

VOLUME THREE OF FOUR

STATE OF SOUTH CAROLINA

In The Supreme Court

ORIGINAL

APPEAL FROM GREENVILLE COUNTY

Larry R. Patterson, Circuit Court Judge

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

FREDDIE EUGENE OWENS,

APPELLANT

RECORD ON APPEAL

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1 testimony in the case, and particular facts and
2 circumstances of the case for murder, do you believe that if
3 you felt like the death penalty were appropriate, you could
4 give a sentence of death?

5 A. I believe so.

6 Q. You would have to sign a document with your fellow
7 jurors, your signature on that sentence of death. Could you
8 do that?

9 A. Yes.

10 Q. All right. If any evidence came in about any prior
11 crimes or any subsequent crimes or bad acts after this
12 happened, that could not come in as a statutory aggravating
13 circumstance, but only as it would bear on the defendant's
14 individual character. Do you understand that?

15 A. Yes.

16 Q. Okay. Would race have any effect on your decision?

17 A. Absolutely not.

18 Q. Would religion have any effect?

19 A. Absolutely not.

20 Q. If a party or person was a Muslim or of the Islamic
21 faith, would that affect your decision?

22 A. No.

23 Q. Okay. Please answer any questions that the lawyers
24 have, okay, sir?

25 A. Yes.

1 VOIR DIRE EXAMINATION BY MR. GODFREY:

2 Q. Good afternoon Mr. Grose. My name is Bill Godfrey.
3 This is Ken Gibson, co-counsel, and this is our client
4 Freddie Owens.

5 I just have couple of questions for you.

6 A. Okay.

7 Q. If you were a juror on this case, could you keep an
8 open mind throughout the entire case and listen to
9 everything?

10 A. Yes.

11 Q. Would you be able to be fair and unbiased, both to the
12 State and to the defense?

13 A. Yes.

14 Q. Is there anything that you think could interfere with
15 your ability to serve as a juror on this case?

16 A. Not to my knowledge.

17 MR. GODFREY: That's all I have.

18 VOIR DIRE EXAMINATION BY MS. VERDIN:

19 Q. Good evening, Mr. Grose. My name is Leticia Verdin.
20 I'm a prosecutor here in Greenville County. Earlier you
21 were introduced to a lot of people in the room. I'll just
22 tell you again this is Bob Ariail. He's the circuit
23 solicitor, and deputy solicitor Betty Strom. And the
24 solicitor is like the district attorney that you see or you
25 hear about in other states or see on TV sometimes.

1 I have a few questions for you.

2 Do you think that the death penalty is an appropriate
3 penalty in certain circumstances for murder?

4 A. Yes.

5 Q. Is that a belief that you held for some time, or is
6 that something that you have just thought about recently?

7 A. No, for some time.

8 Q. For some time?

9 A. Yes.

10 Q. Is that something that you have discussed with other
11 people or seen cases on TV and thought, you know, the death
12 penalty would be appropriate for that?

13 A. I don't know that I have discussed it. I mean, I don't
14 have a recollection of discussing it with anybody, but,
15 yeah, I have seen stuff, you know, read about crimes and
16 stuff.

17 Q. Okay.

18 A. Thought it was appropriate.

19 Q. Now, you said earlier I believe when the judge was
20 questioning you that you wanted to be a number three juror,
21 but you weren't quite exactly sure. You just didn't know.

22 A. Well, what --

23 Q. Can you explain that just a little bit more?

24 A. Well, having never done this before, you know, and
25 it -- to put somebody to death is an awesome responsibility.

1 Q. Sure.

2 A. So I was just trying to give an honest answer. I don't
3 really know.

4 Q. Okay.

5 A. I think I could, but I just need to be honest about it.

6 Q. I appreciate your honesty.

7 But do you believe that you could fairly and
8 meaningfully consider giving the death penalty --

9 A. Yes.

10 Q. -- to someone.

11 And I believe the judge asked you, and I just want to
12 be clear on this, though, you understand that if you, along
13 with your fellow jurors, deliberated and decided the death
14 penalty was appropriate in these circumstances, you would
15 have to personally sign the document that would go to the
16 Department of Corrections to carry out the sentence?

17 A. Yes.

18 Q. You would be fine with doing that?

19 A. I understand that, yes.

20 Q. Okay. Thank you, sir.

21 THE COURT: Okay. Mr. Grose, you are qualified as
22 a potential juror in this case.

23 JUROR NUMBER 174: Yeah.

24 THE COURT: You would need to report back tomorrow
25 morning at 9:30. Park in the Hyatt building and report

1 downstairs to the jury assembly room, and there would be
2 about 40 other people there.

3 JUROR NUMBER 174: Yeah.

4 THE COURT: And then you will come up to the
5 courtroom and we will select the jury from that group.

6 JUROR NUMBER 174: Okay.

7 THE COURT: Do not discuss the case with anyone.
8 Do not expose yourself to any publicity about the case.

9 JUROR NUMBER 174: Yes, sir.

10 THE COURT: And bring some clothing for four or
11 five days that you would need in the motel, if you were
12 selected.

13 JUROR NUMBER 174: Okay.

14 THE COURT: Thank you so much. I'm going to give
15 you this order. You don't have to call that night because
16 it's so late that we have already decided to bring everybody
17 tomorrow back. We will select the jury tomorrow. Thank
18 you.

19 JUROR NUMBER 174: Thank you.

20 (Whereupon, Juror Number 174 was taken out of the
21 courtroom)

22 THE COURT: Thomas K. Foster.

23 (Whereupon, Juror Number 142 was brought into the
24 courtroom)

25 THOMAS K. FOSTER, JR., #142, having been first

1 duly sworn, testified as follows:

2 VOIR DIRE EXAMINATION BY THE COURT:

3 Q. Mr. Foster, what type juror do you believe that you
4 might be, one, two, or three?

5 A. I would say a three.

6 Q. Three.

7 A. Yes, sir.

8 Q. All right, sir. Now, this case arises out of an
9 incident on November the 1st, 1997, on Laurens Road at a
10 Speedway early in the morning hours. Ms. Irene Graves was
11 killed. Mr. Owens has been convicted of the murder of Ms.
12 Grace. That was decided by a jury. Our process is a jury
13 determines the guilt or innocence and they found him guilty.
14 And then a separate sentencing proceeding before a jury is
15 required under our law and then a jury determines how he
16 will be sentenced. So you understand why we are here and
17 what we are doing?

18 A. Yes, sir.

19 Q. Now, in a jury -- the State cannot seek the death
20 penalty in every murder case in South Carolina. It's just
21 not -- it cannot be done, but the State may seek the death
22 penalty in cases where there are statutory aggravating
23 circumstances. Okay.

24 So the first thing the State would have to do is prove
25 to the jury beyond a reasonable doubt that this murder was

1 committed during the commission of a robbery while armed
2 with a deadly weapon, or a larceny while armed with a deadly
3 weapon. They would have to prove it beyond a reasonable
4 doubt.

5 The defendant doesn't have to prove anything. He
6 doesn't even have to testify. Do you understand that?

7 A. Yes, sir.

8 Q. Now, have you been affected personally by any armed
9 robberies or larcenies of the person using a deadly weapon
10 so that you could not give fair and impartial consideration
11 to those aggravating circumstances?

12 A. No, sir.

13 Q. Now, if the State proved to you beyond a reasonable
14 doubt, and all your other jurors, all twelve of you, if you
15 were on the jury, and they proved that aggravating
16 circumstance beyond a reasonable doubt, then it would become
17 the duty of the jury to impose the sentence on Mr. Owens.
18 Do you understand that?

19 A. Yes, sir.

20 Q. There would only be two possibilities for the jury to
21 sentence Mr. Owens to. That would be life in prison without
22 the possibility of parole until his death, or death by
23 lethal injection or electrocution. Do you understand that?

24 A. Yes, sir.

25 Q. It would be your responsibility as the sentencing

1 authority to focus on the circumstances of the murder of
2 Mrs. Graves on that date and the individual characteristics
3 of this defendant, along with any evidence in extenuation,
4 mitigation, or aggravation, and write a verdict of either
5 life or death. Do you understand that?

6 A. Yes.

7 Q. You would have to give due and serious and fair
8 consideration to all the evidence of aggravation and all the
9 evidence of mitigation and write a verdict in the case based
10 on the evidence and testimony that you heard in the
11 courtroom. Could you do that?

12 A. Yes, sir.

13 Q. Would you consider all the circumstances, those of
14 aggravation and any evidence of mitigation, and write a
15 verdict in this case that speaks the truth?

16 A. Yes, sir.

17 Q. And based on your view and understanding and your
18 finding of the facts, if the facts so warranted it as a
19 result of this murder, could you write a sentence of life
20 imprisonment for Mr. Owens?

21 A. Yes, sir.

22 Q. Based on your finding of the facts, and if it so
23 warranted it based on the circumstances of this murder,
24 considering all the aggravating and mitigating
25 circumstances, could you write a sentence of death?

1 A. Yes, sir.

2 Q. Okay. Now, you would focus on the circumstances of
3 this crime on November the 1st and individual
4 characteristics of the defendant, as I told you, and any
5 evidence in extenuation, mitigation, and aggravation.

6 If any evidence came in of prior crimes or bad acts or
7 any crimes or bad acts after November the 1st, that could
8 only come in as it would bear on the characteristics of the
9 defendant and not in evidence of a statutory aggravating
10 circumstance. Do you understand that?

11 A. Yes.

12 Q. All right. Would religion have any bearing on your
13 decision in this case?

14 A. No, sir.

15 Q. If someone were of the Islamic or Muslim faith, would
16 that have any bearing on your decision?

17 A. No, sir.

18 VOIR DIRE EXAMINATION BY MS. VERDIN:

19 Q. Good evening, Mr. Foster. My name is Leticia Verdin.
20 I'm a prosecutor here in Greenville County, and I know that
21 you were introduced to everybody in the room fairly quickly,
22 but seated at my same table is the solicitor for our
23 circuit, Bob Ariail, and the deputy solicitor Betty Strom.
24 And the solicitor is just a term that other states, you
25 know, call district attorney, the prosecutor.

1 Mr. Foster, I take it from your answers that you
2 believe that the death penalty is an appropriate penalty
3 under certain circumstances for murder, is that correct?

4 A. Yes, ma'am.

5 Q. Is that a belief that you have held for a long time, or
6 is that a more recent belief?

7 A. For a long time.

8 Q. For a long time.

9 Is that a belief that you have discussed with other
10 people or see news events and maybe think person deserved
11 the death penalty?

12 A. No.

13 Q. So that's something that you have thought about
14 yourself?

15 A. Yes, ma'am.

16 Q. Okay. Now, I wanted to ask you. I just want to be
17 sure that you understand this. If you and your fellow
18 jurors deliberate in this case after hearing all the
19 evidence and decided that the death penalty was appropriate
20 in this case, you would be required to sign a document that
21 would go to the Department of Corrections that would be used
22 to carry out the sentence in this case. Do you think if you
23 and your jurors decided that the death penalty was
24 appropriate you could do that?

25 A. Yes, ma'am.

1 Q. Now, I noticed from your survey, your juror survey that
2 you had, that you and your -- I believe your mother's
3 boyfriend had been charged with domestic violence and
4 maybe --

5 A. Yes, ma'am, it was actually my mother had -- she got
6 charged with it.

7 Q. She was charged?

8 A. Yes, ma'am.

9 Q. Okay. Would the fact that she was charged with
10 domestic violence, would that have any bearing on your
11 ability to be fair in this case?

12 A. No, ma'am.

13 Q. And do you believe that you could fairly and
14 meaningfully consider both life without the possibility of
15 parole or the death penalty in this case?

16 A. Yes, ma'am.

17 Q. Thank you Mr. Foster.

18 A. Thank you.

19 VOIR DIRE EXAMINATION BY MR. GIBSON:

20 Q. Mr. Foster, how are you?

21 A. Fine, sir.

22 Q. Thank you. I am Ken Gibson. This is my co-counsel
23 Bill Godfrey and this is our client Freddie Owens.

24 I'm going to ask you a few questions just to make sure
25 that you are going to be able to be fair to Mr. Owens, as

1 well as you are going to be fair to the State, okay?

2 A. Yes, sir.

3 Q. Now, what I need to actually make sure of is that in
4 this case, after you have considered all the circumstances
5 and there is nothing in your background or belief system or
6 anything else that would keep you, if you thought it was
7 appropriate, to give Mr. Owens a life sentence, okay?

8 A. Yes.

9 Q. Now, when we talk about life sentence, I'm talking
10 about life without the possibility of parole.

11 A. Yes, sir.

12 Q. Do you understand what that means?

13 A. Yes, sir.

14 Q. Can you tell me what your understanding is?

15 A. My understanding of life without parole is -- I don't
16 even think you get a parole hearing, right?

17 Q. Right.

18 A. You are in prison until death.

19 Q. That's absolutely right.

20 A. That's my understanding.

21 Q. That's absolutely right.

22 Do you think that's an appropriate sentence in certain
23 circumstances regarding murder?

24 A. Yes, sir.

25 Q. Now, let me ask you -- let me explain something to you

1 and go forward. Now, this is sort of a different
2 circumstances than normal. In this case Mr. Owens has
3 already been convicted by another jury of murder. Okay.
4 And based on the evidence that that jury had, they believed
5 that that murder was deliberate and intentional. Okay.

6 Given that finding -- and we are going to be stuck with
7 it. Given that finding, would you still be able to give a
8 sentence of life if you thought that it was appropriate
9 under circumstances?

10 A. Yes, sir.

11 Q. And do you understand that you have a choice --

12 A. Yes, sir.

13 Q. -- in this case?

14 A. Yes.

15 Q. And even after aggravating factors are found, do you
16 understand that you will have a choice?

17 A. Yes, sir.

18 Q. And given the fact that those aggravating factors are
19 found and that his man's life is in your hands, would you
20 still be able to consider all the evidence and is there
21 any -- well, will you be able to still consider the
22 evidence?

23 A. Yes.

24 Q. Is there anything in those findings or anything else
25 which would significantly impair you from giving a life

1 sentence to Mr. Owens?

2 A. No, sir.

3 Q. Thank you Mr. Foster. Appreciate it.

4 A. Thank you.

5 THE COURT: Mr. Foster, you are a qualified juror
6 in this case. That means that you will have to report back
7 tomorrow and bring sufficient clothing and stay in a motel
8 for a few days, if you are chosen. And you cannot discuss
9 the case with anyone. This says call back, but we are past
10 that point. We have got almost enough jurors to go ahead
11 and select the jurors. You will be here with about 45 other
12 people in the morning. Report downstairs to the room where
13 we were Monday morning at 9:30 and we will bring you up here
14 after that and begin the selection. That won't take a whole
15 lot of time. If you are not selected you will be excused.

16 JUROR NUMBER 142: Okay.

17 THE COURT: Okay. And do not discuss the case or
18 look at any news media, TV, or radio, or anything about the
19 case.

20 JUROR NUMBER 142: Yes, sir.

21 THE COURT: You don't have to call. I'm just
22 giving you that to go by that I want you -- you are excused
23 the evening. Appreciate you getting in.

24 JUROR NUMBER 142: Thank you, sir.

25 (Whereupon, Juror Number 142 was taken out of the

1 courtroom)

2 THE COURT: Richard Reid.

3 (Whereupon, Juror Number 342 was brought into the
4 courtroom)

5 RICHARD A. REID, JR., #342, having been first duly
6 sworn, testified as follows:

7 VOIR DIRE EXAMINATION BY THE COURT:

8 Q. Mr. Reid, in reviewing the types of jurors, could you
9 tell me what type juror that you believe that you might be?

10 A. Number three.

11 Q. All right, sir. Mr. Reid, this case arose out of an
12 incident on Laurens Road in Greenville County, on November
13 1st, 1997. Ms. Irene Graves was killed in a Speedway early
14 in the morning hours on that date and Mr. Owens has already
15 been convicted by a jury of murder.

16 Our process in South Carolina is to have a murder trial
17 or proceeding -- or guilt or innocence proceeding as to the
18 murder. And then once that's determined by a jury, there is
19 a second proceeding that must be held to determine how he
20 should be sentenced. Do you understand that's why we are
21 here?

22 A. Yes, sir.

23 Q. Okay. Now, have you heard anything or saw anything or
24 read anything in the newspaper or saw anything on TV or the
25 radio about this case?

1 A. No, sir.

2 Q. Okay. Could you be a fair and an impartial juror, fair
3 to the State and fair to the defendant, and consider all the
4 evidence and circumstances and render a fair and impartial
5 verdict on the sentence?

6 A. Yes, sir.

7 Q. You certainly haven't already formed an opinion about
8 what the sentence should be?

9 A. No, sir.

10 Q. Now, the State would have to prove aggravating
11 circumstances -- statutory circumstances to the jury. They
12 would have to prove beyond a reasonable doubt that this
13 murder was committed during a robbery while the defendant
14 was armed with a deadly weapon, or during a larceny while
15 the defendant was armed with a deadly weapon.

16 Have you had any personal experience with a robbery or
17 larceny while a person was armed with a deadly weapon that
18 would affect your ability to be fair and impartial?

19 A. No, sir.

20 Q. Okay. Could you -- aggravated circumstances are
21 circumstances that make the crime worse, that aggravates the
22 crime of murder. It increases the enormity of that crime of
23 murder.

24 Mitigating circumstances are circumstances that reduce
25 the seriousness of the offense of murder, and you may

1 consider this evidence as extenuating or reducing the degree
2 of responsibility or fault.

3 Could you seriously consider aggravated circumstances
4 and mitigating circumstances and determine a life sentence
5 without the possibility of parole or until the death of the
6 defendant?

7 A. Yeah.

8 Q. Could you seriously consider the facts and
9 circumstances of the case, and if they warranted it, impose
10 a death penalty.

11 A. Yes, sir.

12 Q. Could you sign a sentence personally, along with your
13 fellow jurors, of the death for the defendant, if the
14 circumstances warranted that?

15 A. Yes, sir.

16 Q. Do you understand that even though there were
17 aggravating circumstances, you could conclude from the
18 evidence and testimony that you should award a life
19 imprisonment sentence, and you could do that?

20 A. Yes, sir.

21 Q. Would race have any effect on your decision?

22 A. No, sir.

23 Q. If evidence came out that of any prior crimes or bad
24 acts or anything that happened after November the 1st, any
25 crimes or bad acts, I would instruct you that that couldn't

1 come in as it would bear on the statutory aggravating
2 circumstances in Mrs. Graves case. Do you understand that?

3 A. Yes, sir.

4 Q. That evidence would only come in as to the
5 characteristics of the defendant. Do you understand this?

6 A. Yes, sir.

7 Q. Would religion or if a person of the Islamic or Muslim
8 faith, would that affect you in any way?

9 A. No, sir.

10 Q. Please answer the attorneys questions.

11 VOIR DIRE EXAMINATION BY MR. GODFREY:

12 Q. Good evening Mr. Reid.

13 A. Good evening.

14 Q. My name is Bill Godfrey. Co-counsel is Ken Gibson and
15 we represent Freddie Owens.

16 I just have a couple of questions for you.

17 A. Okay.

18 Q. If you were chosen to be a juror on this case, could
19 you keep an open mind throughout the entire proceeding?

20 A. Yes, sir.

21 Q. And could you be fair and impartial when you went to
22 consider the evidence?

23 A. Yes, sir.

24 Q. In this case, once the aggravating factor, if the
25 aggravating factor is found by the jury to exists beyond a

1 reasonable doubt, then you as a juror, with the rest of the
2 jury, would be determining the sentence in this case.

3 After all of the evidence had been heard by you and
4 when it was time to deliberate, if the evidence indicated to
5 you that you should return a verdict of life, would you be
6 able to do that?

7 A. Yes, sir.

8 Q. Would there be any hesitation on your part at all?

9 A. No.

10 Q. Is there anything in your background - religious
11 beliefs, political beliefs, morality - that would have any
12 impact on your ability to make a decision in this case?

13 A. No, sir.

14 MR. GODFREY: Nothing further.

15 THE COURT: Ms. Strom.

16 MS. STROM: Thank you Your Honor.

17 VOIR DIRE EXAMINATION BY MS. STROM:

18 Q. Good evening, Mr. Reid.

19 A. Hi.

20 Q. I just have a couple of questions, so I know that
21 everybody has pretty much hit everything, so I'll try not to
22 keep you too long, okay?

23 A. Okay.

24 Q. But based upon what you said in your responses to the
25 judge and to Mr. Godfrey, is it my understanding or what

1 would I be correct in saying that you believe that the death
2 penalty is an appropriate penalty in certain murder cases?

3 A. Yes.

4 Q. And if you found those circumstances to exists, you
5 personally could impose and write a verdict of death?

6 A. Yes.

7 Q. I can't remember if the judge went over this with you,
8 so I apologize if I'm repeating, but as part of that, if a
9 jury were to return a verdict of death, each and every juror
10 would have to sign their name to that document. Could you
11 sign your name?

12 A. Yes.

13 Q. Do you have any hesitancy in signing your name --

14 A. No, ma'am.

15 Q. -- to that document. Okay. Thank you very much.

16 THE COURT: Thank you. Mr. Reid, you are a
17 qualified juror.

18 JUROR NUMBER 342: Yeah.

19 THE COURT: If you are chosen, you need to come
20 back at 9:30 in the morning.

21 JUROR NUMBER 342: Yeah.

22 THE COURT: Report downstairs. You can park in
23 the Hyatt parking garage over here.

24 JUROR NUMBER 342: Yeah.

25 THE COURT: And you can bring clothes so you can

1 be in the motel for a few days, if you are chosen. Leave
2 them in your car, if you want to, and you can drive your car
3 to the motel after sometime tomorrow.

4 JUROR NUMBER 342: Okay.

5 THE COURT: You cannot talk with anyone about this
6 case or be exposed to the news media in any way about this
7 case. Do you understand that?

8 JUROR NUMBER 342: Yes, sir.

9 THE COURT: Now, it's not necessary here for you
10 to call back after six, but we have only got one more juror
11 to go and then we are going to be finished. We have got
12 enough people with you and the others to have 43 and that
13 would be sufficient.

14 JUROR NUMBER 342: Okay.

15 THE COURT: So I'm going to give you this order
16 and you report back at 9:30 in the morning. Thank you so
17 much.

18 JUROR NUMBER 342: Thank you.

19 (Whereupon, Juror Number 342 was taken out of the
20 courtroom)

21 THE COURT: Joel R. Irvine.

22 (Whereupon, Juror Number 214 was brought into the
23 courtroom)

24 JOEL R. IRVINE, #214, having been first duly
25 sworn, testified as follows:

1 VOIR DIRE EXAMINATION BY THE COURT:

2 Q. Mr. Irvine, could you tell me what type juror that you
3 think that you might be in this case?

4 A. I believe I would be a three.

5 Q. Okay. Mr. Irvine, this incident that brings us here
6 occurred on about November the 1st of 1997, on Laurens Road
7 in Greenville County, at the Speedway. Early in the morning
8 hours Ms. Irene Graves was killed. Mr. Owens has been
9 convicted of that murder by a jury.

10 Have you heard anything about this case, seen any
11 publicity or read anything about this case?

12 A. I believe I have read about it in the past. At a
13 convenience store?

14 Q. Yes.

15 A. Yeah.

16 Q. Do you recall anything that you read or heard about it?

17 A. Not really, no.

18 Q. Okay. If anything should occur to you during this
19 trial, could you dismiss that from your mind if you were a
20 juror and decide the case only on the evidence and testimony
21 that you heard in court?

22 A. I believe I could.

23 Q. Because a jury in any case is only permitted to decide
24 the facts and circumstances based on what's presented in
25 court, because that's relevant and valid evidence under the

1 law. What you may or may not have heard outside the
2 courtroom may be evidence, it may be hearsay, it may not be
3 true, it may be true. Do you understand that?

4 A. Yes, sir.

5 Q. Understanding that, would you decide it only on the
6 evidence and testimony that you heard in court?

7 A. Yes, sir.

8 Q. All right, sir.

9 Now, you have not, based on what you have told me,
10 formed any opinion about what the sentence for Mr. Owens for
11 murder should be?

12 A. No, sir.

13 Q. All right, sir. Could you be a fair and an impartial
14 juror and be fair to the State of South Carolina and fair to
15 Mr. Owens and write a verdict under the facts and
16 circumstances of this case either for life in prison or for
17 death?

18 A. One more time, please.

19 Q. Could you -- based on the evidence that you heard in
20 the courtroom, depending upon the facts and circumstances
21 surrounding this murder, could you write a sentence either
22 for life or for death, depending on the evidence that you
23 heard?

24 A. Yes, sir.

25 Q. You would be fair and open-minded and not decide it on

1 anything except the circumstances?

2 A. I believe so.

3 Q. Now, for every murder the State cannot seek the death
4 penalty in South Carolina. There are murders in which they
5 cannot ask for the death penalty. The State can only seek
6 the death penalty if there is statutory aggravating
7 circumstances. The law said if these things occur, if there
8 is evidence of that, the State can ask for the death
9 penalty, but not in every murder case. Do you understand it
10 has to be a statutory aggravated case for them to seek the
11 death penalty?

12 A. Yes, sir.

13 Q. And they have to prove to you those aggravating factors
14 beyond a reasonable doubt, in this case robbery while armed
15 with a deadly weapon and larceny while armed with a deadly
16 weapon in the commission of this murder. If that's proven
17 to the jury beyond a reasonable doubt, then the jury would
18 have to determine the sentence of Mr. Owens, which would be
19 life in prison or death, and that would be the reason we are
20 here, the only two possible sentences for the jury. Do you
21 understand the process?

22 A. Yes, sir.

23 Q. Okay. Now, the jury in this case under the law would
24 have to focus on the circumstances surrounding the murder of
25 Mrs. Graves and the individual characteristics of Mr. Owens

1 in determining whether the sentence should be life or death.

2 Do you understand that proposition?

3 A. Yes, sir.

4 Q. Could you be -- could you consider, seriously consider,
5 all the circumstances of aggravation and mitigation in this
6 case and if you thought the facts and circumstances
7 warranted it, write a sentence of life imprisonment?

8 A. I believe so, yes.

9 Q. Life in prison in South Carolina means life until the
10 death of the defendant with no possibility of parole.

11 Death is by lethal injection or by electrocution. Do
12 you understand that?

13 A. Yes, sir.

14 Q. If you think the facts and circumstances warranted it
15 in regard to this murder, could you write a death sentence?

16 A. Yes, sir.

17 Q. Would you be able to sign your name to that death
18 sentence, if you thought that the facts warranted it, along
19 with your other jurors?

20 A. I believe I could, yes.

21 Q. Okay. Would race have any effect on your decision in
22 regard to a sentence in this case?

23 A. None whatsoever.

24 Q. Okay. If evidence came in as to prior crimes or bad
25 acts or anything that happened after this offense, I would

1 tell you that that could not be evidence of a statutory
2 aggravating circumstance, could you accept that?

3 A. Yes, sir.

4 Q. If that evidence came in, I would tell you that it can
5 only bear upon the individual characteristics of Mr. Owens.
6 Could you accept that?

7 A. Yes, sir.

8 Q. Would the fact that a person is of the Muslim or
9 Islamic faith have any effect on your decision in the case?

10 A. No, sir.

11 Q. Okay. Please answer any questions that the lawyers
12 have. Okay.

13 VOIR DIRE EXAMINATION BY MS. STROM:

14 Q. Good evening.

15 A. Hi.

16 Q. Again, I'm Betty Strom. I'm one of the prosecutors.
17 We call them solicitors here. Okay.

18 And I just want to go over a couple of things and make
19 sure that I understand what you are telling us and make sure
20 I'm not confused, okay?

21 Based upon what you have told the judge, am I correct
22 in saying that you believe that the death penalty is an
23 appropriate penalty in certain circumstances?

24 A. Yes.

25 Q. And that if those circumstances were shown to you, then

1 you could impose that sentence if you felt that it were
2 appropriate?

3 A. I believe I can, yes.

4 Q. You believe that you can. Okay.

5 And I take it that your hesitation is any time that you
6 are dealing with this type of situation it's difficult?

7 A. It's real right now.

8 Q. Sure. Sure.

9 A. Before all of this took place, it was you know -- well,
10 sure, no problem. Now, it's real, and yes, I think I could.

11 Q. Okay. And if you came to that decision in the jury
12 room, along with your other jurors, to impose the death
13 penalty, you would be able to sign that document stating
14 that was your verdict?

15 A. I already said I would, yes.

16 Q. I just want to make sure.

17 In reviewing your questionnaire, I noticed that you
18 have family in law enforcement?

19 A. I did, yes.

20 Q. Okay. Would the fact that you had family members who
21 were in law enforcement, would that in any way affect your
22 ability to be fair to either the State or the defendant?

23 A. Not really, no.

24 Q. Okay. All right. I know sometimes it seems like an
25 obvious question, but we have to ask.

1 A. Okay.

2 Q. Okay. Because I don't want you to be thinking, well,
3 I'm so pro-law enforcement that I'm not going to give the
4 defendant a fair trial. That would not happen?

5 A. No.

6 Q. Okay. And I also saw in your questionnaire that you
7 actually witnessed a robbery up in Charlotte, North
8 Carolina?

9 A. Yes, sir.

10 Q. Would the fact that you witnessed that and that you
11 were involved in that, would that in any way affect your
12 ability to be fair in this case, or in any case involving an
13 armed robbery?

14 A. No.

15 Q. You could put that aside and -- His Honor would
16 instruct you that you would have to put everything else
17 aside and decide the case solely on the facts presented in
18 this courtroom, and you could follow the judge's instruction
19 on that?

20 A. Yes, I could.

21 Q. Okay.

22 MS. STROM: Court's indulgence.

23 (Off the record)

24 (Back on the record)

25 MS. STROM: Thank you.

1 VOIR DIRE EXAMINATION BY MR. GIBSON:

2 Q. Mr. Irvine, I'm Ken Gibson. This is co-counsel Bill
3 Godfrey and this is our client Freddie Owens.

4 I want to ask you a few questions.

5 Now, I see from your transcripts -- or your
6 questionnaire you used to live in Kentucky?

7 A. Yes, sir.

8 Q. And you say that while you were in Kentucky a lot of
9 your best friends were lawyers? You chose to hang out with
10 lawyers?

11 A. Well, they didn't have many other friends.

12 Q. Okay. All right. With that said, just let me get to
13 the heart of what I need to know from you.

14 I want to make sure that you are going to be able to be
15 fair, not only to the State, but also to Mr. Owens, okay?

16 A. Right.

17 Q. Now, they have asked you a lot of questions about
18 whether or not that you could impose a death penalty in the
19 circumstances. I want to make sure that you can impose a
20 life sentence in the circumstances. Do you think that you
21 could do that?

22 A. I think I could if the circumstances were, you know,
23 appropriate, yes.

24 Q. Okay. Now, you know in this case another jury has
25 already found that Mr. Owens is guilty of murder?

1 A. Yes, sir.

2 Q. Okay. And that's going to -- by statute that's
3 considered to be a deliberate and intentional act.

4 Given that, do you still believe that you could impose
5 a sentence of life in this case, if you thought the
6 circumstances were appropriate?

7 A. For life, if they were appropriate, yes, I could.

8 Q. Is there anything about that circumstance which would
9 significantly impair your ability to give a sentence of
10 life?

11 A. I don't know.

12 Q. Okay. All right. Let me ask you this. Now, in order
13 for you, the jury, to be -- as a jury member to be a able to
14 consider whether or not that you should impose life or
15 death, first thing that would have to happen is the jury
16 would have to find by a standard of beyond a reasonable
17 doubt that an aggravating circumstance was present. In this
18 case that's either with an armed robbery, that's committed
19 with an armed robbery, or at the same time as an armed
20 robbery, or committed at the same time as a larceny. Do you
21 understand that?

22 A. Yes.

23 Q. If you were on this jury and you found beyond a
24 reasonable doubt that one of those two aggravating
25 circumstances occurred, would that in any way

1 significantly -- would that significantly impair your
2 ability to give a life sentence in this case?

3 A. Can you repeat that one more time?

4 Q. Okay.

5 A. I thought the way that you were going, would it impair
6 my ability to impose the death sentence and --

7 Q. Yeah. Well, no, would it be --

8 A. Mitigating circumstances or what?

9 Q. I can't tell you what they are right now, but you would
10 hear mitigating circumstances as part of all this. You
11 would hear possibly some more aggravating circumstances as
12 part of all this, but what I want to make sure of is that
13 you are not type of juror that once you make that finding of
14 that statutory aggravating circumstance, which in this case
15 is either an armed robbery or a larceny, that at that point
16 you have made up your mind that there is no way I'm giving a
17 life sentence. That's what I'm trying to make sure of.
18 Okay?

19 A. I don't think that would be the case.

20 Q. Okay. Thank you Mr. Irvine.

21 THE COURT: Mr. Irvine, you are a qualified juror
22 in this case. And I know it's late, but you will have to
23 come back at 9:30 in the morning. Okay.

24 JUROR NUMBER 214: Okay.

25 THE COURT: And we will select the jury at about

1 ten o'clock. We will get up here and get everybody
2 assembled at 9:30. It would be about 44 of you.

3 JUROR NUMBER 214: Come back to the rear or --

4 THE COURT: Park in the Hyatt garage. Put your
5 some clothes in there.

6 JUROR NUMBER 214: I'm going to have little
7 difficulty parking at the Hyatt. I had a stroke three weeks
8 ago.

9 THE COURT: Oh, okay.

10 JUROR NUMBER 214: And I have difficulty walking.
11 The other day they gave me a parking pass for over here.

12 THE COURT: You still use that parking pass then.

13 JUROR NUMBER 214: Well, it's one of those
14 temporary things.

15 THE COURT: That's fine.

16 JUROR NUMBER 214: The meter guy said he didn't
17 recognize it.

18 THE COURT: Bring some clothes in order to --

19 JUROR NUMBER 214: Okay, sir.

20 THE COURT: Leave them in the car. If you are
21 chosen, you can drive your car from here and leave it in the
22 motel and SLED will escort you back and forth. You don't
23 have to call back in tonight because you are the 44th and we
24 are not going to go any further.

25 JUROR NUMBER 214: How did I luck out?

1 (Whereupon, Juror Number 214 was taken out of the
2 courtroom)

3 THE COURT: We will adjourn until about ten
4 o'clock in the morning. We will assemble about ten o'clock
5 here in the courtroom. Okay. I'll have hopefully 44, but
6 we got a couple of extras in case something happens to a
7 couple. And I'll see y'all tomorrow. Thank you.

8 (Whereupon, Proceedings were adjourned to November
9 9, 2006)

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Numbered

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 FREDDIE EUGENE OWENS,) 1998-GS-23-5220
7 Defendant.) NOVEMBER 9, 2006
8) Greenville, South Carolina

9 (VOLUME IV)

10 B E F O R E:

11 THE HONORABLE LARRY R. PATTERSON, JUDGE. ; and a jury.
12

13
14 A P P E A R A N C E S:

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1 (PROCEEDINGS, November 9, 2006)

2 THE COURT: The news media and our friends, you
3 will protect the identity of the jurors and not identify any
4 of them in any way, either by photograph or name. Is that
5 correct?

6 UNKNOWN MEDIA: Okay.

7 THE COURT: All' right, sir.

8 And I believe we are ready for the selection of
9 the jury.

10 I think we have a jury list.

11 And one matter to take up before we start. The
12 juror number 44, the last gentleman that was here last night
13 called back. He called the Clerk of Court this morning to
14 tell her that when he got home --

15 THE CLERK: He's present.

16 THE COURT: He's present?

17 THE CLERK: He's present.

18 THE COURT: He called you, didn't he?

19 THE CLERK: No, he came to my office.

20 THE COURT: Oh, he came to her office, I'm sorry,
21 and he told her that he remembered when he got home last
22 night that Mr. Owens was the person that had maybe killed
23 the cellmate with a pencil. And I asked the clerk not to --
24 to tell him not to discuss anything with anybody, if he
25 recalled that. He's the only juror that mentioned that, and

1 I don't know if y'all wanted to -- 44 is kind of down the
2 list, but if y'all wanted to ask him any questions about
3 that. That may, as I understand it, it may come out in
4 evidence anyway, so I wanted to inform you of that.

5 Any particular position by the defense on that?

6 MR. GIBSON: May we just have a moment, Your
7 Honor?

8 THE COURT: I'm sorry?

9 MR. GIBSON: Can I have just a second?

10 THE COURT: Yeah, you go ahead and talk to him.

11 (Off the record)

12 (Back on the record)

13 MR. GIBSON: We don't need to explore it, Your
14 Honor.

15 THE COURT: The defense says that we don't need to
16 call the juror in and explore that any more on voir dire.

17 MR. ARIAIL: I don't see -- we don't see any need.

18 THE COURT: Okay. I believe that evidence came in
19 in front of Judge Kittredge, and I have known that thinking
20 that we may face that issue anyway.

21 So both sides by agreement agree that we do not
22 need to do any more voir dire with juror number 44 on our
23 list. He's juror number 214.

24 Do we need to take up anything else before we
25 bring the jury up and select the jury in this case?

1 MR. GODFREY: None from the defense, Your Honor.

2 MR. ARIAIL: Nothing from the State.

3 THE COURT: Now, it's my understanding that the
4 jurors in response to some questionnaires in the past have
5 felt very uncomfortable with having to walk down to the
6 front here and turn around and stand in front of y'all.

7 The way that I normally do it in every case -- and
8 most courtrooms are so small, jurors having to walk down, go
9 down the aisle and come back, and then they have to go back
10 if they are excused and sit back down in the aisle
11 somewhere. There is a lot of lifting around. It takes
12 longer. I found it's the same result if they just stand up
13 in place and it's -- it gives them -- we know who it is and
14 I think they are more comfortable with that.

15 The State -- I'm not sure we are mandated to any
16 particular procedure, but if no one has any objection to
17 that, I think we will do it that way.

18 MR. GODFREY: No objection from the defense,
19 judge.

20 MR. ARIAIL: We don't object.

21 THE COURT: I like the old procedure. It was a
22 lot more formal and everything, but since the citizens have
23 spoken up about that, I don't see any prejudice or how
24 that's going to affect anybody one way or the other, so we
25 will just let them stand in place.

1 It's going to be ten peremptory challenges for the
2 defense and five for the State.

3 Are y'all ready?

4 MS. STROM: Yes, sir.

5 MR. GODFREY: We are.

6 THE COURT: Once we get the jury seated, I'm not
7 going to swear them this morning. I'm going to let SLED
8 agents take them out to the motel and let them get
9 comfortable and settled in, as we talked about. Then when
10 they come back, we will put them under oath, because
11 anything could happen between now and then.

12 Once the jury is seated, we will swear the SLED
13 agents and all the bailiffs in the presence of the jury.

14 (Off the record)

15 (Back on the record)

16 THE COURT: Mr. Irvine has again said he has a
17 problem, so I'm going to have him come in and I'm going to
18 speak to him down here at the bench.

19 (Whereupon, Juror Number 214 was brought into the
20 courtroom)

21 THE COURT: Mr. Irvine, if you would come in
22 privately and speak with me up here.

23 (Whereupon, the following was an off-the-record
24 bench conference with Juror Number 214, outside the presence
25 of the attorneys)

1 THE COURT: Mr. Irvine, before we leave, let me go
2 over what we talked about with the attorneys and then the
3 bailiffs will tell you you can leave, okay?

4 JUROR NUMBER 214: Yes, sir.

5 THE COURT: You can step on outside of the
6 courtroom.

7 (Whereupon, Juror Number 214 was taken out of the
8 courtroom)

9 THE BAILIFF: Do you want us to keep him
10 separated?

11 THE COURT: Go out and let him walk down the hall
12 somewhere, okay. I have already instructed him not to talk
13 to other jurors.

14 THE BAILIFF: Okay.

15 THE COURT: Judy, I think you told him that this
16 morning.

17 THE CLERK: Yes, I did.

18 THE COURT: He had been instructed by the clerk
19 and me not to discuss it with anybody else.

20 Essentially he told me that he could not be fair
21 and impartial, so I excused him.

22 MR. ARIAIL: Okay.

23 THE COURT: Have you got any objection to that?

24 MR. GODFREY: No objection.

25 MR. ARIAIL: None.

1 THE COURT: All right. You can bring the jurors
2 in. Have them seated on my left and your right.

3 I think he told me that he had had a stroke three
4 weeks ago, did he say?

5 THE CLERK: He said that yesterday.

6 THE COURT: That's what he said yesterday.

7 (Whereupon, the jury venire panel was brought into
8 the courtroom)

9 THE COURT: Ladies and gentlemen, we are ready to
10 select the jury in a resentencing proceeding for the State
11 versus Freddie Eugene Owens.

12 At this time the names will be called and -- I'm
13 going to ask you to stand up in place and when your name is
14 called. You will either be seated or excused for this
15 sentencing proceeding for Mr. Owens.

16 And if you are seated, you can bring whatever you
17 have with you and come down and be seated in the jury box.

18 If you are excused, just have a seat in place.

19 Now, that may end the process and 15 of you would
20 stay and 28 of you would be able to go back home and be
21 excused from this case, but that may not. It may not stop
22 there. We may reconsider things. But once we do that, it
23 will take a little while. We will just have to see how much
24 time it takes, but we will give you some further
25 instructions maybe before we let you go.

1 At this time we will select a jury.

2 Madam Clerk.

3 THE CLERK: Your Honor, number 111, Ronald D.

4 Dillard.

5 What says the State?

6 MR. ARIAIL: Present Mr. Dillard.

7 THE CLERK: What says the defendant?

8 MR. GIBSON: Present Mr. Dillard.

9 THE CLERK: Come forward, please, sir. Have a
10 seat in the jury box to my left.

11 Number 194, Joseph G. Hedrick.

12 What says the State?

13 MR. ARIAIL: Present Mr. Hedrick.

14 THE CLERK: What says the defendant?

15 MR. GIBSON: Present Mr. Hedrick.

16 THE CLERK: Come forward, please, sir, and have a
17 seat in the jury box.

18 Number 332, Daniel D. Poulton.

19 What says the State?

20 MR. ARIAIL: Present Mr. Poulton.

21 THE CLERK: What says the defendant?

22 MR. GIBSON: Please excuse Mr. Poulton.

23 THE COURT: You may be excused in this case.

24 THE CLERK: Number 441, Kathryn J. Woods.

25 What says the State?

1 MR. ARIAIL: Present Ms. Woods.

2 THE CLERK: What says the defendant?

3 MR. GIBSON: Please excuse Ms. Woods.

4 THE CLERK: You may be excused in this case.

5 Number 471, Ivory J. Taylor.

6 What says the State?

7 MR. ARIAIL: Present Mr. Taylor.

8 THE CLERK: What says the defendant?

9 MR. GIBSON: Please excuse Mr. Taylor.

10 THE CLERK: You may be excused in this case.

11 Number 369, Scottie D. Shockley, Jr..

12 What says the State?

13 MR. ARIAIL: Present Mr. Shockley.

14 THE COURT: What says the defendant?

15 MR. GIBSON: Please excuse Mr. Shockley.

16 THE CLERK: You may be excused in this case.

17 Number 252, William J. Law?

18 What says the State?

19 MR. ARIAIL: Present Mr. Law.

20 THE CLERK: What says the defendant?

21 MR. GIBSON: Please present Mr. Law.

22 THE CLERK: Come forward please, sir, and have a
23 seat in the jury box.

24 Number 408, Matthew L. Thrift.

25 What says the State?

1 MR. ARIAIL: Present Mr. Thrift.

2 THE CLERK: What says the defendant?

3 MR. GIBSON: Please excuse Mr. Thrift.

4 THE CLERK: You may be excused in this case.

5 Number 29, Pamela S. Benfield.

6 What says the State?

7 MR. ARIAIL: Present Ms. Benfield.

8 THE CLERK: What says the defendant?

9 MR. GIBSON: Please present Ms. Benfield.

10 THE CLERK: Come forward, please, ma'am, and have
11 a seat in the jury box.

12 Number 217, Roger D. James.

13 What says the State?

14 MR. ARIAIL: Present Mr. James.

15 THE CLERK: What says the defendant?

16 MR. GIBSON: Please present Mr. James.

17 THE CLERK: Come forward, please, sir.

18 Number 394, Cassandra Talbert Carroll.

19 What says the State?

20 MR. ARIAIL: Please excuse Mrs. Carroll from this
21 case.

22 THE CLERK: You may be excused in this case.

23 Number 474, Christian L. Zeimet.

24 What says the State?

25 MR. ARIAIL: Present Mr. Zeimet.

1 THE CLERK: What says the defendant?

2 MR. GIBSON: Please present Mr. Zeimet.

3 THE CLERK: Come forward, please, sir.

4 Number 12, Nathan Asire.

5 What says the State?

6 MR. ARIAIL: Present Mr. Asire.

7 THE CLERK: What says the defendant?

8 MR. GIBSON: Please present Mr. Asire.

9 THE CLERK: Come forward, please, sir.

10 Number 304, Judy M. Mullinax.

11 What says the State?

12 MR. ARIAIL: Present Ms. Mullinax.

13 THE CLERK: What says the defendant?

14 MR. GIBSON: Please excuse Mrs. Mullinax.

15 THE CLERK: You may be excused in this case.

16 Number 458, Sherry L. Gratzner.

17 What says the State?

18 MR. ARIAIL: Present Ms. Gratzner.

19 THE COURT: What says the defendant?

20 MR. GIBSON: Please present Ms. Gratzner.

21 THE CLERK: Come forward, please, ma'am, and have
22 a seat in the jury box.

23 Number 467, Fawn Norton.

24 What says the State?

25 MR. ARIAIL: Please excuse Ms. Norton from this

1 case.

2 THE CLERK: You may be excused in this case.

3 Number 51, Sharon Breazeale.

4 What says the State?

5 MR. ARIAIL: Present Ms. Breazeale.

6 THE CLERK: What says the defendant?

7 MR. GIBSON: Please present Ms. Breazeale.

8 THE CLERK: Come forward, please.

9 Number 184, Donna L. Hanvy.

10 What says the State?

11 MR. ARIAIL: Present Ms. Hanvy.

12 THE CLERK: What says the defendant?

13 MR. GIBSON: Please present Ms. Hanvy.

14 THE CLERK: Come forward, please, ma'am, and take
15 a seat in the jury box.

16 Number 221, Pamela Jennings Gregg.

17 What says the State?

18 MR. ARIAIL: Present Ms. Gregg.

19 THE CLERK: What says the defendant?

20 MR. GIBSON: Please present Ms. Gregg.

21 THE CLERK: Come forward, please, ma'am.

22 Number 66, Susan B. Campbell.

23 What says the State?

24 MR. ARIAIL: Present Ms. Campbell.

25 THE CLERK: What says the defendant?

1 MR. GIBSON: Please present Ms. Campbell.

2 THE CLERK: Come forward, please.

3 THE COURT: Okay. We will now move into the
4 alternates. It will be two peremptory challenges for the
5 defense and one for the State per alternate.

6 THE CLERK: Number 158, Linda M. Gawrych.

7 What says the State?

8 MR. ARIAIL: Present Ms. Gawrych.

9 THE CLERK: What says the defendant?

10 MR. GIBSON: May I have just a second, please?

11 (Off the record)

12 (Back on the record)

13 MR. GIBSON: Please present Ms. Gawrych.

14 THE CLERK: Come forward, please, ma'am.

15 Number 120, Wendy E. Eastland.

16 What says the State?

17 MR. ARIAIL: Present Ms. Eastland.

18 THE CLERK: What says the defendant?

19 MR. GIBSON: Please excuse Ms. Eastland.

20 THE CLERK: You may be excused in this case.

21 Number 211, Rebecca Hunter.

22 What says the State?

23 MR. ARIAIL: Please excuse Ms. Hunter.

24 THE CLERK: You may be excused in this case.

25 Number 133, G. Keith Faust.

1 What says the State?

2 MR. ARIAIL: Present Mr. Faust.

3 THE CLERK: What says the defendant?

4 MR. GIBSON: Please excuse Mr. Faust.

5 THE CLERK: You may be excused in this case.

6 Number 290, Jeffery Scott Merriam.

7 What says the State for cause?

8 MR. ARIAIL: Present Mr. Merriam.

9 THE CLERK: The defendant for cause?

10 MR. GIBSON: Please present Mr. Merriam.

11 THE CLERK: Come forward, please, sir.

12 Number 274, Randy R. Mathena.

13 What says the State?

14 MR. ARIAIL: Present Mr. Mathena.

15 THE CLERK: What says the defendant?

16 MR. GIBSON: Please present Mr. Mathena.

17 THE CLERK: Come forward, please, sir.

18 THE COURT: Ladies and gentlemen, at this time I'm
19 going to instruct you from this time forward you cannot
20 discuss the case with anyone. Do not discuss it with each
21 other, period. But right now I'm going to let you step back
22 into this jury room where you would be deliberating and
23 taking breaks. We have two rooms back here. And I'm going
24 to let you be there for about five minutes, I think, and
25 then I'll bring you back out. Okay. If y'all would just

1 step across, please.

2 (The following takes place outside the presence of
3 the jury panel)

4 THE COURT: I do not want to, of course, put any
5 motions on the record or anything. I want everything on the
6 record, but I just wanted to ask you if I'm going to have
7 any motions to take up at this time?

8 MR. GODFREY: Not from the defense.

9 MR. ARIAIL: None from the State.

10 THE COURT: Okay. Now, based on that statement in
11 the record I'm going to excuse the rest of this panel. And
12 once they leave, I cannot bring them back. Okay.

13 All right, ladies and gentlemen, I'm going to
14 excuse you from this case now and you are not under a
15 subject to any orders or anything. Any directions from the
16 court, and you are certainly free to do just everything that
17 you did - reading the paper, watching the news media, and
18 whatnot - but I do really appreciate you working with us and
19 I hope and believe the staff I hope has been courteous with
20 you. I couldn't be with you because we were in the
21 courtroom most of the time, but as I told you when you came
22 in, jury service in a matter like this is very, very heavy
23 duty, and it's a very, very important case for the State and
24 to this defendant in this sentencing proceeding. And I do
25 appreciate your being on time and being here. We moved as

1 quickly as we could. And we stayed as late as we could for
2 the staff, but -- and I do appreciate it and I'm going to
3 excuse you, ladies and gentlemen, from your jury service in
4 this case. Thank you so much. Y'all can go out the back
5 way.

6 Do you need for them to do anything, Madam Clerk?

7 THE CLERK: They have been instructed to go to the
8 clerk's office if they need anything.

9 THE COURT: Okay. Very good.

10 (Whereupon, the Jury Venire Panel was discharged
11 and left the courtroom)

12 THE COURT: If these jurors are not in the
13 restroom or anything, we can bring them on back in the
14 courtroom.

15 (The following takes place in the presence of the
16 jury panel)

17 THE COURT: All right, ladies and gentlemen, you
18 are the jury in this sentencing proceeding. And as we
19 explained to each one of you individually, I hope, we talked
20 to a lot of people, that that is proceeding permitted under
21 our law.

22 The first proceeding was to determine the guilt or
23 innocence of Mr. Owens. He has been convicted of the crime
24 of murder.

25 And your duty would be to determine how he's going

1 to be sentenced, and we will go into that in more detail
2 with you, but the thing I want to tell you now and just -- I
3 hope this has been imprinted upon your minds, I want you to
4 be relaxed. I know that you will pay close attention to
5 this case, but do not talk to anyone about this case. Do
6 not permit anyone to talk to you about the case. And just
7 from experience and years, do not ask the SLED agents
8 questions about the case. They should not -- they know, I
9 hope, not to talk to you about the case. Just don't talk to
10 anyone about the case. Concentrate on the evidence and
11 testimony when you are in this courtroom.

12 I believe that the agents will take good care of
13 you until we complete this. If they don't, any time that
14 you want to communicate with the court, you can write
15 whatever your communication you want to tell me. If it's
16 something that maybe happening or whatever, you can write me
17 a note about that. If something is happening at night, or
18 whatever, in the motel rooms, or whatever, but I don't
19 anticipate any problems.

20 What we are going to do -- and when you come to
21 court, let me emphasize this to you. Do not bring any
22 reading materials at all. Do not bring any pamphlets in
23 your pocket of any type, religious or secular. We cannot
24 have any extraneous materials in the jury room. Whatever
25 comes into evidence, we are going to send that back there.

1 You will have that. It may be a good bit, I don't know, but
2 do not bring anything in your pockets or anything like that.
3 You have to have your normal stuff that's in your wallet or
4 whatever, but don't bring any testaments or secular reading
5 material or anything like that. We just cannot permit
6 anything to go into the jury room with you, except what's
7 been introduced into evidence.

8 And we are going to let you go to the motel and
9 then we are going to bring you back and start this trial.
10 You can go out and get into your rooms. The SLED agents
11 have the key and they will give you a key to your individual
12 room there, and y'all can kind of get relaxed and be ready
13 to come back. We will be here for a few days. I cannot
14 tell you how long it will be, but you and I will give this
15 whatever time it takes to make sure this is a fair trial.
16 And all of you told us that you could be fair and impartial
17 to both sides. We have been through that process.

18 If you would ask Mr. McCloud and his group of SLED
19 agents to come in, please.

20 Mr. McCloud, would you bring the group in, please?

21 Would each of you raise your right hand and be
22 sworn in regard to -- I will do that separately.

23 Madam Clerk, would you swear the SLED agents.

24 THE CLERK: You do solemnly swear that you will
25 keep the jury sworn and you will suffer no one to speak to

1 them, neither speak to them yourself about this case, so
2 help you God?

3 SLED AGENTS: (Collectively said I would.)

4 THE COURT: Do not talk to any of them. I know
5 that y'all know this, but do not speak to them about this
6 case or answer any questions. I have instructed them not to
7 talk to you about it. Y'all will just take real good care
8 of them, okay?

9 Mr. McCloud, thank you so much. I'm going to turn
10 them over to you in just a second, okay.

11 SLED AGENT MCCLOUD: All right, sir.

12 THE COURT: If the bailiffs would come around,
13 please.

14 Would each of you raise your right hand.

15 THE CLERK: You do solemnly swear that you will
16 keep the jury sworn and you will suffer no one to speak to
17 them, neither speak to them yourself about this case, so you
18 help God?

19 THE BAILIFFS: (Collectively said yes)

20 THE COURT: All right. Ladies and gentlemen,
21 these people will take good care of you from now on. Every
22 day that you will be fed. The county will pay for your
23 meals. They will pay for your rooms. And, if necessary, we
24 will work out with Mr. McCloud, if the case goes that long,
25 for some scheduled visitation, if you need to do that. And

1 we will have some instructions about people that may come
2 and go and speak with you. But at this time I'm going to
3 let them -- and Mr. McCloud, we told them that they could
4 drive their cars with their clothes in the cars and drive
5 their cars to the motel.

6 SLED AGENT MCCLOUD: All right, sir.

7 THE COURT: And if you would, I'm going to let
8 them go with you at this time, and then we will -- I believe
9 we could try to get back around one o'clock. Can you get
10 them to lunch and get them in their rooms and everything and
11 be back by then? If you can't, we will do it at 1:30.
12 Would that be better?

13 SLED AGENT MCCLOUD: 1:30 sounds good. We will
14 shoot for one.

15 THE COURT: Well, is 1:30 a problem?

16 MS. STROM: No problem.

17 MR. ARIAIL: No, sir. No, sir.

18 THE COURT: Mr. Godfrey?

19 MR. GODFREY: No, sir.

20 THE COURT: Well, let's -- so that you won't be
21 rushed up in what you are doing, let's do it at -- have
22 everybody back here at 1:30 and we will start the trial.

23 SLED AGENT MCCLOUD: All right, sir.

24 THE COURT: Thank you so much. Y'all just feel
25 free to go with this gentleman.

1 (Whereupon, the Jury Panel and the SLED agents
2 left the courtroom)

3 MR. ARIAIL: I think -- how late did you plan?
4 Did you say six?

5 THE COURT: I think probably this evening we will
6 go to six.

7 MR. ARIAIL: Okay.

8 THE COURT: Any problem with that, Mr. Ariail?

9 MR. ARIAIL: No, I have no problem with that.

10 MR. GODFREY: No, Your Honor.

11 THE COURT: I know we have worked a little bit
12 later each night than I thought we would, but I would --
13 yeah, six o'clock. I think the normal hours would be like
14 nine to six because --

15 MR. ARIAIL: Well --

16 THE COURT: -- Mr. McCloud was telling me they
17 have to make arrangements to get these people out for dinner
18 and everything.

19 What we will do is try to bring in -- bring lunch
20 into here, and I will discuss with you how much time you are
21 going to need during lunch. If some days we can just take
22 an hour, we will do that. If not -- I'm going to work with
23 you on this case because this one -- all cases are special.

24 MR. ARIAIL: Well, I just want to keep the court
25 and defense sort of apprised. Depending upon how fast we

1 get going this afternoon, we run until six?

2 THE COURT: We are getting started thirty minutes
3 later.

4 MR. ARIAIL: But we may be -- we may be through by
5 lunch tomorrow.

6 THE COURT: Okay.

7 MR. ARIAIL: So I just want to -- so that we are
8 not. So everybody can kind of -- I'll know better this
9 afternoon, but based on the speed that we will go, I think
10 that there would be a good chance of that happening.

11 THE COURT: If we run into Sundays, I will kind of
12 leave it up to the jury if they want to work Sunday morning.

13 You got a problem with that, Mr. Godfrey?

14 MR. GODFREY: I got a problem with my hip, judge.
15 It wasn't anything about your comment.

16 THE COURT: Okay. No, I thought that you might
17 have a problem with Sunday morning.

18 MR. GODFREY: No, Your Honor.

19 THE COURT: Okay. If the jury wants to work,
20 since they are sequestered and in the motel, I would be
21 inclined to go with whatever their decision is.

22 And usually I do not appoint a foreman until we
23 get well along into the trial or something. I just haven't
24 had a chance to look over the list or anything.

25 Thank y'all very much and we will -- I'm sure they

1 will have the jury back because I thought it would be a
2 little bit rushed to get in the motel and back by one, so
3 1:30 we ought to be ready to go.

4 My opening comments are not going to be very long.
5 I don't -- I don't want to repeat too much of what the three
6 of us, or five of us have -- six of us have said to the
7 jurors already, and we just keep going over and over that.
8 They probably think that -- wonder what we are doing
9 sometime, but I'll see y'all back at 1:30. Thank you.

10 MS. STROM: Thank you.

11 MR. ARIAIL: Thank you, judge.

12 (Whereupon, proceedings were recessed)

13 (Whereupon, proceedings were reconvened)

14 (Autopsy Drawing marked as State's Exhibit No. 1
15 for identification)

16 (DVD marked as State's Exhibit No. 2 marked
17 identification)

18 (Projectile marked as State's Exhibit No. 3 for
19 identification)

20 (Photograph marked as State's Exhibit No. 4 for
21 identification)

22 (Scene Diagram marked as State's Exhibit No. 5 for
23 identification)

24 (Scene Diagram marked as State's Exhibit No. 5-A
25 for identification)

1 (Scene Diagram marked as State's Exhibit No. 5-B
2 for identification)

3 (Photograph marked as State's Exhibit No. 6 for
4 identification)

5 (Photograph marked as State's Exhibit No. 7 for
6 identification)

7 (Photograph marked as State's Exhibit No. 8 for
8 identification)

9 (Photograph marked as State's Exhibit No. 9 for
10 identification)

11 (Photograph marked as State's Exhibit No. 10 for
12 identification)

13 (Photograph marked as State's Exhibit No. 11 for
14 identification)

15 (Photograph marked as State's Exhibit No. 12 for
16 identification)

17 (Photograph marked as State's Exhibit No. 13 for
18 identification)

19 (Photograph marked as State's Exhibit No. 14 for
20 identification)

21 (Photograph marked as State's Exhibit No. 15 for
22 identification)

23 (Photograph marked as State's Exhibit No. 16 for
24 identification)

25 (Photograph marked as State's Exhibit No. 17 for

1 identification)

2 (Photograph marked as State's Exhibit No. 18 for
3 identification)

4 (Photograph marked as State's Exhibit No. 19 for
5 identification)

6 (Videotape marked as State's Exhibit No. 20 for
7 identification)

8 (DVD marked as State's Exhibit No. 21 for
9 identification)

10 (Waiver of Rights form marked as State's Exhibit
11 No. 22 for identification)

12 (Photograph marked as State's Exhibit No. 23 for
13 identification)

14 (Photograph marked as State's Exhibit No. 24 for
15 identification)

16 (Photograph marked as State's Exhibit No. 25 for
17 identification)

18 (Advisement of Rights Form marked as State's
19 Exhibit No. 26 for identification)

20 (Written Statement marked as State's Exhibit No.
21 27 for identification)

22 (Autopsy Drawing marked as State's Exhibit No. 28
23 for identification)

24 (Autopsy Drawing marked as State's Exhibit No.
25 28-A for identification)

1 (DVD marked as State's Exhibit No. 29 for
2 identification)

3 (Summary of SCDC Records marked as State's Exhibit
4 No. 30 for identification)

5 (Summary of SCDC Records marked as State's Exhibit
6 No. 31 for identification)

7 (Off the record)

8 (Back on the record)

9 THE COURT: The news media, y'all are aware that
10 you cannot identify the jury or put the jury on camera or
11 tape them. I'm sure that you have all done this before.

12 All right, are we are ready to begin?

13 MS. STROM: The State is, Your Honor.

14 THE COURT: Defense ready?

15 MR. GODFREY: Defense is ready, Your Honor.

16 THE COURT: Okay.

17 We were just talking about it's a little bit
18 different in this sentencing proceeding than what she
19 normally gives in the standard trial on the indictment.

20 (The following takes place in the presence of the
21 jury panel)

22 THE COURT: Okay. Ladies and gentlemen of the
23 jury, we are about to begin this criminal proceeding and I
24 would ask you to stand and raise your right hand, please.
25 The clerk will administer the oath to you in regard to this

1 matter and would you respond by saying I will when you take
2 the oath. If you would raise your right hand, please.

3 THE CLERK: You do solemnly swear that you shall
4 well and truly try the issues of sentencing according to the
5 law and the evidence in 98-GS-23-5220, the State versus
6 Freddie Eugene Owens, so help you God?

7 THE JURY: (Jury collectively said I will)

8 THE COURT: Thank you. Y'all maybe seated.

9 Okay, ladies and gentlemen of the jury, the
10 defendant, Freddie Eugene Owens, was convicted on February
11 the 15th of 1999, of murder in this case.

12 Under our Code of Laws, Section 16-3-20 of the
13 South Carolina Code of Laws, provides that upon a conviction
14 of a defendant of murder, the court shall conduct a separate
15 sentencing proceeding to determine how the defendant should
16 be sentenced. So that is our purpose here in conducting
17 this proceeding which we are now engaged in, is to determine
18 how the defendant, Freddie Eugene Owens, should be sentenced
19 for murder in this case that occurred on November the 1st,
20 1997, in Greenville County at a Speedway on Laurens Road.
21 The victim was Mrs. Irene Graves.

22 Now, ladies and gentlemen, in this case it is your
23 job to determine the facts and the issues in this case.
24 You, ladies and gentlemen, are the sole judges of the facts
25 and circumstances surrounding this murder, and you determine

1 those issues; any aggravating or mitigating circumstances,
2 you determine what those are, and any particular
3 characteristics of the defendant in this case.

4 Now, before you can determine a sentence of life
5 imprisonment or death, the State must prove to you beyond a
6 reasonable doubt that this murder was committed while the
7 defendant committed a statutory aggravating circumstance.
8 In this case the State alleges that this murder was
9 committed while the defendant was committing a robbery and
10 that he was armed with deadly weapon, possessed a deadly
11 weapon, and that a larceny was committed by the defendant at
12 the time of this murder while he possessed a deadly weapon.

13 Now, the burden is on the State to prove one, or
14 both, of those statutory aggravating circumstances beyond a
15 reasonable doubt. There is no burden of proof upon the
16 defendant in this criminal proceeding.

17 Now, ladies and gentlemen, I know that you will
18 pay close attention to this case. As I said, you are the
19 sole judges of the facts of the case and the circumstances.
20 You bring into this courtroom your good judgment, your
21 common sense, your every-day experiences in life. You,
22 ladies and gentlemen, can determine the facts as well as
23 anyone that applies to the issues in this case. You
24 determine the credibility and the believability of the
25 testimony of any witness, regardless of who that witness may

1 be.

2 Now, I cannot discuss the facts with you and I
3 would not do that. If I do anything that might cause you to
4 believe that I have a feeling about this case, one way or
5 the other, you disregard that, because if I do anything it
6 would be a mistake on my part and I wouldn't intentionally
7 do that. I appreciate you, the jury, being here more than
8 any person in this courtroom to determine the issues in this
9 case and write a verdict in this case. It's my
10 responsibility to explain the law to you in regard to these
11 matters.

12 Now, ladies and gentlemen, it's very important, as
13 I told you before, and I have to tell you again, that you
14 cannot discuss this case with anyone. Do not discuss the
15 case with each other. Do not permit anyone to discuss this
16 case with you outside the courtroom, at the motel, at lunch,
17 or at dinner, or at any other time. I would give you
18 instructions as to what you can do when the case is over in
19 that regard.

20 And, ladies and gentlemen, keep an open mind
21 throughout this proceeding. You have to evaluate this case
22 as we go along. Do not determine in your mind what the
23 verdict should be until all the evidence is in and the
24 prosecution and the defense have had a chance to make
25 statements to you at the close of the case and I go over the

1 law with you that applies to what we have heard. So don't
2 make up your mind conclusively or determine what the verdict
3 should be until you have heard everything and then you step
4 back into the jury room and begin deliberations with your
5 fellow jurors.

6 Now, at some point we will have to select a
7 foreperson, and we will do that, but I don't really know you
8 folks. We have met 70, or more, people this week about this
9 matter and a foreperson or forelady would be appointed at
10 some time during the proceeding, but it's an important thing
11 for you to understand is each of you have an equal input and
12 an equal voice into the verdicts in this case. And so when
13 you come in, you can sit pretty much where you want to,
14 except when the foreperson is appointed, I think the
15 foreperson will sit here and the alternates would sit
16 probably on the back left-hand side.

17 But now alternate jurors are jurors in this case,
18 just like the other jurors are. When we have a case or a
19 proceeding that extends over a few days, sometimes
20 emergencies arise or sometimes illnesses occur of close
21 family members and things like that and we have to use an
22 alternate. So consider yourselves as jurors in this case
23 just like the other jurors are until this case begins
24 deliberations.

25 Now, if there are no exceptions to anything that I

1 said by the prosecution or the defense, we would begin this
2 trial.

3 Ladies and gentlemen, we will have the opening
4 statements by the parties, if they care to make opening
5 statements.

6 After that you will hear the evidence and
7 testimony from which you will determine the issues in this
8 case.

9 After that each side would have the opportunity to
10 address you at the conclusion of the case with summations or
11 closing statements as permitted by the law.

12 After that then I would go over with you again --
13 or at least really for the first time, probably, in many
14 instances the law that applies to this case. I have to
15 cover all the law that applies to the issues that you have
16 to decide and I would do that.

17 So without anything else, we will begin this trial
18 with opening statements, first by the State.

19 Ms. Strom.

20 MS. STROM: May it please the court.

21 THE COURT: Yes, ma'am.

22 MS. STROM: Good afternoon. I checked the clock
23 to make sure. I know that I have introduced myself to each
24 one of you at least probably more than once, but, again, my
25 name is Betty Strom and I'm the deputy solicitor here in

1 Greenville and Pickens Counties. And as I introduced to you
2 before, Solicitor Ariail and Leticia Verdin and I will be
3 prosecuting this case. We represent the State of South
4 Carolina. I think we talked to each one of y'all about that
5 in terms of you could equate it to the district attorney.
6 And, of course, you have met the defendant and his counsel
7 earlier on, Mr. Godfrey, Mr. Gibson, and then, of course,
8 Freddie Owens.

9 There are other people in the courtroom. Just to
10 kind of give a feel of who all is in here, because I know
11 this is new to most of you, if not all of you. So you have
12 already met your bailiffs. You met your SLED agents. And
13 we know that they are going to take very good care of you
14 during this time that you are with us.

15 Of course, we have. You have met Judge Patterson.
16 And then that's his law clerk with him.

17 And then we have the court reporter who takes down
18 everything that's being said.

19 And then we have members of the clerk's office.

20 So I just want to kind of give you a rundown here
21 in opening statement about what the procedure is going to be
22 and what you can expect to hear. I know the judge briefly
23 went over with you a little bit of the process, but we are
24 up here for opening statement. When I sit down, defense
25 counsel has the opportunity to come up and give an opening

1 statement. Obviously they are not required to. You will
2 remember the judge telling you that the defendant never has
3 the burden. The burden is always upon the State, so the
4 defense does not have to. They will be given the
5 opportunity to come up and give an opening statement.

6 Once opening statements are done, that's when you
7 start hearing the evidence, start calling witnesses. And
8 again, because the burden is on the State of South Carolina,
9 we go first. So you will hear from our witnesses.

10 And then at the close of our case the defense will
11 have an opportunity again to present any evidence that they
12 wish to present. Again, they do not have to, and His Honor
13 will charge you, and he's already told you in voir dire,
14 that if the defense chooses not to put up any evidence, the
15 defendant chooses not to testify, that's fine. That's his
16 right. You cannot hold that against him whatsoever, because
17 the burden is always upon the State. Okay.

18 After the defense puts up their evidence, if they
19 choose to, then the attorneys will come up here and give to
20 you what's called a closing argument, their view of what the
21 evidence has shown.

22 After the closing arguments of both sides, the
23 judge will tell you what the law is. You all stated that
24 you would accept the law as His Honor charges you. Even if
25 you think the law is something different, even if you think

1 it should be something different, you will take the law as
2 His Honor charges it to you and apply that law to the facts
3 as you find in this case.

4 That's sort of a road map of what you can expect,
5 what the procedure is going to be.

6 Also I kind of give you an idea of what you can
7 expect to hear during that procedure. A couple of things,
8 and I know I'm probably repeating myself and I apologize to
9 you, but a couple of things that we need to all be clear on,
10 and His Honor has charged you, is that the issue of the
11 defendant's guilt of murder is not before you. Do you
12 remember, the judge has told you, Freddie Owens has already
13 been convicted of murder. He's already been found guilty of
14 murder. So that issue is not before you. The reason I tell
15 you that is because as far as the evidence that we are going
16 to present to you, that cuts down some of the evidence that
17 we are going to show you, because we don't have to show you
18 the individual evidence that links him to the murder. He's
19 already been convicted of the murder. What we are here to
20 show you is we are going to give you an overview of that
21 murder, because you are going to need to know the facts and
22 circumstances of the crime in order to determine what
23 punishment to impose.

24 One of the things that the judge also told you is
25 that before the jury can even consider what sentence to

1 impose, the person must find an aggravating circumstance.
2 He told you that the aggravating circumstances that the
3 State has alleged in this case are two. One is that the
4 murder was committed during the commission of a robbery
5 while armed with a deadly weapon, or that the murder was
6 committed while a larceny was committed while armed with a
7 deadly weapon. Those are the two statutory aggravating
8 circumstances that the State has submitted and will submit
9 to you that's in this case. So obviously you have to find
10 beyond a reasonable doubt that one, or both. We only have
11 to prove one, we can prove both, of those circumstances of
12 aggravation, statutory circumstances of aggravation exists.
13 So we would, of course, bring you evidence to support the
14 fact that the murder was committed during an armed robbery
15 or robbery while armed with a deadly weapon, or that the
16 murder was committed during a larceny while armed with a
17 deadly weapon.

18 From the types of evidence that you -- let me step
19 back. We will use some legal terms. Obviously I have
20 already thrown out a couple of them - beyond a reasonable
21 doubt, robbed while armed with a deadly weapon. His Honor
22 at the end of the case will charge you what the law is.

23 To give you some idea, robbery while armed with a
24 deadly weapon is the taking of personal property, goods or
25 monies, from the person or the immediate presence of that

1 person, through force, intimidation, or violence. That's
2 what robbery is. Taking something of value either from that
3 person or from that person's immediate presence by the use
4 of force, intimidation, or violence.

5 For it to be a statutory aggravating circumstance,
6 you must add to that the fact that the defendant was armed
7 with a deadly weapon.

8 What is deadly weapon? It seems maybe sort of
9 redundant to say it, or whatever you want to call it, but
10 it's any type of weapon that can cause death.

11 We submit to you that you will see evidence in
12 this case that the defendant Freddie Owens was armed with a
13 pistol during the robbery and the murder.

14 In order to support those aggravating
15 circumstances --

16 Let's go back. Let me tell you what larceny was.
17 Larceny while armed with a deadly weapon. Larceny is
18 stealing. Stealing. It's a fancy word for stealing.

19 So larceny while armed with a deadly weapon again
20 is stealing something of value while armed with a deadly
21 weapon.

22 It may seem like they overlap a little bit, but
23 those are the two aggravating circumstances that are allowed
24 in the law, so we present both of them.

25 Like I said, we will bring you the evidence to

1 support both of those aggravating circumstances.

2 I'm not going to go into what each witness is
3 going to testify to you. You will hear it and judge it for
4 yourself, but you are going to hear from police officers who
5 investigated it.

6 You are going to hear from the co-worker. Ms.
7 Graves was -- although she was alone in the building at the
8 time of the robbery and the murder, she had a co-worker
9 there. You will hear about why the co-worker who, in fact,
10 was not in the building at the time this happened, what she
11 was doing.

12 You will actually get to see the robbery, because
13 they had video cameras in the Speedway on Laurens Road and
14 it captured the robbery. So you will not only hear
15 witnesses testify about it, you will actually get to see it.

16 So that's the type of --

17 And you will also hear witnesses -- Mr. Owens
18 girlfriend at the time and the fact he admitted to her that
19 he had done this, that he had robbed the place.

20 That's the kind of evidence that you are going to
21 have to support these statutory aggravating circumstances.
22 That will be the only evidence that we bring you, though,
23 because do you remember the judge talked to you about
24 evidence of other crimes or bad acts of the defendant? And
25 he talked to you about the fact that you could not use that

1 to find an aggravating circumstance? What we are talking
2 about here, because the additional evidence we are going to
3 bring to you, in addition to the overview of the murder and
4 the armed robbery, is the character of the defendant: What
5 kind of person he is; what else has he done; because you
6 need to know these types of things in order to determine the
7 punishment. As I said, the judge told you his other bad
8 acts or other crimes can't be used to support the statutory
9 aggravating circumstance. In other words, you can't say
10 what he has done since November the 1st, 1997. You can't go
11 oh, well, then he must have done the armed robbery. You
12 have to decide the two separately. You look at the facts on
13 November 1st, 1997, to determine if the murder was committed
14 during an armed robbery or a larceny with a deadly weapon.
15 But it doesn't mean that you disregard all the other
16 evidence that you are going to hear. We are going to bring
17 you other evidence.

18 We are going to bring you other evidence of how
19 he's behaved while he's been confined. We are going to
20 bring you evidence of how he has threatened and assaulted
21 correctional officers. We are going to bring you evidence
22 of how he's threatened and assaulted other inmates, to
23 include stabbing other inmates and beating other inmates.
24 We are going to bring you evidence of what Freddie Owens had
25 to say after he was arrested on this crime, what he had to

1 say about it, to give a sense of what his character is,
2 what's his makeup.

3 You will also hear from other people about Freddie
4 Owens mental makeup, what's his mental makeup.

5 Those are the types of things that you will hear
6 to let you determine his character in order to aid you in
7 determining the appropriate punishment.

8 I will tell you up front that some of this
9 evidence is going to be difficult to hear. It's going to be
10 difficult to see, okay, but there is no soft way to give it
11 to you. It is what it is. And it is what Freddie Owens has
12 done. So I just wanted to tell you up front that it may be
13 difficult, but it is necessary for you to see that and it is
14 necessary for you to hear it in order for you to make the
15 decision that you are comfortable with at the end of this
16 case.

17 One of the things that I wanted to let you know
18 also is I know the judge told you to bring clothes for about
19 four or five days. On TV you see cases taking weeks and
20 months. We are not going to -- we are not going to do that
21 to you. Okay. It would be a few days. Now, obviously we
22 are going to take as long as that's necessary for both sides
23 to present everything that they possibly need to present to
24 you, but I can assure you it will not be the lengthiness
25 that you see in other cases.

1 As I told you before, the defense attorney will
2 have an opportunity to come up here and talk to you after I
3 sit down. I do not know how they will classify or if they
4 will say anything about our request, because obviously we
5 are requesting the death penalty. I don't know what kind of
6 terms they are going to use in referencing our request to
7 seek the death penalty or our request for the death penalty.

8 I just want to put something in your head and
9 remind you that it is -- the death penalty is a lawful
10 punishment. It is a lawful punishment designed by our
11 legislature to be imposed for an unlawful act. Everyone in
12 this courtroom realizes that this is an awesome
13 responsibility on each and every one of you. We know that
14 none of y'all volunteered to be here, and we so appreciate
15 the fact that you are here willing to listen to all of the
16 facts and all of the evidence in the case and listen to His
17 Honor's charge and then impose the penalty that you believe
18 is appropriate for this defendant for his crime. Thank you.

19 MS. STROM: Thank you, Your Honor.

20 THE COURT: Mr. Godfrey.

21 MR. GODFREY: May it please the court. Solicitor.

22 Ladies and gentlemen, as you know from the last
23 two or three days my name is Bill Godfrey. Seated with me
24 is Ken Gibson and we represent Freddie Owens.

25 What we believe the evidence in mitigation will

1 show, and you will hear testimony from our witnesses that
2 describe how it is that Freddie grew up; how he really
3 didn't have a home on a consistent basis; how he really
4 didn't have food on a consistent basis. You will hear
5 evidence of the violence that he has lived through his
6 entire life. And you will come to know him as a person,
7 basically from the time he was a young boy up to where he is
8 now.

9 Now, he stands convicted of murder and you all are
10 here for the sentencing procedure. We ask you to please
11 take the evidence in mitigation and listen to it very
12 carefully. You will hear from psychiatrists. You will hear
13 from psychologists.

14 One of the most important things that the evidence
15 will show is that within this past year while Freddie was in
16 the Department of Corrections he kept asking for help. He
17 needed help. He wanted help to control his actions. You
18 will hear from a witness, Dr. Thomas Cobb, who goes to
19 prison and provides psychiatric services at the prison. You
20 will hear from Dr. Cobb that he heard Freddie's crying. He
21 heard his plea for help. And Dr. Cobb sat down and
22 evaluated him and prescribed medication for Freddie. You
23 will hear evidence from Dr. Cobb that Freddie has been very
24 frank with him, that he has been faithful with taking his
25 medication, and that it has helped control his impulses.

1 Dr. Cobb will testify that Freddie has an impulse control
2 disorder.

3 Basically the evidence is going to show that where
4 Freddie came from and everything that he went through,
5 nobody had ever really diagnosed or treated his underlying
6 problem.

7 You will hear other evidence from our witnesses
8 which indicates that Freddie's behavior in prison has
9 changed since he has been on the medication.

10 It's a terrible responsibility that all of you all
11 have to hear and consider all of this evidence. This whole
12 case is a tragedy. It's horrible. Freddie Owens and I and
13 Ken Gibson appreciate the fact that you all can be fair and
14 impartial and will listen to everything.

15 The mitigation in this case is not pretty either.
16 You hear things about -- from the evidence about things that
17 happened here in Greenville to a family that should never
18 happen. None of it pretty, but it happened. What you are
19 going to have to do, each and every one of you, each
20 individual person, you are going to have to fairly consider
21 all of the evidence that you hear. Not just from the State,
22 but also from the defense, from our psychiatric,
23 psychological and social history person, to arrive at what
24 the proper sentence is in this case.

25 We believe that you all will faithfully fulfill

1 your obligation. We believe that after you hear all of the
2 evidence, including all of the mitigation evidence from our
3 experts and other people, that you will return a verdict of
4 life. Thank you.

5 THE COURT: Ladies and gentlemen of the jury,
6 there was one point I meant to tell you. I do not believe
7 that I told you when you were under oath that everyone in
8 individual questioning, if the State proves a statutory
9 aggravating circumstance beyond a reasonable doubt, you will
10 determine the sentence of life imprisonment without the
11 possibility of parole until death, or the death penalty.
12 This is what I want you to understand. Whatever sentence
13 you determine will be the verdict. Whatever sentence that
14 you determine at that point, this court will impose that
15 sentence. I was going to tell you that now and I will
16 instruct you that again at the conclusion of this case.

17 And if you need to take a break, if you are
18 uncomfortable, back problems, you need to take a restroom
19 break or something, just raise your hand and it will not be
20 any problem. There is 15 of you and we do not want you to
21 be uncomfortable. We will be taking regular breaks for the
22 staff and everybody in the courtroom, but please don't
23 hesitate to slip up your hand if you need to.

24 We will go forward now with the first witness.

25 Mr. Ariail.

1 MR. ARIAIL: Thank you, Your Honor.

2 The State calls Dr. Stafford.

3 DR. JESSE STAFFORD, having been first duly sworn,
4 testified as follows:

5 THE CLERK: State your name for the record,
6 please.

7 THE WITNESS: Jesse Ray Stafford.

8 THE CLERK: Thank you. Be seated.

9 DIRECT EXAMINATION BY MR. ARIAIL:

10 Q. Dr. Stafford, if you would, please, state your name for
11 the record.

12 A. Jesse Ray Stafford.

13 Q. Keep your voice up just like that so these last two
14 jurors down here can hear.

15 What is your profession?

16 A. I'm a pathologist.

17 Q. And by whom are you employed?

18 A. Pathology Associates of Greenville.

19 Q. And what is a pathologist?

20 A. A pathologist is a medical physician that receives
21 additional training in the field of pathology, which is the
22 study of disease.

23 Q. And what is your education and training for being a
24 pathologist?

25 A. I received a degree from Auburn University, University

1 of Alabama School of Medicine; pathology residency in
2 anatomical pathology and clinical pathology at the
3 University of South Alabama.

4 I did a fellowship training at the Medical University
5 of South Carolina.

6 I'm board certified in anatomic and clinical pathology
7 and psychopathology.

8 Q. And you are presently in private practice?

9 A. That's correct.

10 Q. And as part of your private practice, in 1997, were you
11 associated with your -- practice associated with the county
12 for the purposes of performing autopsies?

13 A. That is correct.

14 Q. And what is the purpose of an autopsy?

15 A. The primary purpose of an autopsy is to define the
16 cause of death.

17 Q. And how many autopsies have you performed in your
18 career?

19 A. Many hundreds.

20 Q. Have you qualified as an expert in the field of
21 pathology in this state?

22 A. Yes.

23 Q. And have you previously testified and were you
24 qualified as an expert in the field of pathology in this
25 particular case?

1 A. Yes.

2 MR. ARIAIL: Your Honor, we would submit Dr.
3 Stafford as an expert in the field of pathology.

4 MR. GODFREY: Without objection.

5 THE COURT: Without objection, he may testify as
6 to opinions in that field.

7 BY MR. ARIAIL:

8 Q. Did you have occasion to perform an autopsy on Ms.
9 Irene Graves?

10 A. Yes, that's correct.

11 Q. And as a practice when you perform an autopsy, do you
12 record and make notes of your findings?

13 A. Yes, that is correct.

14 Q. And if you need to refer to those notes, feel free to
15 do so during your testimony.

16 When did you have an occasion to perform the autopsy on
17 Ms. Irene Graves?

18 A. It was on November 1st, 1997.

19 Q. And what general information regarding Ms. Graves did
20 you determine, such as height, weight, age, etcetera?

21 A. She was a middle aged African American female,
22 approximately she stated as 41 years of age. She weighed
23 approximately 175 pounds. She measured about 5'7" in
24 height.

25 Q. And upon the autopsy were you able to determine her

1 cause of death?

2 A. Yes, Ms. Graves died as a result of a single gunshot
3 wound to the head.

4 Q. As a regular part of the performance of autopsies, do
5 you prepare a diagram of the injuries that you find to be
6 relevant in terms of cause of death?

7 A. Yes, I usually do.

8 Q. Okay. And let me ask you if you recognize what has
9 been premarked as State's Exhibit No. 1 as being --

10 A. Yes.

11 Q. Is that -- do you recognize that?

12 A. Yes.

13 Q. Okay.

14 MR. ARIAIL: We would offer State's Exhibit No. 1,
15 Your Honor.

16 THE COURT: Without objection it's in evidence.

17 BY MR. ARIAIL:

18 Q. Doctor, what is this drawing?

19 A. It's really diagramming the entrance wound on the right
20 side of the head and the track of the bullet of the
21 projectile within the head.

22 Q. And did you prepare this contemporaneously with your
23 autopsy?

24 A. That is correct.

25 Q. And it's based on your findings at autopsy?

1 A. Correct.

2 Q. And based on this drawing and for purposes of
3 illustration for the jury, did I request that you oversee
4 the preparation of a computer enhancement of the head wounds
5 described on State's Exhibit No. 1?

6 A. Yes, that is correct.

7 Q. Let me show you what we have already placed in the
8 presenter and ask if you are familiar with this particular
9 disc?

10 A. Yes.

11 Q. All right.

12 MR. ARIAIL: Your Honor, we would like to offer
13 this. It does not have a sticker, but it has a case which
14 was marked State's Exhibit No. 2, and we had provided
15 counsel with copy of this.

16 THE COURT: Okay. No objection, I would let it
17 in.

18 All right, sir.

19 MR. ARIAIL: All right. Thank you.

20 BY MR. ARIAIL:

21 Q. I'm going to slip this in and let you talk about the
22 DVD, Exhibit No. 2.

23 All right. Looking at the drawing or the image that's
24 reflected on there, as labeled impact, tell us what that is
25 showing.

1 A. That is -- that is highlighting the area that was
2 struck on the side of the head by the bullet.

3 Q. All right. That's the entrance point?

4 A. Correct.

5 Q. Into Ms. Graves head?

6 A. Yes.

7 Q. Let me go to number two, which is the entry. What is
8 that showing?

9 A. That is highlighting the pathway of the bullet of the
10 projectile as it tracks across Ms. Graves head through her
11 brain. The track that it's taking is dominantly just from
12 the right side over to the left side, and it's slightly
13 upward and slightly towards the front of Ms. Graves' head.

14 Q. And did the projectile exit Ms. Graves' head?

15 A. No, it was retained inside the skull. It ricocheted
16 back along the track of the bullet.

17 Q. Let me show you a diagram of that.

18 A. And that's where I recovered the projectile, the
19 bullet.

20 Q. The green being the path that it ricocheted backwards?

21 A. That is correct.

22 Q. And did you actually recover the projectile during
23 autopsy?

24 A. Yes.

25 Q. What is the nature of the damage that is done when a

1 projectile in this fashion enters and progresses through the
2 brain?

3 A. There is a tremendous amount of damage that takes place
4 within the brain, and it's not just the immediate zone that
5 the missile goes through, but there is a lot of extensive
6 injuries within the brain where it damages tissue around
7 that track as well. There was a lot of bleeding and a lot
8 of necrosis, dead tissue. Around that bullet track.

9 Q. And Ms. Graves survival would have been how long?

10 A. Seconds. I mean, she was essentially dead. I mean,
11 that's a nonsurvivable injury.

12 Q. She would have died almost instantaneously?

13 A. Yes.

14 Q. Did you recover the projectile?

15 A. Yes, I did.

16 Q. Let me show you what's been marked as State's Exhibit
17 No. 3 and ask you if that is the projectile with the
18 labeling on the top?

19 A. The labeling is correct. The projectile is wrapped up
20 inside.

21 Q. All right. The labeling is correct?

22 A. Yeah.

23 Q. Okay.

24 MR. ARIAIL: Your Honor, we would offer State's
25 Exhibit No. 3.

1 MR. GODFREY: Without objection.

2 THE COURT: Without objection, it's in evidence.

3 BY MR. ARIAIL:

4 Q. Lastly, doctor, let me ask you to look and tell me if
5 you can identify this particular photograph as being an
6 accurate representation of the entry wound into Ms. Graves'
7 head at the time of autopsy?

8 A. Yes, that is correct.

9 Q. Okay.

10 MR. ARIAIL: Your Honor, this is marked as State's
11 Exhibit No. 4.

12 We would offer State's Exhibit No. 4.

13 THE COURT: Okay. Without objection?

14 MR. GODFREY: Without objection.

15 THE COURT: Without objection, it's in evidence
16 and admissible.

17 BY MR. ARIAIL:

18 Q. Doctor, let me -- I have a couple of questions that I
19 want to ask you. Let me get this focused.

20 The wound that you have been talking about with Ms.
21 Graves, were you able to determine the distance from Ms.
22 Graves' head that the shot -- from which the shot was fired?

23 A. All I was able to determine was that it was not a
24 contact type injury. In other words, the gun, weapon, was
25 not placed immediately up against her head. There is --

1 there is a lot of hair -- there is scalp hair in that area,
2 which makes it difficult to determine the distance. All I
3 can tell you it was not pressed immediately up against her
4 head. It was some distance from that.

5 Q. And the scalp hair impacts or affects your ability to
6 determine distance for what reason?

7 A. It's because with closer -- with closer range gunshot
8 injuries you will have changes that take place on the skin,
9 but the hair -- the hair affects that and keeps those
10 changes from being detected in many cases.

11 Q. Thank you, doctor. Answer any questions that the
12 either defense counsel may have.

13 MR. GODFREY: No questions of this witness, Your
14 Honor.

15 THE COURT: All right. Doctor, you may come down.

16 THE WITNESS: Yes, sir.

17 MR. ARIAIL: Your Honor, may he be excused to
18 return to work?

19 MR. GODFREY: Without objection.

20 THE COURT: Without objection, doctor, you may be
21 excused, if you so desire. Thank you.

22 MR. ARIAIL: Call Larry Bellew.

23 LARRY BELLEW, having been first duly sworn,
24 testified as follows:

25 THE CLERK: State your name for the record,

1 please.

2 THE WITNESS: Larry Bellew, B-E-L-L-E-W.

3 THE CLERK: Thank you. Be seated.

4 THE COURT: For the news that just came in, he's
5 aware of the protection of the jury and you are not to
6 expose them or identify them in any way.

7 DIRECT EXAMINATION BY MR. ARIAIL:

8 Q. State your name, please, sir?

9 A. Larry Bellew.

10 Q. And that's great. Keep your voice up just like that so
11 these last two jurors can hear you.

12 Mr. Bellew, what is your present employment?

13 A. I work for the U.S. Department of State Bureau of
14 Counselor Affairs in the Diplomatic Security Services.

15 Q. Where are you located?

16 A. In Charleston.

17 Q. And that's where you came from today?

18 A. Yes, sir.

19 Q. Prior to that previous employment, particularly on .
20 November 1st of 1997, by whom were you employed?

21 A. The Greenville County sheriff's office.

22 Q. And in what capacity were you with the sheriff's office
23 at that time?

24 A. I was the supervisor of the violent crimes unit. I was
25 an investigative sergeant with them.

1 Q. How long had you been employed with the sheriff's
2 office at that time?

3 A. At that time about twenty-four and a half years.

4 Q. And did you subsequently retire from the sheriff's
5 office and moved to Charleston?

6 A. Yes, sir.

7 Q. When was that?

8 A. I retired from the sheriff's office in 2000, in
9 October, I believe of 2000. I moved to Charleston shortly
10 thereafter.

11 Q. Did you have occasion on November the 1st, 1997, to
12 respond to the Speedway on Laurens Road here in Greenville
13 in regard to an investigation?

14 A. Yes, sir.

15 Q. This was part of your official duties with the
16 sheriff's office as an investigator?

17 A. Yes, sir.

18 Q. What time did you arrive?

19 A. Shortly after 4:30 in the morning.

20 Q. This was November the 1st. Would have been the morning
21 after Halloween evening?

22 A. Yes, sir.

23 Q. Who was with you, or when you arrived, who else was on
24 the scene?

25 A. Investigator Wes Smith was with me when we went to the

1 scene.

2 When I arrived on the scene, then Lieutenant Brooks,
3 Sergeant Guy, several other uniformed patrol officers from
4 the sheriff's office were there. There were several -- or
5 there were two officers from the Greenville Police
6 Department there. EMS was there. A short time later the
7 coroner, Mr. Parks Evans, arrived. And the forensics
8 officer, Sergeant Labrash, arrived.

9 Q. And for the jury's information, why were both sheriff's
10 deputies and the Greenville police department officers at
11 the same place?

12 A. That is right on the line of the city-county line and
13 when the call first came in, no one was exactly sure whether
14 it was city or county, and the city was the closest
15 responder and they responded to it. They determined it was
16 in the county. They then contacted a sheriff's office and
17 we responded.

18 Q. All right. And forensics, you talk with Officer
19 Labrash, what is forensics, Greenville County forensics?

20 A. That's the crime scene investigators. They take
21 pictures, fingerprints, seize evidence, that type of thing.

22 Q. Okay. Process the crime scene?

23 A. Yes, sir.

24 Q. Now, was the victim still present when you arrived, Ms.
25 Graves?

1 A. Yes, sir.

2 Q. And did you have occasion to examine her?

3 A. Yes, sir.

4 Q. And had you been involved in the investigation of
5 homicide cases previously?

6 A. Yes, sir, I have been in homicide about -- about 17, 18
7 years at the time.

8 Q. And you had an occasion then to investigate on-scene
9 victims and their cause of death?

10 A. Yes, sir.

11 Q. Could you describe for us what was her condition and
12 her apparent wounds that you could see?

13 A. Yes, sir. Her body was found inside the Starvin Marvin
14 store on Laurens Road. It was behind the counter. Her feet
15 were out in a little walkway area between the register and
16 the store room. The rest of her body her torso and head
17 were back in the store room area. She was dead.

18 She had had what appeared at the time to be a single
19 gunshot wound to the head. There was a lot of pooling of
20 blood around the head.

21 Q. But she was still in the same location as where she had
22 been shot?

23 A. Yes, sir, when we get a scene like that, it is sealed
24 off. No one goes in until forensics officer, the
25 investigating officers and the coroner arrive. We then do a

1 quick walk-thru. The scene is then photographed and
2 videotaped sometimes by the forensics. We will do a diagram
3 of the scene and then we will go in and examine the body.

4 Q. Okay. Speaking of diagram, let me show you what is
5 your diagram labeled State's Exhibit No. 5 and ask you if
6 you are familiar with that?

7 A. Yes, sir, this is a rough diagram I did at the scene
8 that morning.

9 Q. Okay.

10 A. Later on at the office I redid it to make it a little
11 bit neater.

12 Q. Okay. Let me show State's Exhibit No. 5.

13 MR ARIAIL: We would offer it, Your Honor.

14 MR. GODFREY: Without objection.

15 THE COURT: Without objection. And it's not to
16 scale or anything?

17 A. Oh, no, sir, it's not to scale whatsoever. It's just a
18 rough diagram.

19 BY MR. ARIAIL:

20 Q. And you say you went back after preparing the rough
21 diagram. I want to show you State's Exhibit No. 5-A and ask
22 if you prepared that document and when?

23 A. Yes, sir, later on in the office. Probably later that
24 morning. I don't remember exactly when it was, but it was
25 probably later that morning. I would take a rough diagram

1 while it was still fresh in my mind and draw another one.

2 Q. Okay.

3 A. A little neater.

4 Q. This is the neater drawing?

5 A. Yes, sir.

6 Q. And it too is not to scale?

7 A. No, sir, that is not to scale either.

8 MR. GODFREY: No objection.

9 THE COURT: Without objection.

10 MR. ARIAIL: 5-A.

11 BY MR. ARIAIL:

12 Q. Let me place 5-A on here for purpose of orienting.

13 All right. Let this focus a second.

14 Now, if you would, tell us -- going over that, just
15 orient the jury what we are looking at.

16 A. All right. This is just, like I say, a diagram of the
17 inside of the store and surrounding area.

18 To the bottom would be Laurens Road.

19 In between Laurens Road and the store would be the gas
20 pumps.

21 I had what's marked as the front door down here that's
22 near the counter that the clerk can stand behind.

23 On the other side there is another door going out to --

24 Q. Tell you what --

25 A. -- to the diesel pumps.

1 Q. Let me give you this little pointer and it's on the
2 top.

3 A. Okay.

4 Q. Use that little pointer to --

5 A. I'll try not to hit you in the head.

6 All right. Laurens Road would be down in this area.

7 Then there would be the gas pumps.

8 The front door would be in this area.

9 This would be the counter where the registers are.

10 This is step up into this area of the walkway behind
11 it.

12 This is an office area behind it.

13 This is a storage room.

14 There is another door that goes out this side.

15 There is the diesel pumps where on this side of the
16 building.

17 And there are security cameras in the building. There
18 are two of them located that are approximately here on the
19 ceiling; one of them pointing towards that door, one of them
20 pointing towards this door.

21 There is a security camera behind the register, what we
22 call the diesel register, just to try and keep them straight
23 since this is the diesel pumps. The diesel register here
24 pointing outwards.

25 There is another one behind the gas register pointing

1 outwards.

2 Q. Okay. And the two little things up there where it near
3 the candy boxes, are those the -- what are those right
4 there?

5 A. Those are just displays that I put in there.

6 Q. Okay.

7 A. Candy boxes, that kind of thing.

8 Q. And there is ceiling cameras?

9 A. Yes, sir. They are approximately in this area right
10 here, two cameras, one pointing towards each doorway.

11 Q. Now, so we can use the -- let me ask you if this
12 document, which is marked as 5-B, if this is an accurate
13 blowup or enlargement of that document, which is 5-A?

14 A. Yes, sir, it is.

15 Q. Okay.

16 MR. ARIAIL: Your Honor. We would like to offer
17 this for purposes of use, taking this off screen.

18 MR. GODFREY: Without objection.

19 THE COURT: Okay. I don't know if it would be in
20 evidence along with that other or just for demonstrative
21 purposes.

22 MR. ARIAIL: I have got it marked as 5-B. I can
23 put it in or just use either one.

24 THE COURT: Of course, the jury sees it without
25 objection, but it's in evidence.

1 BY MR. ARIAIL:

2 Q. Now, looking at 5-B -- and you mentioned that as part
3 of the process that forensics and your investigation goes
4 through earlier before there was anybody on the scene is
5 photographing of the crime scene?

6 A. Yes, sir, we try and photograph it before it in any way
7 gets any evidence may get destroyed or moved or anything.

8 Q. I want to show you a selected group of photographs,
9 which have been marked as State's Exhibits 6 through 19, and
10 ask if you would review those and tell me if those are an
11 accurate representation of the crime scene as it existed at
12 the time that you arrived and investigated this case?

13 A. Yes, sir, they are.

14 MR. ARIAIL: Your Honor, we are going to offer
15 these, but I'll show them to defense counsel.

16 MR. GODFREY: Your Honor, I would object to
17 State's Exhibit 17, 18 and 19.

18 THE COURT: I viewed the exhibits as he was going
19 through them for the purposes of this proceeding. I would
20 admit those in evidence.

21 MR. ARIAIL: Your Honor, just for purposes, we
22 discussed this pretrial, but we placed new orange stickers.
23 Some of these will have double stickers. The orange sticker
24 is the current one that the court reporter is using for this
25 proceeding.

1 BY MR. ARIAIL:

2 Q. All right. Let me --

3 MR. ARIAIL: We have admitted 6 through 19.

4 BY MR. ARIAIL:

5 Q. Let me go over a few of these so the jury can get an
6 understanding of the inside of that building.

7 Using what is enlargement of 5-B, State's Exhibit No.
8 6, where is that taken from and what does it show?

9 THE WITNESS: May I step down, Your Honor, and
10 point to this?

11 THE COURT: Yes.

12 Just speak up so everybody can hear you.

13 (Witness off the witness stand)

14 BY MR. ARIAIL:

15 Q. Just keep your voice up.

16 A. Okay. This is a picture from out in the parking area
17 going in this direction towards -- there is the drink
18 machine, the ice machine. I think there is an ashtray
19 there. You see Coke machines and the doorway on the Laurens
20 Road side of the building.

21 Q. Okay. And State's Exhibit No. 7?

22 A. Yes, sir, that's another shot, the same side of the
23 building coming from another angle showing the gas pumps
24 from Laurens Road towards what we call the front door.

25 Q. State's Exhibit 8?

1 A. There again, that's just another picture showing the
2 gas pumps going in the front of the building. You can see
3 we have the crime tape up by that time.

4 Q. State's Exhibit No. 9?

5 A. All right, sir, that's a safe behind the counter. This
6 is the counter. And as I said, there were two different
7 registers, what we call the gas register and the diesel
8 register, just for clarifying on our part, and the safe was
9 located in this area behind the counter.

10 Q. Closest to the diesel pumps?

11 A. Yes.

12 Q. And furtherest away from Laurens Road?

13 A. Yes, sir, Laurens Road would be down here. The safe
14 was up in this area.

15 Q. Okay. That's the safe that we are looking at in
16 State's Exhibit No. 9.

17 State's Exhibit No. 10?

18 A. That's -- that would be from out in this area taking a
19 picture back towards the diesel pump, what we call the
20 diesel pump register, which would be on this end. That
21 would be from this area going back this way towards the
22 office over the registers.

23 Q. All right. And I would ask you, if you could, I was
24 trying to brighten it up, can you identify for the jury one
25 of the cameras that you talked about, pointed out with the

1 red?

2 A. Yes, sir, that would be it right there. That's the
3 camera pointing over the register back out into the store.

4 Q. That's one of the video cameras?

5 A. Yes, sir.

6 Q. And State's Exhibit No. 11?

7 A. All right. That would be a picture from this end
8 behind the counter shooting back down this way. There was a
9 stool there with the victim's purse on it, and there was a
10 little storage area behind it.

11 Q. Can you also point out in that photograph the other
12 camera that was behind or on the counter behind the sales
13 counter?

14 A. Let me see.

15 Excuse me Your Honor.

16 I believe that's it right there. I'm not absolutely
17 positive. I believe that was it. There was one back there.

18 Q. All right. And then State's Exhibit No. 12 is?

19 A. That would be a picture from the front door, what we
20 call the front door, taking a look back -- on the outside of
21 the counter, taking a look back towards the back what we
22 call the back door where the diesel pumps were.

23 Q. Okay. State's Exhibit No. 13?

24 A. That's two of the security video cameras that were
25 located at in the ceiling, about this area. One of them is

1 pointing back towards this door, and the other one is
2 pointing towards this door.

3 Q. State's Exhibit No. 14?

4 A. That's just another angle of the same two security
5 cameras up there.

6 Q. States Exhibit No. 15?

7 A. That would be a closer up showing the video camera over
8 the diesel pumps right here, and the camera would be mounted
9 about that area.

10 Q. That's the camera mounted on the door frame?

11 A. Yes, sir, right there.

12 Q. State's Exhibit 16?

13 A. That's just a close-up of the same camera.

14 Q. And you testified that Ms. Graves was still on
15 location. Let me show you State's Exhibit 19 and ask if you
16 can identify that?

17 A. Yes, sir, that would show -- here is the doorway going
18 back into the office area right there. She was laying with
19 her feet out in the walkway area, and the rest of her torso
20 and head in the other area. She's still had a Bic pen in
21 her hand there.

22 This equipment right here is EMS equipment. We had to
23 determine she was dead, obviously, so EMS went in to check
24 her to see if she was still alive. They would have taken
25 her to the hospital. Since they were dead, they just leave

1 everything back out.

2 Q. And that was the way she was found?

3 A. Yes, sir.

4 Q. State's Exhibit No. 18?

5 A. That's another shot of Ms. Graves with her feet out in
6 this area and her torso back in that area. And you can also
7 see the pooling blood next to her head there.

8 Q. State's Exhibit 17?

9 A. It's just another angle showing Ms. Graves, the pooling
10 blood. I don't think that's a very good picture, but you
11 can see the entrance wound on some of them and the EMS
12 equipment still on her.

13 Q. All right.

14 MR. ARIAIL: You can get back to the stand and let
15 me put these back.

16 (Witness back on the stand)

17 BY MR. ARIAIL:

18 Q. You mentioned the video cameras that were in the
19 ceiling and behind the counter. Did you have occasion as
20 part of your investigation to secure a videotape that was in
21 these or was recording these -- from these cameras?

22 A. Yes, sir, back in the office area where Ms. Graves body
23 was, there was equipment there that we went back and the
24 videotape was back there and we observed it several times
25 there that night and then seized it.

1 Q. Did you -- did you secure that on your own, or did you
2 need assistance from Speedway personnel?

3 A. No, we didn't want to accidentally do anything to the
4 tape to erase it or make any changes in it, so we got -- I
5 think his name was Mr. Sayer, come in and show us how to
6 video equipment worked and we replayed the tape then.

7 Q. And did you watch it on location, or did you take it
8 to -- back to your office?

9 A. Yes, sir, we looked at it several times at the scene to
10 try and get as much information as we could as quick as we
11 could right then. Then it was seized by Sergeant Labrash
12 and taken back to the office.

13 Q. Let me show you what's presently marked State's Exhibit
14 No. 20 and ask you if that is the video that you, in fact,
15 secured from the Speedway that morning and viewed?

16 A. Yes, sir, it is.

17 Q. All right.

18 MR. ARIAIL: And, likewise, Your Honor, it has two
19 stickers.

20 We offer State's Exhibit 20.

21 MR. GODFREY: Without objection.

22 THE COURT: Without objection, it's in evidence.

23 BY MR. ARIAIL:

24 Q. Now, I'm going to show you what is marked as State's
25 Exhibit 21. And by agreement of the parties, this is a DVD

1 of that videotape for purposes of the court presentation,
2 marked State's Exhibit No. 21.

3 Have you had an opportunity to review what is marked
4 for identification as State's Exhibit No. 21, the DVD?

5 A. Yes, sir, I have.

6 Q. And is it an accurate representation of State's Exhibit
7 No. 20, the videotape?

8 A. Yes, sir, it is.

9 Q. Okay.

10 MR. ARIAIL: Your Honor, we would offer this.

11 MR. GODFREY: Without objection.

12 THE COURT: Without objection, it's in evidence.

13 BY MR. ARIAIL:

14 Q. Now, we have talked about the location of the various
15 cameras, and what I would like to do at this point is for
16 you to give the jury an overview of the images and how they
17 are going to be viewed on this DVD.

18 A. All right. When we observed the tape, and later the
19 DVD, it's not your usual video. It has all four cameras on
20 it at the same time. It's a split screen with all four
21 cameras on it. The top two are the two cameras from the
22 center of the store and the bottom two are the two cameras
23 behind the counter.

24 Q. Four cameras running at once?

25 A. Yes, sir, all four of them are taping at once and all

1 four of them are on the video at once.

2 Q. All right. And to go over just a summary of what we
3 will see, can you see from which door the robbers come in?

4 A. Yes, sir, you can see them come in through the bottom
5 door -- or the front door. The Laurens Road door down
6 there. One of them goes in front of the counter. One of
7 them goes behind the counter.

8 Q. Are how are they dressed?

9 A. Both of them had on dark clothes.

10 One of them had on a hooded jacket and I believe a
11 homemade mask. That's the gentleman that goes in front of
12 the counter.

13 The other one had on dark jacket and a ski mask, and
14 both of them had weapons in their hands.

15 Q. So they both were armed?

16 A. Yes, sir.

17 Q. And where is Ms. Graves?

18 A. She was behind the counter.

19 Q. And you will see her on the video?

20 A. Yes, sir.

21 Q. And what happens to her during the course of the video?

22 A. She walks back. The register on this end of the
23 counter, the gas pump registers, there is money taken from
24 that. They go up towards the safe and then you see her get
25 shot.

1 Q. All right. Do you see the robbers exit?

2 A. Yes, sir, out the same exit through the Laurens Road
3 entrance.

4 Q. Then who comes in after that?

5 A. Mrs. Buehner, who was a co-worker of Ms. Graves. At
6 the time all this went on, she was out filling the ice
7 machines. I believe on those pictures that you can see the
8 cart with the bags of ice on it. She comes in right after
9 the other gentlemen leave, or shortly afterwards. She sees
10 what happened. She runs and locks the doors and then she
11 calls 9-1-1.

12 Q. All right.

13 MR. ARIAIL: Now, what I'm going to do, Your Honor
14 if, I'm just going to play the video without any comment all
15 the way through. And then we will stop it and come back and
16 let him talk a little bit about it.

17 (Whereupon, the videotape was played)

18 BY MR ARIAIL:

19 Q. Now, Mr. Bellew, what I would like to do is go through
20 here and just pause as we go along and let you go back and
21 identify, beginning with -- we will stop it when the people
22 come in, right there.

23 A. All right, sir. I would like to mention also it was
24 determined that date and time on this video were not
25 correct.

1 Q. Okay.

2 A. So --

3 Q. And we are looking at camera one is in the top. I
4 believe they are labeled. Two is in the top right. Three
5 bottom left, and four bottom right?

6 A. Yes, sir, camera one would be the ceiling camera
7 pointing towards the entrance of the Laurens Road entrance
8 that they entered from.

9 As you can see from when they come in, both of them
10 have on masks. Both of them have on dark clothes. One of
11 them has a hood up. The other doesn't.

12 Q. And then where do they go in regard to the counter?
13 Let's go forward a little bit more.

14 Pause it again.

15 A. All right. The gentleman with the hood on goes in
16 front of the counter out in the customer area.

17 Q. Okay.

18 A. The other one goes behind the counter where that
19 walkway is.

20 You can see the weapon in that one's hand at that time.

21 Q. Okay.

22 A. And in a minute you will be able to see the other
23 weapon in the lower right-hand corner. You will be able to
24 see the weapon in the other one's hand.

25 Q. What register is she at in number four?

1 A. Number four would be the gas register. It would be
2 towards the entrance at the lower part of this diagram.

3 Q. Uh-huh.

4 A. Then they go up. Number three is the diesel pump
5 register where the safe was.

6 Q. The individual in front of the counter is on the other
7 side of the counter?

8 A. Yes, sir, he's on the customer side of the counter.

9 Q. When do you see the weapon on the person behind?

10 A. After Ms. Graves moves over, then the other gentleman
11 walks behind her and you will be able to see the weapon in
12 his hand. Actually you could see it when they first came in
13 as you look close.

14 Q. Right here?

15 A. Right there.

16 Q. That's what you were referring to in camera vision
17 number four?

18 A. Yes, sir.

19 Q. All right. You mentioned earlier this photograph of
20 Ms. Graves pen in her hand?

21 A. Yes, sir.

22 Q. Is that shown in camera number three?

23 A. Yes, sir, you can see the pen in her hand there.

24 Q. And is her location at this juncture in camera three,
25 how is that related to where her body was found?

1 A. It's directly in front of where her body was found.
2 Almost directly in front. It's -- the body was behind and
3 slightly towards the other entrance from where she was
4 standing there. You can see when she gets shot, she goes
5 back and to the left, to her left.

6 Q. Her left and backwards?

7 A. Yes, sir.

8 Q. I want to go back to one other in camera two.

9 At any point during here do you see Ms. Buehner on the
10 outside of the building?

11 A. Yes, sir, you can see her outside going by with the ice
12 tray.

13 Q. In camera two?

14 A. I believe it was, yes, sir.

15 Q. Well, stop it when she goes by.

16 A. There she goes right there.

17 Q. Okay. And she's the lady that later reenters?

18 A. Yes, sir, she was the co-worker, the one that came in
19 and locked the door.

20 Q. Okay.

21 (Whereupon, the videotape was completed)

22 MR. ARIAIL: That's all I have of Mr. Bellew, Your
23 Honor. Please answer any questions that defense counsel may
24 have.

25 MR. GODFREY: I have no questions of Detective

1 Bellew.

2 THE WITNESS: Thank you, sir.

3 THE COURT: Thank you.

4 MS. STROM: The State calls Joe Wood.

5 OFFICER JOE WOOD, having been first duly sworn,
6 testified as follows:

7 THE CLERK: State your name for the record,
8 please.

9 THE WITNESS: It's Joe G. Wood.

10 THE CLERK: Thank you. Be seated.

11 DIRECT EXAMINATION BY MS. STROM:

12 Q. Mr. Wood, if you would, please, state your full name
13 again for the record?

14 A. It's Joe G. Wood.

15 Q. You need to keep your voice up like that so all the
16 jurors and I can hear you.

17 A. Yes, ma'am.

18 Q. Thank you.

19 By whom are you employed?

20 A. Greenville County sheriff's office.

21 Q. How long have you been with the Greenville County
22 sheriff's office?

23 A. A little over 33 years.

24 Q. Okay. In what capacity do you work with the Greenville
25 County sheriff's office?

1 A. The violent crimes division in the criminal
2 investigation division.

3 Q. How long have you been in that division, approximately?

4 A. Probably about 25 years.

5 Q. I want to direct your attention back to Halloween
6 night, 1997, the early morning hours of November 1st, 1997.

7 A. Yes, ma'am.

8 Q. Do you recall the incident that occurred at the
9 Speedway gas station. I think it also has the Starvin
10 Marvin convenience store in it?

11 A. Yes, ma'am, I do.

12 Q. That's located in Greenville County?

13 A. It is.

14 Q. What was the nature of your participation in the
15 robbery murder that occurred there?

16 A. I was initially called in by who was then Sergeant
17 Bellew, my sergeant over the homicide unit, to assist in the
18 investigation. He had already gone to the scene and advised
19 that he needed some assistance.

20 Q. After the initial investigation of the crime scene, did
21 you have an occasion to speak with Freddie Owens, the
22 defendant in this case, after he was arrested?

23 A. I did.

24 Q. Do you recall when that was?

25 A. I believe it was the following day, or maybe a couple

1 days later.

2 Q. When you talked with -- did you talk with Freddie Owens
3 that one time?

4 A. That's correct.

5 Q. When you talked with him, prior to talking to him, did
6 you advise him of his rights?

7 A. Yes, I did.

8 Q. And did you do that on a standard Greenville County
9 sheriff's office advise of rights form?

10 A. Yes, ma'am.

11 Q. I'm going to show you what's been marked as State's
12 Exhibit No. 22. Don't go into what it is, but do you
13 recognize that?

14 A. Yes, ma'am.

15 Q. Does that document bear your signature?

16 A. It does.

17 MS. STROM: Your Honor, at this time we are going
18 to offer State's Exhibit No. 22 into evidence.

19 MR. GODFREY: Without objection.

20 THE COURT: Without objection, it's in evidence.

21 BY MS. STROM:

22 Q. I'm going to take it from you so we can put it on the
23 projector, all right?

24 You stated that --

25 Well, first of all, go over this advise of rights form.

1 Would you have put the date on here that the date that you
2 talked with Freddie Owens?

3 A. Yes, ma'am.

4 Q. Do you sign that up in the corner?

5 A. Yes, ma'am.

6 Q. What date did you talk with Freddie Owens?

7 A. November the 11th, 1997. It's been a long time ago.

8 Q. I understand, sir.

9 And that was the first time that you spoke with him,
10 the only time that you spoke with him?

11 A. That's correct.

12 Q. So it was a few days after the incident?

13 A. That's correct.

14 Q. Could you please describe for this jury what you do
15 when you advise someone of their rights?

16 And let's start with the top right-hand corner. What's
17 going on on there.

18 A. That's where the date is entered and the time at which
19 the Miranda Rights are started.

20 Q. And what time is reflected there?

21 A. That is 10:30 a.m..

22 Q. Okay. And it's not showing there. So let me pull it
23 down just a little bit.

24 What is that in the very top right-hand corner?

25 A. That is the -- or one of the case numbers that's

1 assigned to this particular case.

2 Q. The file number that y'all have?

3 A. That's correct.

4 Q. If you would, please go over with this jury -- tell me
5 exactly how you went about advising Freddie Owens of his
6 rights. What exactly did you do?

7 A. Well, first of all, it's explained to him why he's
8 there and why the rights are being administered in this
9 case. It was explained to him why he was under arrest.

10 Q. Did you explain that to him?

11 A. I did.

12 Q. Go ahead.

13 A. I make sure or try to make sure as well as I can if
14 he's under the influence of any alcohol or drugs.

15 Q. And were you able to determine if he were under the
16 influence of any alcohol or drugs?

17 A. To the best of my knowledge, he was not, and he also
18 stated that he was not.

19 Q. Okay.

20 A. I also checked for any visible injuries, and there was
21 none noted.

22 And then the waiver of rights is gone through verbally
23 by myself. I read the rights to the individual.

24 Q. And I believe that someone is there present with you,
25 is that correct?

1 A. That's correct. At the time it was my captain, which
2 is Captain Ken Evett.

3 Q. Ken Evett.

4 And how are you and Captain Evett dressed?

5 A. Street clothes.

6 Q. Such as you are today, or --

7 A. No, it's just a little more -- a little more formal. I
8 think I had on blue jeans that day and maybe a sweatshirt or
9 something and a green jacket, which I thing I had taken off
10 when we got in the office.

11 Q. Were you armed?

12 A. I was.

13 Q. Was Captain Evett armed?

14 A. He was.

15 Q. Were the weapons that you had on, were they ever pulled
16 out and displayed or pointed at in any way to Mr. Owens?

17 A. No, ma'am.

18 Q. They remained in the holster at all times?

19 A. They did.

20 Q. Where did the advise of rights occur?

21 A. In my office inside the CID division, which is located
22 in the law enforcement center.

23 Q. Were y'all the only people in there?

24 A. Myself, Captain Evett and Freddie.

25 Q. And, again, I know I have cut you off a couple of

1 times. How is it that you go about advising him of his
2 rights? What did you do?

3 A. I read the rights aloud. The entire rights is read by
4 me out loud. And then I go back and go through each right
5 individually to make sure that each right is understood by
6 the person that is being administered to.

7 Q. So this advise of rights form you read out loud to him?

8 A. I did.

9 Q. All in one reading?

10 A. All in one reading, yes, ma'am.

11 Q. After you did that, what did you do?

12 A. I go back and go through each right separately. For
13 example, "you have the right on remain silent." I read that
14 aloud and then ask the individual "do you understand what
15 that means," and have them explain it to me.

16 Q. Is that what you did with Freddie Owens?

17 A. That's correct.

18 Q. And tell us what these markings are around the
19 individual rights.

20 A. I just bracket those off as I go through them to make
21 sure that I cover all of them.

22 Q. And there appears to be a checkmark out beside. What's
23 that?

24 A. When that's explained back to me satisfactorily, I
25 check it off.

1 Q. And so you explained to him these rights. Did you go
2 over those specifically and tell the jury what you advised?

3 A. "You have the right to remain silent.

4 "Anything that you say can be used against you in
5 court.

6 "You have a right to talk to a lawyer for advice before
7 we ask you any questions and to have him with you during
8 questioning.

9 "And if you have no money to pay a lawyer's fee, the
10 court will appoint one to represent you without costs, if
11 you wish.

12 "And if you decide to answer questions now without a
13 lawyer present, you will still have the right to stop
14 answering at any time.

15 "You also have the right to stop answering at any time
16 until you talk to a lawyer."

17 It goes on further as the waiver of rights, and it
18 states "I have read this statement of my rights and
19 understand what my rights are. I am willing to make a
20 statement and answer questions. I do not want a lawyer at
21 this time. I understand and know what I'm doing and no
22 pressure or threats have been made to me and no pressure or
23 coercion of any kind or promises of threats have been made
24 to me, and no pressure or coercion of any kind has been used
25 against me."

1 Q. You went over each and every one of these rights with
2 the defendant Freddie Owens?

3 A. I did.

4 Q. And did he indicate to you that he understood these
5 rights?

6 A. Yes, ma'am, he did.

7 Q. Out beside these rights "if you have no money to pay a
8 lawyer's fee," it appears to be another indication of some
9 sort. What's that?

10 A. When we do the rights, one of the things that we do is
11 we -- after all this is done, we give the rights form to the
12 individual and let them read it themselves. And in order to
13 do that, we have to make sure that they can read and right,
14 so we have them pick out a particular line, any line of
15 their choosing on that form, and read it aloud to us and
16 then they initial it that that is the line that they read.

17 Q. So that's the line that Freddie Owens read out loud in
18 your presence?

19 A. That's correct.

20 Q. Okay. Did he appear to have any trouble understanding
21 his rights?

22 A. No, ma'am.

23 Q. Did he ever indicate to you that he did not understand
24 his rights?

25 A. No, ma'am.

1 Q. Were all his responses indicative to you that he, in
2 fact, understood his rights?

3 A. Yes, ma'am.

4 Q. Was any pressure put upon Mr. Owens to get him to waive
5 his right?

6 A. No, ma'am.

7 Q. And did anyone promise him anything in any way
8 whatsoever to get him to waive his rights?

9 A. No, ma'am.

10 Q. Did anyone coerce him or threaten him or lay hands upon
11 him in any way during that session to get him to waive his
12 rights?

13 A. No, ma'am.

14 Q. I believe you talked about that you also went over the
15 waiver of the rights form?

16 A. Yes, ma'am.

17 Q. The last paragraph at the bottom.

18 Did Mr. Owens, in fact, sign that document waiving his
19 rights?

20 A. He did.

21 Q. Did you witness that waiver of rights form?

22 A. Yes, ma'am, I did, along with Captain Evett.

23 Q. There is a time at the bottom?

24 A. Yes, ma'am.

25 Q. What time is that?

1 A. 10:47 a.m..

2 Q. And what does that time indicate?

3 A. That's the time that the form was signed and that it
4 was completed.

5 Q. You began the advise of rights at 10:30 a.m. and
6 completed it at 10:47 a.m.?

7 A. That's correct.

8 Q. Okay. After you advised --

9 Let me ask you this. At any time while you were
10 advising Mr. Owens of his rights, did he ever indicate to
11 you that he wanted a lawyer?

12 A. No, ma'am, he did not.

13 Q. Did he ever indicate to you that he did not wish to
14 talk to you?

15 A. No, ma'am, he did not.

16 Q. After you advised Mr. Owens of his rights, did you, in
17 fact, ask him if he wanted to talk with you?

18 A. Yes, ma'am, I did.

19 Q. And did he indicate anything to you?

20 A. He said that he would talk with me, but he would not
21 put anything in writing at that time.

22 Q. And did you, in fact, talk to him at that time?

23 A. I did.

24 Q. And after talking with him about the incident, did you
25 at any time confront him or make any statements to him about

1 the strength of the case that you had on him?

2 A. Yes, ma'am, I did.

3 Q. What did you say?

4 A. We -- we had basically just been talking and going over
5 some details. And I explained to him that what he was
6 telling me did not particularly add up with what the
7 evidence and the witnesses had told us and that we had a
8 pretty strong case against him.

9 Q. And when you said that to him, what did he -- did he
10 respond?

11 A. Yes, ma'am, he did.

12 Q. What did he say?

13 A. I -- I can't do it verbatim. I don't have any notes
14 with me.

15 Q. Do you need your notes?

16 A. Please.

17 Q. So you took notes of this at the time that you were
18 talking with him?

19 A. Yes, ma'am, I did.

20 MS. STROM: Your Honor, for the record, Mr.
21 Godfrey has copies of these.

22 BY MS. STROM:

23 Q. These are your notes, correct?

24 A. Yes, ma'am.

25 Q. Okay. And again, if you need to refer to them, please

1 feel free.

2 A. Okay.

3 Q. We were at the point where you told Mr. Owens that what
4 he was telling you was not adding up, or something to that
5 effect?

6 A. That's correct.

7 Q. And did he say anything to you in response to that?

8 A. He did.

9 Q. What did he say?

10 A. He said "the only thing I'm here for is to eat, sleep,
11 shit and piss. I don't give a shit. I was born to be in
12 jail."

13 Q. After he made that comment, did you make any other
14 comment to him?

15 A. Yes, ma'am.

16 Q. What was that?

17 A. I asked him at that point if he was aware that his
18 mother was -- had indicated that she was going to turn him
19 in.

20 Q. Did he respond to that?

21 A. He did.

22 Q. What did he say?

23 A. He said "if my mom says anything, tell her I said
24 adios, to kiss her ass too. She can kiss my ass too. Tell
25 Ian and the rest of them assholes to fuck themselves. If I

1 go to jail, I go to jail. I don't give a shit."

2 Q. After he made that comment, did you say anything to him
3 or did he make any further comments to you about himself?

4 A. He was pretty much just talking and I was writing as
5 fast as I could, because I wanted to make sure that I got
6 everything written down. He pretty much just continued on
7 from that point and he said "people tend to think I have a
8 sick and evil mind, but I have a very educated mind. I
9 would like to take the blame for all of this, but I'm not
10 going to take it all myself. I made my mark on Hall Street
11 after I got out of jail selling lots of drugs. I made lots
12 of money. Yeah, I want to be remembered as the one who
13 killed the most people in Greenville. I'm a real menace."

14 Q. Mr. Wood, what was Freddie Owens demeanor during this
15 conversation that you had with him?

16 A. He was cocky. He had a don't-care attitude. He smiled
17 a lot when he was saying this.

18 Q. How did he make you feel?

19 A. He's one of two people out of probably 25 years in
20 homicide that I have interviewed that actually gave me cold
21 chills.

22 Q. Thank you.

23 MS. STROM: Court's indulgence, Your Honor.

24 (Off the record)

25 (Back on the record)

1 BY MS. STROM:

2 Q. During your conversation with him, did you at any time
3 talk to him about the possibility of this case being a
4 capital case?

5 A. I did.

6 Q. Being a death penalty case?

7 A. Yes, ma'am.

8 Q. Did he have response to that?

9 A. He did.

10 Q. What did he say?

11 A. He said "I don't give a shit about that either."

12 MS. STROM: Thank you. Please answer any
13 questions that the defense may have.

14 THE COURT: Yes, ma'am.

15 MR. GODFREY: No questions of this witness.

16 THE COURT: Thank you, Detective Wood.

17 THE WITNESS: Thank you, judge.

18 MS. STROM: Thank you, Your Honor.

19 THE COURT: Okay. It's been about an hour and a
20 half or so. We will take a short recess and for everybody
21 to be comfortable. We will take 20 minutes instead of 10 or
22 15.

23 Remember, I don't have to tell you this, but do
24 not discuss the case with each other at this point or with
25 anybody until the case is over, as I told.

1 We will take a break for this afternoon. Y'all
2 can step back and we got two rooms, maybe three. SLED also
3 will help you. Just step out for that and recess.

4 (The following takes place outside the presence of
5 the jury panel)

6 THE COURT: We will be in recess here and we won't
7 start back until twenty-five to.

8 MR. ARIAIL: Okay.

9 (Whereupon, proceedings were recessed)

10 (Whereupon, proceedings were reconvened)

11 THE COURT: I'm informing the attorneys I'm going
12 to make it part of the record a note from Mr. Asire asking
13 if he knew anyone in the courtroom. He had told us no, but
14 he recently met this young lady here in green and told us
15 that he did know somebody in the courtroom. When he
16 answered the other day he didn't see her, but she's not
17 going to be participating in the case. She's going to be
18 assisting Carolina.

19 Thank you. Bring them in.

20 (Juror Note marked as Court Exhibit No. 3 marked
21 for identification)

22 (The following takes place in the presence of the
23 jury panel)

24 THE COURT: Ms. Strom.

25 MS. STROM: Thank you, Your Honor.

1 The State calls Elizabeth Buehner Hall.

2 MARY BUEHNER HALL, having been first duly sworn,
3 testified as follows:

4 THE CLERK: State your full name for the record,
5 please.

6 THE WITNESS: Mary Buehner Hall.

7 THE CLERK: Thank you. Be seated.

8 DIRECT EXAMINATION BY MS. STROM:

9 Q. Ms. Hall, if you would, please state your full name for
10 the record.

11 A. Mary Buehner Hall.

12 Q. By whom are you employed?

13 A. Poole's Moving at this time.

14 Q. Back in October of 1997, and November of 1997, where
15 were you working?

16 A. Speedway Super America.

17 Q. Where was that located?

18 A. This particular location was on Laurens Road.

19 Q. You had worked at other Speedways?

20 A. Yes, ma'am.

21 Q. At other locations?

22 A. Yes, ma'am.

23 Q. On the evening of October 31st, in the early morning
24 hours of November 1st, you were working at the one on
25 Laurens Road?

1 A. Yes, ma'am.

2 Q. And I don't believe it's there any more, is it?

3 A. No, it's torn down.

4 Q. It's torn down. All right.

5 At the time of October 31st and November 1st, how long
6 had you been working for Speedway?

7 A. About six years.

8 Q. The night of October 31st, or early morning hours of
9 November 1st, who was working with you?

10 A. Irene Graves.

11 Q. What shift were y'all working?

12 A. Third shift.

13 Q. What hours?

14 A. Ten p.m. to six a.m..

15 Q. Were y'all the only two working that evening?

16 A. Yes, we were.

17 Q. Was it customary for two people to work in the evening?

18 A. Yes.

19 Q. I want you to go back to the early morning hours of
20 November 1st, and -- the jury has already seen the video. I
21 believe you were present when that was shown?

22 A. Yes, I was.

23 Q. Tell this jury what occurred. Why was it that you were
24 not in the store?

25 A. Throughout the night it gets quiet, reaches a certain

1 time that we have to do our work for the night so that the
2 next shift can start their shift without having a hard time.
3 We had been discussing who was going to do what for that
4 night.

5 We were completely out of ice in our fountain drink
6 machine. We were very low on ice on the bag machine where
7 we sell out of outside, and we was just going on about who
8 is going to go outside. I said "I don't want to go out in
9 the building," because it was just one of those types of
10 buildings next to the Waffle House that it was okay to get
11 there, but once you got inside of it, you closed the door to
12 feel protected. But then you had to come back out of the
13 door, which was kind of an odd thing to do. And we jokingly
14 went back and forth. And I said "okay, fine, I'll go get
15 some ice. I'm just getting enough to carry in for a little
16 while and to fill up the fountain drink machine."

17 Q. So this building that you are talking about that was
18 near the Waffle House, that's the ice house?

19 A. That's what we called it. We had kept supplies, fast
20 food supplies. Being a truck stop, diesel oil that we sold
21 in the store because we had to have an area to place to be
22 able to stock the shelves regularly.

23 Q. And so you decided that you would go?

24 A. Yes.

25 Q. And what occurred? What happened when you went out

1 there? What did you do?

2 A. I bagged about ten, twelve bags of ice. I just went
3 ahead and what I was going to put in the fountain drink
4 machine, I just bagged so that we could pour over into it,
5 because we generally fill buckets or something.

6 I may have been gone 15 to 20 minutes. And once I got
7 it bagged, come out of the ice house to pull it back up to
8 the store.

9 Q. When you pulled up to the store, what side did you pull
10 up to, the diesel pump side or the Laurens Road side?

11 A. The diesel pump side.

12 Q. All right. And what did you do?

13 A. I pulled -- you pull around to the end of the building.
14 On the front side is the ice box where we sell ice, and I
15 pulled all the way from the back side of the building to the
16 front to be able to put that into the box.

17 Q. When you are talking about the front side, that's the
18 Laurens Road side?

19 A. The gas pump side.

20 Q. You pulled around from the diesel side all the way
21 around to the front side?

22 A. Yes, ma'am.

23 Q. And what occurred?

24 A. I heard a noise.

25 Q. What kind of noise?

1 A. Like a balloon popping. It didn't really initiate
2 anything in my brain at the time as to what it really was.
3 I kept pulling. I pulled a little bit past where the ice
4 box is, which is probably about 30 feet from the front door,
5 and that's when, you know, two people come running out the
6 front door, and it just kind of hit me what it was, what the
7 sound could have been.

8 Q. When you saw the two people running out of the door,
9 tell me what you saw. What did you notice about them?

10 A. One was a little taller than the other. They was
11 taking off pretty fast. The one without the hood was like
12 trying to pull his mask off to see to run, I don't know, but
13 they were going really fast. I mean, they just -- they just
14 took off. And all I could really do was -- that's the
15 reason a few seconds you see -- they were going out and me
16 coming in, I couldn't even move because it was just like an
17 initial shock what just happened, is all I could think what
18 just happened in this store.

19 Q. After they run out of the store, they ran out towards
20 Laurens Road side?

21 A. Yes, towards Carolina Blouse, which was a business
22 straight in front of the Speedway.

23 Q. Across Laurens Road?

24 A. Right. I did not pay attention once they hit the road
25 exactly which side of the building they took to. I just

1 know they went through the middle of the gas pumps and was
2 headed across the street.

3 Q. And they ran past you or ran out the doors towards
4 Laurens Road, what did you do?

5 A. I went on inside the store.

6 Q. Tell us what you found when you went inside the store.

7 A. I went in. I said Irene one time, two times. I don't
8 know how many times. I stepped up behind the counter and
9 the only thing I could see was the lower half of her body at
10 the office area, which is right behind the diesel register,
11 and I at least knew she was hurt, so I went ahead and locked
12 the doors. I guess feeling safety for myself at that
13 particular moment, and went back around to see if I could do
14 anything for her. I called her name, leaned over, touched
15 her hand. At that point looking at her I could tell that
16 there was -- it just didn't seem like there was no life, and
17 I called 9-1-1.

18 Q. The officers arrived there at the scene and you talked
19 with them?

20 A. (Shaking head yes)

21 Q. How well did you know Irene Graves?

22 A. I helped her get the job there four, four and a half
23 years before that. She had worked at the Pantry right down
24 the road. And she come in as a customer and made jokes.
25 No, it wasn't jokes. I know how serious it probably could

1 have been about how she was getting robbed down at the
2 Pantry, and people coming in and bothering her and messing
3 with her, and we needed to get her a job there, and talked
4 to the manager, and "come on, she's been working down there.
5 You know she would be a good worker and she's willing to
6 work any hours," and they hired her.

7 Q. Do you know if working at the Speedway was her only
8 job?

9 A. At the particular time we was working together that
10 night, I knew she had three jobs.

11 Q. She had three jobs?

12 A. Three jobs.

13 Q. How did you know that?

14 A. Because we talked about it. We talked about how much
15 time she either did with jobs or her kids. I mean, that's
16 the main thing we talked about was her work, her kids,
17 because, you know, both single moms at the time.

18 Q. Did y'all work together often?

19 A. We had. Prior to this I had only been back in that
20 store for about two weeks to help the manager of that store.
21 She was a new manager and needed a little help and didn't
22 like working third shift, but I was willing -- I know how
23 hard it was when I started managing to not have somebody
24 there to kind of back you up and have to be there almost 24
25 hours a day to keep things going. But before that we had

1 worked together before I had taken a store probably about a
2 year, year and a half.

3 Q. Do you know how Ms. Graves got back and forth to work?
4 Did she own a car?

5 A. At one time she did. It didn't last too long. It was
6 a piece of junk. She rode bicycle sometimes. She asked for
7 us rides. Most of the time we offered the rides before she
8 would even ask for them.

9 At her apartment complex there were a few people she
10 could depend on from time to time if they were there to take
11 her to work, and whoever worked with her generally took her
12 home in the mornings.

13 Q. What type of worker was she?

14 A. She was a good worker. She did what was expected of
15 her. She was a good worker. She really was.

16 Q. What kind of person was she?

17 A. Funny. She had a sense of humor, but she also had a
18 harshness about her. You know, I guess I had a little bit
19 of that myself over the years going through a divorce,
20 raising kids by yourself, working all the time.

21 She was a little brazen sometimes with the way she put
22 things to people, the profanity she would use sometimes, but
23 she never meant any harm with it. I mean, she never
24 directed it towards anyone. It was more or less cutting up
25 than anything. But if somebody come in running their mouth,

1 wanting to act like they was wanting to start some trouble,
2 most of the time it was some of the guys we knew that come
3 in from Laurel Creek. They was harmless. She would kind of
4 tell them off in a more of a harsh mother type way than
5 anything, but she spoke what she felt.

6 Q. You said earlier that y'all talked about her kids. How
7 many kids did she have, do you recall?

8 A. Three.

9 Q. And did you ever have occasion to be around them?

10 A. Oh, yeah. There was times that she would stop by the
11 store when she was taking Insley to dance practice or
12 different things she was doing with the kids. She kept them
13 involved in things. She, you know, tried to do what was
14 right for them.

15 There was even one year that I cooked Thanksgiving
16 dinner for them, just for the mere fact that I knew her
17 trying to pay the bills, paying for dance practice and
18 everything else. She didn't ask me. She did not -- she
19 didn't ask me. I mean, she made comment about "you better
20 bring me a piece of that sweet potato pie." And, you know,
21 I just went and bought a few things and she very
22 appreciative. I mean, she cried when I took it to her.

23 Q. How did she interact with her children?

24 A. She loved her kids. She spent a lot of time working,
25 but she never spent any time with her for herself. She

1 would be sick at work.

2 Odd things, you know. I would tell her "you need to go
3 to the doctor." You could tell her she had an earache one
4 night and she asked me to blow smoke in her ear, an old
5 wives' tale or something, and I said "I'm not as doctor.
6 I'm not doing that for you," but she let herself go in order
7 to work and spent time with her kids. I do know that.

8 Q. Let me show you what's been marked as State's Exhibit
9 No. 23. Without going into what's in that, do you recognize
10 State's Exhibit No. 23?

11 A. Yes.

12 Q. Okay.

13 MS. STROM: Your Honor, at this time we would
14 offer State's Exhibit No. 23 into evidence.

15 MR. GODFREY: Without objection.

16 THE COURT: Without objection, it's in evidence.

17 BY MS. STROM:

18 Q. Ms. Hall, if you would please tell us who was reflected
19 in this photocopy of a photograph?

20 A. Irene, Insley and Jeremy.

21 Q. Those are two of her children?

22 A. Her two youngest. She has an older son also.

23 Q. And at the time of her murder, the oldest son, was he
24 an adult?

25 A. He was 18.

1 Q. Ms. Hall, would you consider yourself one of Ms.
2 Graves' friends?

3 A. I would.

4 Q. How has her death affected you?

5 A. I feel guilty sometimes because I'm so glad it wasn't
6 me, but at the same time I guess I worried about her
7 spiritual life.

8 Q. Had y'all talked about that?

9 A. We had. We had. She talked about her kids going to
10 church. And she said "I know you think bad about me because
11 I don't go to church." I said "Irene, I love God and God
12 loves me." And I don't feel like you have to go to church
13 to have him in your life, but I think her kids were just
14 coming to her with their feelings of God and it was actually
15 affecting the way she felt about things because it affected
16 her kids. I mean, it most definitely affected her.

17 My kids were four and seven at the time this happened.
18 They are 17 and 13 now. I thank God every day that I can
19 see them grow up, but it hurts me to think there is kids
20 that have grown up without a mother.

21 Q. Thank you, Ms. Hall. Please answer any questions that
22 defense may have.

23 MR. GIBSON: No questions. Thank you, Ms. Hall.

24 THE COURT: Thank you, ma'am.

25 MS. STROM: Your Honor, we would ask that she be

1 allowed to return home and to work.

2 MR. GIBSON: No objection.

3 THE COURT: Without objection, ma'am, you may be
4 excused, if you would like.

5 The State calls Aisha Austin.

6 AISHA AUSTIN, having been first duly sworn,
7 testified as follows:

8 THE CLERK: State your name for the record,
9 please.

10 THE WITNESS: Aisha Austin.

11 THE CLERK: Thank you. Be seated.

12 DIRECT EXAMINATION BY MS. STROM:

13 Q. Ms. Austin, please state your full name for the record.

14 A. Aisha Shaniqua Austin.

15 Q. I need you to keep your voice up so all these jurors
16 and I can hear you, all right?

17 A. Okay.

18 Q. Where do you live?

19 A. 200 Ashe Drive, apartment E-7.

20 Q. Is that in Greenville?

21 A. Yes.

22 Q. How old are you?

23 A. 28.

24 Q. How far did you go in school?

25 A. I graduated.

1 Q. From high school?

2 A. Uh-huh.

3 Q. Which high school?

4 A. J.L. Mann High School.

5 Q. J.L. Mann?

6 A. Uh-huh.

7 Q. Are you presently employed?

8 A. Yes.

9 Q. Where do you work?

10 A. I work at BMW.

11 Q. What do you do with BMW?

12 A. I inspect the car parts.

13 Q. You inspect the car parts?

14 A. Uh-huh.

15 Q. Do you know the defendant Freddie Owens?

16 A. Yes.

17 Q. How long have you known him?

18 A. A couple years.

19 Q. I want to direct your attention back to October 31st,
20 1997, November 1st, 1997. Do you recall that time?

21 A. Yes.

22 Q. How old were you at that time, approximately?

23 A. 18.

24 Q. How old was Freddie at that time?

25 A. The same age.

1 Q. Did you know him back then?

2 A. No, I had just met him of the year of 1997.

3 Q. You had met him in 1997?

4 A. Uh-huh.

5 Q. So on October the 31st and November 1st of 1997, what
6 was your relationship with Freddie Owens?

7 A. Boyfriend-girlfriend.

8 Q. How long had y'all been seeing each other?

9 A. Like about four months.

10 Q. On that Halloween night what did you do? Do you recall
11 what you did that night?

12 A. Yes.

13 Q. What did you do?

14 A. I went to a J.L. Mann football game.

15 Q. Who went with you?

16 A. My cousin.

17 Q. What's your cousin's name?

18 A. Brandy.

19 Q. How did y'all get there?

20 A. Her mother.

21 Q. Her mother took you?

22 A. Yes.

23 Q. Was Freddie Owens with you?

24 A. No.

25 Q. After the ball game did Brandy's mother pick you up?

1 A. Yes.

2 Q. Where did she take you?

3 A. To Freddie's house.

4 Q. You went to Freddie Owen's house?

5 A. Yes.

6 Q. Why was that?

7 A. That's where I -- that's where I go every night.

8 Q. So it's not unusual for you to go to his house?

9 A. Uh-uh.

10 Q. Okay. What time do you think that you got to Freddie
11 Owens house that night?

12 A. I would say around 10:30, something eleven.

13 Q. Was Freddie Owens there when you got there?

14 A. No.

15 Q. How long did you stay there?

16 A. Until the next morning.

17 Q. While you were there that evening, did Freddie Owens
18 come home?

19 A. No.

20 Q. When was the next time that you saw Freddie Owens?

21 A. The next morning.

22 Q. What time did you see him, approximately?

23 A. It was maybe like ten -- ten or eleven.

24 Q. What were you doing when you saw him, do you remember?

25 A. I was asleep. I had just woke up.

1 Q. When you woke up was he there?

2 A. Yes.

3 Q. Did you have any conversation with Freddie Owens while
4 he was there?

5 A. I asked him where he had been.

6 Q. What did he tell you?

7 A. He was out riding, him and Andre.

8 Q. I'm sorry?

9 A. Him and Andre was out riding.

10 Q. Did you have any other conversation with him at that
11 time?

12 A. No.

13 Q. Tell me what happened that day.

14 A. I got out of the bed. He came through there. I got
15 up. I asked him where he had been. He stated out riding.
16 I went outside. I went down the street a couple doors down.
17 I talked to a friend of mine named Sally. She was asking me
18 about --

19 Q. Don't go into what she said, okay, but after you talked
20 with Sally, did you come back to Freddie's house?

21 A. Yes. Yes, I came back to Freddie's house.

22 Q. What happened when you came back to Freddie's house?

23 A. I got a phone call from my sister. She asked me did I
24 know anything about --

25 MR. GIBSON: Objection.

1 BY MS. STROM:

2 Q. Don't go into what anybody else told you. You can only
3 talk about what you said and what Freddie said, okay?

4 Let me back you up. Before you went to your friend
5 Sally's house, did Freddie Owens receive a call there at his
6 house?

7 A. Oh, yes. Uh-huh.

8 Q. Okay. Not going into what the person on the other end
9 of the line said, but could you hear what Freddie was
10 saying?

11 A. Yes.

12 Q. What did Freddie say?

13 A. "I know you know I did it. Just keep quiet."

14 Q. "I know you know I did it."

15 A. "Just keep quiet."

16 Q. "Just keep quiet."

17 A. Uh-huh.

18 Q. Did you say anything to him about that?

19 A. No, I just asked him who he was talking to.

20 Q. What -- did he tell you who he was talking to?

21 A. Yes.

22 Q. What did he say?

23 A. Cornelius.

24 Q. Cornelius?

25 A. Yes.

1 Q. Do you know Cornelius' last name?

2 A. Uh-uh. No.

3 Q. After you went to Sally's house and came back, you said
4 that you were received a call from your sister?

5 A. Yes.

6 Q. Again, not going into what your sister said, but after
7 you talked to your sister, did you then talk with Freddie
8 Owens?

9 A. Yes.

10 Q. What did you say to Freddie Owens?

11 A. I just asked him about just riding. Just out riding
12 and where he had been.

13 Q. What did he say?

14 A. Just out riding. Went to -- just went -- just went
15 riding.

16 Q. And did he have an occasion to leave his house?

17 A. Yes.

18 Q. Where did he go?

19 A. He went to the store.

20 Q. Did you go with him?

21 A. No.

22 Q. Who went with him?

23 A. One of his friends.

24 Q. Do you remember who that was?

25 A. I think his name was James.

1 Q. When he came back from the store, what, if anything,
2 did he have?

3 A. He had a newspaper.

4 Q. A newspaper?

5 A. Yes.

6 Q. What happened with that newspaper? Tell me what
7 happened.

8 A. He came in the house with the newspaper, sat down and
9 read it. Everybody got to read it except me. I asked him
10 why I couldn't read it. He told me I didn't need to read
11 it. So I got the paper anyway and read it. It was telling
12 me about the lady at the store, how the two gunmen came in
13 robbed the store and shot the lady.

14 Q. Did you say anything to Freddie about that?

15 A. I asked him about it.

16 Q. What did he say?

17 A. He was saying "yeah, you know, he -- they went in the
18 store and the lady didn't open up the safe, so he just shot
19 her.

20 Q. Do you recall specifically what he said about how the
21 lady was shot?

22 A. He -- he say he went in and he kept asking her to open
23 the safe. She kept throwing up her hands and said she
24 couldn't open the safe, so he just said "I shot the bitch".

25 Q. He said "I shot the bitch"?

1 A. Yes.

2 Q. Did you say anything to him after he told you that?

3 A. I asked him why did he do it, because, you know, my mom
4 left me -- she left three kids, so -- and -- and I was
5 telling him basically that he wouldn't want nobody to do it
6 to his mother, and, you know, her kids would be left without
7 a mother.

8 Q. Did he say anything back to you?

9 A. No, uh-uh.

10 Q. Do you recall how -- do you recall if he said anything
11 to you about how he was dressed, or what he was wearing, or
12 anything other about the incident?

13 A. He said he was dressed in all black.

14 Q. Did he tell you who was with him?

15 A. Yes.

16 Q. Who did he say was with him?

17 A. Andre.

18 Q. Did he say how Andre was dressed?

19 A. In all black.

20 Q. Did he say anything about what he did with the clothes
21 or the gun?

22 A. Yes, he burnt the clothes at an old school.

23 Q. Aisha, has Freddie Owens ever said anything to you
24 about how he wants to be remembered?

25 A. Yes.

1 Q. What has he said to you?

2 A. He said he wanted to go down in history for committing
3 the most murders in Greenville County without getting
4 caught.

5 MS. STROM: Court's indulgence, Your Honor.

6 (Off the record)

7 (Back on the record)

8 BY MS. STROM:

9 Q. Thank you, Ms. Austin. Please answer any questions
10 that the defense may have.

11 CROSS EXAMINATION BY MR. GIBSON:

12 Q. Good afternoon, Ms. Austin.

13 I'm Ken Gibson, one of Mr. Owens lawyers. I just want
14 to ask you a few questions if that's okay.

15 So let me get this straight. You -- at the time this
16 thing happened you were Mr. Owens girlfriend?

17 A. Yes.

18 Q. And you had been his girlfriend for four months, is
19 that correct?

20 A. Yes.

21 Q. And y'all were living together?

22 A. I was going over there and spending the night. It
23 wasn't like living together.

24 Q. Okay. All right.

25 Now, isn't it true that about the time this thing

1 happened you found out that Freddie was cheating on you?

2 A. No, he wasn't cheating on me.

3 Q. Isn't it true that you found out he was cheating on
4 you?

5 A. Uh-uh, he wasn't cheating.

6 Q. Now, when this thing happened, you gave a statement to
7 the police, didn't you?

8 A. Yes.

9 Q. All right. And I'm going to show you this statement,
10 if that's okay.

11 A. Uh-huh.

12 Q. Take a look at that and tell if that's the statement
13 that you told the police about?

14 A. Yes.

15 Q. How many pages is that statement?

16 A. Four.

17 Q. A four page statement. All right.

18 And in that statement I presume that you were asked to
19 tell everything that you knew about this case, right?

20 A. Yes.

21 Q. Can you tell me in that statement, show me, where it
22 says "I shot the bitch"?

23 A. (Witness reviewing statement.)

24 Right here.

25 Q. Okay. And I'm going --

1 A. "And got some more and shot her in the head."

2 Q. Okay. So what it actually says is "he said they went
3 in and took the money and the lady behind the counter
4 started talking junk and got smart, so he shot her in the
5 head."

6 A. Right.

7 Q. It doesn't say "I shot the bitch," does it?

8 A. Uh-uh.

9 Q. Is that anywhere in there?

10 A. No.

11 Q. Now, don't you think that's a -- I mean, that's a
12 fairly important fact, don't you think? I mean, that's
13 pretty harsh language, don't you think?

14 A. Yeah, that was his attitude, though.

15 Q. And isn't that something that if that in fact happened,
16 you would have put in a four page statement that you gave to
17 the cops?

18 A. Yes.

19 Q. Isn't it in fact true that he really did cheat on you
20 and you are mad at him and now you are trying to get back at
21 him?

22 A. No, nothing like that.

23 Q. Thank you Ms. Austin.

24 A. Uh-huh.

25

1 REDIRECT EXAMINATION BY MS. STROM:

2 Q. Ms. Austin, I just want to make sure. Do you have that
3 statement with you?

4 A. No.

5 Q. Okay. I believe it was on page three of your
6 statement, is that correct?

7 A. Where at? Right here, uh-huh.

8 Q. And after -- if you would start, "he said they went
9 in."

10 A. "He said they went in, took the money, and the lady
11 behind the counter started talking junk and got smart, so he
12 shot her in the head."

13 Q. And that's what you told the police?

14 A. Yes.

15 Q. What were the exact words that he told you?

16 MR. GIBSON: Objection. Asked and answered.

17 THE COURT: I would sustain the objection. She's
18 already testified to that.

19 BY MS. STROM:

20 Q. But he told you in the statement that she got smart
21 with him and that's why he shot her?

22 A. Yes.

23 THE COURT: I would sustain the objection.

24 MR. GIBSON: Thank you, Your Honor.

25 THE COURT: We have been over that.

1 MS. STROM: I have no further questions.

2 THE COURT: Okay, ma'am, you may come down. Thank
3 you.

4 THE WITNESS: Uh-huh.

5 MS. STROM: Your Honor, the State would request
6 Ms. Austin be excused.

7 MR. GIBSON: Without objection, Your Honor.

8 THE COURT: Without objection.

9 MS. STROM: The State calls Tracy Hayes.

10 TRACY HAYES KNIGHT, having been first duly sworn,
11 testified as follows:

12 THE CLERK: State your name for the record,
13 please.

14 THE WITNESS: Tracy Hayes Knight.

15 THE CLERK: Thank you. Be seated.

16 DIRECT EXAMINATION BY MS. VERDIN:

17 Q. Ms. Knight, would you state your full name, please?

18 A. Tracy Aileen Hayes Knight.

19 Q. And where are you employed?

20 A. Little General convenience stores.

21 Q. Where were you employed on November 1st, 1997?

22 A. Speedway.

23 Q. Do you know how long you had been working there then?

24 A. Over a year, I believe.

25 Q. What was your job title?

1 A. Manager.

2 Q. And what were your duties as manager of the Speedway?

3 A. Overseeing the store, basically.

4 Q. Okay. Did you work at a particular Speedway?

5 A. 626 on Laurens Road.

6 Q. What shift did you work?

7 A. Mostly first shift.

8 Q. Mostly first.

9 Now, through your employment at the Speedway did you
10 also know Irene Graves?

11 A. Yes, I did.

12 Q. Did she work there as well?

13 A. Yes, she did.

14 Q. And what was her job title?

15 A. Assistant manager.

16 Q. Do you know what shift Ms. Graves normally worked?

17 A. Third.

18 Q. So you worked the shift just after Ms. Graves, would
19 that be a correct statement?

20 A. Yes.

21 Q. Normally?

22 A. Yes.

23 Q. Did you have occasion to go to the Speedway on Laurens
24 Road on November 1st of 1997?

25 A. Yes, ma'am, I did.

1 Q. What time do you think that you got there?

2 A. Probably a little after five a.m..

3 Q. And can you describe to us what you found when you
4 arrived?

5 A. The parking lot was still full of police cars. They
6 actually had it blocked off. It had to move for me to pull
7 my car in when they found out who I was.

8 Irene was still in the store, so nobody was allowed in
9 the store, and we could not stand directly in front of the
10 window because they did not want us seeing in the store.

11 Elizabeth was actually in the back of the police car
12 when I got there. She left shortly after I got there.

13 Q. In fact, Ms. Buehner we heard from.

14 A. Yes.

15 Q. Now, did you talk to the police when you were there?

16 A. Yes.

17 Q. And while you were there, did the police request that
18 you do anything?

19 A. They asked me to audit the registers to see if there
20 was any money missing.

21 Q. Now, how many registers were in that store?

22 A. Two.

23 Q. Two.

24 And what register did you go to first to audit?

25 A. The gas register, which was on Laurens Road side.

1 Q. It would have been on the Laurens Road side.

2 Was there -- and there was another register in the
3 store. Did you have a name for it?

4 A. I believe that was POS-8.

5 Q. And we have heard some testimony earlier about the
6 diesel register?

7 A. Yes, diesel register.

8 Q. Okay. Just for purposes of being consistent then,
9 let's just call that one the diesel register.

10 Now, you have said the gas register is the one closest
11 to the Laurens Road side. Why did you decide to audit that
12 register first?

13 A. When I first went into the store and got behind the
14 counter, the diesel register, if you will notice in the
15 pictures, it had the keyboard flipped down, which
16 automatically told me it was not running a register. She
17 actually had a grocery order up on the screen, so I wouldn't
18 have been able to get into that register at that time.

19 Q. Okay. When you say a grocery order, she was doing that
20 on cash register? Explain that to me just a little bit.

21 A. She was ordering what needed to be ordered for our
22 truck to come in. What the vendors don't bring us, we order
23 from. I'm trying to think. McClain's I think was the
24 grocery vendor we had then. But she didn't -- she was using
25 her register instead of the back off computer.

1 Q. So I'm taking it from that that you could use that
2 register sort of like a computer?

3 A. Yes.

4 Q. If she had wanted to open that register, would she have
5 been able to have done that?

6 A. No, not on that -- not with it being in the inventory.

7 Q. Not with it being in the inventory.

8 Could she have ever opened it? I mean, could she have
9 changed it over to register mode?

10 A. Yes, she could have, but it would have taken some time
11 to download what she had already entered in the inventory.
12 It would have taken time to download.

13 Q. And have you done grocery orders on one of the
14 registers before?

15 A. Yes.

16 Q. Do you know when you are in the middle of doing a
17 grocery order, about how long would it take you to open that
18 register up like if you were in the middle of doing a
19 grocery order?

20 A. A good five or ten minutes.

21 Q. Now, you said that you went ahead and audited what we
22 call the gas register, the one closest to the Laurens Road
23 side, but -- let me ask you a little bit about that
24 register. When you got there, was the drawer open or closed
25 on that register?

1 A. It was closed.

2 Q. Closed.

3 And were you able to then open the drawer on the
4 register?

5 A. Yes.

6 Q. Was there any money in that drawer?

7 A. No, there was not.

8 Q. And when I asked that, was there any cash in the
9 drawer?

10 A. No.

11 Q. Was that unusual?

12 A. Yes.

13 Q. Now, do you -- normally would you keep any change or
14 just be cash in that drawer?

15 A. It would just be cash.

16 Q. Would there be an occasion that you would keep change?

17 A. Yes, those particular registers had change machines.

18 And if somebody got 5.01 in gas and they brought you in the
19 5.01, you might set the penny in your register until you get
20 some more -- enough to fill your change machine with. Do
21 you understand what I'm saying?

22 Q. I do. I do.

23 So just a little bit of change that you get every now
24 and again might be in that drawer as well?

25 A. Correct.

1 Q. But mainly cash, is that fair to say?

2 A. Yes.

3 Q. What mode was the gas register in?

4 A. The register mode.

5 Q. And what is register mode mean?

6 A. That means that you are running a register on it.

7 Q. Okay. Would it be fair to say that might be something
8 like up for business?

9 A. Yes.

10 Q. Did Irene Graves have the capacity as an assistant
11 manager to open that register?

12 A. Yes, she did.

13 Q. Tell me what was Speedway's policy regarding cash in
14 the drawer? What was the maximum that you could keep in
15 that drawer?

16 A. \$200.

17 Q. Did you always keep \$200 in the drawer?

18 A. Not always.

19 Q. So you could keep less, but not more?

20 A. Right.

21 Q. Now, you said that you did an audit of that register.
22 Do you remember what that audit showed?

23 A. I remembered that it had no money in it. I didn't
24 remember the exact amount until I seen the copy of it, but I
25 knew it had very low amount of money missing out of it -- I

1 mean, there was no money in it when I seen it, but it was a
2 low amount of money missing.

3 Q. When you did the audit on that register, did you get
4 any type of document from that audit?

5 A. Yes, I did.

6 Q. And what kind of document did you get from that?

7 A. A receipt showing what should have been -- or when you
8 did audits, you opened the drawer and you typed in what was
9 in the drawer moneywise and what was in the change drawer,
10 and there was nothing in the money drawer.

11 Q. Okay. Now, just to give us a little bit of
12 understanding here, is an audit of a register something that
13 you did regularly in your course of business?

14 A. Yes.

15 Q. And does the receipt generate for each audit that you
16 do of that register?

17 A. Yes.

18 Q. And do you remember if on November the 1st, 1997, did a
19 receipt generate when you did the audit?

20 A. Yes.

21 Q. And did you follow the same procedures that you always
22 follow when you do an audit and get a produced receipt?

23 A. Yes.

24 Q. Ms. Knight, I'm going to show you what's been
25 previously marked as State's Exhibit No. 32 and ask you to

1 identify this document?

2 A. That is the receipt from the audit.

3 Q. From the audit?

4 A. Yes.

5 Q. Did you actually do the audit? Did you generate this
6 receipt?

7 A. Yes, I did.

8 MS. VERDIN: Your Honor, at this time we would
9 move State's Exhibit No. 32 into evidence.

10 MR. GIBSON: Without objection.

11 THE COURT: Without objection.

12 (Receipt marked and admitted as State's Exhibit
13 No. 32)

14 BY MS. VERDIN:

15 Q. I just want to put this receipt up for so you can take
16 a look at it.

17 Ms. Knight, I see on this receipt it says cash drawer
18 zero. Did you say earlier that's what you enter, based on
19 what you see in the cash drawer?

20 A. That is correct.

21 Q. Okay. And the change machine, it says 74.64. The
22 change machine, is that what you are talking about when the
23 change comes out?

24 A. Yes.

25 Q. And then down here at the bottom the variant, it says

1 negative \$37.29. Tell us what that means.

2 A. That mean that there was \$37.29 not accounted for.

3 Q. Not accounted for in that register. Okay.

4 Now, Ms. Knight, there has been some talk about the
5 safe that was I believe in the store, is that correct?

6 A. Uh-huh.

7 Q. Where was that safe located?

8 A. It was located underneath the diesel register.

9 Q. So back behind -- what I think of behind the registers,
10 is that correct?

11 A. Yes.

12 Q. Did Ms. Graves, as assistant manager, did she have the
13 authority to open that safe?

14 A. No, she did not.

15 Q. Would there have been any way she could -- let's not
16 even say authority. Did she have the ability to open the
17 safe?

18 A. No, she did not.

19 Q. Thank you, Ms. Knight.

20 MR. GIBSON: No questions, Your Honor.

21 THE COURT: Thank you, ma'am. You may come down.

22 MR. ARIAIL: Your Honor, before we call our next
23 witness, there is a matter we need to take up outside the
24 presence of the jury, a legal matter.

25 THE COURT: Okay.

1 Ladies and gentlemen, I didn't tell you, but
2 occasionally during the proceedings, based on the rules and
3 everything you shouldn't be concerned with, the attorneys
4 have to object. That's their job, and they may do that, and
5 they may be some matters that -- matters of law. It's not
6 matters of fact, or anything of that nature, but just
7 matters of law that we have to take up. And we won't -- I'm
8 not one that keeps you in and out or has a lot of sidebar
9 conferences or whatever, like you see on TV, but there are
10 special matters that we have to do, and I need to see what
11 this one is, okay? Y'all just step out for just a minute.

12 (The following takes place outside the presence of
13 the jury panel)

14 MR. ARIAIL: Your Honor, the State's next witness
15 is Nakeo, also known as Kiko Vance.

16 Mr. Vance is currently a resident of the federal
17 penitentiary in Virginia that we have had transported here.
18 He testified in the first trial. He was a co-defendant with
19 Mr. Owens, who was an occupant in the vehicle, not in the
20 store. He now has indicated to me when I brought him down
21 that he did not wish to participate and testify. I told him
22 that he would need to appear before the judge and that the
23 judge would inquire as to whether or not he would testify,
24 if he was so ordered.

25 I explained to him about making himself

1 unavailable as a witness and use of his prior testimony, so
2 he is fully versed in all that, and he still continues to
3 indicate he does not wish to testify, he did not wish he
4 didn't want to participate, and his exact words were that he
5 had put this behind him and he wanted it to stay behind him.

6 So what I would like to do at this point, we would
7 propose to call him, establish that he is, in fact, an
8 unavailable witness under 804. At that point let you
9 question him, or I'll be glad to question him as to his
10 understanding and that his unwillingness to testify.

11 And then we would move to publish his prior
12 testimony. I would read it. And I have given a copy to
13 Detective Paul Silvaggio with the sheriff's office and he
14 would be my responder.

15 THE COURT: Okay.

16 MR. ARIAIL: That is our plan.

17 And they have custody of Mr. Vance somewhere in
18 this building, is that correct?

19 OFFICER MCCALL: He's got him right here.

20 THE COURT: What's the defense position on that?

21 MR. GIBSON: Beg the court's indulgence.

22 Thank you, Your Honor.

23 (Off the record)

24 (Back on the record)

25 MR. ARIAIL: It would be under 804(a)(2).

1 THE COURT: Okay.

2 MR. ARIAIL: Bring him in.

3 Your Honor, could Ms. Knight be excused? She
4 drove down from West Virginia and plans to drive back.
5 Would that be all right?

6 THE COURT: If she would like to be excused, she
7 may.

8 MR. GIBSON: Your Honor, our position is that we
9 would be opposed to allowing his testimony from a prior
10 proceeding again, if he is not willing to testify. I mean,
11 we believe that former testimony was not, in fact, true. We
12 believe that we should have a right in this proceeding to
13 cross-examine him on it. I mean, given the stakes that we
14 are talking about, we believe that it would beg due process
15 to allow him to -- to allow the State to bring in what we
16 consider false testimony in this matter.

17 THE COURT: I do not have my book in front of me,
18 but I believe if a witness is unavailable, and I have run
19 into this once or twice -- one time it was in somebody
20 incarcerated in Columbia. If testimony has been given I
21 believe in a prior proceeding where he was subject to cross
22 examination by the defendant, I'm not sure how the rule
23 reads but --

24 MR. ARIAIL: Do you need --

25 THE COURT: I may -- let me give -- I'll give

1 everybody a five minute break. I hate to do that, but --
2 and then we will come right back. And you are beginning to
3 do this outside the presence of the jury?

4 MR. ARIAIL: Yes, sir.

5 THE COURT: Okay.

6 MR. ARIAIL: Well, however you instruct me. I'll
7 do it either way. I'm not sure. I mean, I don't know if
8 this is something that may be in front of the jury or not.
9 I have always done it outside.

10 THE COURT: That would be safest thing to do.

11 MR. ARIAIL: Okay.

12 THE COURT: Bring him on in. I'll put him under
13 oath.

14 NAKEO "KIKO" VANCE, having been first duly sworn,
15 testified as follows:

16 THE CLERK: What is your name?

17 THE WITNESS: Nakeo Vance.

18 THE COURT: Have a seat, Mr. Vance.

19 THE CLERK: Be seated.

20 THE COURT: All right, sir.

21 DIRECT EXAMINATION BY MR. ARIAIL:

22 Q. You are Mr. Nakeo Vance?

23 A. Yes, sir.

24 Q. And Mr. Vance, you and I have recently met on a couple
25 of occasions regarding your testimony in this proceeding, is

1 that correct?

2 A. Yes, sir.

3 Q. And, in fact, you testified previously in 1999, in
4 regard to the circumstances of the murder of Ms. Irene
5 Graves at the Speedway on Laurens Road?

6 A. Yes, sir.

7 Q. And your testimony -- you rendered your testimony, you
8 were subject to cross-examination at that time. And you are
9 presently incarcerated in the federal prison system in
10 Virginia, is that right?

11 A. Yes, sir.

12 Q. All right. I have indicated to the court that you have
13 advised me that you do not wish to testify in this case --

14 A. Yes, sir.

15 Q. -- at this time?

16 A. Right.

17 Q. That I advised you that the judge would want to hear
18 from you and hear your statement in regard to not willing to
19 testify. And that even if he ordered you to testify, you
20 would refuse to testify?

21 A. Yes, sir.

22 Q. And I also advised you in the meetings that we have had
23 that if you refused to testify pursuant to an order of the
24 court, that your prior testimony that has been recorded by
25 the court reporter could then be used in this proceeding?

1 A. That's what you said.

2 Q. In your absence?

3 A. Yes, sir. I guess, yeah.

4 Q. And you are aware of that?

5 A. (Shaking head yes)

6 Q. Do you have any questions that you want to ask the
7 court or an attorney or is there anything that you do not
8 understand about what we are doing today?

9 A. No, sir.

10 Q. Are you under the influence of any alcohol or drugs?

11 A. (Shaking head no)

12 Q. And you have been incarcerated in Virginia -- well, how
13 long have you been incarcerated total?

14 A. Seven years.

15 Q. Seven years?

16 A. (Shaking head yes)

17 Q. And part of that is a result of a sentence that you
18 received as part of this case?

19 A. Yes, sir.

20 Q. And in addition to that you received a five year
21 sentence in addition to that from the federal system?

22 A. Yes, six and a half.

23 Q. How much?

24 A. Six and a half.

25 Q. Six and a half. All right.

1 So you have been incarcerated for the last seven and a
2 half years.

3 Are you willing to answer anything today or to testify
4 in regard to the incidents that occurred on November the 1st
5 of 1997, in which Ms. Graves was killed at the Speedway?

6 A. No, sir.

7 Q. And even if the judge orders you to testify, do you
8 still intend to refuse to testify?

9 A. Yes, sir.

10 THE COURT: I'm ordering you to testify. Would
11 you -- will you answer his questions under my order?

12 THE WITNESS: No, sir.

13 THE COURT: That's six months in addition
14 consecutive to what you are serving right now when you get
15 released up there, okay?

16 THE WITNESS: Yes, sir.

17 THE COURT: You hold him and we may bring him back
18 tomorrow and see if we have to give him another order.

19 THE WITNESS: It won't make no difference.

20 THE COURT: I can keep giving you consecutive
21 times every time you disobey a court order.

22 THE WITNESS: I'll plead the Fifth. It don't make
23 no difference to me.

24 THE COURT: That is contempt of court. This is
25 prior testimony. You cannot --

1 THE WITNESS: I plead the Fifth.

2 THE COURT: I'll get you an attorney. You can
3 discuss it with him in regard to pleading the Fifth
4 Amendment.

5 Before we go any further, any cross-examination?

6 MR. GIBSON: Just briefly, Your Honor.

7 (Off the record)

8 (Back on the record)

9 MR. GIBSON: No, nothing, Your Honor. Nothing.

10 THE COURT: All right, sir.

11 We will prepare an order to that.

12 Okay. I find that he is under 804(3)-- no, (2),
13 he persists in refusing to testify..

14 I find as a fact that he refused prior to coming
15 down here. The State knew about that.

16 I find that he refused in open court today after
17 an order of this court, and I have held him in contempt and
18 he says he will still not testify.

19 He is serving a lot of time. I don't know what.
20 The six months may not affect his feelings about it, but in
21 any event, he is not available under that rule at the
22 present time, and so former testimony under (a)(b)(1) would
23 not be hearsay. It would be a hearsay exception.

24 MR. GIBSON: Your Honor, I would -- given the
25 circumstances, I would ask that the jury be told that the

1 reason why his testimony is being read to the record is
2 because he has, in fact, refused to testify.

3 THE COURT: I'll bring him back in here and let it
4 be done in front of the jury.

5 MR. GIBSON: Thank you.

6 MR. ARIAIL: Bring him in, or just tell them?

7 THE COURT: No, he wants me to tell the jury.
8 I'll tell them that, if that's --

9 MR. ARIAIL: That's fine.

10 THE COURT: Are y'all ready, or do you need any
11 time?

12 What was his name?

13 MR. ARIAIL: Nakeo, N-A-K-E-O. Last name is
14 Vance, V-A-N-C-E.

15 THE COURT: Okay.

16 MR. ARIAIL: And he goes by the name of Kiko.
17 K-I-K-O is his --

18 THE COURT: I know -- did he testify at both
19 trials?

20 MR. ARIAIL: No, sir, just the first trial.

21 THE COURT: Just the first trial.

22 I feel like that he will not testify. I think
23 he's just absolutely not going to do it, and I'll make that
24 finding on the record, from his demeanor and from the
25 questions he asked. And I would tell the jury that he's

1 been brought in and he refuses to testify, but he's
2 testified -- did he testify -- did he testify at the guilt
3 phase?

4 MR. ARIAIL: Yes, sir.

5 THE COURT: That he testified in the prior
6 proceeding. And that's the testimony that you are going to
7 use?

8 MR. ARIAIL: Yes, sir.

9 THE COURT: Not testimony from the sentencing
10 phase?

11 MR. ARIAIL: He did not testify in the sentencing
12 phase.

13 THE COURT: Okay. And the testimony is relevant,
14 I assume? I hadn't heard it yet.

15 MR. ARIAIL: Yes.

16 THE COURT: But I can hear it as we go through it,
17 and I assume the defense has had an opportunity to read it.

18 MR. GIBSON: We have, Your Honor.

19 THE COURT: Let's take five and start back.

20 MR. ARIAIL: Then what I would plan on doing would
21 be putting Mr. Silvaggio on the stand and start in as soon
22 as you explain to the jury.

23 THE COURT: Yeah. How long will that take?

24 MR. ARIAIL: 30 minutes, maybe.

25 THE COURT: And then you got a couple more

1 witnesses?

2 MR. ARIAIL: Oh, yes, sir.

3 And then they may -- I don't know if they want to
4 publish his cross-examination, but if they do --

5 THE COURT: Who did the cross, Mr. Rollins?

6 MR. ARIAIL: Either Mr. Rollins or --

7 MS. STROM: Karl Allen.

8 MR. ARIAIL: I believe Mr. Karl Allen.

9 THE COURT: Mr. Vance was represented at the time?

10 MR. ARIAIL: Yes, sir, by Mr. Larry Crane and Mr.
11 Barcroft, I believe. Both of those lawyers represented him
12 on those charges.

13 THE COURT: Okay.

14 MR. ARIAIL: He had both state charges and federal
15 charges pending at the same time.

16 THE COURT: Those charges were pending when he
17 testified?

18 MR. ARIAIL: Yes, sir.

19 THE COURT: So he's been sentenced since then? He
20 has not been sentenced at the time?

21 MR. ARIAIL: Not, and they go into -- all the
22 cross-examination they go into, are there any deals been
23 made, and, you know, all of that.

24 THE COURT: All right. Very good.

25 MS. STROM: It was Mr. Rollins.

1 THE COURT: Let's take about five minutes or so
2 and we will start back and continue on until quitting time.

3 (Whereupon, proceedings were recessed)

4 (Whereupon, proceedings were reconvened)

5 THE COURT: He is in federal custody in Virginia?

6 MR. ARIAIL: Yes, sir, somewhere near Virginia
7 Beach, I believe.

8 (The following takes place in the presence of the
9 jury panel)

10 THE COURT: Ladies and gentlemen of the jury, it's
11 not permissible for parties to bring in statements that are
12 normally made by another person outside the presence of the
13 court. That's referred to as hearsay. Some hearsay is
14 admissible and some is not. If it's offered for the truth
15 of the matter asserted, it's hearsay.

16 An exception to that is under this rule. There is
17 a person, Nakeo Vance, called Kiko, I believe, Vance, who
18 has testified in the guilt or innocence proceeding, the
19 previous proceeding under our law heard by a jury to
20 determine if Mr. Owens was guilty or innocent of the crime
21 of murder. He testified in that offense. Since then he's
22 been sentenced and serving federal time. He was brought
23 down from prison in Virginia and he refuses to testify, even
24 though I have given an order of the court and can hold him
25 in contempt, but he will not testify.

1 And if he has testified in a previous case, and he
2 was under oath, and he was subject to cross-examination by
3 the lawyers for Mr. Owens in that guilt or innocence
4 proceeding, then prior testimony under oath that has been
5 subject to cross-examination can come in. So the testimony
6 that he gave in the prior hearing will be admitted under the
7 rules.

8 And for the record that's 804(a)(2) and (b)(1).

9 And to do that the testimony will be -- the
10 questions will be asked by Mr. Ariail and the answers are
11 going to be read by Mr. Silvaggio. So you just assume that
12 Mr. Silvaggio is giving the testimony of Mr. Vance. He has
13 to read it exactly the way Mr. Vance stated it in court
14 under oath in the presence of the jury. Okay.

15 Does any side have any comments or statements you
16 want to make in that regard?

17 MR. ARIAIL: Nothing from the State.

18 MR. GODFREY: Nothing.

19 THE COURT: Mr. Godfrey, agree?

20 MR. GODFREY: No, Your Honor.

21 THE COURT: Detective Silvaggio, do you want to
22 come up.

23 MR. PAUL SILVAGGIO, having been first duly sworn,
24 testified as follows:

25 THE COURT: Ask him if he will read it correctly.

1 THE CLERK: Do you solemnly promise that you will
2 correctly read the statement?

3 THE WITNESS: I do, ma'am.

4 THE COURT: Okay. Be seated, please.

5 You would swear or affirm that you would correctly
6 read the statement, wouldn't you?

7 THE WITNESS: That is correct, Your Honor.

8 THE COURT: Y'all have a copy of it?

9 THE WITNESS: Yes, Your Honor.

10 (Whereupon, Officer Paul Silvaggio read the
11 previously given testimony of Nakeo "Kiko" Vance into the
12 record)

13 DIRECT EXAMINATION BY MR. ARIAIL:

14 Q. Mr. Silvaggio, if you would, for purposes of the
15 record, identify yourself and your employment.

16 A. I am Paul Andrew Silvaggio, S-I-L-V-A-G-G-I-O. I'm an
17 investigator with the Greenville County sheriff's office
18 homicide unit.

19 Q. And how long have you been so employed?

20 A. 19 and a half years.

21 Q. We will proceed with the reading of this official court
22 transcript.

23 "The State calls Niko Vance.

24 Q. Now, Mr Vance, if you would, you and I have talked
25 previously, is that right?

1 A. Yes, sir.

2 Q. You will need to keep your voice up. You have a very
3 low voice. You might want to slide a little closer to that
4 microphone just so it will pick you up. As we go along I'll
5 probably remind you to keep your voice up.

6 How old are you?

7 A. 23.

8 Q. And you are presently a resident of the detention
9 center?

10 A. Yes, sir.

11 Q. How long have you been at the detention center?

12 A. 15 months.

13 Q. How many months?

14 A. 15.

15 Q. Since you were arrested around November 13th?

16 A. Yes, sir.

17 Q. Of 1997?

18 A. Yes, sir.

19 Q. You are presently under charges at this time, correct?

20 A. Yes, sir.

21 Q. And let me read these charges to you and see if this is
22 correct. Charges that are pending against you, accessory
23 after the fact of murder?

24 A. Yes, sir.

25 Q. You are charged with conspiracy to commit armed

1 robbery, two charges of that?

2 A. Yes, sir.

3 Q. You are charged with two armed robberies?

4 A. Yes, sir.

5 Q. You are charged with unlawful carrying of a pistol?

6 A. Yes, sir.

7 Q. Charged with possession of a firearm during a violent
8 crime?

9 A. Yes, sir.

10 Q. And you are charged with two other conspiracy counts to
11 commit armed robbery?

12 A. Yes, sir.

13 Q. And those charges are presently pending?

14 A. Yes, sir.

15 Q. And you have an attorney, Mr. Barcroft, seated right
16 here is your retained counsel, is that correct?

17 A. Yes, sir.

18 Q. Now, you and I have previously met, is that right?

19 A. Yes, sir.

20 Q. Did you give the police or the sheriff's office
21 investigators a statement on November 13 of 1997?

22 A. Yes, sir.

23 Q. At that time in November of 1997, had you ever met me
24 or talked to me or know even who I was?

25 A. No, sir.

1 Q. And you gave that statement to actually the city police
2 officers?

3 A. Yes, sir, I guess.

4 Q. Well, two investigators, they were in street clothes or
5 coat and tie, didn't have uniform?

6 A. Yes, sir.

7 Q. And they asked you -- they were asking you about
8 certain crimes that have been committed about the City of
9 Greenville and County of Greenville?

10 A. Yes, sir.

11 Q. You gave them a full statement?

12 A. Yes, sir.

13 Q. They gave you a waiver of rights. They read you Waiver
14 of Rights Form?

15 A. Yes, sir.

16 Q. And went over the form with you?

17 A. Yes, sir.

18 Q. Did you understand it?

19 A. Yes, sir.

20 Q. And did you agree to talk to them?

21 A. Yes, sir.

22 Q. Were you willing to talk to them?

23 A. Yes, sir.

24 Q. Did you tell them what happened beginning on October
25 31st of 1997?

1 A. Yes, sir.

2 Q. Okay. Now, since that time you and I have met?

3 A. Yes, sir.

4 Q. When is the first time we met, approximately?

5 A. I can't recall the certain date.

6 Q. How long ago would you say it was? I can't recall the
7 date either. Within the last two months?

8 A. Yes, sir.

9 Q. Okay. And when we first met, where did we meet?

10 A. In the office.

11 Q. Downstairs in the part of this building where the
12 detention center is?

13 A. Yes, sir.

14 Q. Who was present at that meeting, other than me and you?

15 A. My lawyer, my sister, and mother, and Betty Strom, and
16 what is the lady name right there?

17 Q. This lady right here, Ms. Reese?

18 A. Yes, sir.

19 Q. So your mother and your sister, your lawyer, Ms. Strom,
20 Ms. Reese and myself?

21 A. Yes, sir.

22 Q. And how long did that meeting take place?

23 A. About an hour.

24 Q. All right. And did we meet again?

25 A. Yes, sir.

1 Q. Where did we meet this time, the second time?

2 A. Right here in the courtroom.

3 Q. Right here in this courtroom?

4 A. Yes, sir.

5 Q. Who was present for that meeting?

6 A. Me, my lawyer, detective, Betty Strom and Ms. Reese.

7 Q. And me?

8 A. And you.

9 Q. And on those two occasions what did we talk about?

10 What did we go over in those meetings?

11 A. My statement.

12 Q. The statement that you had given police?

13 A. Yes, sir.

14 Q. And then when we went over that statement or before we
15 went over that statement, has anybody promised you anything,
16 and specifically have I promised you anything for rendering
17 your testimony in accordance with your statement?

18 A. No, sir.

19 Q. Has Ms. Reese, or Ms. Strom, or anyone with law
20 enforcement promised you anything?

21 A. No, sir.

22 Q. And you -- your decision to testify today is voluntary
23 on your part?

24 A. Yes, sir.

25 Q. Have you consulted with your attorney and received his

1 advice on that?

2 A. Yes, sir.

3 Q. All right. Let me take you back then to October 31st,
4 1997, Halloween. Do you remember that day?

5 A. Yes, sir.

6 Q. Who were you -- who were you with on Halloween day?

7 A. Me, Freddie Owens, Andre Golden, Steven Golden, and
8 Lester Young.

9 Q. How long had you known Lester Young?

10 A. About all my life.

11 Q. And how about Andre Golden or Steven -- you call him
12 Steven?

13 A. Andre.

14 Q. His nickname he goes by 'Dre?

15 A. Yeah.

16 Q. How long have you known him?

17 A. About ten years.

18 Q. How about Freddie Owens?

19 A. About a year and a half.

20 Q. Where did y'all get together?

21 A. At my house.

22 Q. Where do y'all live?

23 A. I was staying at Roosevelt Apartments.

24 Q. The Roosevelt Apartments, where are they?

25 A. Behind Nicholtown.

1 Q. And where do your parents live?

2 A. 801 Jacqueline Lane.

3 Q. Where is that located?

4 A. Laurel Creek.

5 Q. Laurel Creek.

6 And Laurel Creek is an area off of Fairforest Road?

7 A. Yes, sir.

8 Q. How far is Fairforest Road from the Speedway?

9 A. About a five minute walk.

10 Q. And had you lived in the Laurel Creek area and actually
11 walked on the Speedway before?

12 A. Yes, sir.

13 Q. How long had you been living at Roosevelt Apartments?

14 A. About four months.

15 Q. And prior to that where did you live?

16 A. Laurel Creek.

17 Q. With your parents?

18 A. Yes, sir.

19 Q. Your mother and father?

20 A. Yes, sir.

21 Q. Who also lived in that house with you?

22 A. My sister and brother.

23 Q. And how old were you when you moved out with your
24 parents?

25 A. 22.

1 Q. And what is your father -- what does your father do?

2 A. Drive a truck.

3 Q. What does your mother do?

4 A. She drive a bus and work at a plant.

5 Q. Work where?

6 A. At a plant.

7 Q. At a plant?

8 A. Yes, sir.

9 Q. So both of them work?

10 A. Yes, sir.

11 Q. And when you moved down, were you working?

12 A. No, sir, not at the time, but I was off and on working
13 for temporary service.

14 Q. All right. Temporary service.

15 Now, while you were not working, are you a drug dealer?

16 A. No, sir.

17 Q. Are you a robber?

18 A. No, sir.

19 Q. And have you told the truth in your statement?

20 A. Yes, sir.

21 Q. Now, when y'all four got together on Halloween day,
22 what time of day did you get together?

23 A. Morning time.

24 Q. Morning time?

25 A. Yes, sir.

1 Q. What time in the morning?

2 A. About nine o'clock, 9:30.

3 Q. And where -- once you got together, what did y'all
4 start to do?

5 A. Smoke blunts.

6 Q. And what is a blunt?

7 A. That's when you cut a cigar in half, pour out the
8 tobacco, put reefer in it.

9 Q. Reefer is what?

10 A. Marijuana.

11 Q. How many of those were did you smoke that morning?

12 A. About two or three.

13 Q. How long did it take you to smoke those?

14 A. About ten minutes. Five to ten minutes.

15 Q. After you smoked them, what did you do?

16 A. Talked, laughed and stuff.

17 Q. How long was it before you left your house at Roosevelt
18 Apartments?

19 A. We was doing that while we was riding.

20 Q. You were riding while you were smoking one?

21 A. Yes, sir.

22 Q. Whose car was you in?

23 A. Steven Golden's grandmother.

24 Q. What kind of car is it?

25 A. I don't know what model.

1 Q. Do you know the color?

2 A. Yeah, burgundy.

3 Q. Who is driving?

4 A. Steven.

5 Q. Who is in the front seat?

6 A. Freddie Owens.

7 Q. Who is in the back passenger's side seat?

8 A. Lester Young.

9 Q. Who is in the back behind the driver?

10 A. Me.

11 Q. And where did y'all drive?

12 A. Just riding around.

13 Q. And what were you riding around doing? Anything in
14 particular, or just riding around?

15 A. Scoping out stores.

16 Q. Scoping?

17 A. Yeah.

18 Q. What does that mean?

19 A. Looking at stores.

20 Q. For?

21 A. For robbery.

22 Q. For a robbery.

23 Before you started riding, did you know that is what
24 you were going to do?

25 A. Yes, sir.

1 Q. How did you know that is what you were going to do?

2 A. Because we had planned it the night before.

3 Q. The Thursday night before the Friday?

4 A. Yes, sir.

5 Q. Where had y'all planned it?

6 A. We just planned to hit a bank.

7 Q. And who is we?

8 A. Me, Steven and Freddie.

9 Q. How about Lester?

10 A. No, sir.

11 Q. He wasn't part of the plan?

12 A. No, sir.

13 Q. And did y'all split up that night after you planned it
14 and go home?

15 A. Yes, sir.

16 Q. Got back together again at nine or ten?

17 A. Yes, sir.

18 Q. And while y'all are going around, did you scope out a
19 bank?

20 A. Yes, sir.

21 Q. Did you ride around? How long did you ride around
22 scoping out places?

23 A. For about two hours, I guess.

24 Q. Then what did you do after you scoped these places out
25 for a couple of hours?

1 A. Fixing to make an attempt to rob the bank.
2 Q. You didn't rob the bank?
3 A. No, sir.
4 Q. Didn't go in the bank?
5 A. No, sir.
6 Q. Just thought about it?
7 A. Yes, sir.
8 Q. Talked about it?
9 A. Yes, sir.
10 Q. Did you have guns?
11 A. Yes, sir.
12 Q. What kind of guns did you have?
13 Let me ask you this. What kind of gun did Andre Golden
14 have?
15 A. .32.
16 Q. What kind did Lester Young have?
17 A. .25 or .22.
18 Q. .25 or .22?
19 A. Yes, sir.
20 Q. And you -- what kind did you have?
21 A. .32.
22 Q. What kind did Freddie Owens have?
23 A. .25.
24 Q. What were y'all riding around -- after you decided
25 looking at this bank, where did you go?

1 A. To a jewelry store.

2 Q. Where was the jewelry store?

3 A. On Laurens Road.

4 Q. Do you know the name of it?

5 A. I think it's Anthony's.

6 Q. Had you ever been there before?

7 A. No, sir.

8 Q. Tell the jury where on Laurens Road this jewelry store

9 is.

10 A. By the pet shop.

11 Q. A pet shop?

12 A. Yes, sir, feed or seed store.

13 Q. What is noticeable about the feed and seed that is on

14 Laurens Road?

15 A. It has a big white horse out front.

16 Q. Big white horse out front.

17 Okay. When you went to Anthony's Jewelers, did anybody

18 get out of the car?

19 A. Yes, sir.

20 Q. Where did you park?

21 A. Across the street at a car wash.

22 Q. Who got out?

23 A. All of us.

24 Q. Where did you go?

25 A. Walked across the street to check it out.

1 Q. Did you go in?

2 A. No, sir.

3 Q. How close to it did you get?

4 A. Right beside the washerette.

5 Q. And where is the washerette in relation to the jewelry
6 store?

7 A. Right beside it.

8 Q. Next door? They in the same building?

9 A. They are connected.

10 Q. Like a little strip shopping center?

11 A. Yes, sir.

12 Q. Did you do anything at that time about robbing that
13 jewelry store?

14 A. No, sir.

15 Q. What did you do?

16 A. Got back in the car and left.

17 Q. Where did you go then?

18 A. Back over to Freddie Owens' house.

19 Q. Where does he live?

20 A. Nicholtown.

21 Q. Had you been to Freddie Owens house before?

22 A. Yes, sir.

23 Q. Do you know the address or just know where it is?

24 A. Know where it is.

25 Q. Who was at Freddie Owens house when you went back over

1 there, other than you four?

2 A. I don't know. We didn't go inside.

3 Q. What did you do?

4 A. Sit on the porch.

5 Q. Anybody on the porch with you, other than the four?

6 A. No, sir.

7 Q. How long did you stay there?

8 A. About 30 minutes to an hour.

9 Q. Then where did you go?

10 A. Decided to go back up to Anthony's Jewelers.

11 Q. Did you talk about that while you were sitting on the
12 porch?

13 A. Yes, sir.

14 Q. Did you smoke any more blunt?

15 A. Yes, sir.

16 Q. And did you go back to Anthony's Jewelers?

17 A. Yes, sir.

18 Q. What happened this time? Where did you park?

19 A. Beside Texaco. Right beside it.

20 Q. On the same side of Laurens Road?

21 A. At the store, at the jewelry store.

22 Q. But it is on the other side of the feed and seed?

23 A. Yes, sir.

24 Q. Anybody get out?

25 A. Yes, sir.

1 Q. Who?

2 A. Freddie Owens.

3 Q. Anybody beside Freddie?

4 A. No, sir.

5 Q. What kind of gun did he have?

6 A. My .32.

7 Q. Your .32?

8 A. Yes, sir.

9 Q. How had he gotten your .32?

10 A. I gave it to him.

11 Q. Was there any discussion about it, or you just reach

12 over and hand it to him?

13 A. Yeah, because it -- it's bigger than .25. It is

14 noticeable.

15 Q. Noticeable?

16 A. Yes, sir.

17 Q. Why was that important?

18 A. Because I guess he was going by himself.

19 Q. He was going in by himself?

20 A. Yes, sir.

21 Q. Okay. I'm sorry, did he go into Anthony's Jewelers?

22 A. I don't know. He went down towards the store.

23 Q. Did you lose sight of him?

24 A. Yes, sir.

25 Q. Did he come back?

1 A. Yes, sir.

2 Q. What did he tell you?

3 A. He said there was a man right there. He didn't get to

4 go in.

5 Q. How was he dressed?

6 A. I can't recall what he had on.

7 Q. Did he have anything on his head?

8 A. Yes, sir.

9 Q. What?

10 A. Ski mask.

11 Q. A ski mask?

12 A. Yes, sir.

13 Q. What color?

14 A. Black.

15 Q. Did it have any holes in it?

16 A. Yes, sir.

17 Q. What kind?

18 A. Eye holes, like it was bought.

19 Q. Like it was bought?

20 A. Ski mask.

21 Q. Now, after Anthony's Jewelers or Freddie came back,

22 what did y'all do?

23 A. Rolled back down 291.

24 Q. Everybody is in the car now and you are driving back

25 down 291?

1 A. Yes, sir.

2 Q. Which way down 291?

3 A. Back toward Nicholtown.

4 Q. Is that towards 385 or towards Greenville Tech?

5 A. Towards Greenville Tech.

6 Q. And where did you go going down Laurens Road?

7 A. We stopped and we seen the Prestige.

8 Q. What is Prestige?

9 A. It is cleaners.

10 Q. Dry cleaners?

11 A. Yes, sir.

12 Q. Where is it located when you were going down Laurens

13 Road?

14 A. On the left. On the left-hand side. I don't know the

15 address.

16 Q. Where did you park?

17 A. Where did we park?

18 Q. Park the car.

19 A. Behind it right -- right there like a little garage.

20 Q. I'm sorry?

21 A. Parked behind it like a little garage section, right

22 behind it there.

23 Q. Where you parked, is it off 291? Did you turn off of

24 291 onto another road?

25 A. Yes, sir.

1 Q. Why did you stop at the Prestige Cleaners?
2 A. Steven Golden, he wanted to rob it.
3 Q. Is he the one that brought it up?
4 A. Yes, sir.
5 Q. Did y'all all agree that this was a good idea?
6 A. No, sir.
7 Q. Who disagreed?
8 A. I did.
9 Q. Anybody else?
10 A. Freddie Owens.
11 Q. He disagreed?
12 A. Yes, sir.
13 Q. Did y'all discuss this disagreement?
14 A. No, sir, not like discuss it. Told him it was stupid.
15 Q. Told him it was stupid?
16 A. Yes, sir.
17 Q. What did Steven Andre Golden say when you told him it
18 was stupid?
19 A. Said he was going to rob it anyway.
20 Q. Did he get out of the car?
21 A. Yes, sir.
22 Q. Anybody get out with him?
23 A. Yes, sir.
24 Q. Who?
25 A. Lester Young.

1 Q. Lester didn't think it was stupid?

2 A. No, sir.

3 Q. Did you get out of the car?

4 A. No, sir.

5 Q. Did Freddie Owens get out of the car? ↓

6 A. No, sir.

7 Q. And did you and Mr. Owens stay in the same seats in the
8 car that you had?

9 A. Yes, sir.

10 Q. How long did you see anybody go in? Did you see these
11 two go in?

12 A. No, sir.

13 Q. Did you see them come back?

14 A. Yeah, come back running.

15 Q. Came back running.

16 Did they have anything on their heads?

17 A. Yes, sir.

18 Q. What did they have?

19 A. Ski masks. I mean, like what you call it, like
20 stockings.

21 Q. Like ladies stockings?

22 A. Yes, sir.

23 Q. Did both of them have stockings?

24 A. I can't recall what Lester had. Andre had on one.

25 Q. Stockings?

1 A. Yes.

2 Q. Did it have any holes in it?

3 A. Yes, sir.

4 Q. What kind?

5 A. Holes like you poke, like he tore them in there.

6 Q. And were they for his nose, mouth or eyes?

7 A. His eyes.

8 Q. They came back running. Anybody say anything?

9 A. No, sir, they jumped in the car.

10 Q. Could you tell if they had any money?

11 A. Yes, sir, they had a bag with them.

12 Q. What kind of bag?

13 A. Like a little grocery bag type.

14 Q. One of those plastic kind?

15 A. Yes, sir.

16 Q. Was there money in it?

17 A. Yes, sir.

18 Q. Do you know how much?

19 A. No, sir.

20 Q. Did you get any of that money?

21 A. Yes, sir.

22 Q. When you got back in the car, did you divide the money

23 up in the car or go somewhere?

24 A. Riding down the road dividing it up.

25 Q. Which way did you go down the road? Down 291, or going

1 the other way?

2 A. Other way.

3 Q. Didn't get back on 291 right then?

4 A. Not right then.

5 Q. Where did you eventually get back on 291?

6 A. Yeah.

7 Q. Where?

8 A. Like on a little back road.

9 Q. A back road came out of 291?

10 A. Yes, sir.

11 Q. Now, how much money did you get out of it?

12 A. No lesser than \$13.

13 Q. No less than?

14 A. Yes, sir.

15 Q. And possibly more?

16 A. Yes, sir.

17 Q. In your statement you said I got \$15. Is that about
18 what you got, or did you get more?

19 A. That's about how much I got right there.

20 Q. Do you know how much anybody else got?

21 A. No, sir.

22 Q. Did anybody tell you why you were getting \$15?

23 A. Yes, sir.

24 Q. What did they tell you?

25 A. We didn't go in the store. We didn't do nothing.

- 1 Steven said that.
- 2 Q. Do you think other people got more than you?
- 3 A. I don't know.
- 4 Q. You don't know how much anybody got?
- 5 A. Didn't care.
- 6 Q. Did you ask for any of the money?
- 7 A. No, sir.
- 8 Q. Now, after you left, where did you go when you got back
- 9 on 291?
- 10 A. Back to Freddie Owens's house.
- 11 Q. How long did you stay at Freddie Owens' house?
- 12 A. 30 minutes to an hour.
- 13 Q. Did you smoke any more blunts?
- 14 A. Yes, sir.
- 15 Q. How many more did you smoke?
- 16 A. About two.
- 17 Q. Is everyone smoking blunts -- everybody smoking blunts?
- 18 A. Yes, sir.
- 19 Q. Have you had anything to drink alcoholic?
- 20 A. Yes, sir.
- 21 Q. You were drinking too?
- 22 A. Yes, sir.
- 23 Q. Were you intoxicated?
- 24 A. Yes, sir.
- 25 Q. Could you tell if others were intoxicated?

1 A. No, sir. I don't know what I can handle.

2 Q. You know what?

3 A. I just know my limit.

4 Q. Had you passed your limit?

5 A. Not right then. Not at that time.

6 Q. But you were intoxicated?

7 A. Yes, sir.

8 Q. What happens when you pass your limit?

9 A. I go home.

10 Q. Go home. So you hadn't gone past your limit. After
11 you stayed at Freddie's for about an hour or so and smoked
12 some blunts where did you go?

13 A. We were riding looking for girls.

14 Q. Where did you go?

15 A. Down Augusta Road.

16 Q. And did you find any girls?

17 A. No, sir.

18 Q. Did you do another robbery?

19 A. Yes, sir.

20 Q. Where did you go?

21 A. The Hot Spot.

22 Q. To a Hot Spot. Where is it located?

23 A. Beside Community Cash.

24 Q. And for those on the jury to know where it is, how far
25 out Augusta Road is that Community Cash located?

1 A. Past Bellmeade.

2 Q. Past Bellmeade.

3 Is it all the way out Whitehorse Road on Augusta Road?

4 A. Just about. Not all the way.

5 Q. Where is it located, right or left going out Augusta

6 Road?

7 A. Right.

8 Q. Right side.

9 Did you go in the Conoco?

10 A. No, parked on the side.

11 Q. Side of the building?

12 A. Yes, sir.

13 Q. How close to the building?

14 A. Off the road right there.

15 Q. Is it dark now?

16 A. Yes, sir.

17 Q. What time of day are we talking about that you got to

18 the Conoco, do you think?

19 A. About nine.

20 Q. All right. Later on in the night?

21 A. Yes, sir.

22 Q. Okay. And after you parked on the side, who got out?

23 A. Freddie Owens, Steven Golden and Lester Young.

24 Q. The three got out?

25 A. Yes, sir.

1 Q. Did you get out?
2 A. No, sir.
3 Q. You still in the back left seat?
4 A. Yes, sir.
5 Q. Had everyone been in the other seats just like they
6 were when we started?
7 A. Yes, sir.
8 Q. Got out at the Conoco. Did they all -- did they have
9 guns, all three of them?
10 A. Yes, sir.
11 Q. How many guns?
12 A. Excuse me, I think they had four.
13 Q. Four guns?
14 A. Yes, sir.
15 Q. For three people?
16 A. Yes, sir.
17 Q. Who had two guns?
18 A. I can't recall. One of them did. I'm not sure.
19 Q. Did you still have a gun?
20 A. No, sir.
21 Q. Did your gun go into the Conoco Hot Spot?
22 A. Yes, sir.
23 Q. Who did it go with?
24 A. I think Lester, but I'm not for sure.
25 Q. And who had had it before Lester? Who had had it

1 earlier?

2 A. Freddie.

3 Q. And he took it at the I believe Anthony's the second
4 time?

5 A. Yes, sir.

6 Q. Had you gotten it back at that time?

7 A. No, sir.

8 Q. Lester had it?

9 A. Yes, sir.

10 Q. Now, what happened at the Conoco Hot Spot that you
11 observed?

12 A. They went around and robbed it.

13 Q. How long were they in there?

14 A. About five or ten minutes. I don't know if they were
15 in that -- in the store that long, but they were about five
16 or ten minutes.

17 Q. That they were gone?

18 A. Yes, sir.

19 Q. Did you stay in the same spot or get in the driver's
20 seat?

21 A. Same spot.

22 Q. Did anybody that night drive that car, other than Andre
23 Golden?

24 A. No, sir.

25 Q. You said in your statement 'I waited in the car because

1 I wasn't with it'?

2 A. Yes, sir.

3 Q. What does that mean?

4 A. I wasn't down with it. I wasn't going to rob it.

5 Q. Were you scared or what was the reason?

6 A. Just didn't want to.

7 Q. I'm sorry?

8 A. Just didn't want to.

9 Q. When they came back after they had been gone five or
10 ten minutes, what happened?

11 A. They jumped in the car and we left.

12 Q. Everybody get in the same seats?

13 A. Yes, sir.

14 Q. Did they have any money?

15 A. Yes, sir.

16 Q. When they went in the Conoco Hot Spot, did they have --
17 the three of them have anything over their heads?

18 A. Masks and stockings.

19 Q. All of them had something over their heads?

20 A. Yes, sir. They didn't have it over. They had it right
21 there. They didn't have it pulled down yet.

22 Q. When they left, had it on top of their head?

23 A. Yes, sir.

24 Q. When they came back, where was it?

25 A. In their hands.

1 Q. In their hands?

2 A. Yes, sir.

3 Q. Do you remember what Freddie Owens had, what kind of --

4 A. Black mask.

5 Q. Same one we talked about earlier?

6 A. Yes, sir.

7 Q. How about Lester?

8 A. I don't know what he had.

9 Q. And Steven Andre Golden?

10 A. Had the same, stocking.

11 Q. Same stocking mask that you talked about. When they
12 came back, how did they act?

13 A. Regular.

14 Q. What?

15 A. Regular.

16 Q. What do you mean by regular?

17 A. The same when they left. You know what I mean.

18 Q. No different?

19 A. No different.

20 Q. Did you get any money out of that robbery?

21 A. Yes, sir.

22 Q. How much did you get?

23 A. About \$40.

24 Q. How much?

25 A. \$40.

1 Q. Then where did you go?
2 A. Went to Freddie Owens' house.
3 Q. Back to?
4 A. Nicholstown.
5 Q. Nicholstown?
6 A. Yes, sir.
7 Q. How long did you stay there?
8 A. About two hours.
9 Q. What were you doing during that period?
10 A. Sitting out there smoking blunts and talking.
11 Q. During this time that you are remembering how these
12 things go, are you keeping track of the time, or are you
13 just estimating?
14 A. Estimating.
15 Q. You got a watch you are looking at, or a clock, or
16 anything?
17 A. No, sir.
18 Q. And after you stayed at Freddie's for a couple of hours
19 where did you go?
20 A. Decided to go get a hotel room.
21 Q. Before you went to the hotel room, where did you go?
22 Anywhere else?
23 A. No, sir.
24 Q. During the course of the evening you have told us that
25 you went to Anthony's Jewelers, went to Conoco Hot Spot,

1 went to Prestige Cleaners. Other than that, did y'all look
2 at any other places that you say scoping it out?

3 A. Yes, sir.

4 Q. How many others?

5 A. A lot of them. A lot of them.

6 Q. And did y'all discuss robbing other places?

7 A. Yes, sir.

8 Q. What was the reason you didn't want to rob those other
9 places?

10 A. Too many people around or either police or something.

11 Q. So when you got back to Freddie's and you stayed awhile
12 and you decided to go to the hotel, whose idea was that?

13 A. Everybody's.

14 Q. Where was the hotel that you went to?

15 A. Laurens Road beside Waffle House.

16 Q. What is the name of it?

17 A. Red Roof.

18 Q. The Red Roof?

19 A. Inn.

20 Q. And when you got to the Red Roof, how far is the Red
21 Roof from the Speedway?

22 A. About three minutes in walking.

23 Q. Right across the parking lot?

24 A. Yes, sir.

25 Q. And through the woods?

1 A. Yes, sir.

2 Q. How far is that from where your parents live?

3 A. It's about five minutes, ten minutes.

4 Q. Did you get out at the -- who got out at the time Red

5 Roof Inn?

6 A. Steven Golden.

7 Q. What did he do?

8 A. Went and got the hotel.

9 Q. Did he go inside?

10 A. Yes, sir.

11 Q. Did he come back?

12 A. Yes, sir.

13 Q. Did y'all go to the room?

14 A. No, sir.

15 Q. Where did you go?

16 A. Went, parked behind this old restaurant closed down.

17 Q. And where was that closed restaurant?

18 A. Across the street from the Waffle House.

19 Q. Across Laurens Road?

20 A. Yes, sir.

21 Q. And why did you go over there?

22 A. Because we had planned to rob the Speedway and Waffle

23 House.

24 Q. When did you plan to rob the Speedway and the Waffle

25 House?

- 1 A. At Freddie's house.
- 2 Q. At Freddie's house?
- 3 A. Yes, sir.
- 4 Q. Why did you decide to go to the Red Roof Inn to get a
5 room there, do you know?
- 6 A. Yeah, in case anything happened, we had an alibi.
- 7 Q. Alibi?
- 8 A. Yes, sir.
- 9 Q. You talked about alibi?
- 10 A. Yes, sir.
- 11 Q. You knew what that meant?
- 12 A. Yes, sir.
- 13 Q. And how was the Red Roof Inn going to be your alibi?
- 14 A. Because that is where we all had been all night.
- 15 Q. Going to say you have been there all night?
- 16 A. Yes, sir.
- 17 Q. Now, what was everybody wearing when you went over to
18 the -- well, when you parked your car over behind the hotel,
19 behind the closed down hotel, excuse me, closed down
20 restaurant across the road?
- 21 A. Yes, sir.
- 22 Q. Is there a hotel over there too?
- 23 A. Yes, sir.
- 24 Q. What did y'all decide to do at that time?
- 25 A. Me and Lester Young decided to rob the Waffle House.

1 Steven Golden and Freddie decided to rob the Speedway.

2 Q. How did y'all come to the decision of who would go with
3 who?

4 A. Just said it like that. Just planned it. Just planned
5 it like that. No, I know the people in the Speedway, so I
6 couldn't do it.

7 Q. You know the people in the Speedway. How do you know
8 the people in the Speedway?

9 A. I stayed down there. My mother stayed down there. I
10 go in the store all the time.

11 Q. Did you know Ms. Graves?

12 A. Yes, sir.

13 Q. And you know you knew she would know you?

14 A. Yes, sir.

15 Q. You didn't want to go there?

16 A. That's right.

17 Q. So you walked -- excuse me, how did you get over to the
18 Waffle House?

19 A. Walked to Charlie T's. Charlie T's. That is right
20 next to the Waffle House.

21 Q. Charlie T's. Waffle House next door and Speedway next
22 door?

23 A. Yes, sir.

24 Q. Before y'all split into pairs?

25 A. Yes, sir.

1 Q. Two each, did you rob the Waffle House?

2 A. No, sir.

3 Q. Well, let me go back one step. Had you scoped out the
4 Waffle House?

5 A. No, sir.

6 Q. What kind of gun did you have?

7 A. .25.

8 Q. When you went to the Waffle House?

9 A. .25 to Charlie T's parking lot.

10 Q. When you were heading to the Waffle House or left the
11 car, what kind of gun did you have?

12 A. .25.

13 Q. Was that your gun?

14 A. No, sir.

15 Q. Whose gun was it?

16 A. Freddie Owens.

17 Q. What kind of gun -- why did you have a .25? What kind
18 of gun was it?

19 A. .25 automatic.

20 Q. Why did you have that gun?

21 A. Because more people be at the Waffle House.

22 Q. And what did you need that gun for rather than your
23 gun?

24 A. Because you can cock it back, cock the hammer back, and
25 let everybody know it is a pistol.

1 Q. All right. Did it have more bullets in it than your
2 gun?

3 A. No, sir, it just cocked back so they can hear it.

4 Q. They could hear it?

5 A. Yes, sir.

6 Q. Were you planning on shooting anybody?

7 A. I wasn't planning on shooting.

8 Q. Were you planning on robbing that place?

9 A. I had thought about it.

10 Q. All right. Now, when you got over to Charley T's, did
11 you or Lester Young go in the Waffle House?

12 A. My cousin.

13 Q. Cousin. Excuse me. Cousin.

14 A. No, sir.

15 Q. How far did you get?

16 A. To Charlie T's parking lot.

17 Q. Why did you stop there?

18 A. Just didn't feel right.

19 Q. What didn't feel right?

20 A. Robbing the store.

21 Q. You didn't feel right, or didn't feel like the
22 circumstances were right?

23 A. All of it. Didn't feel right. The circumstances,
24 nothing.

25 Q. So what did you and Lester do?

1 A. Decided not to rob it.

2 Q. Did y'all talk about this?

3 A. Yes, sir.

4 Q. Who talked? What did you say?

5 A. I said I am not going to rob it and he agreed.

6 Q. You said that you were not going to rob it?

7 A. Yes, sir.

8 Q. How long did you stand there?

9 A. About five minutes, I guess, at the most.

10 Q. After you stood there, did you see Freddie Owens and

11 Steven Andre Golden?

12 A. Yes, sir.

13 Q. Where were they?

14 A. Running across the parking lot, Speedway parking lot.

15 Q. Where were they running towards?

16 A. Back to the car.

17 Q. What did you do and Lester Young do at that time?

18 A. We took off running too.

19 Q. Which way?

20 A. Towards the car.

21 Q. Towards the car?

22 A. Yes, sir.

23 Q. Who got to the car first?

24 A. Steven Golden -- Steven and Freddie.

25 Q. Who got there next?

1 A. Me and Lester.

2 Q. Who got in the car first?

3 A. Steven and Freddie.

4 Q. Where did they get in the car, what position?

5 A. Back in the same spot.

6 Q. You and Lester got back in the same spots in the back

7 seat?

8 A. Yes, sir.

9 Q. When you got in the car, did Freddie Owens say anything

10 to you?

11 A. Yes, sir.

12 Q. What did he say?

13 A. 'Did y'all hear that gunshot?'

14 Q. Say that again.

15 A. 'Did y'all hear a gunshot?'

16 Q. And what did y'all say?

17 A. No.

18 Q. What did Freddie say?

19 A. He shot that bitch in the head.

20 Q. And what did Andre say?

21 A. 'Damn, I didn't get to shoot mines.'

22 Q. 'Damn, I didn't get to shoot mines'?

23 A. Yeah.

24 Q. What did Freddie say?

25 A. Said she wasn't opening the safe, so he shot the whore.

1 Q. Said what?

2 A. Whore.

3 Q. He said she wouldn't open up the safe, so he shot the

4 whore?

5 A. Yeah.

6 Q. Did you know who he was talking about?

7 A. No.

8 Q. Where did you go then?

9 A. Down to my grandma's house.

10 Q. Let's talk about down at your grandma's house.

11 How did you get from behind the closed down restaurant

12 on Laurens Road to your grandma's house?

13 A. A road goes right through the hotel.

14 Q. Goes up where?

15 A. To the bridge right there by J.L. Mann.

16 Q. So when you are coming out is on that road, if you turn

17 right and go across 85 bridge, J.L. Mann would be on your

18 left?

19 A. Yes.

20 Q. If you kept on going, run into Parkins Mill Road?

21 A. Yes.

22 Q. Did you turn right?

23 A. No.

24 Q. Did you turn left?

25 A. Yes.

1 Q. Where does that take you?

2 A. Back to Fairforest Road.

3 Q. Fairforest.

4 What is the name of that road that you were on?

5 A. I don't know.

6 Q. When you came to the intersection of the road with
7 Fairforest, is there a traffic light or a stop sign?

8 A. Yes, sir, blinking light.

9 Q. Blinking yellow light.

10 Where does your grandmother live?

11 A. On the left right there off the road.

12 Q. She lives on Fairforest Road?

13 A. Yes, sir.

14 Q. So where you went was within walking distance of the
15 Speedway?

16 A. Yes, sir.

17 Q. Did y'all all see any police cars?

18 A. Not at the time when we first got there we didn't.

19 Q. Did you see some later?

20 A. Yes, sir.

21 Q. When you first got there, did you go to your
22 grandmother's house or another house?

23 A. Grandmother's house.

24 Q. And what color is your grandmother's house?

25 A. Blue.

1 Q. Blue house?

2 A. Yes, sir.

3 Q. And what did y'all do at the blue house?

4 A. Parked behind it.

5 Q. Did you get out?

6 A. Yes, sir.

7 Q. What did you do?

8 A. Got out and got my pistol and put it in.

9 Q. I'm sorry?

10 A. Got my .32 from Freddie Owens.

11 Q. Got your .32 from Freddie Owens?

12 A. Yes, sir.

13 Q. And what did you do with his .25?

14 A. Gave it back to him.

15 Q. And that took place in the yard?

16 A. Yes, sir.

17 Q. Y'all all standing outside the car?

18 A. Yes, sir.

19 Q. What did you do at that point after you got your gun
20 back?

21 A. Went and put it -- stashed it in some bushes.

22 Q. You went to stash it in some bushes?

23 A. Yes, sir.

24 Q. All right. How long did you stay there?

25 A. What do you mean?

1 Q. At that location behind the car or at the car.

2 A. About five or ten minutes.

3 Q. Then where did you go?

4 A. Home.

5 Q. And while you are there behind the car, you are -- you
6 said that you took you the gun. Did you take anything else?

7 A. No, sir.

8 Q. Did you leave anything or take anything off of your
9 body?

10 A. No, sir.

11 Q. Let me go back. I forgot to ask you this one question.

12 When Freddie Owens and Andre Golden left you behind,
13 left y'all, y'all split up behind the restaurant to go to
14 rob the Waffle House and the Speedway, what kind of head
15 cover, if any, did they have on?

16 A. A ski mask.

17 Q. Who had that on?

18 A. Freddie Owens.

19 Q. And what did Andre have on?

20 A. Stocking.

21 Q. Same one?

22 A. Yes, sir.

23 Q. While you were over there at your grandmother's house,
24 you took the gun back, who stayed there?

25 A. What do you mean stayed there?

1 Q. After you left, do you know did the rest of them stay
2 there or go with you?
3 A. They left.
4 Q. Where did they go?
5 A. Down to Steven's grandmother's house.
6 Q. To where?
7 A. Steven grandmother's house.
8 Q. Where is that?
9 A. That's on down the same in the neighborhood.
10 Q. Same neighborhood?
11 A. Yes, sir.
12 Q. And you say that you went home?
13 A. Yes, sir.
14 Q. Where are you talking about home?
15 A. Stayed behind my grandmother.
16 Q. Where?
17 A. 81 Jacqueline Lane.
18 Q. That is where your parents stay?
19 A. Yes, sir.
20 Q. That isn't where you stayed up until four months before
21 this?
22 A. Yes, sir, off and on, both of them.
23 Q. You didn't go back to Roosevelt?
24 A. No, sir.
25 Q. You went to your parents' home.

1 Did y'all talk about going to the Red Roof Inn?

2 A. Yes, sir.

3 Q. When?

4 A. What do you mean? When we planned it?

5 Q. No, talking about after you got in the car and y'all
6 were heading to your grandmother's house, anybody talking
7 about let's go to the Red Roof Inn?

8 A. No, sir.

9 Q. When you got -- you put the gun in some bushes?

10 A. Yes, sir.

11 Q. What did you do with it after that?

12 A. The next day I got rid of it..

13 Q. The next day you got rid of it?

14 A. Yes, sir.

15 Q. Where did you get rid of it?

16 A. Conastee Road.

17 Q. Conastee. Where is that?

18 A. That is like in Donaldson like.

19 Q. I'm sorry?

20 A. Going towards Donaldson.

21 Q. Donaldson. And where did you get rid of it?

22 A. There is a bridge right there. Threw it off the
23 bridge.

24 Q. What is below the bridge?

25 A. A river.

- 1 Q. Now, did you tell the police that in your statement?
- 2 A. No, sir.
- 3 Q. When is the first time that you told that to me?
- 4 A. Yesterday.
- 5 Q. Yesterday.
- 6 Why did you not tell that earlier?
- 7 A. Because it was my pistol used in the shooting.
- 8 Q. And what did you think that would do to you?
- 9 A. I don't know at that time.
- 10 Q. You just didn't want it discovered?
- 11 A. Didn't want it to come up.
- 12 Q. Did you shoot Ms. Graves?
- 13 A. No, sir.
- 14 Q. You knew Ms. Graves?
- 15 A. Yes, sir.
- 16 Q. Why did you think your pistol had been used to shoot
- 17 Ms. Graves?
- 18 A. Why?
- 19 Q. Uh-huh.
- 20 A. Because Freddie Owens say he shot her.
- 21 Q. And he had your gun?
- 22 A. Yes, sir.
- 23 Q. And that is why you threw it in the river?
- 24 A. Yes, sir.
- 25 Q. You believe him enough to throw your gun in the river?

1 A. I checked it.

2 Q. I'm sorry?

3 A. I checked it.

4 Q. You checked it?

5 A. Yes, sir.

6 Q. When you checked it, what did you find?

7 A. That a shell had been shot.

8 Q. A shell had been shot?

9 A. Yeah, bullet had been shot. Just a shell there.

10 Q. How many bullets were in it when it left?

11 A. Six.

12 Q. How many were in it when it came back?

13 A. Five.

14 Q. Did you see Freddie and Andre the next day?

15 A. Yes, sir.

16 Q. How did y'all get together?

17 A. Came down to my house.

18 Q. What were you doing?

19 A. Cleaning up, yard work.

20 Q. And what were they doing?

21 A. Nothing. In the car. Just you pulled up and talking

22 and stuff.

23 Q. Did you get with them?

24 A. No, sir.

25 Q. How long did they stay?

1 A. About 10 to 20 minutes.

2 Q. What did y'all talk about?

3 A. What had happened.

4 Q. Did y'all talk about what had happened?

5 A. Yes, sir.

6 Q. What did y'all talk about?

7 A. Just talking about the lady died.

8 Q. How did you find that out?

9 A. My mother.

10 Q. You found out from your mother?

11 A. Yes, sir.

12 Q. Did you talk with Freddie about that?

13 A. Yes, him and Andre.

14 Q. What did Freddie say?

15 A. I don't know which one said, but one of them said

16 that -- one of them said they already got two suspects, so

17 it really don't matter.

18 Q. It don't matter?

19 A. Yes, sir.

20 Q. Now, when the police came to you on the 13th and talked

21 to you, you gave them a statement?

22 A. Yes, sir.

23 Q. On November 13th, 1997?

24 A. Yes, sir, if that is the date the statement got on it.

25 Q. Let me show you this, the date on it, and ask you if

1 this is your signature and this is the statement you gave?

2 A. Yes, sir.

3 Q. And the date is November 13th, at 10:47 a.m.?

4 A. Yes, sir.

5 Q. On that date that you gave this statement was that
6 statement true?

7 A. Yes, sir.

8 Q. And did you know as a result of giving that statement
9 you were going to be charged in these crimes?

10 A. Yes, sir.

11 Q. You knew that you were admitting to armed robberies?

12 A. Yes, sir.

13 Q. And conspiracies?

14 A. Yes, sir.

15 Q. And to being accessory after the fact of murder?

16 A. Yes, sir.

17 Q. But you told the truth?

18 A. Yes, sir.

19 Q. And that is the truth the same story that you told
20 today?

21 A. Yes, sir.

22 Q. That's all we have. Please answer any questions that
23 defense counsel may have."

24 MR. GIBSON: Your Honor, may we address a real
25 quick matter outside the presence of the jury?

1 THE COURT: Just come over here.

2 (Whereupon, the lawyers approached the bench for
3 an off-the-record discussion)

4 THE COURT: If you could, on the record the
5 defense has requested that the jury be able to see Mr.
6 Vance, and there is no objection by the State, as I
7 understand.

8 MR. ARIAIL: No.

9 THE COURT: Okay. Would you ask him to bring him
10 back up?

11 You are going to read the questions?

12 MR. GIBSON: I can, if Mr. Silvaggio don't mind.

13 THE COURT: How are we going to do the
14 cross-examination?

15 MR. ARIAIL: I would prefer to let him read and
16 Mr. Silvaggio answer.

17 THE COURT: Okay.

18 This is the cross-examination by the attorneys
19 that represented Mr. Owens at the proceeding for guilt or
20 innocence.

21 Okay, Mr. Gibson.

22 MR. GIBSON: Thank you, Your Honor.

23 THE COURT: I assume the lawyer was either Mr.
24 Rollins or Mr. Allen.

25 MR. GIBSON: It was Mr. Rollins, Your Honor.

1 CROSS EXAMINATION BY MR. GIBSON:

2 Q. "Mr. Vance, how long have you been in jail?

3 A. 15 months.

4 Q. Are you ready to plead guilty?

5 A. What do you mean by that? I am guilty.

6 Q. Are you ready to plead guilty?

7 A. Yes.

8 Q. Why haven't you?

9 A. Sir?

10 Q. Why haven't you pled guilty?

11 A. Because my lawyer I ain't come up -- ain't come up. My
12 time ain't came up.

13 Q. 15 months?

14 A. Yes, sir.

15 Q. You filed any motions to come in here and plead guilty?

16 A. No, sir.

17 Q. So what are you waiting on?

18 A. Waiting on my lawyer to handle that.

19 Q. Is he handling it for you today?

20 A. I guess so.

21 Q. You handling this today?

22 A. I guess so.

23 Q. Now, these charges that you were charged with, did they
24 tell you what kind of penalty that you are looking at?

25 A. Yes, sir.

1 Q. What are you looking at?

2 A. Life, 30 years.

3 Q. Are you ready to do it?

4 A. That is my charge. If I get convicted I am.

5 Q. What do you mean if you get convicted?

6 A. If I get convicted.

7 Q. You just said that you are guilty.

8 A. Yes, sir.

9 Q. Are you ready to go do it?

10 A. Yes, sir.

11 Q. You want to go ahead and sentence you to life today?

12 A. If that is what happens, yes.

13 Q. Ain't nobody made you no promises?

14 A. No, sir.

15 Q. What if you get up here and do the right thing?

16 A. That is what I am doing right -- that is what I'm
17 doing, the right thing.

18 Q. Okay. You were doing the right thing that night when
19 you were riding around planning on killing people and
20 robbing people?

21 A. Not planning on killing. Just robbing.

22 Q. You sat down with all these people and got your plan
23 together, didn't you?

24 A. Yeah, but nothing said about killing nobody.

25 Q. You had them pistols, didn't you?

1 A. Yes, sir.

2 Q. You said that you didn't plan to use it, but you would
3 if you had to, wouldn't you?

4 A. Yes, sir.

5 Q. So you were ready to kill somebody, weren't you?

6 A. No, sir, I wasn't planning.

7 Q. Now, you met the solicitor how many times?

8 A. About four.

9 Q. About four?

10 A. Yes, sir.

11 Q. When was the last time that you met him?

12 A. Today.

13 Q. This morning?

14 A. Yes, sir.

15 Q. About what time?

16 A. I don't know.

17 Q. Real early?

18 A. No, a few minutes ago.

19 Q. What did he talk to you about?

20 A. My statement.

21 Q. Did he go over it with you?

22 A. Yes, sir. He asked me if everything was true. I need
23 to go ahead and tell the truth. Don't hold back.

24 Q. What did you tell him then?

25 A. I told him it is true.

1 Q. When did you tell him about the pistol?

2 A. Yesterday.

3 Q. When did you talk to him yesterday?

4 A. I don't know what time. Yesterday evening sometime.

5 Q. Okay. Where were you and when you were talking to him
6 then?

7 A. Downstairs.

8 Q. Where at downstairs?

9 A. In the holding cell in the little room.

10 Q. How long did you talk with him down there?

11 A. About five minutes.

12 Q. What made you say something about the pistol?

13 A. Because it is the truth and I am fixing to get up on
14 the stand under oath.

15 Q. Well, you were under oath when you gave that statement.

16 A. Yeah.

17 Q. So why didn't you tell them then?

18 A. I don't know.

19 Q. Did he mention anything to you about a pistol
20 yesterday?

21 A. No. No, sir.

22 Q. It just came up?

23 A. Yes, sir.

24 Q. Have you ever sat on this, one of these witnesses stand
25 before?

1 A. No, sir.

2 Q. Has he ever asked you any questions before about your
3 testimony?

4 A. Yes, sir.

5 Q. When was that?

6 A. I don't know. I can't recall the date.

7 Q. I mean, within the last year, last couple of months,
8 week?

9 A. This month sometime. This month.

10 Q. Did he talk to you like he's talking to you today?

11 A. Yes, sir.

12 Q. And going through all these steps like he did today?

13 A. Yes, sir.

14 Q. Now, you have known Lester Young how long?

15 A. About all my life.

16 Q. Is he a friend of yours?

17 A. My cousin.

18 Q. Cousin?

19 A. Yes, sir.

20 Q. Where is Lester at today?

21 A. In jail.

22 Q. Been down there with you, hadn't he?

23 A. Yeah.

24 Q. You have been talking while you have been in jail?

25 A. No, sir.

- 1 Q. Never have seen him?
- 2 A. Yes, sir, seen him once.
- 3 Q. Did you talk to him?
- 4 A. Yes, sir.
- 5 Q. You have been passing letters back and forth?
- 6 A. No, sir.
- 7 Q. Never wrote any letters out of that jail?
- 8 A. Yes, sir.
- 9 Q. You have, haven't you?
- 10 A. Yes, sir.
- 11 Q. Wrote any letters from that jail to Andre Golden?
- 12 A. No, sir.
- 13 Q. Andre Golden ever wrote you any letters?
- 14 A. No, sir.
- 15 Q. Never gotten any letters from him?
- 16 A. No, sir.
- 17 Q. Your parents live in Laurel Creek, don't they?
- 18 A. Yes.
- 19 Q. And you are from Laurel Creek, as a matter of fact,
- 20 aren't you?
- 21 A. Yes, sir.
- 22 Q. Where is Golden from?
- 23 A. Laurel Creek.
- 24 Q. Where is Lester Young from?
- 25 A. Bellmeade.

1 Q. Have you ever sold dope before?

2 A. Yes, sir.

3 Q. Is that what you do?

4 A. No, sir.

5 Q. What do you do for a living?

6 A. Work at temporary.

7 Q. What do you do on the side?

8 A. Nothing.

9 Q. Don't sell dope on the side?

10 A. No, sir.

11 Q. Have you ever done it before?

12 A. Yes, sir.

13 Q. You do it when?

14 A. What?

15 Q. When did you sell dope?

16 A. When did I sell dope?

17 Q. Yeah.

18 A. Couple years ago.

19 Q. Why did you do that?

20 A. To get some money because I wasn't working.

21 Q. Is that why you robbed?

22 A. No, sir.

23 Q. You robbed because you like it?

24 A. No, sir.

25 Q. So why do you do it?

1 A. I never robbed anybody.

2 Q. You never robbed anybody in your life?

3 A. No, sir.

4 Q. You were planning to rob somebody?

5 A. Yes, sir.

6 Q. Planning to rob a restaurant?

7 A. Yes, sir.

8 Q. Planning to go to the Speedway?

9 A. Yes, sir.

10 Q. Ride around in a car?

11 A. Yes, sir.

12 Q. Take the money?

13 A. Yes, sir.

14 Q. Carry a gun?

15 A. Yes, sir.

16 Q. But you ain't into robbing people?

17 A. No, sir.

18 Q. How many pistols have you owned?

19 A. In my lifetime how many?

20 Q. Yeah.

21 A. About two.

22 Q. How old are you?

23 A. 23.

24 Q. What kind of pistols were they?

25 A. 9 millimeter.

1 Q. What else?

2 A. That was it, and .32.

3 Q. What kind of .32 was that that you had?

4 A. .32 revolver.

5 Q. What color was it?

6 A. Black with a brown handle.

7 Q. Long barrel, what -- short barrel, what?

8 A. Short.

9 Q. How short?

10 A. Short. I can't tell you.

11 Q. Well, can you show this jury, show them how short it

12 was?

13 A. About like that.

14 Q. Paraphrasing indicating how long.

15 About like that. Where is that pistol today?

16 A. In the river.

17 Q. Now, when you first got arrested, you got arrested by

18 whom?

19 A. I think the detective.

20 Q. Who?

21 A. I don't know. I don't know his name.

22 Q. Joe Wood maybe?

23 A. I don't know his name.

24 Q. Do you remember Joe Wood taking a statement from you?

25 A. I don't remember their name.

1 Q. Do you remember signing a waiver form?

2 A. Yes.

3 Q. Have this marked as Defendant's 3.

4 (Whereupon Defendant's No. 3 was marked for I.D.
5 purposes only)

6 Q. I ask you to look at this and see if you recognize this
7 document?

8 A. Yes.

9 Q. Do you recognize it?

10 A. Yes, sir.

11 Q. What is it?

12 A. That is my waiver of -- my waiver of rights.

13 Q. Did you waive your rights when they first arrested you?

14 A. Sir?

15 Q. Did you waive your rights when they first arrested you?

16 A. Yes, sir.

17 Q. Did you tell them anything?

18 A. What do you mean by that? By that? When they first
19 arrested me?

20 Q. Yes, sir.

21 A. Not when they first arrested me.

22 Q. When you talked to Joe Wood, you didn't tell him
23 anything?

24 A. If that is him.

25 Q. Regardless of the people, the first people, you didn't

1 tell them anything?

2 A. Right.

3 Q. The next time that you went down to White and Burgess?

4 A. If that is his name.

5 Q. Can you describe them?

6 A. They all look the same to me.

7 Q. While there you gave a full statement, didn't you?

8 A. Yes.

9 Q. Was it true?

10 A. Yes.

11 Q. Did they force you to give that?

12 A. No, sir.

13 Q. They lay any guns on the table?

14 A. No, sir.

15 Q. Why did you give it to them?

16 A. Because it is the truth.

17 Q. Why would you want to do that?

18 A. Why would I want to do that?

19 Q. Uh-huh.

20 A. It is the truth.

21 Q. Get charged?

22 A. I was already charged.

23 Q. They already charged you and made you give a statement?

24 A. They didn't make me do anything. I did it on my own.

25 Q. You didn't ask for a lawyer?

1 A. No, sir.

2 Q. On that particular statement you gave that with Officer
3 White and Burgess, but you don't remember their names,
4 right?

5 A. Right.

6 Q. Two white guys?

7 A. Yes, sir.

8 Q. During that time you gave that statement you said that
9 Freddie had a .32 caliber revolver with a short barrel on it
10 and it was black?

11 A. Yes, sir.

12 Q. Who did that belong to?

13 A. Me.

14 Q. Did you give it to him?

15 A. Yes, sir.

16 Q. Why did you give it to him?

17 A. Let him hold -- let him hold it.

18 Q. And while y'all were riding around, y'all just decided
19 that you were going to go rob some places?

20 A. Yes, sir.

21 Q. Why did you decide that?

22 A. Sir, I ain't deciding nothing. I agreed with it.

23 Q. What I mean, did they make you go?

24 A. No, sir.

25 Q. Hold the gun to your head?

1 A. No, sir.

2 Q. So why did you go?

3 A. Because I wanted to.

4 Q. To rob?

5 A. Right.

6 Q. To get some money?

7 A. Right.

8 Q. Steal?

9 A. Right.

10 Q. To shoot people, if you had to?

11 A. Nope.

12 Q. Took the gun, though, didn't you?

13 A. Yes.

14 Q. You had a gun the whole time, as a matter of fact,

15 didn't you?

16 A. Yes, sir.

17 Q. Now, when you were riding, where are you riding?

18 A. Around Greenville.

19 Q. In the car where are you riding?

20 A. Sir?

21 Q. In the car where are you riding?

22 A. Around Greenville.

23 Q. You in the back seat?

24 A. Yes, sir.

25 Q. And when you get there, y'all go over there to the

1 Prestige Cleaners?

2 A. Yes, sir.

3 Q. Where were you at when that happened?

4 A. In the same, in the back seat.

5 Q. Looking out?

6 A. No.

7 Q. Listening to the radio? What?

8 A. No, talking. Me and Freddie Owens talking.

9 Q. And just letting them go in and rob the place?

10 A. Yes, sir.

11 Q. When they came back, they gave you money?

12 A. Yes, sir.

13 Q. Why didn't you tell them I didn't want the money?

14 A. Because it is money. I will take it. You give me
15 money, I'm going to take it.

16 Q. If I had got money, you will take it, won't you?

17 A. Yes, sir, if you give it to me.

18 Q. If I won't give it to you, you will stick a gun in my
19 face, wouldn't you?

20 A. No, sir.

21 Q. If you have got a gun, you will, won't you?

22 A. No, sir.

23 Q. Now, while you were down there sitting in the car
24 talking about the weather, sports, whatever, they bring that
25 money back and split it up?

1 A. I don't split nothing up. They gave it. They handed
2 it to me.

3 Q. And you took it?

4 A. Yes, sir.

5 Q. And while you were riding there, you go riding around
6 again, is that right?

7 A. Yes, sir.

8 Q. Where did you come to?

9 A. What do you mean? Where did we come after that?

10 Q. Uh-huh.

11 A. Come back to Freddie Owens' house.

12 Q. What did you do there?

13 A. Sit around and smoked blunts.

14 Q. Smoke a lot of dope?

15 A. Nope. Not dope, reefer.

16 Q. Reefer?

17 A. Yes, sir.

18 Q. Ever smoke crack?

19 A. No, sir.

20 Q. Ever sold it?

21 A. Yes, sir.

22 Q. While you were there doing that, what did you plan to
23 do?

24 A. Nothing. Planned to talk to some girls.

25 Q. Freddie out riding around hollering at girls with you?

1 A. Yes, sir.

2 Q. What is Lester doing while all this is going on?

3 A. Hollering at girls, the same thing everybody is doing.

4 Q. Is he robbing and stealing while y'all are out?

5 A. Yes, sir.

6 Q. About what time of night is this?

7 A. What time? What part?

8 Q. When y'all go back out.

9 A. What?

10 Q. When you leave Freddie's house.

11 A. About nine.

12 Q. Nine o'clock?

13 A. Yes, sir.

14 Q. Now, during that time after you leave his house, where

15 do you go?

16 A. Down Augusta Road.

17 Q. Why did you decide to go to Augusta Road?

18 A. That is where the most cars be, traffic be, to find

19 girls.

20 Q. While you were down there, what did you decide to do?

21 A. I didn't decide to do nothing. 'Dre decided to rob a

22 store.

23 Q. You were into that, weren't you?

24 A. In the car.

25 Q. If he decided to drive a car off a cliff, are you going

1 with him?

2 A. I guess so, if I'm in it.

3 Q. You were willing to do whatever they needed you to do?

4 A. Right.

5 Q. Did they go to the Hot Spot?

6 A. Yes, sir.

7 Q. What happened at the Hot Spot?

8 A. They got out and robbed it.

9 Q. Where were you at?

10 A. In the back seat.

11 Q. Looking out?

12 A. No, I wasn't doing nothing.

13 Q. Just listening to the radio?

14 A. Wasn't no radio playing.

15 Q. You were just sitting?

16 A. Right.

17 Q. What would happen if the cops came by?

18 A. I guess we get busted.

19 Q. So you were sitting there when they come out of the Hot
20 Spot. How much money did they have?

21 A. I don't know how much. I don't know how much in the
22 other robberies.

23 Q. How much did they give you?

24 A. About \$40.

25 Q. Why did they have give you money?

1 A. I guess because I was in the car.

2 Q. Helping them out?

3 A. Ain't helping them. Sitting in the car helping them, I

4 guess so.

5 Q. Now, when they come out of the -- went into the Hot

6 Spot, did you give them your pistol?

7 A. Yes, sir.

8 Q. Why did you give them your pistol?

9 A. He already had it, though.

10 Q. Why would you give away your pistol?

11 A. Because they are going to use it.

12 Q. You let somebody use your gun?

13 A. Yes, sir.

14 Q. Why is that?

15 A. They needed to use it. They are friend of mine.

16 Whatever I have, they have got, they get.

17 Q. You would do anything for a friend, won't you?

18 A. Yes, sir, just about anything.

19 Q. Well, you are going to rob, won't you?

20 A. I don't rob.

21 Q. You don't rob?

22 A. No, sir.

23 Q. What do you call this going on this night?

24 A. Call it down with the robbery. Called it being down

25 with one. That is two different meanings. Down with one --

1 down with one being down with the robbery. That is if you
2 are down -- you down with it, like you got back and stuff
3 and whatever. Robbery is actually when you go in the store
4 and rob.

5 Q. Do you understand you are charged with armed robbery,
6 aren't you?

7 A. Yes, sir.

8 Q. Are you pleading armed robbery?

9 A. Yes, sir.

10 Q. So when they came back, did he give you your gun?

11 A. No, sir. Let me see.

12 Q. What?

13 A. Yes, sir.

14 Q. Why did he give you your gun back?

15 A. Because they finished with it.

16 Q. What gun was that?

17 A. .32.

18 Q. Then where did they go?

19 A. Back to Freddie's house.

20 Q. While you were at Freddie's house, what did you decide
21 to do?

22 A. Smoke blunts. Decided to get a hotel room.

23 Q. For what?

24 A. For what? Alibi.

25 Q. Alibi?

1 A. Yes, sir.

2 Q. Why did you think that you needed an alibi?

3 A. I didn't think all of us thought that. We were all
4 together. If one get caught, we all caught.

5 Q. If you aren't doing anything, why do you need an alibi?

6 A. If I'm with them, I'm accessory.

7 Q. Are you accessory now?

8 A. That's right. That is why I needed an alibi.

9 Q. While you were over there at the Red Roof Inn, Andre
10 went in and got the room?

11 A. Yes, sir.

12 Q. Do you remember what time that was?

13 A. It had to be about 3:30, though --

14 Q. When you were there, he just gets the room and does
15 what?

16 A. Drive off.

17 Q. Drive off?

18 A. Yes, sir.

19 Q. You didn't go up to that room?

20 A. No, sir.

21 Q. Where did you drive to from there?

22 A. Across the street.

23 Q. Where that restaurant was?

24 A. Yes, sir, behind it.

25 Q. Parked the car?

1 A. Yes, sir.

2 Q. Where did you go?

3 A. Over to Charlie T's.

4 Q. Before you got out of the car, did you say you and
5 Lester were going to hit the Waffle House?

6 A. Yes, sir.

7 Q. What made you decide to go robbing that night?

8 A. Sir?

9 Q. What made you decide to go rob the Waffle House?

10 A. No reason.

11 Q. Well, you hadn't been into it all night. What made you
12 decide that time to get up?

13 A. Getting away with it.

14 Q. Ready to get away with it?

15 A. They were getting away with it. Looked easy.

16 Q. So you wanted to be part of it too?

17 A. Yes, sir.

18 Q. Take your gun?

19 A. No, sir, took Freddie's .25.

20 Q. Why did you take that?

21 A. Because it -- because it is automatic and it had more
22 people at the Waffle House.

23 Q. If there is more people at the Waffle House, why would
24 you need an automatic?

25 A. Because a regular revolver don't make no noise.

1 Q. Why would you want to make noise?

2 A. So they know what I got when I come in there for the
3 robbery.

4 Q. What will you say when you go in there?

5 A. I don't know. Whatever come to mind.

6 Q. Merry Christmas, or what?

7 A. Whatever come to mind at the time.

8 Q. What were you planning on saying when you went in
9 there?

10 A. I don't know. Whatever come to mind.

11 Q. Just going to walk in, how y'all doing, and have a
12 pistol in your hand?

13 A. If that come to mind, that is what I would say.

14 Q. Had stockings on your head?

15 A. Yes, sir.

16 Q. Had the eyes cut out?

17 A. Yes, sir.

18 Q. So when you walk up there, you are ready to go, got
19 your pistol. How many shots did it have?

20 A. I don't know how many bullets was in the clip.

21 Q. Did you cock it before you went in there?

22 A. No, sir.

23 Q. Why didn't you cock it before you went in there?

24 A. Wait until I get in there and cock it. That is the
25 reason I had the .25 automatic. I could cock it.

1 Q. Where they could hear it?

2 A. Yes, sir.

3 Q. Get their attention?

4 A. Yes, sir.

5 Q. Let them know that you meant business?

6 A. Yes, sir.

7 Q. Let them know if you -- if they didn't give you the
8 money, then you would shoot somebody?

9 A. No, sir.

10 Q. Now, when you get up to the place what happened?

11 A. When we get up to the place, we stayed across the
12 parking lot, Charley T's parking lot.

13 Q. Uh-huh. Why didn't you go on up to it?

14 A. Because we didn't feel like doing it. We decided not
15 to.

16 Q. You are the big man getting ready to rob it.

17 A. Not the big man, nothing. Just getting ready to do
18 something.

19 Q. So you got up there and just changed your mind?

20 A. Yes, sir.

21 Q. Change your mind a lot, don't you?

22 A. Yeah. Robbery ain't my thing. That is why I didn't.

23 Q. Telling the truth your thing?

24 A. Yes, sir, if that is what it takes.

25 Q. That's right, if that is what it takes.

1 A. Telling the truth. Yes, sir. Watching a lot. I ain't
2 did nothing but sit in the car.

3 Q. You don't think that you are guilty of any robberies?

4 A. Yeah, I am charged with it. I'm guilty.

5 Q. Well, being charged make you guilty?

6 A. Yeah, I was with them. I was down with them. That is
7 robbery.

8 Q. So you just go up there and stand around Charley T's?

9 A. Yes, sir.

10 Q. Just talking about what?

11 A. Just talking. Talking about how we not going to do it.

12 Q. Lester talking to you?

13 A. Yes, sir.

14 Q. What did Lester say?

15 A. He say we ain't going to do it both of us.

16 Q. Why?

17 A. Because we didn't want to. That's why.

18 Q. Wasn't scared?

19 A. Huh?

20 Q. Wasn't scared?

21 A. No.

22 Q. Just got up there and changed your mind?

23 A. That's right.

24 Q. So you are just hanging around there. What are you
25 waiting on?

1 A. Sir?

2 Q. What were you waiting on?

3 A. Nothing.

4 Q. Standing there waiting on the bus, or what?

5 A. No, nothing.

6 Q. So what made you go back across the street to the car?

7 A. We seen Freddie and Andre running out of the store.

8 Q. So why would that make you go back to the car?

9 A. Because it is our ride. We have to get back in there.

10 Q. So when you get back in there what happened?

11 A. That is when Freddie Owens said he had shot the lady.

12 Q. Do you recall in your statement what you told them?

13 A. Sir?

14 Q. Do you recall in your statement what you told the

15 police what they said?

16 A. What do you mean?

17 Q. About shot in the head.

18 A. Shot the bitch.

19 Q. Solicitor go over that with you?

20 A. No, sir.

21 Q. He never talked to you about that?

22 A. Yeah, he asked me.

23 Q. You told him, didn't you?

24 A. Yes, sir.

25 Q. And when they left there, they went to where?

1 A. To my grandmother's house.

2 Q. Why would they go there?

3 A. Because I told them that that is where I stay at, take
4 me to my house.

5 Q. Did they let you out?

6 A. Yes, sir.

7 Q. And they gave you the pistol?

8 A. Yes, sir.

9 Q. Do you remember telling the police about your pistol?

10 A. Yes, sir. I told them I ain't touched it.

11 Q. I'd like you to look. Do you remember exactly what you
12 said to them?

13 A. I told them that I ain't going to touch them hot ass
14 things. That is what I told the police.

15 Q. Right. You told the police you didn't have that
16 pistol, didn't you?

17 A. Right.

18 Q. And the day before you supposed to testify you are
19 telling the solicitor what?

20 A. I had it. I got it.

21 Q. Well, where is it?

22 A. It is gone in the river.

23 Q. Do you know where you threw it?

24 A. Yes, sir.

25 Q. Why didn't you take them down there?

1 A. Because.

2 Q. Because why?

3 A. They didn't ask me to. They didn't tell me to take
4 them down there. That is why.

5 Q. You have been in the detention center, haven't you?

6 A. Yes, sir.

7 Q. Where they can find you?

8 A. Yes, sir.

9 Q. They got patrol cars out there?

10 A. They didn't come down there and tell me.

11 Q. Did you have any gloves on that night?

12 A. I can't remember.

13 Q. Do you normally wear gloves?

14 A. No, sir.

15 Q. Who loaded that .32 caliber that night?

16 A. I did.

17 Q. Did you load it with the gloves on?

18 A. No, sir.

19 Q. Why did you open that pistol up? To see how many shots
20 was in it?

21 A. Because he said he had shot the girl.

22 Q. You didn't believe him?

23 A. Hell no.

24 Q. Did you look at it?

25 A. Sir?

1 Q. You look at it after you got the pistol back?

2 A. I looked at it the next day.

3 Q. When did you throw it in the river?

4 A. Next day.

5 Q.° Your conscience bothering you now?

6 A. No, sir.

7 Q. Never has bothered you?

8 A. Yes, sir.

9 Q. When?

10 A. When I decided to tell a lie.

11 Q. Have you ever told a lie before?

12 A. Yes, sir, plenty.

13 Q. It ain't hard for you to tell a lie, is it?

14 A. No, sir. It ain't hard for me to tell the truth
15 either.

16 Q. When it suits you?

17 A. When it is time.

18 Q. When it is time to tell the truth?

19 A. Yes.

20 Q. It is time when you have pending charges that will give
21 you life without parole?

22 A. Yes, sir.

23 Q. Beg the court's indulgence.

24 When you said you got to the Red Roof in about 3:30,
25 how did you know it was supposed to be 3:30?

1 A. I assumed that. I don't know the exact time.

2 Q. Why did you assume that?

3 A. You asked me.

4 Q. I mean, how did you arrive at that time?

5 A. What do you mean by that?

6 Q. Anybody tell you it was about 3:30?

7 A. No, sir.

8 Q. Solicitor ever talk to you about it being 3:30?

9 A. No, sir.

10 Q. How did you come up with that?

11 A. I assumed that.

12 Q. You got a watch?

13 A. No.

14 Q. Did you have a watch then?

15 A. No.

16 Q. Now, you said that you had a mask on?

17 A. Yes, sir.

18 Q. Did you or anybody else ever wear a ski mask in this?

19 A. Say what?

20 Q. You or anybody else wear a ski mask in this case?

21 A. What do you mean? That night?

22 Q. Uh-huh.

23 A. Yeah, me and Freddie.

24 Q. Why would you wear that ski mask?

25 A. To hide the face.

1 Q. As a matter of fact, you all had the same type ski
2 mask, didn't you?

3 A. Yes, sir, just about.

4 Q. We are not talking about pantyhose, are we?

5 A. No, sir.

6 Q. We are talking about a knit ski mask you see on TV?

7 A. Yes, sir.

8 Q. And it's like a toboggan?

9 A. I don't know what a toboggan is. I can't agree with
10 that.

11 Q. Rolled up hat?

12 A. Yes.

13 Q. When you pull it down, you have a mouth sewn into it
14 and eyes sewn into it?

15 A. Yes, sir.

16 Q. You had one of those, didn't you?

17 A. Yes, sir.

18 Q. You ever wore Nike clothing before?

19 A. Yes, sir.

20 Q. What kind of shoes do you have on today?

21 A. Dress shoes.

22 Q. Did you ever have a pair of Nike tennis shoes?

23 A. Yes, sir.

24 Q. Nike jacket?

25 A. Yes, sir.

1 Q. Stuff with a swoosh on it?

2 A. No, sir.

3 Q. Never had Nike swoosh?

4 A. No.

5 Q. Nike makes stuff with their logo on it.

6 A. That is the swoosh. That is Nike design.

7 Q. Uh-huh.

8 A. I had plenty of Nike design.

9 Q. Nike puts that on their clothes?

10 A. They have swoosh too. I ain't either owned no swoosh
11 gear.

12 Q. Did you ever own Nike stuff with their emblem on it?

13 A. Yes, sir.

14 Q. Jacket?

15 A. Yes, sir.

16 Q. Shoes?

17 A. Yes, sir.

18 Q. Shirts, T-shirts?

19 A. Yes, sir.

20 Q. Hat?

21 A. No, sir.

22 Q. Never owned a hat with Nike on it?

23 A. Never had a hat.

24 Q. That's powerful stuff, isn't it?

25 A. Yes, sir.

1 Q. Have you ever known Ian Hawthorn?

2 A. Yes, sir.

3 Q. How long have you known him?

4 A. About a couple of months.

5 Q. When this happened?

6 A. What do you mean?

7 Q. Back when this happened?

8 A. I had known him, yeah.

9 Q. What about Cornelius Hawthorn?

10 A. Hawthorn?

11 Q. Excuse me, Cornelius Hawthorn. Cornelius Hendrix.

12 A. What about him?

13 Q. Ever known him?

14 A. Yes, sir.

15 Q. How long have you known him?

16 A. About 13, 14 years, 15.

17 Q. All them kind of live around Laurel Creek?

18 A. Yeah, except Ian.

19 Q. Those are the people that you grew up with, you knew,
20 right?

21 A. Who?

22 Q. Cornelius and Ian.

23 A. Cornelius, not Ian.

24 Q. You grew up with Cornelius?

25 A. Yes, sir.

1 Q. Laurel Creek?

2 A. Yes, sir.

3 Q. You have known Ian just a couple of months?

4 A. Yes, sir.

5 Q. How long have you known Andre Golden?

6 A. A couple of years. About 15.

7 Q. About 15?

8 A. Yes.

9 Q. You grew up him too?

10 A. I didn't grow up with him. I am older than them. I
11 seen them grow up.

12 Q. Lester, he's your cousin, isn't he?

13 A. Yes, sir.

14 Q. How long have you known him?

15 A. About 18 years. About all my life.

16 Q. About all your life?

17 A. Yeah.

18 Q. Were you telling the truth to the police that night you
19 told them that you didn't want them hot ass guns?

20 A. No, sir.

21 Q. That was a lie, wasn't it?

22 A. Yes, sir.

23 Q. Lying to the police?

24 A. Yes, sir.

25 Q. You lied that time when you needed to, didn't you?

1 A. Yes, sir.

2 Q. And Lester ever have a .32 that night?

3 A. No, sir.

4 I don't know. Yes, I think so.

5 Q. You just swapping them around?

6 A. Yes, sir.

7 Q. Couldn't go into a place without a gun, could you?

8 A. Right.

9 Q. Freddie used to carry a .25, didn't he?

10 A. Yes, sir.

11 Q. That's what he let you borrow?

12 A. Yes, sir.

13 Q. Thank you. That's all I have."

14 MR. ARIAIL: Just brief redirect. We don't need
15 that.

16 THE COURT: Are you going to publish the redirect.

17 MR. GIBSON: Your Honor, I'll publish it.

18 MR. ARIAIL: I can do it. It's just a few
19 questions.

20 THE COURT: I'm not saying you have to, unless you
21 want to.

22 REDIRECT EXAMINATION BY MR. ARIAIL:

23 Q. "Mr. Rollins asked you about Ian Hawthorn and Cornelius
24 Hendricks. Were they with you that night?

25 A. No, sir.

1 Q. Were they in the car or associating with in the
2 planning of this?

3 A. No, sir.

4 Q. Did you ever see them that night?

5 A. No, sir.

6 Q. Thank you."

7 THE COURT: Thank you.

8 MR. ARIAIL: We have a short witness. We have a
9 long witness. We have got -- however long that you want to
10 go.

11 THE COURT: I have got it set for six o'clock. I
12 don't know, but can the witnesses come back, or do you need
13 to do them?

14 MR. ARIAIL: No. No, we are fine. We can come
15 back tomorrow.

16 THE COURT: Is that okay? I kind of indicated to
17 the lawyers that we might stop at six o'clock and that would
18 give y'all a chance to go back. You have to get dinner
19 tonight, whatever.

20 Do not discuss the case with anyone.

21 The request has been made that I bring in Mr.
22 Nakeo Vance, Kiko, and let y'all see him. As I told you, I
23 brought him in today, and under oath he refused to testify.
24 He would not testify, because he had testified before, and
25 so I'll bring him in in the morning and so that -- at the

1 request of the defense and let you see the gentleman so you
2 will know who was testifying. Okay.

3 Just have a good evening and I'll see you. We
4 will start at nine o'clock in the morning. We will get in a
5 full day tomorrow. That would be good. See y'all tomorrow.
6 Thank you.

7 (The following takes place outside the presence of
8 the jury panel)

9 THE COURT: Y'all, we have a question. Mr. Asire
10 indicated that he normally did not work or did not do
11 anything on Sunday, and I was just going to see what
12 religion he was.

13 MS. STROM: I can go get it right now, judge.

14 THE COURT: I can get it from the clerk. I just
15 thought that they were here. We will see. He was the one
16 that this lady --

17 Could I just look at it? We won't have to publish
18 it long. These are the juror questionnaires that they
19 completed and sent in.

20 Thank you. All right.

21 Just as a point of inquiry. If people insist on a
22 church service or something of that nature -- I'm sure that
23 happens often. If they insist on that on Sunday morning, I
24 don't know if we can make arrangements for that. If you had
25 to do that -- Mr. Godfrey, you have done a good many murder

1 cases.

2 MR. GODFREY: I don't know.

3 THE COURT: I may have some people that are here
4 that might not want to come in, but I would think that in
5 some way I'm going to have to inquire of the jurors, rather
6 than have them individual statements sent to me as to
7 whether or not if they just want to continue working. And
8 do y'all have any objections to that?

9 MR. GODFREY: None, Your Honor.

10 MR. ARIAIL: None. I have had them in the past
11 they would -- if somebody insisted on that, they have had
12 someone brought in for that purpose.

13 THE COURT: For that purpose.

14 MR. ARIAIL: To meet individually with that
15 person.

16 THE COURT: Okay.

17 MR. ARIAIL: Have their own service.

18 THE COURT: It would be my preference to work all
19 the way straight through until we finish. We will work.
20 Thank you so much.

21 See y'all at nine o'clock in the morning.

22 MR. ARIAIL: We will be through by 10:30 or
23 eleven.

24 THE COURT: Okay.

25 MR. ARIAIL: Just passing on to them for

1 scheduling purposes.

2 THE COURT: All right.

3 MS. STROM: Judge, I have the contempt order.

4 THE COURT: Yes, please. And I'm just briefly
5 going to bring him in and go over with him the fact that he
6 refused to testify. I'm not going on sentence him again
7 except this one time.

8 MS. STROM: That would be fine. I had that drawn
9 up. If there are any changes you need made on it, you just
10 let me know. We saved it on the computer.

11 (Whereupon, proceedings were adjourned to November
12 10, 2006)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF GENERAL SESSIONS

3

4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 FREDDIE EUGENE OWENS,) 1998-GS-23-5220
7 Defendant.) NOVEMBER 10, 2006
8) Greenville, South Carolina

9

(VOLUME V)

10

11 B E F O R E:

12

THE HONORABLE LARRY R. PATTERSON, JUDGE. ; and a jury.

13

14

15

A P P E A R A N C E S:

16

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1 (PROCEEDINGS, November 10, 2006)

2 (Whereupon, Juror Number 217, Roger D. James, was
3 brought into the courtroom)

4 THE COURT: I was just wondering if you have read
5 or heard anything about this case in the paper?

6 JUROR NUMBER 217: I did the day before yesterday
7 when it was in there.

8 THE COURT: On Monday morning?

9 JUROR NUMBER 217: Yes, sir.

10 THE COURT: And what was -- which article was it?

11 JUROR NUMBER 217: It was a -- it showed a picture
12 of him in the Greenville News. It had a picture of him in
13 the Greenville News and it had an article about the robbery
14 of the convenience store and something in the jail.

15 THE COURT: Okay. And so that was an article or
16 something?

17 JUROR NUMBER 217: Yes, sir, it was in the
18 Greenville News.

19 THE COURT: All right. I'm going to let you step
20 out just for a minute.

21 (Whereupon, Juror Number 217 was taken out of the
22 courtroom)

23 MR. GIBSON: I don't remember him saying anything
24 if he -- if he had said something about knowing something
25 about what happened at the jail, I would have written that

1 in my notes.

2 THE COURT: He did. He said it was a subsequent
3 thing.

4 MR. GIBSON: So after he had already been
5 questioned he said that.

6 THE COURT: The day before yesterday that would
7 have been --

8 MS. STROM: That would have been --

9 THE COURT: Tuesday.

10 MS. STROM: Yesterday was Thursday.

11 THE COURT: That would have been Wednesday.

12 MS. STROM: That would have been Wednesday.

13 THE COURT: He would have been qualified Monday.
14 So he did see that and saw about the subsequent
15 thing at the jail.

16 MR. GIBSON: Can I talk with Mr. Godfrey?

17 THE COURT: Yeah, talk about it.

18 MR. GODFREY: I wonder. Has anybody pulled an
19 article online?

20 MS. STROM: Online is not necessarily that's in
21 that hard copy, is the only thing I'm thinking.

22 MR. GODFREY: I understand. I understand, but
23 right now I would really like to see what the article had to
24 say.

25 MS. STROM: Okay, we'll pull it up.

1 THE COURT: As far as him individually, I'm
2 keeping him separated from the jury. It's hard to handle
3 something to know whether it's going to affect them one way
4 or the other or not, and so it's just whatever -- you know,
5 whatever motions that y'all make. I hope no problems come
6 up.

7 MS. STROM: Right.

8 MR. GODFREY: Did he say how he came upon it? I
9 can't hear that well.

10 THE COURT: He said he read it in the paper.

11 MS. STROM: The day before yesterday.

12 THE COURT: The day before yesterday.

13 MR. GIBSON: After he was ordered not to read any
14 articles.

15 MR. GODFREY: Uh-huh.

16 THE COURT: Uh-huh.

17 MR. GODFREY: I will be with you in a minute.

18 (Off the record)

19 (On the record)

20 MR. GODFREY: Judge, Ken and I have talked it
21 over. The view of the defense is this. They were very
22 clear instructions from the court, both during voir dire and
23 after the jury was impaneled, not to review or look at any
24 news. And I'm not saying that this news that he read -- it
25 may not affect him. The problem that the defense has is

1 that he failed to follow the instructions of the court.

2 THE COURT: Okay.

3 MR. GODFREY: And for that reason we would like to
4 have him removed.

5 THE COURT: Okay. And then I think in criminal
6 cases I believe it's the next one in line that goes up.

7 MS. STROM: No, sir, I think --

8 THE COURT: Civil cases you draw by ballot.

9 MS. STROM: I'm getting --

10 THE COURT: I hope I don't have it backwards, but
11 I have instructed my clerk to pull that statute.

12 MS. STROM: That's what I have done too. I have
13 asked Jeff Weston to pull it.

14 THE COURT: And we just looked at it this week and
15 last week to see what we would do, to make sure and I'm
16 going -- I am almost positive in civil cases, because you
17 strike in all that and seat alternate. It's more than one,
18 but here you go right down the line of jurors that are
19 drawn. I believe you take the next one.

20 We will not do anything until --

21 MS. STROM: Until we find out?

22 Judge, the State's position is we can't oppose
23 your removing that juror. I think that's a violation and I
24 don't see why we can't oppose.

25 THE COURT: And he's a really nice fellow.

1 MS. STROM: Yes.

2 THE COURT: And do y'all mind if -- I don't want
3 to embarrass him. I did bring him out here and put it on
4 the record.

5 MS. STROM: Right.

6 THE COURT: If I remove him. Go back -- we have
7 separated him from the rest of the panel and just excuse
8 him?

9 MR. GODFREY: That's fine.

10 THE COURT: And I would let one of the SLED agents
11 take him back to the motel.

12 MS. STROM: That would be fine. That would be
13 fine.

14 THE COURT: Thank you.

15 MS. STROM: And I think I have that written down
16 over in my office in a little book. I'm going to run back
17 to the office to check on that.

18 THE COURT: Then the first thing we will do is
19 identify --

20 MS. STROM: Vance.

21 THE COURT: Vance.

22 MS. STROM: Thank you.

23 THE COURT: From my experience in past with the
24 criminal cases, particularly those with a great deal of
25 publicity, and I was involved in a couple in Charleston,

1 some in Spartanburg, we came out into the courtroom -- and I
2 certainly wouldn't want anybody from the news media knowing
3 how the court's rulings have been, that we are doing
4 anything in private.

5 What we have just done is interviewed a juror who
6 had read something in the newspaper yesterday morning about
7 the case, after we had instructed them not to. The juror
8 was very honest and is a perfect gentleman and may not have
9 intended to violate any orders of the court. He certainly
10 would be punished for that. And what he read may be
11 something that's going to come out in the case and may not,
12 really. I didn't see the article. I did see this morning's
13 article, but I didn't see the one yesterday morning, if
14 there was one there. He said there was. He was very honest
15 and told us what he had read, and we had instructed every
16 one of them, plus I had given them a written order not to
17 read anything in the newspapers about the case. I have got
18 a copy of the standard order I gave all the jurors.

19 With that in mind, he has been separated from the
20 rest of the jury, and I'm going to release him and move an
21 alternate into his position. And they are all -- all the
22 alternates are jurors, just like everyone else, and I think
23 I clearly explained that to them when we started the trial.
24 So I'm going to release him. He's been -- and then -- I'm
25 going to do that.

1 We are -- everyone is in agreement we are not
2 going to cause him any embarrassment and I'm not going to
3 bring him out here and do that in the open court.

4 And if any of the news or anybody wanted -- I'm
5 just going to step back there and excuse him in this case.
6 Thank you very much. We will be right back.

7 (Off the record)

8 (Back on the record)

9 THE COURT: That is an administrative matter.
10 Would you want to discuss that with Mr. Owens first, or do
11 you feel strongly about that? I think -- I think what you
12 have done is the right thing too, probably.

13 MR. GODFREY: I can step back in and speak with
14 Freddie about it. I'm sure Freddie will agree, but let me
15 do that.

16 THE COURT: Go back and speak with him, please.

17 (Off the record)

18 (Back on the record)

19 MR. GODFREY: May it please the court, our client
20 is in agreement with releasing this juror.

21 THE COURT: Thank you. I'll do that and we will
22 come back in and resume the trial.

23 (Off the record)

24 (Back on the record)

25 THE COURT: Is everyone ready?

1 MS. STROM: Yes, Your Honor.

2 MR. GODFREY: Yes, Your Honor.

3 THE COURT: We have got to do it by ballot.

4 The civil rule seems to -- it's seems to be, but
5 it's not clear, but that's the Rules of Civil Procedure.
6 It's not the statute that applies to criminal.

7 MS. STROM: Okay.

8 THE COURT: Madam Clerk, you need to put the three
9 names of the alternates. It says by ballot under Statute
10 14-7-1340, duties of -- would y'all like to see a copy of
11 the statute?

12 MR. GODFREY: No, Your Honor, I really don't.

13 MS. STROM: I found it.

14 THE COURT: You got it?

15 It's 14-7-1340. If before final submission of the
16 case to the jury a juror becomes -- he dies or becomes ill
17 or disabled and is unable to perform in the judgment of the
18 court his duties, the court shall order him to be discharged
19 and draw the name of one of the alternates. If there be
20 more than one, by ballot to serve in the place of such dead
21 or discharged juror throughout the remainder of the
22 proceedings, subject to the same rules and regulations as
23 applied to remaining jurors.

24 Initially I instructed that the alternates, they
25 were just like a regular juror, and that they would be a

1 regular juror until the case was over. There was a good
2 possibility that they may have to replace another juror. We
3 have one discharged juror. Mr. James -- well, one juror.
4 And the -- he was very honest and saw an article in the
5 paper yesterday morning. He informed the court and the
6 attorneys and we have discharged that juror from motion -- I
7 mean with the defense, an appropriate motion, and I'm going
8 to -- because of the disregarding of the court order not to
9 be exposed to publicity on Monday and after they were
10 individually voir dired, so I'm going to ask the rest of the
11 panel if any of them have been exposed to any outside
12 information about the case, and I would do that when they
13 come in, unless there is some objection.

14 MS. STROM: No.

15 THE COURT: And then we will bring in Mr. -- I
16 wrote the gentleman's name down yesterday. Nakeo Vance, is
17 that --

18 MS. STROM: Yes, sir.

19 THE COURT: If you would bring in the jury,
20 please.

21 Tell her to wait just a minute.

22 In drawing this by ballot, have you got the names
23 written down.

24 THE CLERK: Yes.

25 THE COURT: Would you put them in a cup?

1 Wait just one second.

2 And do you waive having that done by a blind
3 person or a minor child or by -- we don't have a computer
4 program just for three.

5 MR. GODFREY: We certainly waive that, judge.

6 THE COURT: The Clerk of Court having put the
7 names in a cup of the three alternates, and we have shaken
8 that cup up. The Clerk of Court will draw one of those
9 names out to be the twelfth juror.

10 THE CLERK: Randy Mathena.

11 THE COURT: Randy Mathena will be the -- he will
12 step in and be the twelfth juror, unless something happens
13 to another one.

14 MS. STROM: Do you want the Order to Show Cause on
15 Nakeo?

16 THE COURT: I'll let one of the deputies serve it
17 after we release him.

18 MS. STROM: Okay.

19 THE COURT: I would ask that the news not -- I had
20 to do that publicly, not to publish that name, if you would,
21 please.

22 (The following takes place in the presence of the
23 jury panel)

24 THE COURT: Let me ask the members of the jury if
25 any of you have accidentally, or any other way heard anything

1 about this case, or talked to anyone about this case, or
2 seen any news reports about this case since you have come in
3 on Monday and I told y'all y'all couldn't discuss it or read
4 anything in the paper about it? If you have, just slip your
5 hand up.

6 (No response)

7 THE COURT: Okay. One of your jurors, which I'm
8 sure was not done intentionally, we had to excuse him. And
9 the way alternates are replaced, it's by ballot. We put the
10 alternates in and then they are blindly drawn out by ballot,
11 and Mr. Mathena, you are the juror that was picked at random
12 to replace the discharged juror.

13 Now, let me emphasize, and I'm sure I told the
14 alternates that y'all -- you are regular jurors too, just
15 like everybody else, you know, because there a great
16 possibility that you could be -- have to replace another
17 juror for illness, or for any other reasons, death in the
18 family, or something like that, so y'all make -- y'all act
19 just like a juror, just like everyone else, until this case
20 is over.

21 Now, yesterday I believe after you were discharged
22 the defense would like for you to see Mr. Nakeo Vance, the
23 person whose testimony we read in the court. We had brought
24 him into the courtroom to testify in this case and he
25 refused to testify. And he had testified in the previous

1 guilt or innocence phase of this trial, and I have explained
2 all that proceedings, and all that testimony was read. I'm
3 going to bring him in and he will be right here at the
4 corner for y'all to see the person whose testimony we
5 actually read, okay?

6 You can have the deputies bring in Mr. Vance.

7 (Whereupon, Nakeo "Kiko" Vance was brought into
8 the courtroom)

9 THE COURT: Good morning Mr. Vance. How are you
10 doing today?

11 MR. VANCE: All right.

12 THE COURT: Mr. Vance, you came in yesterday and I
13 just wanted to -- and the State called you to testify and
14 you indicated to the court that you did not want to testify.
15 And even though I ordered you to testify, you would not
16 testify, isn't that correct?

17 MR. VANCE: Right.

18 THE COURT: Okay. And you still feel that way?

19 MR. VANCE: Yes, sir.

20 THE COURT: All right. Thank you very much.

21 I'm going to excuse you and you can return him.

22 Thank you.

23 (Whereupon, Nakeo "Kiko" Vance was taken out of
24 the courtroom)

25 THE COURT: Anything else from the defense in that

1 regard?

2 MR. GIBSON: No, Your Honor.

3 THE COURT: From the State?

4 MR. ARIAIL: No, Your Honor.

5 THE COURT: Okay. We are ready to continue the
6 case.

7 MS. VERDIN: The State calls Juliana Christy.

8 JULIANA CHRISTY, having been first duly sworn,
9 testified as follows:

10 THE CLERK: State your full name for the record.

11 THE WITNESS: Juliana Christy.

12 THE CLERK: Thank you. Be seated.

13 DIRECT EXAMINATION MS. VERDIN:

14 Q. Will you state your full name for the record, please?

15 A. Juliana Christy.

16 Q. And by whom are you employed?

17 A. The Greenville County sheriff's office.

18 Q. How long have you been employed there?

19 A. 15 and a half years.

20 Q. So were you employed there then on November 1st of
21 1997?

22 A. Yes, I was.

23 Q. What do you do with the sheriff's office?

24 A. I'm a victim advocate.

25 Q. Can you tell me what a victim advocate with the

1 sheriff's office does?

2 A. I work with victims of violent crime. I work with
3 family members of violent crimes and also witnesses of
4 violent crimes.

5 Q. And through your employment with the sheriff's office
6 did you have an occasion to become involved in the
7 investigation of the murder of Irene Graves?

8 A. Yes, I did.

9 Q. And how was it that you first became involved in that?

10 A. On the morning of November 1st, around five o'clock in
11 the morning, I got a call at home from our dispatch office.
12 And my sergeant at the time was Sergeant Larry Bellew, and
13 he had called our dispatch office and asked them to contact
14 me to come to the Speedway on Laurens Road.

15 Q. And did you, in fact, go to the Speedway on Laurens
16 Road?

17 A. Yes, I did.

18 Q. And what did you do when you arrived there?

19 A. When I got there, I saw my sergeant inside the Speedway
20 and I met with Ms. Buehner, who testified yesterday. We sat
21 in my car and talked for a good while. And then I was
22 informed that Ms. Graves had children at home waiting for
23 her to get off work and there was -- there was no one that
24 was going to be going to them. So immediately I knew that I
25 would have to find out where these children -- where her

1 home was and try to get to them as quickly as possible.

2 Q. Who did you go with to the home?

3 A. Myself and -- at that time lieutenant Terrance Brooks
4 and I drove to a fast food restaurant in Mauldin where we
5 met with a friend of Ms. Graves who knew the children. And
6 we wanted someone with us who the children were familiar
7 with, so that they would let us in the house and we could
8 talk with them and it wouldn't be talking to total
9 strangers.

10 Q. Now, what happened when you got Ms. Graves home?

11 A. They lived in an apartment on the second floor of a
12 building and the weather was much like it is today. It was
13 it was a nice day. And it was probably six o'clock in the
14 morning when we got there. And the apartments -- you
15 weren't inside going up the stairs. It was an outside. You
16 could see both balconies from the outside. And we walked up
17 the outside stairs and knocked on the door and the prettiest
18 little girl came to the door with long hair and pigtails
19 that were braided and she had on a cheerleading costume and
20 she had lipstick on and she was just precious. She was
21 beautiful. And she came to the door and her eyes were huge
22 and she said "where is my mommy?" And the friend that came
23 with us stepped inside and said "we are here to talk to
24 you," and introduced us. The little girl was Insley, Ms.
25 Graves daughter, and she kept repeating "where is my mommy?"

1 And then a little boy came out from the back of the
2 apartment and he had obviously just woken up. He just had
3 his little boxer shorts on. And he came out into the front
4 of the apartment and they both said that they were going to
5 a cheerleading competition that day and they were waiting
6 for their momma to get home to take them to the cheerleading
7 competition. She didn't have a car. They were going to
8 meet with some neighbors and the neighbors were going to
9 drive them. So that's why Insley was all in her
10 cheerleading outfit. She was ready to go to her
11 competition. She got herself ready because her momma had
12 told her to be ready when they got home. And they kept
13 saying "where is my momma?" But at the same time they were
14 offering us Halloween candy, because the night before was
15 Halloween, and they were offering us candy.

16 And we asked them to sit down on the couch, which they
17 did, and we -- myself and Lieutenant Brooks knelt down on
18 the floor in front of the couch and I told the children that
19 there had been an accident at work and their mother was
20 hurt. And Insley screamed out crying and put her little
21 hands up on her face, and Jeremy just sat still really,
22 really quietly. And in a few -- say a minute passed by, he
23 sprang off of the couch into my arms and just held on and
24 cried. And we stayed that way for awhile and -- I wasn't
25 expecting that. It just -- it was very sad. And we asked

1 them at that point if they had family in Greenville, and
2 they said they had a brother, but he was out of town. And
3 they did have a grandmother who lived in Mullins, South
4 Carolina.

5 And this entire time Insley was walking around kind of
6 in a daze, and then she would cry again, in a daze and cry
7 again, saying "I want my mommy. I want my mommy." And
8 Jeremy tried to take care of her. He -- he would walk up to
9 her and put his little arm around her.

10 So at that point I left the apartment, because I had to
11 go tell this family that was going to meet with them to give
12 them the ride to the cheerleading competition to go on, that
13 they weren't going to be able to go to the competition. And
14 when I came back, Lieutenant Brooks had Jeremy and he was
15 talking with him. And -- I was glad that he was there
16 because I think Jeremy needed a man to talk to, and so he --
17 he was taking care of Jeremy, and the friend of Irene and I
18 were taking care of Insley.

19 Q. Now, was Insley wearing anything other than
20 cheerleading outfit?

21 A. Before we -- we -- first of all we could not find Mrs.
22 Granger, the grandmother's phone number, and Lieutenant
23 Brooks called dispatch and asked them to track down the
24 grandparents, and finally we did. We did track them down
25 and called. I called Mrs. Granger and told her that she

1 needed to come to Greenville to get her grandchildren. And
2 they hadn't had very much contact before that and the
3 children were very afraid. They didn't know their
4 grandmother that well, and their only family was their
5 mother, and they had no one else to call.

6 So as we were getting ready to leave, they kept saying
7 what happened, "where is mommy? Where is mommy?" And I
8 told them that their mommy was in Heaven. And that was
9 extremely traumatic, once again, of course. And Insley ran
10 to her mother's room, and her mother's coat was hanging on
11 the door on a hanger. And she asked if she could put that
12 coat on. And, of course, I told her she could, and she just
13 put the coat on and just wrapped it around her and was
14 smelling the coat. And she kept the coat on. And we left
15 and she went home with the friend -- they both went home
16 with the friend to wait for the Grangers. And I told them
17 that I would come and meet with them when the Grangers
18 arrived, when the grandparents arrived from Mullins. So
19 that was hours later that afternoon. And I drove over to
20 the friend's house and Insley still had that coat on. And
21 she looked at me -- we were by ourselves and she looked at
22 me and said "what do I do?" And she was a little girl, just
23 a little girl, and she was --

24 Q. How old was she?

25 A. I believe she was 10.

1 Q. And what about Jeremy?

2 A. 11.

3 Q. 11.

4 A. Uh-huh.

5 Q. Now, I'm going to show you what's been marked State's
6 Exhibit No. 24 and ask you if you can identify that?

7 A. Yes.

8 Q. Okay. What does that appear to you to be?

9 A. That's Insley and Jeremy in the front, Irene's
10 daughters.

11 Q. A copy of the photo of them?

12 A. Yes.

13 Q. And does that fairly and accurately represent the way
14 they looked around the time that you met with them?

15 A. Yes.

16 MS. VERDIN: Your Honor, at this time we would
17 move State's Exhibit No. 24 into evidence.

18 MR. GIBSON: Without objection.

19 THE COURT: Without objection.

20 BY MS. VERDIN:

21 Q. And which -- are the two in the front?

22 A. The youngest -- yeah, the smallest -- they were a
23 little bit smaller than that at that time.

24 Q. They were a little smaller than that?

25 A. Yeah.

1 Q. Okay. And you said that you finally did get in contact
2 with the grandmother in Mullins. And then what did you do
3 after that?

4 A. I asked her to come to Greenville, and the children
5 went home with the friend of Irene's. And later that
6 afternoon I met them over at the friend's house, and the
7 Grangers came, and Jeremy immediately quietly just went out
8 and got in their truck and just sat there. And Insley was
9 more verbal and she stayed inside. And the Grangers were in
10 a hurry to get them and leave. And Jeremy had gathered up a
11 few things at the house for them to have, some of their own
12 things. And there were pictures all over the house of
13 Jeremy and Insley, and Jeremy -- Insley was in cheerleading,
14 and both Jeremy and Insley took dancing together. And there
15 is a picture of Jeremy in the middle of all these girls in
16 this little dancing outfit and it was -- it was precious.
17 They were very active in all different kinds of things,
18 because there were pictures all over that apartment of
19 either the three of them together - of Irene, Jeremy and
20 Insley, or just Jeremy and Insley - participating in all
21 kind of extracurricular activities.

22 The Grangers came and I promised Insley I would send
23 her a frame -- a picture frame for one of those pictures
24 that Jeremy packed for them to take with them, and they
25 left.

1 Q. Now, Ms. Christy, how long have you been a victim
2 advocate?

3 A. 15 and a half years.

4 Q. And in that 15 years, how many cases have you been
5 involved in in which you assisted victims or their families
6 on crimes?

7 A. Thousands.

8 Q. And how would you describe this event in your career?

9 A. This was the hardest, hardest case I have ever had to
10 work on. I have never had to do death notification before,
11 or since, and this is definitely the hardest case I have.
12 It affected me the most deeply, and still does.

13 Q. Thank you.

14 MR. GIBSON: No questions, Your Honor.

15 THE COURT: Thank you, ma'am.

16 MR. ARIAIL: The State calls Dr. David Brunetti.

17 DR. DAVID BRUNETTI, having been first duly sworn,
18 testified as follows:

19 THE CLERK: State your full name for record,
20 please.

21 THE WITNESS: David Brunetti.

22 THE CLERK: Thank you. Be seated.

23 DIRECT EXAMINATION BY MR. ARIAIL:

24 Q. Can you state your name for the record, please, sir?

25 A. David G. Brunetti.

1 Q. Dr. Brunetti, you are doctor?

2 A. Yes, I am.

3 Q. All right. Where do you presently reside?

4 A. Minneapolis, Minnesota.

5 Q. And in 1999, where did you reside?

6 A. In Fountain Inn, South Carolina.

7 Q. What is your profession or occupation?

8 A. I'm a licensed clinical psychologist.

9 Q. And where you so licensed in South Carolina in 1999?

10 A. Yes, I was.

11 Q. I'll take you back -- give us a little educational
12 background and training for being a psychologist and making
13 an evaluation of an individual.

14 A. I have a Ph.D. in clinical psychology from Oklahoma
15 State University.

16 I completed an internship at the University of Missouri
17 Health Sciences Center.

18 I have had specialized training in psychological
19 assessment, as well as forensic psychological assessment and
20 consultation.

21 I previously was an assistant professor at West
22 Virginia University Medical School, as well as the
23 Department of Psychology at West Virginia University.

24 I have practiced psychology in the states of West
25 Virginia, South Carolina, and Minnesota.

1 Q. All right. And where do you presently practice?

2 A. I practice in private practice in Minnesota, as well as
3 employed by the University of Minnesota Medical Center.

4 Q. Did you previously work in the mental health system of
5 South Carolina?

6 A. Yes, I did. I was a --

7 Q. Where was that?

8 A. I was a staff psychologist, as well as assistant
9 director of clinical services at Patrick Harris state
10 psychiatric hospital in Anderson, South Carolina.

11 Q. And have you previously testified in the courts of this
12 state as an expert witness in the field of psychology?

13 A. Yes, I have.

14 Q. Do you still have a license in this state?

15 A. I do.

16 Q. And in 1999, while you were located in Greenville
17 County, were you also practicing psychology?

18 A. Yes, I was.

19 Q. In what group were you at, were you in at that time?

20 A. At the time I was in a private practice group,
21 Greenville Psychiatry.

22 Q. And that was composed of psychiatrists and
23 psychologists?

24 A. Yes, it was. I was actually the primary psychologist,
25 evaluating patients for the psychiatrists in that practice.

1 Q. And as a part of that practice in 1999, were you
2 retained by the defendant, Mr. Freddie Owens, and his
3 attorneys to conduct various assessments on Mr. Owens?

4 A. Yes, I was.

5 Q. Were you previously qualified as an expert witness on
6 behalf of Mr. Owens to render opinions regarding the mental
7 health of Mr. Owens in the guilt phase trial of this case in
8 1999?

9 A. Yes, I was.

10 MR. ARIAIL: Your Honor, we would submit him as an
11 expert witness having previously been qualified as expert in
12 the field of psychology in the courts of this state and also
13 particularly in this particular trial previously.

14 MR. GIBSON: I'm sorry, can you repeat exactly
15 what you are trying to get him in? I didn't want to -- what
16 type expert?

17 THE COURT: Expert in clinical psychology.

18 MR. GIBSON: No objection, Your Honor.

19 THE COURT: All right, sir, you may render his
20 opinions in clinical psychology.

21 MR. ARIAIL: Thank you, Your Honor.

22 BY MR. ARIAIL:

23 Q. Doctor, if you would, let's go back to 1999. I want to
24 ask you if on February the 1 first you compiled and
25 forwarded to the attorneys for Mr. Owens a report containing

1 various assessments and material and conclusions?

2 A. Yes, I did.

3 Q. And do you have a copy of that report with you?

4 A. I do.

5 Q. If you would, keep that report out.. We may refer to it
6 from time to time.

7 When you were hired by Mr. Owens and his attorneys,
8 what were you to do?

9 A. I was to do three -- I was to assess him and offer an
10 opinion on three different questions.

11 Q. What were those questions?

12 A. The first was his capacity to participate in his
13 defense.

14 The second was a question about his mental state at the
15 time of the incident.

16 And the third was to determine if there may be any
17 mitigating factors in the sentencing phase.

18 Q. And before we pursue those conclusions that you had in
19 regard to those issues, I want to go through in detail to
20 the jury exactly what information you had to consider before
21 reaching those opinions.

22 Did you administer any particular tests to Mr. Owens?

23 A. Yes, I did. I met with Mr. Owens at the detention
24 center and had him complete a paper and pencil personality
25 evaluation, the personal assessment inventory.

1 Q. And is this a standard used test in the field of
2 psychology?

3 A. Yes, it is.

4 Q. Did you also personally interview Mr. Owens?

5 A. Yes, I interviewed Mr. Owens on two occasions for a
6 total of four hours.

7 Q. In addition to the interview and the testings, did you
8 also have available to you the results of some testing done
9 by Dr. Craig Horne?

10 A. Yes, I reviewed that.

11 Q. And what type of testing was that?

12 A. Dr. Horne administered an IQ or intelligence test, as
13 well as a personality evaluation.

14 Q. And who was Dr. Horne working for at the time that you
15 obtained this information?

16 A. Dr. Horne had been retained by Mr. Owens attorney, John
17 Rollins.

18 Q. And did Dr. Horne reach opinions as to whether Mr.
19 Owens knew the difference between right and wrong and had
20 the ability to conform his behavior to the requirements of
21 law?

22 A. Yes, he did.

23 Q. And what were those opinions?

24 A. He had determined that -- I can actually read you a
25 quote here from the report. "That interview or testing is

1 not consistent with any condition that would likely have
2 severely limited his ability to determine right from wrong
3 or his ability to conform to the requirements of the law.

4 "Furthermore, there is no indication that Mr. Owens
5 would lack the capacity to assist in his own defense."

6 Q. All right. And did you consider those opinions in your
7 evaluation?

8 A. Yes, I did.

9 Q. Did you have an interview with Mr. Owens' mother?

10 A. Yes, telephone interview.

11 Q. I'm sorry?

12 A. I interviewed her on the telephone.

13 Q. And did you interview anyone else?

14 A. Yes, I interviewed a 3rd grade teacher of Mr. Owens.

15 Q. And what was her name?

16 A. Her name was Fain Maag, I believe.

17 Q. M-A-G-G?

18 A. Yes.

19 Q. And what was the subject or nature of that interview?

20 What were you looking for or what type information were you
21 seeking?

22 A. My understanding is that there was concern, I believe,
23 in the 4th grade when Mr. Owens was approximately ten years
24 old about a possible learning disability, and I wanted to
25 get a sense from her, first of all, if there were other

1 indications, say of a mental health issue, depression, or
2 some other type of problem, as well as take a look at what
3 the school had conducted in terms of an evaluation.

4 And then, thirdly, just to find out about his conduct
5 in school and how -- her impression of how he had dealt with
6 conflict situations.

7 Q. And did you also have available to you various police
8 reports and related materials that had been provided to you
9 by Mr. Owens' attorneys?

10 A. Yes.

11 Q. Did you review those?

12 A. I did.

13 Q. And could you describe just in general what those
14 included?

15 A. In general, these were statements that had been taken
16 from either Mr. Owens or others involved in the incidents
17 prior to the Speedway robbery, as well as statements
18 involving the actual robbery.

19 Q. And those were part of the police file that had been
20 compiled as part of the investigation?

21 A. Yes.

22 Q. And did you consider those as part of your evaluation?

23 A. I did.

24 Q. Did you also have available to you a history of testing
25 that had been performed on Mr. Owens beginning in when he

1 was approximately ten years old?

2 A. Yes.

3 Q. What was that testing for?

4 A. Mr. Owens was -- appeared to be initially evaluated for
5 a possible learning disability, and the Greenville School
6 District completed the intelligence testing and IQ tests, as
7 well as a test of his school skills - math, reading and
8 writing.

9 Q. And what were the documents actually that you had in
10 this regard? Did you have IQ tests?

11 A. Yes, I had the result of the IQ tests, the actual IQ
12 numbers, and summary information regarding what they call
13 behavior ratings done by teachers and such.

14 Q. And did you consider that information?

15 A. Yes, I did.

16 Q. What did that testing reveal?

17 A. At that time they determined that Mr. Owens had a
18 mathematics learning disability, that he -- and what that is
19 essentially is that if an individual has an IQ or an
20 intelligence at a certain level - in his case that was in
21 the low average range - if either reading or math abilities
22 are significantly below that, that's -- and there is a
23 formula of how to actually calculate that, but the -- they
24 determined he had a reading -- or, I'm sorry, a mathematics
25 learning disability. They did not indicate any other types

1 of diagnosable conditions at that time.

2 Q. So no mental retardation, no low IQ, no problems in
3 that regard, just a learning disability?

4 A. Yes.

5 Q. And what recommendations were made as a result of that
6 testing?

7 A. The recommendations made by Greenville County school
8 district were to put him in some -- I believe they call it
9 resource classes, as well as some special tutoring, to
10 improve his math abilities.

11 Q. And based on the records that you had, did he, in fact,
12 receive some special education assistance?

13 A. That is my understanding.

14 Q. And did you have copies of additional testing that took
15 place later in 1991, to reevaluate his learning disability?

16 A. Yes, I did.

17 Q. As a result of that testing, did he have any additional
18 testing in 1991, of which you were provided copies?

19 A. Yes.

20 Q. And with the special services tutoring that he had
21 received after the first diagnosis, what did the second
22 testing reveal?

23 A. The second testing revealed that after approximately
24 two years of assistance, his IQ level and his mathematics
25 achievement abilities were equivalent, essentially that the

1 learning disability was no longer present.

2 Q. Did those tests in 1988 and 1991 measure his IQ?

3 A. Yes, they did.

4 Q. And what were his scores?

5 A. His score in the 1988 was an 85, which is within the
6 low average range.

7 Q. Uh-huh.

8 A. And in 1991, the overall score was 84, again within the
9 low average range.

10 Q. Is there any evidence in the records that you reviewed
11 of mental retardation?

12 A. There is not.

13 Q. Did you also review information from Dr. Benjamin
14 Crupwell, dated January 31, 1995?

15 A. Yes, I did.

16 Q. And what was the nature of that information?

17 A. That was a report from the Greenville Memorial Hospital
18 emergency room, the trauma center there.

19 Q. What were you looking for?

20 A. It had come to my attention that Mr. Owens had been
21 involved in a motor vehicle accident and that he had been
22 treated there in their emergency room. And I was looking
23 particularly to see if there was any evidence that he may
24 have suffered a significant traumatic brain injury and
25 received treatment for that or required additional

1 observation.

2 Q. And what did you find?

3 A. The record essentially said that it was a normal exam
4 and that Mr. Owens was released without treatment.

5 Q. In addition to that, did you also review the
6 psychological evaluation conducted by the South Carolina
7 Department of Juvenile Justice in January of 1995?

8 A. Yes, I did.

9 Q. What was the information that you found relevant that
10 was contained in that report?

11 A. That report again contained information about his
12 intellectual functioning. They administered an IQ test.
13 His IQ at this point was measured at 92, which is within the
14 average range. And to me that says that there has clearly
15 been no decline in his intellectual functioning or
16 significant traumatic brain injury.

17 Also within that there was a diagnosis of conduct
18 disorder offered.

19 Q. In that report?

20 A. Yes.

21 Q. And lastly, did you at the time of your initial
22 examination have the clinical notes from the Burchwood
23 Department of Juvenile Justice?

24 A. Yes.

25 Q. Is that what you are referring to there, or are those

1 in addition to that?

2 A. This is what I'm referring to here.

3 Q. Okay. All right. Did you have any additional medical
4 records?

5 A. I did not.

6 Q. That's the scope -- we have now covered then the scope
7 of what you had at the time of your initial examination and
8 evaluation of Mr. Owens?

9 A. Yes.

10 Q. In your examination and evaluation of him, did you
11 detect any information that would suggest to you the
12 presence of a neuropsychological problem? Tell us what that
13 is?

14 A. Well, a neuropsychological problem is any type of
15 problem with an individual's ability to focus their
16 attention, to remember, to put information together, to
17 solve a problem, as well as to anticipate future problems.
18 So it's essentially how does a person think, and what a
19 neuropsychological evaluation does is to assess those
20 different skills.

21 In looking at the information provided by the prior
22 evaluations, four in total that looked at his intellectual
23 functioning, I did not see any significant decline. In
24 fact, the very last intelligence assessment indicated his IQ
25 was within the average range. I just did not see any

1 evidence that there would be any type of neuropsychological
2 problem.

3 Q. All right. Now, based on all that information that we
4 have detailed, or you, did you reach an opinion regarding
5 Mr. Owens' ability and competency and ability to stand
6 trial?

7 A. Yes, I did.

8 Q. And what was that opinion?

9 A. It was my opinion that Mr. Owens did not at that time
10 suffer from any type of significant mental illness, such as
11 schizophrenia, or bipolar disorder, significant depression,
12 that would impair his ability either to participate in the
13 proceedings or assist his attorneys in his defense.

14 Q. All right. So as part of that did you reach an opinion
15 as to his ability to participate in his own defense?

16 A. Yes, I did.

17 Q. And that opinion was?

18 A. That he was fully capable of participating in his
19 defense and that he understood the charges presented and
20 what his role would be and his ability to speak with his
21 attorneys, to confront witnesses, as well as a number of
22 other facets.

23 Q. And did you reach an opinion regarding Mr. Owens'
24 ability to know the difference between right and wrong?

25 A. Yes, I did.

1 Q. What was that opinion?

2 A. My opinion was, again, that there was no significant
3 illness present at the time of the offense, which made it
4 impossible or even difficult for him to know the difference
5 between right and wrong.

6 Q. Did you reach an opinion as to Mr. Owens' ability to
7 conform his behavior to the law at the time he committed
8 these acts?

9 A. Yes, I did.

10 Q. What was that opinion?

11 A. My opinion was that he was fully capable of conforming
12 his behavior to the requirements of the law.

13 Q. What about his ability to conform his behavior to the
14 law at the time that he committed those acts?

15 A. My opinion was that he was able to confirm his behavior
16 at the time that he committed those acts.

17 Q. And at the time that he was scheduled to go to trial?

18 A. Yes.

19 Q. Did you find any mitigating factors bearing on
20 sentencing?

21 A. Yes, initially I did.

22 Q. And did you make this report --

23 Well, what other findings did you make regarding Mr.
24 Owens' mental health, other than the ones that we have
25 discussed?

1 A. Given all the information that I had in front of me, I
2 diagnosed Mr. Owens as having antisocial personality
3 disorder as a primary issue, and secondarily related to
4 being incarcerated and facing possible death penalty of
5 having some depressed mood, what's known as an adjustment
6 disorder.

7 Q. And what is an antisocial personality disorder?

8 A. Antisocial personality disorder is primarily
9 characterized by repeated disregard for the rights of
10 others, for the safety of others, and there are number of
11 different pieces to it. They may be aggressive or may not
12 be. They have been involved repeatedly in criminal
13 activities. They typically has satisfied their own needs at
14 the expense of others.

15 Q. All right. And is this a -- you say -- is this a
16 mental defect or is this just a personality trait?

17 A. This is not a -- as far as research at this point has
18 concerned, this is not a brain disorder or any type of
19 biological disorder. This is what's known as a personality
20 disorder, and personality disorders are believed to be
21 developed from adolescence on into early adulthood through
22 experiences that people have.

23 Q. Is that much like other aspects of every individual's
24 personality is developed from adolescence on up?

25 A. Yes.

1 Q. How does that manifests itself with Mr. Owens; did you
2 determine back in 1999?

3 A. With Mr. Owens -- and I'm going to pull in some pieces
4 of the personality assessment inventory, because that gives
5 a little bit more information, but Mr. Owens is likely to be
6 an individual who is hostile in his relationship with
7 others; that he's very quick to experience anger. And given
8 some of the things that I learned about his childhood, he
9 was certainly shown by a few of the role models in his life
10 that the way you deal with anger is aggressively, as well as
11 with the use of weapons.

12 The personality inventory that I conducted with him
13 also indicates that he's a very suspicious individual. And
14 when added to this antisocial personality disorder, he's
15 likely to see things that most folks would not consider an
16 insult or a slight, he's likely to interpret those as an
17 insult, and coupled with that aggression and use of weapons
18 very likely to act out on that.

19 Q. And were you prepared to testify as to those findings
20 and those opinions that you have just related at the earlier
21 proceeding in this matter of 1999?

22 A. Yes, I was.

23 Q. And did you so inform his attorneys?

24 A. Yes, we discussed it during the guilt phase.

25 Q. Now, having made that diagnosis and being prepared to

1 testify previously, was there an event that altered or what
2 your diagnosis or planned testimony was?

3 A. Yes, there was.

4 Q. And explain to the jury what you understood happened as
5 a part of that event that impacted your ability to testify
6 in 1999.

7 A. Well, originally I was scheduled to testify in the
8 sentencing phase for Mr. Owens, primarily around his --
9 around possible mitigating factors. And the formulation
10 that I come to at that point was that up until the end of
11 the guilt phase, when there was an incident in --

12 Q. Let me stop you there.

13 MR. ARIAIL: Your Honor, there was a matter I need
14 to take up with the court, if I could, out of the presence
15 of the jury.

16 THE COURT: All right. Let me let y'all step back
17 to the jury room while we take up a matter of law.

18 Do not discuss the case, please.

19 (The following takes place outside the presence of
20 the jury panel)

21 MR. ARIAIL: I'm sorry. I apologize.

22 I had not coached this witness as to the necessity
23 of making sure we confined our testimony to a previous -- to
24 the guilt phase. He actually testified in the sentencing
25 phase. My concern was that he was going to cross the line

1 and maybe indicate to this jury that he had testified at the
2 sentencing phase. I just wanted to stop him.

3 THE COURT: As I have listened to his testimony,
4 he has not testified that he's testified in a sentencing
5 phase or --

6 MR. ARIAIL: Right.

7 THE COURT: -- or that there was a sentencing
8 phase.

9 MR. ARIAIL: We are getting to that point, and I
10 just wanted to make sure that he was aware of the court's
11 instruction that the jury does not know about prior
12 sentencing procedures. And so what we are testifying -- we
13 need to keep our testimony generic to the extent that it
14 appears we are testifying or you testified as part of the
15 guilt phase.

16 THE COURT: Overall, based on that voir dire
17 generally of the panels, and individually, particularly
18 individually, we went into it in depth, and as far as we
19 could determine they knew nothing about the case.

20 MR. ARIAIL: Yeah.

21 THE COURT: So -- you were standing up Mr. -- I'll
22 hear from you.

23 MR. GIBSON: I just stretched me legs more than
24 anything else, Your Honor.

25 THE COURT: Okay.

1 MR. ARIAIL: I just didn't want to have this thing
2 blow up right here.

3 Do you understand, Dr. Brunetti, what we are --

4 THE WITNESS: I think you need to clarify it for
5 me.

6 THE COURT: Just don't say anything about a
7 resentencing phase, or you testified at a resentencing
8 phase, or planned to testify about a previous resentencing
9 phase. That's it.

10 THE WITNESS: Okay.

11 MR. ARIAIL: Or a previous sentencing phase. We
12 just --

13 THE COURT: I mean sentencing.

14 MR. ARIAIL: I previously testified, and leave it
15 at that, without using the term sentencing phase or --

16 THE DEFENDANT: Okay.

17 MR. ARIAIL: -- guilt phase. I previously
18 testified in this proceeding. I think that's the way that
19 it is --

20 THE COURT: All right. I assume he did not
21 testify in front of Judge Kittredge?

22 MR. ARIAIL: Yes, he did.

23 MR. GIBSON: He did, Your Honor.

24 THE COURT: So he's testified twice then?

25 MR. ARIAIL: Yes, sir.

1 THE COURT: Okay. All right.

2 MR. ARIAIL: Just previous testimony.

3 THE COURT: Anything else before we keep going?

4 MR. GIBSON: No, Your Honor.

5 MS. STROM: No.

6 THE COURT: Okay.

7 Are they ready to come back?

8 Let's take ten minutes. Several of them need to
9 use the restroom on the jury panel and we will take a break.

10 You can come down.

11 MS. STROM: Don't talk to anyone during this
12 break.

13 THE COURT: You can come down, doctor, and
14 stretch.

15 MR. ARIAIL: You can come down. You just can't
16 talk to anybody.

17 (Whereupon, proceedings were recessed)

18 (Whereupon, proceedings were reconvened)

19 THE COURT: Bring the jury in.

20 (The following takes place in the presence of the
21 jury panel)

22 BY MR. ARIAIL:

23 Q. Dr. Brunetti, let's go back. I'm sorry I interrupted
24 you, but I believe we were to the point that you had
25 completed your evaluation and were preparing -- had met with

1 Mr. Owens' defense attorneys and were preparing to testify.
2 And I asked you was there an event that altered what your
3 diagnosis had been or what your planned testimony was to be?

4 A. Yes, sir, there was.

5 Q. And explain what that event was and explain what you
6 understood happened and how -- tell us how that impacted
7 your opinion at that time.

8 A. My understanding, first of all, is that I was able to
9 review a statement that Mr. Owens had given about an assault
10 in the Greenville detention center. And my understanding of
11 that event was that there was a conflict between Mr. Owens
12 and another inmate there, that there had been words
13 exchanged, that there was a physical fight between the two
14 of them, and that subsequently that other individual had
15 died.

16 Q. Now, you were provided with a statement given by Mr.
17 Owens?

18 A. Yes.

19 Q. And you reviewed that statement as a part of your
20 ongoing evaluation?

21 A. Yes.

22 Q. And did it have an impact upon your opinion?

23 A. Yes, it did.

24 Q. Explain how it impacted your opinion.

25 A. I changed my opinion, because initially my formulation

1 of this case was that Mr. Owens had primarily, when he was
2 violent used a weapon, and that had been typically fairly
3 impulsive and in the midst of a conflict.

4 The description of this event that I read from the
5 statement first of all was not with a weapon. And by
6 weapon, I mean a handgun. This was hands on. He was -- had
7 his hands on the individual hitting, and so on. And my
8 understanding from the statement is that at the point where
9 the individual was incapacitated, he continued to inflict
10 harm on him. And I believe it was mentioned in the
11 statement, because he was moaning, that he had stabbed him
12 with a ballpoint pen, as well as -- his statement was that
13 he had stabbed him with the ballpoint pen, as well as burned
14 him with a lighter.

15 Q. How did that change your opinion?

16 A. That changed my opinion, because initially I was
17 thinking that, like I said before, Mr. Owens is an
18 individual who is likely to react very impulsively, very
19 quickly to see thing statements or actions as slights or as
20 insults, that the rest of us probably wouldn't see those as
21 insults. So my conception was is that he was fairly
22 reactive in terms of his aggression and typically using a
23 handgun.

24 After this incident, I started to feel that -- well, my
25 opinion changed to that this was a much more predatory type

1 of aggression, that it wasn't as distant as using a handgun
2 where all that's required is pulling the trigger.

3 Q. What's the difference or explain the difference between
4 reactive and predatory?

5 A. These are -- these are two different ideas about the
6 intent or the factors that derive aggression. One is that
7 most aggression or most physical aggression verbal
8 aggression that we all have is reactive. There is something
9 that occurs and we react to it, whether it's real or not.
10 So we could perceive something that's inaccurate and react
11 to that circumstance and, say, lash out verbally or
12 physically.

13 Predatory aggression is a little bit different. There
14 is probably a number of different motivators for it, but
15 it's a type of aggression where an individual may actually
16 either plan harming someone or continue beyond what's
17 necessary essentially to stop what appears to them as an
18 insult or an attack on them.

19 Q. And are you familiar with the Department of Corrections
20 manner in which inmates are housed, and specifically are you
21 familiar with the difference between terms general
22 population, supermax, and solitary confinement?

23 A. Yes, I am.

24 Q. Based upon your evaluation of Mr. Owens back in 1999,
25 did you reach an opinion as to how Mr. Owens would have to

1 be housed in the Department of Corrections, if he were
2 placed there?

3 A. Yes, I did.

4 Q. What was that opinion?

5 A. My opinion was at that time that Mr. Owens would need
6 to be housed in a closely supervised, almost total solitary
7 type of confinement, that given the incident that I read the
8 statement of, I was concerned for the safety of others,
9 because of the way the aggression had changed from distant
10 and appearing to be reactive to more predatory.

11 Q. Okay. All right. Since 1999, have we provided you
12 with the records of the South Carolina Department of
13 Corrections concerning Mr. Owens' activities while housed in
14 the Department of Corrections?

15 A. Yes, you have.

16 Q. And have you reviewed those?

17 A. Yes.

18 Q. And what period of time do you recall -- do you have
19 all of those -- did you review all of the records from 1999
20 through 2006?

21 A. I believe so.

22 Q. And following your review of those records, has your
23 opinion concerning the solitary -- virtual solitary
24 confinement of Mr. Owens in any way changed?

25 A. Yes, it has.

1 Q. All right. And what is that opinion? How has it
2 changed?

3 A. In reviewing the records, it appears that even with
4 that level of security, Mr. Owens continues to harm others.

5 Q. Even at that level?

6 A. Yes.

7 Q. Maximum solitary confinement?

8 A. Yes.

9 Q. And regarding a review -- following a review of those
10 records, has your opinion in any way changed as to the
11 predatory aspect of Mr. Owens' behavior?

12 A. Yes.

13 Q. How has it changed?

14 A. I am more convinced that that's the type of aggression
15 that Mr. Owens is engaged in, that it's not a reactive, that
16 there are many instances that I have reviewed that are
17 clearly planned, unprovoked, and --

18 MR. GIBSON: Objection, Your Honor. I object to
19 his characterization.

20 THE COURT: Sustained.

21 BY MR. ARIAIL:

22 Q. Thank you. Answer any questions that defense counsel
23 may have, Dr. Brunetti.

24 CROSS EXAMINATION BY MR. GIBSON:

25 Q. Dr. Brunetti, how are you?

1 A. Good, thank you.

2 Q. I'm Ken Gibson. I was going to ask you a few
3 questions.

4 Now, are you being paid to come here today?

5 A. Yes, I am.

6 Q. How much are you getting paid?

7 A. Per diem per day \$4,000.

8 Q. Is that a flat rate?

9 A. Yup.

10 Q. Now, that \$4,000 per day that you are getting, is that
11 in any way affecting your testimony in this case?

12 A. No, it is not.

13 Q. Is it routine for experts to get paid?

14 A. Yes, it is.

15 Q. Let me ask you this. When was the last time that you
16 actually met with Freddie Owens?

17 A. That would be 1999.

18 Q. What month was that?

19 A. I believe it was January.

20 Q. January?

21 A. Yes.

22 Q. And now after this incident which happened at the jail
23 that changed your mind, did you meet with Freddie Owens
24 again?

25 A. I did not.

1 Q. So let me just get this straight. Your initial change
2 in opinion is based solely upon that statement, is that
3 correct?

4 A. It is.

5 Q. Did you do anything to try to talk with Mr. Owens, try
6 to find out what circumstances that statement was, or -- let
7 me back up. Let me ask that a different way because I think
8 that's probably confusing the way it came out.

9 Did you do anything, as far as talking with Mr. Owens,
10 to confirm whether that statement in its entirety was in
11 fact true?

12 A. I did not speak with Mr. Owens.

13 Q. Did you do anything to confirm whether or not in fact
14 that statement was true?

15 A. I spoke with his attorneys.

16 Q. Okay. If you had wanted to, was there anything which
17 would have kept you from talking to Mr. Owens?

18 A. I don't recall, to be honest with you.

19 Q. Let me back up. Did you ever express a desire to meet
20 with Mr. Owens and talk to him about that incident?

21 A. I spoke with his attorneys about talking with him.

22 Q. Did you ask to talk to him?

23 A. I believe I did.

24 Q. And so why didn't you talk with him?

25 A. If I recall correctly, that was not an option.

1 Q. All right. Now, so let's get this straight. So you
2 have not talked with Mr. Owens since before the first time
3 that you testified, is that correct?

4 A. That's correct.

5 Q. So you wouldn't know -- strike that.

6 When you talked with him the first time that you talked
7 with him, how much time did you spend with him?

8 A. Approximately two hours.

9 Q. Two hours. Is that two hours total? How much time did
10 you spend with him total? How many times did you meet with
11 him?

12 A. Twice.

13 Q. Twice. And first meeting was two hours?

14 A. Approximately.

15 Q. And how long was the second meeting?

16 A. Approximately two hours.

17 Q. So a total of four hours of time that you spent with
18 Mr. Owens?

19 A. Yes.

20 Q. All right. Now, based on this -- I want to go back
21 just a little bit.

22 Based on this situation down at the jail, okay, did you
23 know there was another person involved?

24 A. I'm not sure I understand your question.

25 Q. Did you know that subsequently another person was

1 charged with murder in that case?

2 A. I'm not aware of that.

3 Q. Were you ever made aware the Fred Walker, Jr.?

4 A. I don't believe so.

5 Q. Do you know that to this day that Fred Walker, Jr. has
6 an active murder warrant on that case?

7 A. I did not know that.

8 Q. If you had known that somebody else was involved in
9 that case, would that have affected your opinion in any way?

10 A. It may have.

11 Q. All right. Let me ask you something about some things
12 that you may have seen in your reviewing and assessment of
13 Mr. Owens. Did you ever determine that Mr. Owens had a
14 learning disability?

15 A. Pardon me?

16 Q. I believe that you said that you had determined that
17 Mr. Owens -- at some point Mr. Owens had a learning
18 disability, is that not correct?

19 A. Yes, the records that I reviewed indicated he had a
20 learning disability.

21 Q. And I think you also talked that at least at some
22 significance about that he, in fact, had an impulsivity --

23 A. Yes.

24 Q. -- disorder or condition?

25 A. Not a disorder, but that that was part.

1 Q. Impulsive problem?

2 A. Uh-huh. Yes, that's correct.

3 Q. How about attention disorder, anything like that?

4 A. I did not determine that he had an attention disorder.

5 Q. How about problems with his intellectuality?

6 A. No problems.

7 Q. How about academics?

8 A. Yes.

9 Q. Can you tell me about those?

10 A. Just from what I have from the records, he was
11 struggling with his math abilities in 4th grade, and that
12 tutoring and assistance had been offered and that those
13 abilities had improved.

14 Q. How about social conformity?

15 A. I have to look here.

16 The behavior rating scales that were part of the
17 learning disability evaluation did indicate poor, and this
18 is a quote, poor social conformity.

19 Q. How about anger control?

20 A. Again, those same scales, the quote is poor anger
21 control.

22 Q. Okay. And, in fact, some of those things that we have
23 just talked about were documented as early as elementary
24 school, is that not correct?

25 A. That is correct.

1 Q. All right. Did you, in your review and assessment in
2 this case, determine that Mr. Owens had any evidence of
3 depression?

4 A. Yes.

5 Q. Did he not have a diagnosis of a serious depression
6 disorder as far back as 1997?

7 A. My records indicated that Mr. Owens was evaluated in
8 1997, for depression, and he was diagnosed with major
9 depression. This is a quote, major depression, moderate,
10 and that he was provided an antidepressant.

11 Q. Okay. Now, let me ask you something else. Can
12 depression in children present as irritability, impulsivity,
13 and resistance?

14 A. Yes, it can.

15 Q. And as a clinician, how do you determine what degree of
16 impulsiveness comes from personal choice versus an
17 underlying untreated mental condition?

18 A. That's a very tough question to answer.

19 Q. All right.

20 MR. GIBSON: Just a second.

21 (Off the record)

22 (Back on the record)

23 BY MR. GIBSON:

24 Q. I just want to clarify one last thing before I let you
25 get off the stand.

1 It's my understanding that you are licensed in South
2 Carolina currently?

3 A. Yes, I am.

4 Q. And the license has not lapsed?

5 A. I allowed that license to lapse and I have renewed it.

6 Q. You have renewed it since when?

7 A. That license -- I have a temporary license to practice
8 psychology in South Carolina.

9 Q. You have a temporary license?

10 A. Yes.

11 Q. Okay.

12 MR. GIBSON: Thank you, Dr. Brunetti.

13 MR. ARIAIL: Nothing further, Your Honor.

14 THE COURT: Thank you, sir. You may come down.

15 MR. ARIAIL: Could Dr. Brunetti be excused to
16 return to Minnesota here this afternoon?

17 MR. GIBSON: Without objection, Your Honor.

18 THE COURT: Without objection. Thank you, sir.

19 THE WITNESS: Thank you.

20 MR. ARIAIL: We call Dean Brown.

21 SLED AGENT GARY DEAN BROWN, having been first duly
22 sworn, testified as follows:

23 THE CLERK: State your full name for the record,
24 please.

25 THE WITNESS: Gary Dean Brown.

1 THE CLERK: Thank you. Be seated.

2 DIRECT EXAMINATION BY MR. ARIAIL:

3 Q. State your full name for the record, please, sir.

4 A. Gary Dean Brown.

5 Q. And by whom are you employed?

6 A. With SLED, the South Carolina Law Enforcement Division.

7 Q. And how long have you been employed with the South
8 Carolina Law Enforcement Division?

9 A. For approximately eight years.

10 Q. And were you so employed on February the 16th of 1999?

11 A. Yes, sir.

12 Q. I want to direct your attention to that day and ask if
13 you had occasion to go to the Greenville County Detention
14 Center as part of your official SLED duties?

15 A. Yes, sir.

16 Q. What was your purpose?

17 A. I had received a telephone call at my residence from
18 headquarters that my captain had told them to notify me to
19 be en route, that an inmate had died, and SLED is called in
20 to investigate matters. We are an independent agency.

21 Q. And did you respond to the law enforcement center?

22 A. Yes, sir.

23 Q. What time did you arrive?

24 A. Approximately fifteen 'til nine a.m..

25 Q. And where did you go first in that facility?

1 A. I went to the front desk and a detention officer
2 escorted me to cell block C.

3 Q. Who was with you?

4 A. I was by myself at the time. When I arrived at cell
5 block C, I did not enter. I stood in the hall and looked in
6 and SLED agent Elizabeth Corley was inside, along with SLED
7 lieutenant Randall Stewart, and some other people.

8 Q. And did you eventually go into cell block C?

9 A. No, sir, I stayed out in the hall and just looked in.

10 Q. And what happened? Where did you go next?

11 A. Agent Corley and Lieutenant Stewart came out and
12 Lieutenant Stewart informed me that we were going to go
13 upstairs, that Agent Corley and myself was going to
14 interview an inmate named Freddie Owens.

15 At the end of that hall we met two detention officers
16 that were escorting Freddie Owens. We went from there
17 upstairs to an office and myself and Agent Corley and
18 Freddie Owens went into the office.

19 Q. So the three of you, yourself, Ms. Corley and Mr.
20 Owens, went into this office?

21 A. Yes, sir.

22 Q. Anybody else go in the office with you?

23 A. No, sir.

24 Q. How were you dressed?

25 A. I had a suit on, suit and tie.

1 Q. How was Ms. Corley dressed?

2 A. A pants suit.

3 Q. Civilian type clothing?

4 A. Yes, sir.

5 Q. And what was your understanding of the purpose in
6 meeting with Mr. Owens?

7 A. Lieutenant Stewart had told us that he was a suspect in
8 the homicide of Christopher Lee.

9 Q. And your purpose then was to interview him?

10 A. Yes, sir.

11 Q. Describe the office that you were in. How big is it?

12 A. Small, approximately 12 by 12. It had one large desk
13 and I believe a small desk with three or four chairs in it
14 and a computer.

15 Q. Where did the three of y'all sit?

16 A. Agent Corley sat immediately behind the desk, and I was
17 to her right at the corner of the desk, and Freddie Owens
18 sat in front of the desk.

19 Q. Did you identify yourselves to Mr. Owens?

20 A. Yes, sir. We told him we were SLED agents and showed
21 him our credentials.

22 Q. And did you tell him why you were there?

23 A. Yes.

24 Q. The purpose?

25 A. Yes.

1 Q. And what was that?

2 A. We told him that we were there to talk to him about the
3 murder of Christopher Lee.

4 Q. How was he dressed?

5 A. He had the detention facility jumpsuit on. I believe
6 it was orange.

7 Q. And was he shackled?

8 A. Yes, sir, he was handcuffed behind his back.

9 Q. And did he indicate to you that he understood who you
10 were?

11 A. Yes, sir.

12 Q. Did he indicate to you he understood why you were
13 there?

14 A. Yes, sir.

15 Q. Did he indicate to you that he was willing to talk to
16 you?

17 A. Yes, sir.

18 Q. At that point with the three of y'all in the room with
19 Mr. Owens sitting in front of the desk, was there any force
20 or pressure exerted on Mr. Owens by you or Ms. Corley, or
21 anyone else, in your presence --

22 A. No, sir.

23 Q. -- to make him talk to you?

24 A. No, sir.

25 Q. Did he appear willing to talk to you?

1 A. Yes, sir.

2 Q. Based on your observations?

3 A. Yes, sir.

4 Q. And he was at that time a suspect in that Christopher
5 Lee death?

6 A. Yes, sir.

7 Q. Prior to talking to him, did you advise him of his
8 rights?

9 A. Agent Corley did, yes, sir. She read him his rights
10 and allowed him to read along with her.

11 Q. Okay. And were you present, observing, hearing,
12 watching that take place?

13 A. Yes, sir.

14 Q. Let me show you what's been marked State's Exhibit No.
15 26 and ask you if you are familiar with that document?

16 A. Yes, sir.

17 Q. And is that the rights form that you were talking
18 about?

19 A. Yes, sir.

20 Q. And is this your signature, along with Ms. Corley?

21 A. Yes, sir, it is.

22 Q. And Mr. Owens?

23 A. Yes, sir.

24 Q. Okay.

25 MR. ARIAIL: Your Honor, we would like to offer

1 State's Exhibit No. 26.

2 MR. GIBSON: Without objection, Your Honor.

3 THE COURT: Without objection..

4 BY MR. ARIAIL:

5 Q. Mr. Brown, what I would like to do is put this so the
6 jury can see it.

7 What is this document marked State's Exhibit No. 26?

8 A. It's the Miranda Rights notifying a suspect that he has
9 the right to have counsel, basically.

10 Q. And you say Ms. Corley is the one that read this to him
11 in your presence?

12 A. Yes, sir.

13 Q. Anyone else in the room, other than you, Mr. Owens and
14 Ms. Corley?

15 A. No, sir.

16 Q. Explain to the jury how Ms. Corley went down the list
17 and explained these rights to Mr. Owens.

18 A. She --

19 Q. Well, first we will start at the top with the date.
20 Who wrote that in?

21 A. Agent Corley write the date and time in.

22 Q. This is a standard form --

23 A. Yes.

24 Q. -- SLED issues?

25 A. Yes, sir.

1 Q. How would she go about doing the information on the
2 paper?

3 A. She turned the paper around and pushed it up towards
4 the end of the desk -- I mean towards the front of the desk
5 where Mr. Owens could see it and she leaned over and leaned
6 to the side and took her finger and went down each line.
7 She read off each line. After she finished, she asked him
8 if he understood and he said yes.

9 Q. All right. And did she go through each one of the
10 rights on the line?

11 A. Yes, sir.

12 Q. So starting at the top, did she actually read out
13 "before we ask you any questions, you must understand your
14 rights"?

15 A. Yes, sir, she did.

16 Q. And then after she read that, would he answer or in any
17 way indicate he understood what she was saying?

18 A. Yes, sir.

19 Q. How would he do that? How did he?

20 A. She read each one and -- she read them all the way
21 down. She moved her finger down each one. And at the end
22 she asked "do you understand each of these," and he said
23 yes.

24 Q. And is that Mr. Owens signature at the bottom?

25 A. Yes, sir.

1 Q. And then after she read him the rights on the form, did
2 you discuss with him or did she discuss with him waiving
3 those rights and talking with you?

4 A. Yes, sir, she asked him if he was willing to talk with
5 us about it and he said yes.

6 She asked him if he was willing to sign the form and he
7 said yes.

8 I stepped to the door and asked for a detention officer
9 which was outside the door to come in and to take the cuffs
10 off of Mr. Owens. He did this. The detention officer
11 stepped back outside as soon as he had removed the cuffs
12 and then Mr. Owens signed the form.

13 Q. Based on your observations, did he appear to understand
14 his rights?

15 A. Yes, sir.

16 Q. And did he appear to understand that he was waiving his
17 rights?

18 A. Yes, sir.

19 Q. And did he sign the part at the bottom there that
20 second under waiver of rights?

21 A. Yes, sir. Agent Corley asked him to read that
22 carefully and if he was willing to talk with us then, to
23 sign on the bottom, the second signature that he made.

24 Q. And that's Agent Corley, witness signature?

25 A. Yes, sir.

1 Q. And under that, is that your witness signature?

2 A. Yes, sir.

3 Q. And the concluding time?

4 A. Yes, sir, I did that.

5 Q. Okay. You wrote that in?

6 A. Yes, sir.

7 Q. Was there any pressure or force exerted by you or Ms.
8 Corley, or anyone else, on Mr. Owens during this process?

9 A. No, sir.

10 Q. Did anyone promise him anything or hold out any hope of
11 reward if he would waive his rights?

12 A. No, sir.

13 Q. Was there any pressure or conversation by the detention
14 officer who came in to remove the shackles?

15 A. No, sir, he did not say anything to him.

16 Q. Were you armed?

17 A. No, sir.

18 Q. Was Ms. Corley armed?

19 A. No, sir.

20 Q. At any time during the process did you leave Mr. Owens
21 presence?

22 A. No, sir.

23 Q. Now, following his execution of the waiver of rights
24 form, did he, in fact, talk to you about the events that
25 surrounded the death of Christopher Lee in the detention

1 center on February 16th, 1999?

2 A. Yes, sir.

3 Q. Were there any threats, coercions, promises, hope of
4 reward, pressure, anything exerted on Mr. Owens in order to
5 get him to talk to you and give a written statement?

6 A. No, sir.

7 Q. Did he appear willing to do that?

8 A. Very much so, yes, sir.

9 Q. And did he tell you about the event?

10 A. Yes, sir.

11 Q. At any time during the course of the conversation that
12 you had with him when he was relating these events, did he
13 indicate that he wanted an attorney?

14 A. No, sir.

15 Q. At any time did he indicate he wished to stop talking?

16 A. No, sir.

17 Q. Was a written statement eventually taken from him by
18 you?

19 A. Yes, sir.

20 Q. Explain that process what you did to get the written or
21 culminating the written statement?

22 A. Mr. Owens gave an oral statement. When he finished
23 talking, Agent Corley asked him if he was willing to give us
24 a written statement and he said yes.

25 I switched seats with Agent Corley. I had my notebook.

1 I had the statement forms in it. I took a statement form
2 out, turned it around and showed it to him. I asked Freddie
3 if he wanted to write it or if he wanted me to write it, and
4 that if I wrote it, it would be his words, and he said that
5 he wanted me to write it.

6 The top of the statement form is for personal
7 information. I filled that in.

8 And then as Mr. Owens would tell what happened, I would
9 write it down. We would write approximately two sentences
10 and then I would read them back to him and say is this
11 correct, and then he would say yes, and we did this
12 throughout entire statement.

13 Q. And you hand wrote the statement on the form for him?

14 A. Yes, sir. They're pretty strict about statements not
15 being able to be read by our supervisors and the solicitor's
16 office, and so that's why on a lot of them we write them.
17 We write their words.

18 Q. So they can be legible?

19 A. Yes, sir.

20 Q. Let me show you this document which has been marked as
21 State's Exhibit No. 27, consisting of three pages, and ask
22 if you are familiar with that?

23 A. Yes, sir.

24 Q. And is that the statement that you took or wrote based
25 on what Mr. Owens told you?

1 A. Yes, sir.

2 Q. At the detention center?

3 A. Yes, sir.

4 Q. Okay.

5 MR. ARIAIL: Your Honor, we would like to --

6 THE COURT: I'm going to ask the jury to step out
7 just briefly. I'm going to tell you every time to go out
8 don't discuss it or anything.

9 (The following takes place outside the presence of
10 the jury panel)

11 MR. GIBSON: Your Honor, just a second.

12 THE COURT: This is a very important proceeding
13 and the court understands the law to be before a statement
14 can be used, we must go into it under Jackson v. Denno, if
15 it's going to be used against a defendant in a criminal
16 proceeding. And the court must find by a preponderance of
17 the evidence that it was freely, voluntarily, knowingly and
18 intelligently made.

19 As far as I know in this proceeding and the guilt
20 phase, this statement has never been introduced. There is
21 nothing that would come in at this time that the jury
22 doesn't know anything about the statement. So I am going to
23 make the determination by the greater weight or
24 preponderance of the evidence, under the law, if it was made
25 freely, voluntarily, knowingly and intelligently. In order

1 to do that, I must let the defense question this gentleman
2 and let them produce any evidence that they care to before I
3 can find by the greater weight or preponderance of the
4 evidence under Jackson v. Denno that this statement should
5 come in.

6 Mr. Ariail, do you have anything else? You have
7 offered the statement.

8 MR. ARIAIL: I have offered the statement. I'll
9 stop at this point with that.

10 THE COURT: And in listening -- all of us has been
11 listening very carefully up to this point. The only thing
12 we have been through are the Miranda Warnings and everything
13 and we haven't gone into anything in regard to the
14 statement.

15 MR. ARIAIL: That's correct.

16 THE COURT: Mr. Godfrey or Mr. Gibson, I would
17 permit y'all to examine Mr. Brown, Agent Brown, Captain
18 Brown, I'm not sure.

19 THE WITNESS: Matters none.

20 MR. GODFREY: May it please the court, Ken Gibson
21 is actually going to do the cross on Dean Brown, but he's
22 requested that I go ahead and handle the Jackson v. Denno
23 part.

24 THE COURT: That's fine.

25 MR. GODFREY: Do you have any problems with that.

1 THE COURT: Yes, sir, no problem with that. You
2 can offer testimony or anything that you want to do in
3 regard to the statement. This is just in regard to the
4 statement.

5 MR. GODFREY: Right.

6 (Whereupon, the following was a Jackson v. Denno
7 hearing)

8 CROSS EXAMINATION BY MR. GODFREY:

9 Q. Agent, when you first saw Freddie Owens, how long was
10 it after the incident had occurred?

11 A. It -- I don't have the case jacket in front of me, but
12 if I'm not mistaken, I believe the incident occurred
13 sometime around four o'clock -- four a.m., I mean, that
14 morning.

15 Q. And about you were talking with him at 11:05?

16 A. I believe.

17 Q. 11:05?

18 A. I believe that it ended at 11:05 a.m..

19 Q. So it was just a few hours after the incident?

20 A. Yes, sir.

21 Q. What was Freddie Owens' demeanor?

22 A. Very calm, willing to talk.

23 Q. Did you ask him if he was under the influence of any
24 drugs?

25 A. No, sir, I did not at that time.

1 Q. Isn't it unusual for somebody to be calm after an
2 incident like this?

3 A. Given the amount of time -- I have never killed anyone,
4 so I wouldn't know, sir.

5 Q. But you have interviewed other people, haven't you?

6 A. Yes, sir.

7 Q. How long have you been -- strike that.

8 So he was very calm?

9 A. Yes, sir.

10 Q. Did he appear to know what was going on?

11 A. Yes, sir.

12 Q. And how did you make that determination?

13 A. He -- in my experience he seemed alert. He -- it did
14 not take long to answer a question if he was asked. He
15 didn't appear sleepy.

16 Q. And, of course, he had -- do you know if he was up all
17 night?

18 A. Only from his statement, so I don't know how much sleep
19 he received the night before.

20 Q. But you never asked him if he was on drugs?

21 A. No, sir.

22 Q. Did you check with the jail medical to see if he had
23 been given any medication?

24 A. No, sir.

25 Q. Were his eyes bloodshot?

1 A. As well as I can recall, nothing out of the ordinary,
2 no, sir.

3 Q. Did he have like a thick tongue? Was he having trouble
4 talking or anything?

5 A. No, sir, not at all.

6 Q. So when he was presented -- and you were looking at
7 him, he had a flat affect?

8 A. He appeared normal, like anyone that you would
9 interview.

10 Q. Now, was he brought to you or did you bring him -- or
11 did they bring him to you?

12 A. They met us in the downstairs hallway with Freddie.

13 Q. During the interview did he remain handcuffed?

14 A. Except for the two times that he signed documents, yes,
15 sir.

16 Q. And was -- did he continue to be handcuffed behind his
17 back, or was he handcuffed in front?

18 A. I'm pretty sure it was behind his back all the time.

19 Q. And it was you and Officer Corley, and who else was in
20 the room?

21 A. Just the three of us.

22 Q. This is a 12 X 12 room?

23 A. Approximately, yes, sir.

24 Q. Did you have your service weapon with you?

25 A. No, sir.

1 Q. Were there any weapons in the room? Did Corley have a
2 weapon?

3 A. No, sir.

4 Q. Did you make any promises to him that if he cooperated,
5 that you all would speak to the solicitor for him?

6 A. No, sir.

7 Q. Corley didn't do nothing like that either?

8 A. No, sir.

9 Q. Did you threaten him in any way, like if you do not
10 cooperate with us now, we will make sure that you get the
11 maximum?

12 A. No, sir, none of that.

13 Q. So how did you begin the interview?

14 A. We -- Agent Corley simply asked him if he was willing
15 to talk to us about what happened last night.

16 Q. And his response was?

17 A. Yes, he was willing.

18 Q. Okay. Did he just say yes, or did he give yeah?

19 A. He just simply said yes.

20 Q. And, again, he was flat or had no expression when he
21 did it?

22 A. Basically, yes, sir. He -- he was very willing to
23 talk, almost bragging.

24 Q. He was almost what, sir?

25 A. In a bragging sense of wanting to talk with us.

1 Q. Bragging.

2 And did -- what were your questions to him?

3 A. He was asked by Agent Corley to tell us what happened.

4 Q. And then he just began?

5 A. Yes, sir.

6 Q. . And is that when you said can I type this and it will
7 be your words?

8 A. No, sir, we -- we took an oral statement first. In
9 other words, we just sat there and let him tell us what
10 happened. And then at the end of that Agent Corley asked if
11 he was willing to give us a written statement and he said
12 yes.

13 Q. So an oral statement was taken. Were there notes made
14 of the oral statement?

15 A. I made a few brief outline notes just in order notes,
16 in other words, what happened first and second.

17 Q. But nothing in detail?

18 A. No, sir.

19 Q. And then after that is when the written statement was
20 taken?

21 A. Yes, sir.

22 Q. So you are saying he told you the same story twice?

23 A. Yes, sir.

24 Q. In a bragging way?

25 A. Yes, sir.

1 Q. Did you question him about his educational background?

2 A. It was asked how far in school that he had went, and it
3 was asked by Agent Corley when we did the Miranda Warnings
4 if he could read and write and he stated yes.

5 Then when I started the written statement, there is a
6 place on it to be a yes or no question as to whether or not
7 he can read or write, and I asked him a second time, and
8 both times he stated that he could.

9 MR. GODFREY: I have nothing further, Your Honor.

10 THE COURT: Anything else, Mr. Ariail?

11 MR. ARIAIL: No, Your Honor.

12 THE COURT: Okay. I could bring him down if you
13 would like to present any evidence, Mr. Godfrey.

14 MR. GODFREY: Beg the court's indulgence.

15 (Off the record)

16 (Back on the record)

17 MR. GODFREY: May it please the court, we offer
18 nothing further.

19 THE COURT: Okay. We have heard testimony that's
20 been introduced into evidence in regard to Mr. Owens', of
21 course, his intelligence. His intelligence has increased,
22 based on the scores testified to by the clinical
23 psychiatrist. His intelligence scores were going up. And
24 we -- I would -- and as far as competency goes. There is
25 really no issue about his competency to stand trial.

1 I would find that based on everything that I have
2 heard by the preponderance of the evidence that any
3 statement that he was -- that he gave was freely,
4 voluntarily, knowingly and intelligently given, based on all
5 the evidence and testimony that I have heard about this
6 statement. And pursuant to Jackson v. Denno I would let it
7 come in.

8 But, again, the evidence has been presented that
9 the jury hasn't heard anything they would have to hear it
10 anyway. I have heard it. We have both heard it together,
11 essentially just save a step, and I didn't know it was
12 coming this way, but it did, and that's fine the way it
13 occurred.

14 I would still have to instruct the jury before
15 they considered any statement, they would have to conclude
16 beyond a reasonable doubt -- of course, I'll give that
17 definition to them, that the statement was made freely,
18 voluntarily, knowingly and intelligently.

19 It clearly appears to me that it may be in the
20 nature of a confession and that's the reason I did that.

21 MR. GODFREY: May it please the court?

22 THE COURT: Yes, sir.

23 MR. GODFREY: I believe that -- and correct me if
24 I'm wrong, I believe you have just ruled and stated that
25 this statement could come in?

1 THE COURT: Yes, sir.

2 MR. GODFREY: Judge, I would at this time like to
3 put on the record --

4 THE COURT: Wait a minute. I should not rule and
5 I would retract that. I should not rule before I give you a
6 chance to make a statement, Mr. Godfrey, and I apologize to
7 you for that.

8 MR. GODFREY: Judge, the problem that the defense
9 has with this statement is that we have the officer up here
10 who was testifying and is going to testify about what
11 Freddie said. If we put this statement in, just bolstering,
12 plus it gives a grossly unfair prejudice to the State
13 against my client. The jury is going to have a confession
14 back there, and this is a confession. They are going to
15 have a confession back there that they can read, reread and
16 reread, and I believe that it is sufficient to have the
17 officer testify, as he is doing. If he continues to testify
18 and they have this, it's bolstering and it's prejudicial.

19 THE COURT: I do not know how Mr. Ariail had
20 intended to present it at this point, and I can't -- and I
21 didn't know if he was going to let -- I don't know. It
22 would just be speculation as to whether he's going to let
23 him testify as to what he told him. Well, he offered the
24 statement in evidence.

25 MR. ARIAIL: Yes.

1 THE COURT: If the statement comes in, he can --
2 the statement can be read, if I let it in. So I guess we
3 will have to cross that bridge when we get there.

4 MR. ARIAIL: That's what I'm going to do.

5 THE COURT: You can give him the statement, if
6 it's in, and he can read from the statement.

7 MR. ARIAIL: Well, I was going to suggest a way.
8 I was going to introduce it. Once it's introduced, pursuant
9 to your ruling, I was going to publish it, as I publish it
10 in the last two, by just reading it to the jury.

11 THE COURT: I think --

12 MR. ARIAIL: Rather than asking him.

13 THE COURT: I think the statement -- if he's going
14 to testify. Well, I hate to make advisory rulings, but you
15 have offered the statement.

16 MR. ARIAIL: Yes.

17 THE COURT: You can publish that statement as it's
18 written. If he offered his testimony as to what he told him
19 verbally, and it would differ from that, Mr. Godfrey would
20 be correct.

21 MR. ARIAIL: I do not intend to ask this officer
22 anything about what was in the statement.

23 THE COURT: All right.

24 MR. ARIAIL: Publish it.

25 THE COURT: I'm going to -- while we were taking

1 this break, I thought it a good idea to let the jury order
2 their lunch. And by doing that, and reason I say that is I
3 have got to let the staff and all the workers here order
4 their lunch too so Mr. Bond can go after it, so we need to
5 take ten minutes. They have already written it, but these
6 folks have not -- my helper has got to order their lunch so
7 we will take ten.

8 (Whereupon, the Jackson v. Denno hearing was
9 concluded)

10 (Whereupon, proceedings were recessed)

11 (Whereupon, proceedings were reconvened)

12 THE COURT: A juror has indicated he needs to
13 discuss something with me before we proceed.

14 I'm doing it on the record right here and the
15 record will be made so we can all review.

16 Mr. Asire.

17 (Whereupon, Juror Number 474, Christian L. Zeimet,
18 was brought into the courtroom)

19 THE COURT: Mr. Zeimet?

20 JUROR NUMBER 474: On Wednesday when I called in
21 to work to tell them that I was going to be not able to
22 come, I was going to be probably serving jury duty, the
23 co-worker I was talking to said I hope you don't end up on
24 the case with the crazy guy that stabbed the guy with the
25 pen. I didn't -- I didn't at the time. All I said was

1 whatever man. It never dawned on me that that was this case
2 until the testimony that just happened.

3 THE COURT: That's it. I appreciate you telling
4 us. And this evidence is going to come in right now. You
5 would have heard it anyway.

6 JUROR NUMBER 474: Okay.

7 THE COURT: But I'm going -- I needed to make a
8 record of what you said because we have got to be real
9 careful.

10 JUROR NUMBER 474: Oh, yeah.

11 THE COURT: And when you leave I'm going to go
12 over with this record what you have just told me.

13 JUROR NUMBER 474: Okay.

14 THE COURT: And I really don't think it's going to
15 be a problem.

16 JUROR NUMBER 474: I didn't either.

17 THE COURT: Thank you so much.

18 JUROR NUMBER 474: It put a pit in my stomach when
19 he said it.

20 THE COURT: Just don't discuss anything about that
21 with your fellow jurors.

22 JUROR NUMBER 474: Okay.

23 (Whereupon, Juror Number 474 was taken out of the
24 courtroom)

25 THE COURT: Okay. For the -- I'll publish it on

1 the record exactly what he told me.

2 He stated that when he called back to his
3 employment, wherever that is, to tell them that he had been
4 selected for the jury to sit on the case, that he would not
5 report to work. And the lady that was on the phone, to say
6 almost exactly what he told me, "I hope you are not on the
7 jury for the crazy person that stabbed the person in prison
8 and killed his cellmate," something to that effect. And
9 he -- as he told me that, straight up and honestly, that's
10 what he reported it, and he said that was just her response
11 when he said "I will not be able to come back to work. I
12 have been picked on the jury." And she said something to
13 the effect "I hope you are not on that crazy case where the
14 guy killed his cellmate, or stabbed him." And that's all.
15 That's all that was said, and that was nothing that he -- I
16 do not believe that he intentionally exposed himself to any
17 outside source. And the way he gave to it me, he didn't
18 know it was coming and that's all he heard. And I think
19 that under the law there has got to be -- the juror has got
20 to do something contrary to my order or something, and I do
21 not believe that was contrary to the order.

22 MR. GODFREY: I agree.

23 THE COURT: Yes, sir.

24 MR. GIBSON: Did the court inquire as to whether
25 or not that comment would affect his ability in any way to

1 render a fair sentence either way?

2 THE COURT: Well, I don't know what he's going to
3 hear. I don't -- he may not be able to answer that until we
4 hear what's going to come in. I don't know.

5 MR. ARIAIL: I think he's asking if the comment
6 from the woman would have changed his ability to be a fair
7 juror.

8 MR. GIBSON: Exactly.

9 MR. ARIAIL: Not the substance, but the comment
10 coming from that person.

11 THE COURT: Well, he has no idea that the
12 statement -- he hadn't heard the statement come in, so he
13 would probably say yes, I mean, without knowing that the
14 evidence is coming in. Do you understand what I'm -- he
15 hasn't heard the statement.

16 MR. GIBSON: Yes, sir, but what I'm saying is I
17 just want to make sure that --

18 And let me sort of ask that this -- not so much
19 hypothetical, but a situational thing.

20 If -- what I'm concerned about is that this
21 comment from this lady and this characterization of this
22 case from this lady, I just want to make sure that that
23 characterization from this lady is not going to keep him
24 from being able to be fair to both sides in this case. Do
25 you understand what I'm saying?

1 I mean, I understand he hadn't heard the statement
2 yet, and quite frankly this is probably the best time to ask
3 him that, considering that he hasn't heard the statement,
4 because he can answer it based solely on what he heard from
5 this lady.

6 THE COURT: I understand what you are asking. You
7 want to know if her characterization would affect his
8 ability, not what's included in the statement?

9 MR. GIBSON: Exactly right, Your Honor.

10 MR. ARIAIL: Let's assume that this statement by
11 her took place earlier this week before we even got into the
12 trial. We would have asked in voir dire are you certain --

13 THE COURT: That's right.

14 MR. ARIAIL: We certainly would have asked in voir
15 dire would that affect your ability to be fair.

16 THE COURT: But his -- his -- I understand Mr.
17 Gibson's question is the characterization --

18 MR. GIBSON: That's right.

19 THE COURT: -- by the lady about him being crazy,
20 or something like that, and stabbing him, if that's going to
21 have any effect. Okay.

22 MR. ARIAIL: Yeah, not the substance.

23 THE COURT: Not the substance.

24 MR. GIBSON: Yes, sir.

25 THE COURT: Ask him to come right back in.

1 (Whereupon, Juror Number 474 was brought back into
2 the courtroom)

3 THE COURT: Okay, Mr. Zeimet, we are satisfied
4 that you did not intentionally expose yourself to any
5 information.

6 The issue and the question is -- and if you don't
7 understand it you tell me.

8 JUROR NUMBER 474: Okay.

9 THE COURT: Was the characterization of what this
10 lady said to you on the phone about how she described the
11 case -- as you indicated to me this -- that she hoped you
12 weren't on the jury where this crazy guy stabbed the person
13 in the cell, is that correct?

14 JUROR NUMBER 474: Yes.

15 THE COURT: Would her characterization of what
16 happened here have any bearing on your decision? That's
17 something outside the courtroom.

18 JUROR NUMBER 474: No.

19 THE COURT: Okay. Now, if the statement comes in,
20 you could only consider that and not anything this lady told
21 you. Do you understand that?

22 JUROR NUMBER 474: Yes, sir.

23 THE COURT: And you could completely dismiss from
24 your mind any characterization she made of the defendant?

25 JUROR NUMBER 474: Yes.

1 THE COURT: And only decide it what you heard in
2 the courtroom?

3 JUROR NUMBER 474: Yes. I dismissed it anyway.

4 THE COURT: Okay.

5 (Whereupon, Juror Number 474 was taken out of the
6 courtroom)

7 THE COURT: Anything else, gentlemen?

8 MR. GIBSON: No, Your Honor. Defense is
9 satisfied.

10 THE COURT: I find that he did not intentionally
11 ask for this. It was something spontaneous. We made a
12 record of it. And the characterization of it he says he
13 will dismiss from his mind and only whatever is in that. I
14 haven't seen that document, and we will just -- he said he
15 would just consider that, so I'm satisfied of that and I'm
16 going to leave him on the jury.

17 Any objection?

18 MR. GODFREY: No objection from the defense.

19 MR. ARIAIL: No objection.

20 THE COURT: We will take ten.

21 MR. GIBSON: Thank you, Your Honor.

22 (Whereupon, proceedings were recessed)

23 (Whereupon, proceedings were reconvened)

24 THE COURT: Bring the jury in.

25 (The following takes place in the presence of the

1 jury panel)

2 CONT'D DIRECT EXAMINATION BY MR. ARIAIL:

3 THE COURT: The statement was offered and the
4 court has ruled that it may come into evidence.

5 MR. ARIAIL: The statement is in evidence.

6 If it please the court, could I publish the
7 statement to the jury?

8 THE COURT: Yes, sir.

9 MR. ARIAIL: The statement is entitled "I, Freddie
10 Owens, am not under arrest for nor am I being detained for
11 any criminal offenses concerning the events I'm about to
12 make known to Special Agent Elizabeth Corley and Special
13 Agent Dean Brown. I understand I'm free to walk away
14 without saying anything and I volunteer the following
15 information of my own free will for whatever purposes it may
16 serve.

17 "I am 20 years of age and I live at 11-A Hall
18 Street, Greenville, South Carolina. I can read and write
19 and completed the 10th grade in school. Date of birth
20 3-18-78.

21 "I, Freddie E. Owens, have been read my Miranda
22 Rights by Elizabeth Corley. I would like Dean Brown to
23 write this statement for me.

24 "At eleven p.m., on 2-15-99, myself and the other
25 inmates in my cell block watched the news and saw that I was

1 found guilty. I then worked out and took a shower. I went
2 to bed and woke up whenever they came to get one of the
3 other inmates to take him to Perry. This was around three
4 a.m.. While they were getting the guy ready to go to Perry,
5 Christopher Lee said you won't be the only one because
6 Freddie is coming down there with you. I told him to shut
7 the fuck up. He told me his cousin was on the jury. I
8 asked him if he knew that they convicted me. He said fuck
9 you, I know because my cousin was on the jury. End quote.
10 I then walked into his cell and hit him in the eye. He fell
11 down on his back. I got on top and started hitting him
12 mostly in the face and throat. I took a pen from his right
13 hand and my right hand and stabbed him in his right eye. I
14 then tried to stab him in his chest but the pen would not go
15 in. I then stabbed him in his throat. I don't know if the
16 pen went into his throat or not. He started bleeding out of
17 his mouth. There was a sheet tied into a snare laying on
18 his bed. I reached and got it and put it over his head onto
19 his neck. I wrapped it around my left hand and pulled it
20 tight. I started hitting him in the face with my right
21 hand. Then I started choking him with my right hand and
22 pounding his head against the floor. He never fought back
23 after the first punch he was out of it. He was still
24 breathing and the stuff coming out of his mouth stunk, so I
25 stood up and stomped his head and body with my feet. I saw

1 a black and blue lighter under the bunk. I grabbed it and
2 burned him around the eye and on the left side of his head.
3 I rammed his head into the wall. He was still moaning and
4 breathing. I walked out of the cell to leave him alone. I
5 heard the crazy moaning again, so I grabbed the pen off the
6 floor where I had thrown it and went back into his cell. I
7 got back over him and rammed the pen up his right nostril.
8 I closed his left nostril with my left hand and started
9 choking him with my right hand. The sheet was still around
10 his neck. I was choking him above the sheet. Throughout
11 all of the above he was moaning and breathing. I kept
12 checking him to see if he was dead. I would check his pulse
13 on his wrist, and I put my ear beside his neck and chest to
14 hear if he was breathing. I wanted him to be dead at that
15 time. I finally thought he was dead, so I threw him on his
16 bunk and covered him up. The first time I put him on the
17 bunk he fell off. I then packed my stuff and put my
18 mattress on the table and went to sleep. While I packed my
19 stuff, the black guy that had been on the top bunk of
20 Christopher's cell the whole time this went on got down and
21 put his mattress on the other table and sit down. Everyone
22 in the cell block was awake when I left Christopher. I woke
23 up when Hefner opened the door to bring in breakfast. When
24 I got in the line I was third in line and Sergeant McNeill
25 walked by and I told him to cuff me. He said he would not,

1 and I told him he would if he with go into Christopher's
2 cell. He looked into the cell and Hefner went into the
3 cell.. Sergeant McNeill told Hefner to cuff me, which he
4 did. Sergeant McNeill then called someone on the radio. I
5 really did it because I was wrongfully convicted of murder.
6 Signed Freddie E. Owens."

7 BY MR. ARIAIL:

8 Q. Thank you Mr. Brown. Answer any questions that the
9 defense counsel may have.

10 THE COURT: Mr. Gibson.

11 MR. GIBSON: Thank you, Your Honor.

12 CROSS EXAMINATION BY MR. GIBSON:

13 Q. Mr. Brown, I'm Ken Gibson. I just want to ask you a
14 few questions and I'm going to let you go, okay?

15 A. Okay.

16 Q. What was your involvement with this investigation?
17 What role did you play, other than taking a statement?

18 A. I was the case agent.

19 Q. So you were the head agent?

20 A. Yes, sir. I wasn't in charge. I was just the one
21 to -- the case agent gathers all of the paperwork.

22 Q. Okay. Are you --

23 A. Lieutenant Randall Stewart was in charge at the scene.

24 Q. Are you familiar with the Fred Walker, Jr.?

25 A. Yes, sir.

1 Q. Are you -- so you are aware that Fred Walker, Jr.^has
2 been charged with the murder in this crime, is that correct?

3 A. Yes, sir.

4 Q. And are you aware that that warrant is still active to
5 this day?

6 A. Yes, sir.

7 Q. It has not been dismissed by the State?

8 A. Yes, sir.

9 Q. Now, you testified on two prior occasions in this case,
10 is that not correct?

11 A. Yes, sir.

12 Q. And either of those times did you mention Fred Walker,
13 Jr.?

14 A. No, sir, I wasn't asked.

15 Q. Okay. Thank you.

16 REDIRECT EXAMINATION BY MR. ARIAIL:

17 Q. Fred Walker, Jr.^is the individual who is on the top
18 bunk?

19 A. Yes, sir.

20 Q. Thank you.

21 THE COURT: Mr. Brown, thank you so much.

22 THE WITNESS: Yes, sir.

23 MR. ARIAIL: Larry Minette.

24 DR. LAWRENCE MINETTE, having been first duly
25 sworn, testified as follows:

1 THE CLERK: State your name for the record,
2 please.

3 THE WITNESS: Lawrence J. Minette, M.D..

4 DIRECT EXAMINATION BY MR. ARIAIL:

5 Q. Can you state your name for the record, please?

6 A. Lawrence J. Minette, M.D..

7 Q. And Dr. Minette, what is your profession?

8 A. Pathologist.

9 Q. And by whom are you employed?

10 A. Pathology Associates of Greenville.

11 Q. And is that a private pathology group?

12 A. Yes.

13 Q. Medical group?

14 A. Yes, it is.

15 Q. And how long have you been employed with Pathology
16 Associates?

17 A. 30 years.

18 Q. And as a part of the work of Pathology Associates, your
19 group has an association with the county to perform
20 autopsies?

21 A. Yes, we do.

22 Q. What is your education and training for being a
23 pathologist?

24 A. Training includes medical school, general pathology
25 training, a year of forensic pathology training, and then

1 continued medical education through the years, and practice.

2 Q. Okay. And as a pathologist for 30 years, you have
3 performed autopsies throughout your career?

4 A. Yes, I have.

5 Q. What is the purpose of an autopsy?

6 A. The purpose of an autopsy is to find the diseases or
7 injuries and the cause of death and the manner of death.

8 Q. How many autopsies have you performed in your career?

9 A. Oh, more than several thousand.

10 Q. And have you qualified as an expert in the field of
11 pathology in the courts of this state?

12 A. Yes, I have.

13 Q. And have you previously testified and qualified as an
14 expert in pathology in other proceedings in this state,
15 other courts of this state?

16 A. Yes, I have.

17 MR. ARIAIL: Your Honor, we would submit that Dr.
18 Minette is expert in the field of pathology.

19 MR. GIBSON: No objection, Your Honor.

20 THE COURT: Without objection, he may testify in
21 that field.

22 BY MR. ARIAIL:

23 Q. Dr. Minette, I want to direct your attention to
24 February the 16th of 1999, and ask you if you had occasion
25 to perform an autopsy on Mr. Christopher Lee?

1 A. Yes, I did.

2 Q. What general information regarding Mr. Lee did you
3 determine, such as height, weight, age, etcetera?

4 A. Height, approximately 170 centimeters or 67 inches
5 long. The body weight, approximately 145 pounds. Age,
6 young adult. White male.

7 Q. All right. And were you able to determine the cause of
8 death of Mr. Lee?

9 A. Yes, I was.

10 Q. What was his cause of death?

11 A. Multiple traumatic injuries.

12 Q. And by multiple, what do you mean multiple by that?

13 A. More than one. Actually quite a few injuries of
14 various areas of the body.

15 Q. And traumatic meaning?

16 A. Blunt trauma, injuries from something hitting the body,
17 that type of thing.

18 Q. All right. I want to ask you if at my request you
19 prepared the exhibits, which are marked State's Exhibit 28
20 and 28-A?

21 A. Yes, I did.

22 Q. Okay.

23 MR. ARIAIL: Your Honor, we would like to offer
24 these as Dr. Minette's.

25 MR. GIBSON: No objection.

1 THE COURT: Without objection, they are in
2 evidence.

3 BY MR. ARIAIL:

4 Q. Doctor, what are State's Exhibit 28 and 28-A? Do you
5 have copies of those up there?

6 A. State's Exhibit 28 is a front and back diagram of the
7 body indicating internal and external injuries.

8 And State's Exhibit 28-A is some of the injuries of the
9 head and neck, which I could not include completely on the
10 other larger diagram.

11 Q. And these are diagrams that you prepare normally as a
12 part of an autopsy?

13 A. Yes.

14 Q. Okay. And did I also request for purposes of
15 illustration to the jury for you to oversee the preparation
16 of a computer-enhanced illustration of these wounds?

17 A. Yes.

18 Q. Okay. And I'm going to show you this, which is marked
19 State's Exhibit 29, and ask if that appears to be the disc
20 we --

21 A. Yes.

22 Q. All right.

23 MR. ARIAIL: Your Honor, we would offer State's
24 Exhibit 29 also.

25 MR. GIBSON: Without objection, Your Honor.

1 THE COURT: Without objection.

2 BY MR. ARIAIL:

3 Q. Does the foregoing -- before getting into the details
4 of this, I would like to ask you if your review of this,
5 does it accurately reflect both your findings in autopsy and
6 your previously prepared drawings, which are State's 28 and
7 28-A, this disc?

8 A. Oh, yes. Yes, it does.

9 Q. All right. If we would, let's -- what I would like to
10 do is roll through this and have you relate to the jury in
11 just an overall grouping of the types of injuries and the
12 brief description of each one. Within limits due to the
13 number, we would just run through them.

14 Let's go to the first set, which would be the external
15 injuries on Mr. Lee's body that you found. If you need a
16 pointer, we have a pointer.

17 A. Okay, I believe that what I will do is go from top to
18 bottom straight through. And the -- all of the different
19 red marks are the external injuries, and I'll -- I won't
20 mention right side or left side, unless it isn't too
21 obvious.

22 You can see on the forehead there is hemorrhage in the
23 skin. Down below the eye hemorrhage. Bleeding from both
24 nose nostrils. Bleeding of the right temple. Bleeding in
25 the skin of the neck. Bruising and bleeding of the front of

1 the chest. Some areas of bleeding on the left shoulder.
2 Eight marks on the left chest in the area of the left
3 nipple. And then a couple of bruises of the left arm.

4 Q. All right. And going back to the neck wound, could you
5 give a description of the extent of those wounds?

6 A. Yes. If you look at the right side of the neck, which
7 is the side with the two words external injuries, that's the
8 right side, that area was actually swollen and red and
9 abraded in that entire generally area as marked in the
10 diagram, and it extended to the midline also. And then
11 there was some separation in the left side of the neck also
12 was reddened and swollen.

13 Q. And when you say abraded, what does abraded mean?

14 A. That means multiple scratch marks or roughening of the
15 skin surface, such that the surface skin wasn't there any
16 more and it was reddened and raw.

17 Q. So the surface skin was gone?

18 A. Variably, intermittently, part of it gone, yes.

19 Q. And the three large red marks sort of in the center of
20 the sternum, what does those indicate?

21 A. Basically bruises of the skin.

22 Q. Apparent from the exterior you could?

23 A. That's -- that's correct, from the external surface of
24 the body, you could see bruises of the upper mid chest.

25 Q. What causes bruising?

1 A. Blunt trauma.

2 Q. And blunt trauma is defined from another type of
3 trauma?

4 A. It's defined from sharp trauma, which is knife, arrows,
5 razor blades and also missiles or gunshot wounds, another
6 type of injury which is not blunt injury.

7 Q. And is blunt trauma consistent with being struck by a
8 fist or falling on a hard surface?

9 A. Yes.

10 Q. All right. And the eight puncture wounds you talked
11 about around the left nipple, left chest area, describe
12 those for us.

13 A. Those were tiny rounded perforations or punctuate marks
14 on the skin, which were small perforations of the skin.

15 Q. All right. They entered the skin, but not the chest
16 wall?

17 A. That's correct.

18 Q. All right. Let's go -- any other external injuries on
19 the front that are of significance?

20 A. Well, I may emphasize going back to the center of the
21 neck, that area also was quite prominently reddened and with
22 bleeding of the skin.

23 Q. All right. And the bruising that you referred to on
24 the scalp and the facial areas, that was also consistent
25 with blunt trauma?

1 A. Yes.

2 Q. Let's go to the internal injuries. Now, these are not
3 visible from the exterior, but upon autopsy you determined
4 these existed?

5 A. Yes, at autopsy, yes.

6 Q. Describe those for us.

7 A. Okay. These are all internal injuries.

8 In examining the head, you can see in the center of the
9 forehead area is an area, this was a small hole in the base
10 of the brain -- base of the skull, excuse me. Base of the
11 skull.

12 The area of the neck was prominent bleeding in the soft
13 tissues of the neck, including the subcutaneous fat, the
14 muscles, the voice box or larynx and the esophagus.

15 Q. Now, is that bruising or bleeding?

16 A. It's hemorrhage. It's bleeding. It's internal
17 bruising. They are all somewhat synonymous.

18 Q. But the bruising you can have -- or can you have
19 bruising without hemorrhage?

20 A. No.

21 Q. Okay. So hemorrhaging means blood has gone into the
22 wound?

23 A. That's correct.

24 Q. Okay. Go ahead.

25 A. And then we have on the outer side here, down here, up

1 here and here, these point to bilateral aspects of the chest
2 and that indicates bleeding into the lungs, upper lobes and
3 lower lobes, bilaterally.

4 Q. Bilaterally meaning both sides?

5 A. Both sides, yes.

6 The upper part of the chest inside, there was bleeding
7 in the center of the chest tissues. These indications right
8 here over the heart area were actually bleeding into the
9 heart surfaces.

10 There was also blood in the heart sac.

11 There was blood in the right chest cavity.

12 There were two ribs that were broken toward the
13 midline.

14 There was bleeding of the diaphragm between the chest
15 and abdomen.

16 There was bleeding of the small intestine.

17 There was bleeding of the soft tissue or fatty tissue
18 that holds the small bowel in place.

19 Q. And what would be the cause of blood in the heart sac
20 and blood in the diaphragm and the bleeding and hemorrhaging
21 you talked about?

22 A. Blunt trauma causing disruption of the blood vessels of
23 those tissues so those tissues bled.

24 Q. And blunt -- would all of these been caused by one
25 blunt trauma, or would there have been consistent with

1 multiple?

2 A. Not one, no. Multiple.

3 Q. Multiple blunt traumas?

4 A. Yes.

5 Q. And the hole in the base of the skull, you were -- were
6 you given information regarding Mr. Owens' description of
7 the event and what he did?

8 A. Yes, I was.

9 Q. And was that wound in the skull consistent, within the
10 base of the skull internally, consistent with a ballpoint
11 pen being inserted through that area?

12 A. Yes, it was.

13 Q. Let's go to the next. That's a combination of the
14 internal, external?

15 A. Yes, it is.

16 Q. So that was the scope of the -- total scope of the area
17 from the front of the area of injury to the body of Mr. Lee?

18 A. Yes.

19 Q. Okay. Let's go to the next one.

20 The back of the head I want to talk about. Let's talk
21 about a few of those also. We will go to external first.

22 A. This is the back of the head and there was some
23 bruising of the skull. And, of course, on the other side
24 the forehead had bleeding or bruising.

25 Q. And the two red dots indicate bruising of the skull?

1 A. Bruising of the scalp.

2 Q. Okay. And the cause of that would be?

3 A. Blunt trauma.

4 Q. And then look at the internal.

5 A. The internal, you can see a squiggly line. This is
6 fracture of the skull. The two somewhat central green dots
7 indicate blood within the ventricles of the brain.

8 The blue -- or excuse me, the green going all the way
9 around is bleeding on the surface of the brain.

10 And the somewhat thickening on the site I'm pointing to
11 now is bleeding into the brain tissue, in that area.

12 Q. And the cause of those injuries, the fractured skull,
13 the bleeding in the brain would be?

14 A. Blunt trauma.

15 Q. And were these injuries to the head and the body
16 consistent with the statement given by Mr. Owens as to
17 how -- or what he did in regard to Mr. Lee?

18 A. Yes, it is.

19 Q. That is all I have, doctor. Thank you. Answer any
20 questions that either defense counsel may have.

21 A. Yes, sir.

22 CROSS EXAMINATION BY MR. GIBSON:

23 Q. Dr. Minette, I'm Ken Gibson. I just got a few
24 questions for you, okay?

25 A. Yes, sir.

1 Q. There was some things that I was -- I just want to
2 clear up in my confusion about. Did you find any burning?

3 A. Yes, I did. As I recall, it was on the chin hair
4 primarily.

5 Q. Did you find any burning anywhere else?

6 A. Not that I recall.

7 Q. So there was no burning to the eye that you can recall?

8 A. Initially when I saw the body, the entire -- the entire
9 face had blood on it.

10 Q. Yeah.

11 A. And so that was removed. And so any indication of
12 burning of hairs could have been removed, and I was aware of
13 that, and I didn't document anything around the eye, but I
14 was quite glad that I could document that there was burning
15 of chin hair.

16 Q. So?

17 A. It was singed. And I think that was indicated on the
18 diagram, but it wasn't a hemorrhagic bleeding lesions. I
19 neglected to mention that.

20 Q. And that's on the chin hair you are talking about?

21 A. Yes.

22 Q. But you don't recall any burning to the skin around the
23 eye, is that correct?

24 A. I do not recall documenting that, no.

25 Q. Okay. Now, I was looking at your diagram of the

1 computer generated thing that you did --

2 A. Yes.

3 Q. -- and I assumed that the way that that thing was put
4 up there, was that it was right side equals right side and
5 not flipped around? What I mean by that is the thing was
6 going this -- the diagram was this way, I assumed that the
7 right eye, the right side of the diagram corresponds to the
8 right eye of Mr. Lee.

9 A. That's correct.

10 Q. Okay. Now, when I was looking at that diagram, I
11 didn't see any damage to the right eye of that diagram.

12 A. I had injury of the left eye.

13 Q. Okay. But there was no damage to the right eye?

14 A. Not that I documented, no.

15 Q. Okay. All right.

16 Let me ask you this, last question. From your
17 investigation. Were you in any way able to determine who,
18 in fact, inflicted these injuries?

19 A. No, I was not.

20 Q. So it could have been -- so as far as you know, it
21 could have been either Mr. Owens or Fred Walker, Jr.?

22 A. Yes, I have no idea who inflicted the injuries, no.

23 Q. Thank you, Dr. Minette.

24 A. You are welcome.

25 THE COURT: Thank you, doctor. You may come down.

1 Thank you.

2 MS. STROM: The State calls Major Thierry Nettles.

3 MR. GIBSON: Your Honor, before Mr. Nettles takes
4 the stand, can we address an issue outside the presence of
5 the jury?

6 THE COURT: Yes, I'll let y'all step across the
7 hall.

8 (The following takes place outside the presence of
9 the jury panel)

10 MR. GIBSON: Your Honor, the defense would object
11 to the testimony of Mr. Nettles to the extent that he
12 intends to talk about records, any SCDC records regarding
13 incidents or behavior. Our understanding of the law is that
14 -- and I'm looking at this case, is Ex Parte Department of
15 Health and Environmental Control v. The State, or State v.
16 John Doe, and I can give you the site of it, but they have
17 to prove in order to get business records in, which I assume
18 that's what they are trying to get them into, or the venue
19 they are trying to get into, they have to prove the record
20 in themselves trustworthy.

21 My problem with these records are I do not believe
22 that they are trustworthy.

23 In a lot of these occasions, Your Honor, they are
24 talking about attacks on guards. So the person filling out
25 the record would be the victim. It would be extremely

1 difficult for me to think that a victim's testimony, without
2 any other inquiry whatsoever, would be trustworthy.

3 In addition, they also talk about incidents of him
4 assaulting other inmates. If that is to be believed, the
5 only -- I mean, if it is to be believed that an independent
6 third party viewed those incidents, we would have to believe
7 that a corrections officer sat there, watched Mr. Owens
8 begin to assault another inmate, did nothing, and just
9 watched it happen.

10 Now, from my viewpoint, it would be the same as
11 the police trying to enter an incident report in a regular
12 General Sessions trial.

13 MS. STROM: Your Honor, I submit -- are you ready
14 to hear from me?

15 THE COURT: Yes.

16 MS. STROM: Just one second, Your Honor.

17 (Off the record)

18 (Back on the record)

19 MS. STROM: Your Honor, I do believe that these
20 records do fall -- do come into evidence under the Business
21 Record Act, that we must show -- I'm getting to the rule
22 real quick, Your Honor.

23 According to the Rule 803(6), records of regularly
24 conducted activity. A memorandum, report, or record
25 compiled at or near the time of the incident, and if it is

1 shown that that is compiled at the time of the incident, the
2 custodian of records can testify to that. Then it is
3 admitted into evidence under the Business Record Act, Your
4 Honor.

5 MR. GIBSON: May I respond, Your Honor?

6 THE COURT: You can respond.

7 MR. GIBSON: Your Honor, in that rule it also says
8 that if there is any indication of untrustworthiness, that
9 those records should not be allowed to come in.

10 And I'm looking and again, it's 350 S.C. 243, Ex
11 Parte, Department of Health and Environmental Control,
12 Petitioner, In Re: The State. The court in that case
13 listed the requirements for business records to come in, and
14 I'm going to read from it. It says "Rule 803(6)," the same
15 rule that Ms. Strom just referred to, "provides that
16 memoranda, reports, records, etcetera, in any form of acts,
17 events, conditions, or diagnosis are admissible as long as
18 they are:

- 19 1. Prepared near the time of the event recorded;
- 20 2. Prepared by someone with or from information
21 transmitted by a person with knowledge;
- 22 3. Prepared in the regular course of business;
- 23 4. Identified by a qualified witness who can
24 testify regarding the mode or preparation of the record;

25 And, 5, found to be trustworthy by the court."

1 It is my contention that these records are not
2 trustworthy, given the nature of the records.

3 THE COURT: Okay. And this is something that I
4 have looked at prior to this trial. And the rule, Ms.
5 Strom, is business records are admissible under the hearsay
6 exception.

7 805 says that if hearsay is included within
8 hearsay, it's not admissible, unless both the hearsay
9 records are admissible and the statement within the hearsay
10 records are also an exception to the hearsay rule.

11 I think you have got a problem with that in regard
12 to how these events occurred.

13 The general requirements -- we did a great deal of
14 work in this regard, anticipating something, maybe this. I
15 haven't indicated to either side I thought this was coming
16 up, but my clerk and I did a great deal of research on this
17 last Friday afternoon from having read the transcripts of
18 the other proceedings and found an opinion written by Judge
19 Wilkins in the Fourth Circuit. It was a statement from
20 Circuit City in regard to selling of a TV. And if I recall
21 that case correctly, and I forget the name of the case right
22 now, I can't think of it right now, but the records from
23 Circuit City were business records of the sale of the TV,
24 and the date and time of the sale, and it was records made
25 by an employee of that Circuit City, and -- but the evidence

1 on that record of who they sold it to and the place where
2 that person resided, as I recall it, Fourth Circuit said
3 that was not admissible, because that was not made by
4 someone who kept that information in the regular course of
5 business and it was hearsay. Of course, it didn't fall
6 under 805. Now, we found this to be law under 57 ALR 4th at
7 Page 1,111. 1111. And I think this is the general law in
8 most places in South Carolina.

9 The general requirements of business records
10 exception are these as follows:

11 It must be a memorandum, report, record, or data
12 compilation of acts, events, conditions, opinions, or
13 diagnoses kept in the course of a regularly conducted
14 business, and it is the regular practice of the business to
15 make the record. The source of the information must be a
16 person with personal knowledge of the information. The
17 information must be recorded contemporaneously with the
18 event or occurrence in question. The foundation must be
19 laid by testimony of a custodian of the records or some
20 other qualified witness and the source of information,
21 methods, or circumstances of preparation must not indicate a
22 lack of trustworthiness.

23 Now, I just -- I don't know what the evidence is
24 going to be, really. And I say that honestly, because I
25 read through -- the transcripts were lengthy and I didn't

1 read every word word for word, and I read it very, very
2 fast, and I can't recall specific instants of what I saw in
3 the previous transcripts, and -- but I think that's going to
4 be the law of the case, what I just read from that ALR.

5 MS. STROM: Your Honor, I would submit that we go
6 ahead while the jury is out and proffer Major Nettles.

7 THE COURT: Okay.

8 MS. STROM: Come forward Major Nettles.

9 MAJOR THIERRY NETTLES, having been first duly
10 sworn, testified as follows:

11 THE CLERK: State your name for the record,
12 please.

13 THE WITNESS: Thierry Nettles.

14 THE CLERK: Be seated.

15 DIRECT EXAMINATION BY MS. STROM:

16 Q. Please state your full name again for the record.

17 A. Thierry Nettles.

18 Q. By whom are you employed?

19 A. South Carolina Department of Corrections.

20 Q. And what capacity are you employed with the South
21 Carolina Department of Corrections?

22 A. I'm a major currently assigned to the Leiber
23 Correctional Institution.

24 Q. Leiber Correctional Institution?

25 A. Yes, ma'am.

1 Q. And tell us what is Leiber? Now that we are outside
2 the presence the jury, what is Leiber?

3 A. Leiber is one of six level three facilities in the
4 State of South Carolina.

5 Q. What does level three security mean?

6 A. In other words, I house a maximum security unit and
7 general population.

8 Q. Do you also house death row?

9 A. Yes, ma'am.

10 Q. And as part of the business of housing inmates, is it
11 the -- is it the normal course of business to record
12 incidents of infractions or rule violations or assaults by
13 the inmate?

14 A. Yes, ma'am.

15 Q. And are those records kept in the normal course of
16 business of the corrections department?

17 A. Yes, ma'am.

18 Q. And the records which are kept, are they made at or
19 near the time of the incident involved?

20 A. Yes, ma'am.

21 Q. And are they made by persons who have personal
22 knowledge of the events which occurred?

23 A. Yes, ma'am.

24 Q. I show you what has been marked as State's Exhibit No.
25 30 for purpose of this hearing and ask you, are you familiar

1 those records?

2 A. Yes, ma'am.

3 Q. And those are the records that are normally kept in the
4 course of business by the Department of Corrections with
5 regards to Freddie Owens?

6 A. That's correct.

7 Q. And are you custodian of records for the Department of
8 Corrections and can verify these records?

9 A. At Leiber, yes, ma'am.

10 MS. STROM: Court's indulgence, Your Honor.

11 (Off the record)

12 (Back on the record)

13 MS. STROM: Your Honor, I didn't know if you
14 wanted me to continue with the entire, because what I was
15 going to have him do was identify the records.

16 THE COURT: It appears to me that they keep
17 regular records in the ordinary course of business and it's
18 their business to do that and that the Department of
19 Corrections would be in the nature of a business, and it's
20 the same thing. They do keep records as to incidents in
21 regard to the people they house, based on his testimony, and
22 right now there is nothing to refute that.

23 I'm going to give the defense an opportunity to
24 ask him some questions, if they want to, but I do not know
25 what's in those records, but I do know this, that subjective

1 statements or opinions and judgments and things of that
2 nature just can't come in, and hearsay within hearsay cannot
3 come in. But it appears to me that a record of an incident
4 could come in. But if he were not -- didn't have first-hand
5 knowledge of the facts and circumstances surrounding the
6 incident, if it were based on a guard that was attacked or
7 people that were -- you know, Mr. Owens may or may not, I
8 don't know, but you talking about incidents in prison. I
9 assume that's going to be something where someone may or may
10 not have had a confrontation with Mr. Owens.

11 The specific facts and circumstances surrounding
12 that and what occurred at the time could not come in, but
13 the fact that an incident did happen -- the fact that's
14 written down does not make it admissible in this court.
15 It's absolutely hearsay, not subject to cross-examination.
16 And the person making the statement would, of course, if he
17 were attacked or something of that nature would not -- it
18 would not be trustworthy, because he would have a -- if he
19 were here to testify, he could testify. That person could
20 not be cross-examined.

21 So the fact that an incident occurred and what
22 that incident was and what they recorded it to be could come
23 in. But as I see it right now, I don't see that the facts
24 and circumstances could come in. A lot of it would be
25 subjective testimony. It would be hearsay within the

1 hearsay and would fall under 805 and it would not meet all
2 the requirements of the general records requirement.

3 Now, I'll give you defense.

4 MR. GIBSON: I just want to clarify. It's my
5 understanding what you are saying is they can say that an
6 incident occurred, but they could not say what that incident
7 was?

8 THE COURT: No, they can say that an incident
9 occurred where -- between Mr. Owens and a guard, or
10 whatever, on a certain such a date where the guard was
11 assaulted, period. The facts and circumstances surrounding
12 it, he doesn't have any personal knowledge of that.

13 MR. GIBSON: Okay.

14 THE COURT: And it would be a subjective statement
15 or by a person that did not keep the records in the regular
16 course of business.

17 MR. GIBSON: Can I have few questions of the
18 witness, Your Honor?

19 THE COURT: This comes up a lot in reports by
20 governmental agencies where people go out and make
21 investigations and report it back and things of that nature.

22 Okay. You go ahead.

23 MR. GIBSON: Just a few questions.

24 CROSS EXAMINATION BY MR. GIBSON:

25 Q. Now, my understanding, I think I heard you say, Mr.

1 Nettlles, that you were a major at Leiber?

2 A. That's correct.

3 Q. Do you work at any of the other institutions?

4 A. No, sir.

5 Q. And so you were not a custodian of records for SCDC in
6 general, is that correct?

7 A. Just my facility.

8 Q. Okay. So you can talk about how the records at Leiber
9 are maintained and prepared, but you really don't have any
10 knowledge about what happens at the other facilities?

11 A. I do have knowledge of what happens at the other
12 facilities.

13 Q. Do you have any firsthand knowledge about what happens
14 at the other facilities?

15 A. We -- I'm in a route group where what they call
16 management information notes are disseminated.

17 Q. Yes, sir.

18 A. So, yes, I do read in my ends from other facilities.

19 Q. You read hearsay statements about what happens and how
20 they maintain records at other facilities, is that right?

21 A. No, sir, I just read what comes up on the computer.

22 Q. Okay. But you don't have any firsthand knowledge? I
23 mean you are not --

24 A. You are correct.

25 Q. You are not at that facility?

1 A. You are correct.

2 Q. And, again, you are at Leiber, not the other
3 institutions, is that correct?

4 A. That's correct.

5 Q. All right. Now, let me ask you this about these
6 incidents reports. Are there ever incidents which occur
7 which are not reported incidents, incident reports;
8 violations of the rules which are not -- an incident report
9 is not made from?

10 A. Sure there is.

11 Q. So there is a subjective component as to what comes --
12 what an incident report --

13 Let me back up. So there is some subjective component
14 to determining what events caused the creation of an
15 incident report, is that correct?

16 A. It's the degree of severity, yes.

17 Q. Okay. So basically somebody when they make an incident
18 report in the first case, they are making some kind of
19 judgment as to the severity of the situation?

20 A. You are correct. Normally that's the correctional
21 officer on the scene.

22 Q. Now, let's talk about --

23 Nothing further. Thank you, Mr. Nettles.

24 MR. GIBSON: Your Honor --

25 MS. STROM: May I have one followup question, Your

1 Honor?

2 THE COURT: Let me hear his argument first.

3 MR. GIBSON: I mean, if she needs a followup,
4 that's fine.

5 THE COURT: Okay. Go ahead Ms. Strom.

6 REDIRECT EXAMINATION BY MS. STROM:

7 Q. Just in terms of how the records are kept, the process
8 of reporting incidents, making a record of that, is that
9 standardized throughout the Department of Corrections?

10 A. Yes, ma'am.

11 Q. So y'all all follow the same policy regarding the
12 making of the record and keeping of the records?

13 A. Yes, ma'am.

14 Q. Thank you.

15 MR. GIBSON: Your Honor, in 803(6) there is also a
16 statement that says that any subjective things such like
17 that are not admissible. And I'm trying to find this case
18 right now, but I saw another case, it's In Re: Hanby, and
19 what happened in that case was it was a sexual predator
20 hearing and the State tried to put in what -- the doctors
21 created a law, which they said they -- they labeled a law
22 important incidents relating to his treatment. The State
23 tried to put that in evidence. The court said that they
24 could not, because the very nature of the record itself,
25 because of its subjective nature in putting things in, was

1 too subjective to fall under 803(6) under that business rule
2 exception.

3 Now, normally, Your Honor, when we are talking
4 about business records and we talk about them being
5 trustworthy, we are talking about things, just like you
6 mentioned, that Circuit City thing, where there is no real
7 judgment in it. It's just something that they do as a
8 matter of course. It's a objective record. It's created in
9 an objective manner.

10 Here Mr. Nettles has testified, Your Honor --
11 Officer Nettles has testified --

12 THE WITNESS: Major.

13 MR. GIBSON: That there is clearly --

14 THE WITNESS: Major.

15 MR. GIBSON: I'm sorry. Major Nettles has
16 testified that there is clearly a subjective nature as to
17 whether an incident report gets created in the first place.
18 That is a judgment. He said that himself, Your Honor.
19 Given that statement, I don't see how that comes in.

20 THE COURT: I indicated that as a nature of a
21 motion in limine, that the only thing I would let in is the
22 incident, the date, and the -- just the -- and the general
23 nature of that, and that's it. Otherwise, subjective -- you
24 are right. I stated that already. It's subjective opinions
25 and judgments cannot come in. It's clearly stated in the

1 rule.

2 MS. STROM: Your Honor, if I may?

3 THE COURT: And I -- if she wants to present it --
4 go ahead, in front of the jury, that's just -- that's a
5 ruling in limine. I have not looked at the records. Are
6 these -- let me see these records.

7 MS. STROM: Yes, sir, and they have previously
8 been provided to defense counsel.

9 THE COURT: Just because you provided them with
10 the defendant doesn't make it -- it makes him look at them
11 and object to it, but it doesn't create any admissibility.

12 MS. STROM: No, sir, I'm not saying it does. I'm
13 just letting you know that they have had them. I didn't
14 want you to think I was springing it on him.

15 THE COURT: Things like "Lieutenant Kearse gave
16 Inmate Owens numerous directive to back up." That is --
17 that just ain't coming in. Stuff like that ain't coming in.

18 MS. STROM: Well, I have prepared -- my suggestion
19 would be, Your Honor, then that if there are specific lines
20 or specific things within those records that the defendant
21 objects to, that he let me know specifically which ones of
22 those he has objected to.

23 Now, as part of my preparation, I did prepare a
24 summary of those events, which I again provided to the
25 defense counsel, and I would submit to the court which sets

1 forth a date and an event, such as --

2 THE COURT: You can let me see it.

3 MS. STROM: Let you look at the summary.

4 Here you go, judge. This is the official one.

5 THE COURT: This is more in the nature of
6 something that I -- that the court would rule admissible as
7 a record of an incident that was reported, and they keep
8 these records.

9 The -- I mean, like 1, 2, 3, 4, but this way that
10 you have got them labeled and stuff like that couldn't come
11 in. Separate incidents including whatnot, that's not going
12 to be testimony in evidence.

13 I would say like 1, 2, 3, 4, 5, and -- but -- the
14 only thing that I think could possibly come in, and I
15 thought about this long and hard, with nobody outside this
16 court, not talking to any other judge, which you are not
17 supposed to do that, just the research my law clerk and I
18 have done. I think like 1 through 5, 1 through 8, that
19 solely is -- I haven't read them all.

20 Something like August the 5th of 2002, the
21 incident report indicates a male nurse was slapped in the
22 face. A record would probably be kept of that in the
23 ordinary course of business, and that would be indicated on
24 the report. But going further than that, I just -- I just
25 think it would -- it would not be admissible under all --

1 under everything that I know about the Rules of Evidence and
2 the case law. So that would be the only thing that I could
3 possibly do.

4 Now that's just -- I'm just looking at this for
5 the first time, based on what she's shown me, and she tells
6 me this was given to the defense, but I'll hear you on this,
7 Mr. Gibson.

8 MR. GIBSON: Your Honor, I would repeat my earlier
9 objection. And I found that case. It's In Re: Harvey at
10 355 S.C. 53, 584 S.E. 2d 893.

11 THE COURT: If you got a copy of it, just give it
12 to me.

13 MR. GIBSON: I do.

14 THE COURT: Or is that a headnote? Give us a
15 site.

16 MR. GIBSON: It's 355 S.C. 53; In Re: Harvey, 584
17 S.E. 2d 893.

18 THE COURT: Okay. I'll let them --

19 MR. GIBSON: And I have one other issue regarding
20 Mr. Nettles.

21 THE COURT: I'm going to give this to the State
22 and let them review it, and I can look at it on the
23 computer.

24 MR. GIBSON: That's fine, Your Honor. I apologize
25 that's my only copy.

1 With respect to Major Nettles, he also testified
2 to something else. He is the custodian of records for
3 Leiber. I would submit that even if you allow any -- if you
4 allow any of his testimony, that it be limited to incidents
5 which happened solely at Leiber, and not other places which
6 he's not the custodian of records for.

7 He has testified he's not a custodian of records
8 for SCDC, generally. He's testified that he does not have
9 any dealings with the other institutions in that respect.

10 I would request to the extent that you allow any
11 of his testimony, it would be limited to situations which
12 occurred at Lieber.

13 MR. ARIAIL: Your Honor, I would submit that he is
14 a custodian of records. He is housed at -- I mean, he --
15 excuse me, he's employed and works at the Leiber
16 Institution. However, he's testified that all the records
17 are made in accordance with the same policies, the same
18 procedures. He has access to them. He is the one who, in
19 fact, provided them to me, so I submit to you that he is, in
20 fact, the custodian of the records.

21 MR. GIBSON: And, Your Honor, obviously he
22 testified that he has no firsthand knowledge about how those
23 records are created or maintained or prepared at any
24 institution other than Leiber. So, therefore, he's not the
25 proper custodian for those records.

1 THE COURT: I'm going to let the State think about
2 it. They may have been caught by surprise by this motion.
3 I'm not saying they were. I do not know, but I'm going to
4 give you just a few minutes to look at this. Okay?

5 MS. STROM: Yes, sir.

6 THE COURT: And I'll come back out. We will try
7 to finish up, if we can, before lunch, but it may be here.
8 Let me check and see.

9 (Whereupon, proceedings were recessed)

10 (Whereupon, proceedings were reconvened)

11 THE COURT: We are going to take a lunch break now
12 at twelve. I thought it was a quarter of one, but we will
13 start back at a quarter to two by the clock in the back.
14 It's a couple minutes fast.

15 And the court having anticipated this ruling as a
16 motion in limine, this information contained in these
17 records, which I have as State's Exhibit 30, and I will mark
18 all these at least as a Court's Exhibit at this time, would
19 be extremely prejudicial. And that's, of course, any
20 evidence, one side or the other, comes in may be
21 prejudicial, but having given it a lot of thought before
22 today, I think that the regularly conducted records of the
23 South Carolina Department of Corrections would be such as on
24 Monday, July the 1st of 2002, at the time 1356 hours,
25 Officer Thierry -- now what he was doing and all that --

1 Officer Thierry had taken the phone out of his mattress.
2 That's not admissible. I don't know how this is reported.
3 I'll have to look. I didn't see that on your list.

4 MS. STROM: Your Honor, the records themselves are
5 the entire records, and what I did as far as a summary
6 was -- I didn't put down every one that was in the records.
7 I just put down what I considered to be important ones on
8 the list.

9 THE COURT: Well, the record that I would rule is
10 admissible is on that date he set fire to the mattress in
11 his cell. That's the only thing I see out of that that
12 could come in. And I think that would be regularly
13 recorded.

14 Now, all this other stuff is subjective. It talks
15 about what two or three other people did and said and
16 guards.

17 The fact that he admitted to me, Lieutenant
18 Randall Williams -- this is statement by Mr. -- that he cut
19 S.K. Stokes on the face with a razor and he flushed it down.
20 Note that no staff members witnessed the altercation,
21 whatever. That's just -- that couldn't come in.

22 I just -- I just don't think I could go through
23 all of them. I can give you the guidance. I think the date
24 the time and the nature of the reported incident; cutting of
25 an inmate so and so, and that's about as far as I think you

1 can go.

2 MS. STROM: Such as reflected on the summary that
3 I prepared, absent the characterization of them up at the
4 top, is that what you are saying?

5 THE COURT: That -- what I have looked at, and I
6 haven't looked at all of them, it looks to me like that's
7 pretty much what I would let in.

8 MR. GIBSON: Your Honor, just --

9 THE COURT: Yes.

10 MR. GIBSON: Another clarification. Two, really.

11 The records that you just read specifically stated
12 that no staff members saw what happened.

13 THE COURT: I said that couldn't come in.

14 MR. GIBSON: So any record where there is no staff
15 member that see it, do those come in?

16 How about records where the only person who saw it
17 was the victim of it?

18 THE COURT: Well, like statements by an inmate
19 would just be like the statements by the person that bought
20 the TV at Circuit City. That's a statement by someone that
21 doesn't make those statements in the ordinary course of
22 business and it's a hearsay statement.

23 What an inmate would say about Mr. Owens certainly
24 would not be admissible.

25 We just have to go through it record by record, I

1 guess.

2 MR. GIBSON: Okay, I think that would be --

3 THE COURT: That's the way it's been presented to
4 me.

5 MR. GIBSON: I'm objecting to them in total, Your
6 Honor.

7 And the other thing -- the other issue, Your
8 Honor, I wanted to get a clarification on is as regards to
9 what Mr. Nettles -- what records is he going to be deemed to
10 be a proper custodian for, given his testimony that he was
11 not the custodian of records for anyplace other than Leiber?

12 THE COURT: The rule says the custodian of records
13 are a qualified person. Now, whether or not he falls under
14 the qualified person category I just have to rule on that.

15 I'm not -- I'm just not -- I know that the way
16 everything contained in these records, I know what inmate
17 said about Mr. Owens and all that, that is just -- I almost
18 feel absolutely certain those things would not be
19 admissible. That's going to be my ruling.

20 We will just have to take them one at a time, I
21 guess. But, you know, it is the business of the Department
22 of Corrections to keep records of incidents. Now, what in
23 those incidents can come in, we just have to spend time
24 fleshing it out, I guess, and take one at a time.

25 MR. GIBSON: Would it be prudent to do that

1 outside the presence of the jury?

2 THE COURT: We would have to, because if it came
3 in, it may be so prejudicial it would affect the outcome of
4 the case.

5 MR. GIBSON: Yes, sir.

6 THE COURT: But now the incidents, in my opinion,
7 and the way I would rule, I'll just tell you, is the fact
8 that an incident occurred and the general nature of that
9 incident, that should be reported and kept by the Department
10 of Corrections. But a lot of all the verbal and the way
11 it's written would not be admissible under the hearsay rule
12 and under 805.

13 MR. GIBSON: Could we have an instruction that Mr.
14 Nettles not talk to anyone during the break about his
15 testimony, considering he's already taken the stand?

16 THE COURT: I don't think that -- my general rule
17 is unless they are finished and he's on cross-examination, I
18 usually don't permit that. I don't know anything that could
19 be said between them that would be prejudicial.

20 I'll just leave it up to the State whether they
21 want to talk to him or not. I don't think that whatever
22 they tell him is going to change his testimony.

23 MR. GIBSON: Thank you, Your Honor.

24 THE COURT: There is no rule about talking to
25 people. I hadn't been able to find one anywhere or much

1 case on it, except a federal case in Charleston with
2 judge -- the guy from Florence, the short guy that handled
3 the Citadel case. I can't remember the federal judge down
4 there. And he ruled that if they were on cross-examination,
5 he wouldn't let them do it. That's the only case I found.
6 Thank you.

7 MR. GIBSON: Thank you, Your Honor.

8 THE COURT: Because then they would have finished
9 everything and be anticipating what you were going to ask
10 him. They hadn't finished their direct.

11 MR. GIBSON: Yeah.

12 THE COURT: I will be glad to take this back up
13 with y'all, if y'all want to be here about -- well, anytime
14 that y'all want to take it up we will come back. Everybody
15 has had a chance to look at it. And if you want to look at
16 it any more. Thank you.

17 MR. GIBSON: Thank you, Your Honor.

18 (Whereupon, proceedings were recessed)

19 (Whereupon, proceedings were reconvened)

20 THE COURT: How does the State intend to proceed?

21 MS. STROM: Your Honor, instead of going through
22 each one of these records and deleting any type of
23 subjective statement or hearsay statement within hearsay,
24 what I have prepared I think it's accordance with what you
25 had said earlier was simply a listing of the offenses. I

1 will give you a copy. I have provided a copy to the
2 defense. I took out the heading and just listed them 1
3 through 31 or 32. I can't remember.

4 THE COURT: You probably have to strike one of
5 those on March the 29th, unless there was something --

6 MS. STROM: Oh, I'm sorry. I can do that very
7 quickly, judge.

8 THE COURT: Okay.

9 MS. STROM: I had it under two different
10 categories. That's why it was there.

11 THE COURT: Okay. Like number 10. And, of
12 course, these are just motion in limine rulings right now,
13 but like kicks an inmate who is restrained in a restraint
14 chair. I would not be inclined to admit that if it was just
15 reported by an inmate, if it were not witnessed by a
16 correction officer who reported it as a -- as a record to be
17 kept in the ordinary course of business.

18 MS. STROM: Your Honor, my recollection -- oh, I'm
19 sorry. My recollection is that was reported by an officer.

20 THE COURT: That observed it?

21 MS. STROM: Yes, sir. I can find that record.

22 THE COURT: And I thought about this during lunch
23 when I was across the street having a sandwich.

24 Like August 5th of 2002, assaulting a male nurse.
25 We all know, as having been in the court system so long,

1 that 400 different ways of assault or a slap can occur. It
2 can be a tap, or a slap, or whatever. But in thinking about
3 it, the report slaps a male nurse, and I would let that -- I
4 would be inclined to let that come in, because it doesn't go
5 any further than that. And technically in my -- the court's
6 view that would be something that would be kept in the
7 regular course of business in the records and something that
8 it would be --

9 October 23, it says sets fire to cell.

10 Okay. I'll hear from the defense.

11 MR. GIBSON: Your Honor, we would, of course,
12 assert our earlier objection to the records in their
13 entirety. However, given the court's earlier ruling on the
14 issue, subject, of course, to the direction that the court
15 has already made and subject to hopefully a real quick
16 review by us to make sure that none of these incidents were
17 solely reported by inmates, the proposed new list is fine.

18 I would, however, still like, at least for the
19 record, a ruling on whether or not Mr. Nettles -- or, I'm
20 sorry, Major Nettles is going to be able to testify about
21 records that were prepared at other institutions other than
22 Leiber.

23 THE COURT: As I understand it, the records of
24 other inmates or records of an individual inmate should
25 follow that inmate and be available on the computer. And if

1 he -- I would let him testify to that.

2 MR. GIBSON: Thank you, Your Honor.

3 MS. STROM: Your Honor, if I may make that one
4 change that you requested on the March 29th?

5 THE COURT: Well -- okay.

6 MS. STROM: Because it's in there twice.

7 MR. GODFREY: Andre Golden's name is misspelled.

8 THE COURT: I don't see that.

9 MS. STROM: March 29th, number 7.

10 THE COURT: Okay. That -- I would be inclined to
11 admit this the way it's presented. Okay.

12 MS. STROM: You want me to take that change out,
13 though, that second one out?

14 THE COURT: Yeah.

15 MS. STROM: Okay. I just need to do that very
16 quickly and I'll be right back.

17 THE COURT: We will wait.

18 (Off the record)

19 (Back on the record)

20 THE COURT: Mr. Ariail, you may have Ms. Strom
21 look at this because of the issues raised and y'all are
22 asking me for a preliminary ruling. It was -- this law that
23 we found indicates that under 803, business records of a
24 federal prison may be admissible, but statements made by
25 third parties under business duty could not be. I want you

1 to look at that.

2 And it would -- my ruling would be that the
3 officers of the institution would have a business duty to
4 make reports.

5 Now, we would have to spend a considerable amount
6 of time, which I do not mind doing, and I could just dismiss
7 the jury to their hotel rooms, if we needed to, and take up
8 everything item by item. I hurriedly looked at those
9 documents and a good many of those things were items where
10 one of the officers would have had a business duty to report
11 it. And some of them were reports by inmates. And I have
12 tried to indicate that anything another inmate, which I
13 would be considering that as a third party, an employee of
14 the Department of Corrections. Just my cursory opinion in
15 limine would be that they would be required to have a duty
16 to make that report. So that's all I'm going to say about
17 it right now. Okay. And that's a Fourth Circuit case out
18 of Virginia.

19 MR. GIBSON: Your Honor, I hate to do this, but I
20 think we are going to have to go through them.

21 THE COURT: Okay.

22 MR. GIBSON: Because I'm looking at them and some
23 of them I'm just not sure if there is an officer that
24 actually saw anything in these cases, and that's my concern.

25 THE COURT: Mr. Gibson, I think this is important

1 enough to spend some time on.

2 MR. GIBSON: Thank you, Your Honor.

3 THE COURT: Based on the Fourth Circuit case I
4 just showed Mr. Ariail that the statements in the prison
5 records are made by third parties are not admissible. I
6 just gave that to him.

7 MS. STROM: I see.

8 THE COURT: That's the case out of Virginia. So
9 Mr. Gibson feels -- and it's such an important matter from
10 the Constitutional standpoint that I think we should spend
11 some time on it.

12 MS. STROM: And, judge, I don't know if Mr. Gibson
13 is aware of this or not, and I just do it for the court's
14 information and Mr. Gibson's information, any -- all of
15 these incidents involving Freddie Owens, he was permitted,
16 if he so chose, to have an administrative hearing. If at
17 the administrative hearing he was found not guilty or it was
18 found not founded, I did not include it in the summary. I
19 did not include it in the records. So I just wanted you to
20 be aware of that so -- you know, I didn't know if Mr. Gibson
21 was aware of that. I just wanted to make you aware that
22 that's -- it's not something that -- you know, just because
23 someone says something it goes in the record. It's -- you
24 know, he has opportunity to have the administrative hearing
25 on each of these. He can waive it.

1 THE COURT: This is a very serious trial. It's
2 not an administrative hearing. We have to go through it
3 again.

4 I want to -- either -- I'm going to let Mr. Gibson
5 look over these and if statements -- if these incidents were
6 reported by third parties, based on the Fourth Circuit case,
7 I would have to exclude them.

8 MS. STROM: If he would just let me know which
9 ones he believes to be.

10 THE COURT: I'm going to give y'all some time to
11 look through each one.

12 MR. GIBSON: Yes, sir.

13 THE COURT: Unless you want to go on the record on
14 each one, I don't know why that would be necessary.

15 MR. GIBSON: I can go through them myself, Your
16 Honor.

17 THE COURT: Administratively why don't you just
18 sit down at the table. If any dispute arises, we will put
19 it on the record with regard to anything that may come up
20 okay.

21 MR. GIBSON: Thank you, Your Honor.

22 (Whereupon, proceedings were recessed)

23 (Whereupon, proceedings were reconvened)

24 MS. STROM: Your Honor?

25 THE COURT: Yes.

1 MS. STROM: I believe that out of the first
2 summary that I gave to you, I believe it had 30. Anyway, we
3 have pulled out two of them because two of the incidents did
4 not have any officer involvement. And my understanding with
5 Mr. Gibson is he is in agreement with that. So the one that
6 I have handed up to the Clerk of Court has 28 incidents.

7 THE COURT: Okay.

8 MR. GIBSON: Your Honor, just for the record, that
9 is correct. And, of course, subject to our earlier
10 objections, given the court's ruling, this proposed exhibit
11 as proposed now is fine with us.

12 THE COURT: Okay. My ruling is, and would be, and
13 I would not require -- Mr. Gibson would need to make a
14 contemporaneous objection when it's first offered, but he
15 does not need to make a continuing objection on each one.

16 My ruling on the Fourth Circuit case is that
17 prison records are -- this is a 1989 case. That prison
18 records are admissible if they were made by an officer
19 prison records, but -- there is some unusual facts about
20 that case. The State stipulated to come in and defense
21 relied on it is the only reason that part of it came in, but
22 they cite United States v. Snyder.

23 Anyway, that case, as I understand it, would let
24 it in if the person made it. And I would rule here that a
25 person employed by the Department of Corrections would be

1 under a duty to report incidents that concerned the
2 department and inmates, and they keep a record on incidents
3 involving inmates. If a person reporting that were an
4 officer or an employee of the Department of Corrections, he
5 would not be considered a third party under the Rules of
6 Evidence.

7 And as I instructed both sides before we took a
8 break for them to review the records, the statements by
9 third parties, such as prisoners and others like that, would
10 not be admissible. They have gone through the records and
11 based on that ruling that the person reported that needed to
12 be an employee and have a duty to report it and these are
13 records regularly kept by the Department of Corrections with
14 incidents concerning an inmate, then they have stipulated
15 that under those guidelines 28 would be admissible, and he
16 can -- the testimony would be permitted. I'm ruling in
17 limine from 1 through 28. Okay.

18 MR. GIBSON: Thank you, Your Honor.

19 THE COURT: Okay. As I understand it from Mr.
20 McCloud from SLED, one of the witnesses -- I mean one of the
21 jurors -- and these people are very sensitive to the
22 importance of this, is she may have known the mother of Mr.
23 Lee from work. She may have known him, but not even sure
24 about that.

25 If we need to explore that, I think we can

1 afterwards, but as of right now she's not even sure she knew
2 the lady or not. So I think we will proceed and I can
3 explore that at the end of the day.

4 Any objection to that, Mr. Godfrey?

5 MR. GODFREY: No objection, Your Honor.

6 MR. ARIAIL: No. No objection. And I'm not sure
7 that I, without some time, could even help you with finding
8 out what the mother's name is.

9 THE COURT: Okay.

10 MR. ARIAIL: I would have to -- I would have to
11 find that file.

12 THE COURT: She's not even sure.

13 MR. ARIAIL: Yeah.

14 THE COURT: We can ask her about that at the end
15 of the day. She's not going to talk to the other jurors
16 about anything, because she's not even sure.

17 MR. ARIAIL: Okay.

18 THE COURT: Sir, do you want to come back up? I
19 think he's already been sworn.

20 MR. ARIAIL: He has not been sworn in front of the
21 jury.

22 THE COURT: You have not? Well, wait out there
23 then. You have not been sworn in front of the jury. Okay.
24 Just wait out there.

25 (The following takes place in the presence of the

1 jury panel)

2 THE COURT: The State calls Major Thierry Nettles.

3 MAJOR THIERRY NETTLES, having been first duly
4 sworn, testified as follows:

5 THE CLERK: State your full name for the record,
6 please.

7 THE WITNESS: Thierry Nettles.

8 THE CLERK: Thank you. Be seated.

9 DIRECT EXAMINATION BY MS. STROM:

10 Q. Major Nettles, if you would again, please state your
11 full name for the record?

12 A. Thierry Nettles.

13 Q. I need you to either sit up and talk a little bit
14 louder?

15 A. Thierry Nettles.

16 Q. Thank you, sir. I need for all the jurors to be able
17 to hear you.

18 By whom are you employed?

19 A. The South Carolina Department of Corrections.

20 Q. How long have you been with the South Carolina
21 Department of Corrections?

22 A. 18 years.

23 Q. Presently what is your position with the South Carolina
24 Department of Corrections?

25 A. Currently I'm a major at Leiber Correctional

1 Institution.

2 Q. At Leiber Correctional?

3 A. Yes, ma'am.

4 Q. Where is that located?

5 A. Ridgeville, South Carolina.

6 Q. And can you tell us a little bit about Leiber in terms
7 of its security level, that sort of thing?

8 A. Leiber is a medium-maximum security facility. It
9 houses general population, a maximum security component and
10 death row.

11 Q. And as part of that -- as part of your duties as a
12 major at Leiber Correctional Facility, do you have access to
13 records involving a particular inmate?

14 A. Yes, ma'am.

15 Q. And are those records made in the normal course of
16 business?

17 A. Yes, ma'am.

18 Q. And are the records made contemporaneous with the
19 events that occurred?

20 A. Yes, ma'am.

21 Q. And have you -- for the purposes of your testifying
22 here today, have you reviewed the particular records as they
23 relate to inmate Freddie Owens?

24 A. Yes, ma'am, I have.

25 Q. I'm going to show you what's been marked as State's

1 Exhibit No. 30 and ask you, do you recognize that?

2 A. Yes, ma'am.

3 Q. Is that an accurate summary of the records -- the
4 inmate records involving inmate Freddie Owens?

5 A. It is.

6 MS. STROM: Your Honor, at this time we would
7 offer State's Exhibit No. 30 into evidence.

8 MR. GIBSON: Subject to the earlier objection,
9 Your Honor.

10 THE COURT: All right. It's admissible subject to
11 the objection.

12 MS. STROM: May I publish to the jury now, Your
13 Honor?

14 THE COURT: Yes, ma'am.

15 BY MS. STROM:

16 Q. Just to go through each of these, are you able to see
17 that from there? Can you read that?

18 A. Yes, ma'am.

19 Q. Okay. If you would, just go down -- I believe these
20 are in date order. So if you would just go down, beginning
21 with number 1?

22 A. April 13, 2001, breaks toilet, sink and sprinkler.
23 Continue all the way down?

24 Q. Yes, sir.

25 A. May 26, 2001, throws hot water on another inmate.

1 May 27, 2001, had a six and a half inch shank made from
2 fencing and toothbrush.

3 June 14, 2001, spat on a correctional officer.

4 February 8, 2002, a 14 inch solid brass shank.

5 March 29, 2002, stabs correctional officer Smith in the
6 face with a shank.

7 June 12, 2002, stabs Undra Golden in the shower.

8 June 15, 2002, kicks an inmate who is restrained in a
9 restraint chair.

10 August 5, 2002, slaps a male nurse in the face.

11 August 17, 2002, throws a food tray and hits officer
12 Guess in the head.

13 August 23, 2002, struck officer in the face with his
14 fist.

15 October 22, 2002, hits officer Eaton in face with the
16 fist.

17 October 23, 2002, sets fire to cell.

18 December 22, 2002, shank made from fencing.

19 December 30, 2002, a ten inch made from a push rod of
20 the sink.

21 July 17, 2005, spits in the face of officer Jones.

22 August 26, 2005, slaps officer Henley in the face.

23 August 31, 2005, sets fire to cell.

24 September 11, 2005, threatens officer Jones.

25 January 1, 2006, a 12 inch homemade knife.

1 January 3, 2006, breaks cell door window with broom
2 stick.

3 January 13, 2006, throws feces on officer Williams
4 hitting him in the face.

5 February 3, 2006, spits in the face of another inmate.

6 February 4, 2006, orally threatens officer Jones.

7 February 28, 2006, a 12 inch weapon hidden between the
8 mattresses.

9 April 4, 2006, an eight and a half inch shank made from
10 flat metal sharpened at the edge and wrapped with ace
11 bandage.

12 May 1, 2006, sets fire to his mattress.

13 May 20, 2006, throws coffee on officer Smith.

14 Q. Thank you Major Nettles.

15 In this summary of incidents involving Freddie Owens,
16 there were a number of things that you referred to or were
17 referred to on the exhibit as shanks. Tell us what is a
18 shank?

19 A. A shank is a homemade weapon within the penitentiary.
20 The two that -- say push rod actually comes out of the cell.
21 The rest are predominately made from fencing material off
22 the rec field.

23 Q. And what can shanks be made from?

24 A. You can make a shank out of anything. I have seen them
25 made out of toothbrushes, razors, lighters. Those

1 facilities that allow canteen items, you can take a can of
2 tuna and turning it into a shank. Pencils, pens, paper.
3 You can roll up newspaper and wet it and let it get hard and
4 shape it. The same way with saran wrap.

5 Q. And where Mr. Owens has been housed, would you consider
6 that a very restrictive environment?

7 A. Yes, ma'am.

8 Q. And yet still within that restrictive environment he
9 has all of these infractions?

10 A. Yes, ma'am.

11 Q. Do you have personal dealings with Freddie Owens?

12 A. Yes, ma'am, I have.

13 Q. And as a major at Leiber, are you responsible for the
14 supervision of his housing?

15 A. Yes, ma'am.

16 Q. How did you classify Mr. Owens in terms of his behavior
17 within the Department of Corrections?

18 A. Normally I would refer to him as an ADD inmate. He's
19 assaultive, destructive, and damaging. He's -- he's, within
20 that housing unit, bar none, my most problematic inmate.

21 MS. STROM: Court's indulgence, Your Honor.

22 (Off the record)

23 (Back on the record)

24 BY MS. STROM:

25 Q. Thank you. Please answer any questions that the

1 defense may have.

2 CROSS EXAMINATION BY MR. GIBSON:

3 Q. Just real quickly, Major Nettles.

4 You talked about a number of ways that people can
5 make -- turn things into shanks. Newspaper, tuna cans and
6 those different things, right?

7 A. Yes, sir.

8 Q. Now, any of these shanks made by him, or in these
9 incident reports you talk about, are any of these made from
10 a tuna can or a newspaper or anything like that?

11 A. The ones from -- that were on the screen?

12 Q. Yes, ma'am.

13 A. No, most of those were fencing material. And on two
14 occasions he had the push rods out of his toilet.

15 Q. So other inmates in SCDC are making shanks, is that
16 right?

17 A. Yes, sir, you are correct.

18 Q. Now, are other inmates in SCDC -- are there other
19 inmates other than Mr. Owens that have assaulted officers?

20 A. Yes.

21 Q. Are there other inmates in SCDC who had fights with
22 other prisoners?

23 A. Yes, sir.

24 Q. Prison is unfortunately a dangerous place, is it not?

25 A. It is.

1 Q. Thank you Major Nettles.

2 MS. STROM: Okay. Nothing further.

3 THE COURT: All right.

4 MS. STROM: Your Honor, we would ask that he be
5 allowed to be excused.

6 MR. GIBSON: Without objection, Your Honor.

7 THE COURT: Without any objection.

8 MS. STROM: One second, Your Honor.

9 (Off the record)

10 (Back on the record)

11 MS. STROM: The State rests, Your Honor.

12 THE COURT: Okay. I'm sorry. Sometimes we have
13 to keep you out so long, we did a few minutes ago. The
14 lawyers were working. We were reviewing matters of
15 evidence, but that's not a concern of yours.

16 Before we move from the State's case, that's the
17 entire case for the State, and go into the defense case, I
18 may need to take up a couple of more matters, but it will
19 not be as long as you were out before. Okay.

20 If y'all would just go out.

21 (The following takes place outside the presence of
22 the jury panel)

23 MR. GODFREY: May it please the court, on behalf
24 of Freddie Owens I would make a motion for a directed
25 verdict on the issue of statutory aggravating factor. I

1 think if you look at all the evidence that has been
2 presented, the State has not proved a statutory aggravating
3 circumstance warranting that this case continue to the
4 penalty or death phase of the trial. We would ask that the
5 capital part of this trial be ended.

6 THE COURT: Do you want to put something on the
7 record?

8 MR. ARIAIL: I think in response to that, just the
9 facts, number one, the video demonstrates clearly both
10 people in the store were armed with deadly weapons.

11 The cash drawer was empty.

12 The audit revealed that the cash drawer was short.

13 Ms. Graves was obviously shot with a deadly
14 weapon. She was the attendant of the store.

15 Mr. Owens admitted to his girlfriend, Ms. Austin,
16 that he, in fact, robbed the place and that shot the lady.
17 He did likewise with --

18 THE COURT: My ruling would be there is evidence
19 to submit to the jury.

20 MR. ARIAIL: Thank you.

21 THE COURT: Okay. Are y'all ready to proceed?

22 MR. GODFREY: Could we have about three minutes?

23 THE COURT: Okay. Do you need at this time about
24 his right to testify or remain silent, or can we let that go
25 for awhile?

1 MR. GODFREY: Judge, that's one of the reasons I
2 want to have three minutes. I want to chat with him again
3 right now.

4 THE COURT: Oh, okay.

5 (Whereupon, proceedings were recessed)

6 (Whereupon, proceedings were reconvened)

7 THE COURT: Mr. Godfrey, are y'all ready?

8 MR. GODFREY: Yes, Your Honor.

9 THE COURT: Okay.

10 MR. GODFREY: Defense calls -- I'm sorry.

11 THE COURT: At this particular juncture it's not
12 a -- I don't want to do it prematurely to go into your
13 client's right to testify. At some point when you think you
14 might call him, I would do that.

15 MR. GODFREY: May it please the court, I would
16 advise the court that I have spoken with Freddie, and also
17 with Ken, and it is our client's decision not to testify in
18 this case.

19 THE COURT: Okay. If -- I'm going to let you go
20 ahead and go through the other witnesses. And when we reach
21 that point where -- I will go into it with him in detail.

22 MR. GODFREY: Okay.

23 THE COURT: Okay. You will use the afternoon, I
24 assume.

25 MR. GODFREY: Yes, Your Honor, and probably a

1 little bit of tomorrow morning, depending upon how late we
2 run.

3 THE COURT: Okay.

4 (The following takes place in the presence of the
5 jury panel)

6 THE COURT: Mr. Gibson.

7 MR. GIBSON: Thank you, Your Honor.

8 Your Honor, defense would call Ms. Marjorie
9 Brittany Hammock.

10 MARJORIE BRITTANY HAMMOCK, having been first duly
11 sworn, testified as follows:

12 THE COURT: State your name for the record.

13 THE WITNESS: Marjorie Brittany Hammock.

14 THE CLERK: Thank you. Be seated.

15 DIRECT EXAMINATION BY MR. GIBSON:

16 Q. Good afternoon, Ms. Hammock.

17 A. Good afternoon.

18 Q. Would you please tell the court where you live and
19 work?

20 A. I live in Columbia, South Carolina, and I'm a professor
21 at Benedict College in Columbia.

22 Q. Do you do any -- did you in the past do any work for
23 the South Carolina Department of Corrections?

24 A. I was employed with the Department of South Carolina
25 for 15 years. I was the director of the social work at one

1 period of time, and I served as a senior social worker in
2 various institutions.

3 Q. Now, what would that -- what did that entail?

4 A. Well, it was a fairly -- we were considered part of the
5 mental health team, and so we provided inmates with a
6 variety of services, including intake and assessment. We
7 provided them with alcohol and drug treatment. We did work
8 with anger management, social skills, and we treated those
9 who had serious mentally ill problems.

10 Q. Now, you said now that you work for Benedict College?

11 A. That's correct.

12 Q. What do you do?

13 A. I teach social work courses in the Department of Social
14 Work at Benedict.

15 Q. Okay. Now, do you have any kind of a private practice?

16 A. I do have a private practice that usually entails
17 working on death penalty cases, as well as consulting and
18 providing training in diversity and human relations.

19 Q. Okay. About the death penalty work, what's that work?

20 A. I have been asked to do biopsychosocial exams for the
21 last six or seven years, and I serve as a social work expert
22 witness in providing these assessments and testifying in
23 court.

24 Q. Now, before I get into this, let me ask you this, have
25 you ever been qualified as an expert?

1 A. I have, sir.

2 Q. And what fields have you been qualified by?

3 A. As a -- as a -- as an expert in doing assessments,
4 biospsychosocial assessments. Sometimes they are called
5 social histories.

6 Q. Okay. Now, I want back up a little bit and I want you
7 to tell me some more about your qualifications, okay? Would
8 you please tell me about your education?

9 A. I have a Bachelors of Arts Degree from Howard
10 University. A Master of Arts Degree from Howard University,
11 and I have completed course work at the Ph.D. level in
12 social work at the University of South Carolina.

13 I have done extensive in-service training, and I'm also
14 certified as a diplomat in clinical training.

15 And I'm a member of the National Association of Social
16 Work.

17 Q. Okay. Now, my understanding is you have got about 40
18 years of social work practice experience, is that correct?

19 A. 47.

20 Q. 47.

21 Now, would you please tell the court about some of the
22 areas of -- the practice areas in social setting that you
23 have dealt with in the past?

24 A. I have worked for the Department of Social Services. I
25 have done foster care placement. I have worked in

1 adoptions. I have been a school social worker. And as also
2 I said, I spend 15 years in the Department of Corrections
3 doing largely forensic social work.

4 Q. Now, are you involved with any community activities?

5 A. Yes, I am. I'm currently the chairman of the board of
6 the Palmetto AIDS Life Support Services, which is an HIV
7 AIDS support services for the Columbia area. And I serve
8 as -- I serve on the board of the South Carolina Board of
9 Social Work Examiners, which is the licensing effort here in
10 South Carolina.

11 Q. Now, are you certified in any way?

12 A. As I indicated before, I am licensed in South Carolina
13 at the independent clinical level.

14 Q. Okay. And are you a member of any national
15 professional organizations?

16 A. I'm a member of the National Association of Social
17 Workers. I serve on a national board with that entity, and
18 I also am active locally.

19 And I am also a member of the South Carolina Clinical
20 Social Work Society.

21 Q. Okay. I just want go back again. How many times have
22 you been qualified as an expert in the courts of South
23 Carolina?

24 A. In South Carolina? I know the total number, because I
25 looked it up, and I know that I have been certified to

1 testify in eight cases. I'm going to guess and say that's
2 five or six in South Carolina.

3 Q. Okay.

4 A. I could count those cases.

5 Q. And have you been certified in other states?

6 A. Yes, I have, in the State of Florida and Indiana,
7 Maryland.

8 MR. GIBSON: Your Honor, at this time I would
9 submit Ms. Hammock as an expert in conducting psychosocial
10 assessments, present findings and conclusions from the
11 assessments to this court.

12 MR. ARIAIL: We will stipulate she's qualified as
13 an expert in this court several times.

14 THE COURT: Okay.

15 MR. GIBSON: Thank you.

16 THE COURT: She may express her opinion about that
17 field.

18 MR. GIBSON: All right. Thank you, Your Honor.

19 BY MR. GIBSON:

20 Q. Now, Ms. Hammock, are you familiar with the term
21 psychosocial assessment?

22 A. I am.

23 Q. Would you please explain to the court what that term
24 is?

25 A. Well, it simply is a model or a vehicle that social

1 workers use to examine the life, the complete existence of
2 an individual. In this instance of someone who is on trial,
3 or involved in criminal proceedings. And it's a procedure
4 by which we look at the social, the psychological, the
5 physical, the educational experiences and practices of an
6 individual. And we use that to pull together and submit
7 what is known as a social history, so that we have a full
8 understanding of the experiences and the actions of an
9 individual.

10 Q. Okay. How does a professional social worker go about
11 performing such an assessment?

12 A. Well, we collect data in those very areas. We
13 interview the client, of course. We take a look at records,
14 school records, medical records, the Department of Juvenile
15 Justice and corrections, if they are applicable. We
16 interview members of the family, neighbors, friends. We
17 look at and we use the information that we may get from
18 other experts, like psychologists, psychiatrists, educators,
19 and we put together a picture that tells us about the life
20 of the individual.

21 Q. I don't know if you said this or not, but do you review
22 any literature on anything like that?

23 A. We take a look at what the existing, as well as the
24 standard literature, particularly in this instance if there
25 have been issues of abuse and neglect, what that literature

1 says.

2 We take a look at the information that we may gain from
3 educational sources, such as those issues that may impact
4 learning. Those kinds of areas of expertise is what we also
5 consider to determine whether or not we are proceeding
6 correctly in terms of making an assessment.

7 Q. Now, psychosocial assessment that we are talking about,
8 is that a typical method used in social work?

9 A. For social work, yes. It's offered in our schools of
10 education and we also do continuing education in that area
11 to make sure that we are operating within the framework of
12 the expertise of the information.

13 Q. Okay. And in what capacity have you from your
14 experience done psychosocial assessments?

15 A. Well, I have -- certainly that that was a very specific
16 part of my responsibilities when I was with the Department
17 of Corrections, but I have also worked in private
18 psychiatric facilities where that is the standard intake or
19 assessment procedure.

20 I have also -- it's also used in school settings where
21 the social worker, the psychologists, the psychiatrists,
22 pull together information about a given student or client.

23 Q. Is it also done in a foster care and/or Head Start?

24 A. Yes, in every single entity there is what is known as
25 intake or the assessment process whereby one determines what

1 a client or a person may need.

2 Q. Okay. Now, in the sentencing phase of a capital trial,
3 like we are in right now, how would one use a psychosocial
4 assessment?

5 A. The psychosocial assessment can be used to examine and
6 explain a person's behavior. It is not an excuse, but it's
7 a way of determining how a person may arrive in a setting
8 like this and the kinds of issues that one needs to consider
9 to make a determination.

10 Q. Now, were you asked to conduct the psychosocial
11 assessment in this case?

12 A. Yes.

13 Q. Did you conduct interviews in connection with that
14 psychosocial assessment?

15 A. Yes, I did.

16 Q. Did you review records?

17 A. Yes, I did.

18 Q. Did you consult with any other experts?

19 A. Yes, I did.

20 Q. Did you review any literature?

21 A. I did.

22 Q. Now, do you normally make a list of interviews,
23 records, experts and literature that you review --

24 A. Yes.

25 Q. -- in the process?

1 A. Yes, I do.

2 Q. All right. In this particular case would you please
3 tell us who you interviewed?

4 A. I interviewed the client, the defendant Freddie Owens.
5 I interviewed his mother, his -- both of his sisters. I
6 interviewed one of his brothers. I had a chance to talk to
7 his stepfather, who was then stepfather. I spoke to staff
8 at DJJ who had known him when he was incarcerated there.

9 Q. Okay. What types of records --

10 A. I'm sorry, I also interviewed --

11 Q. I'm sorry.

12 A. Yeah, I also interviewed other experts who would have
13 some dealings with him, and I have read the records of his
14 school records, his SCDC and his Department of Corrections
15 records.

16 Q. Okay. Now, you mentioned earlier that you had talked
17 to some experts. Would you tell me which experts that you
18 have consulted?

19 A. At this point I was able to talk to Dr. Donna Schwartz,
20 a psychologist, and Dr. Brawley, a psychologist.

21 I have also talked to Ms. Maag, who was one of his
22 teachers and who gave us some information about him.

23 Q. Okay. Did you develop any findings as a result of your
24 assessment?

25 A. Yeah, it was -- it was -- it was -- it was a way in

1 which, again, we arrived at some decisions about what his
2 life looked like. And what we concluded was that this was a
3 young man who was born to a woman who was I think 18 at the
4 time and had one child, who had very limited resources and
5 had difficulty caring for her family because of those
6 limited resources. For that reason there were factors in
7 their childhood which prohibited him from getting the kind
8 of normal, comfortable, supportive environment that they
9 needed.

10 And it's also a great deal of violence in both the
11 immediate experience that the client experienced, because
12 he -- his -- both his stepfather and his father were
13 described as very violent people, and his mother was a
14 victim of that violence in many instances.

15 Again, because of the limited resources, the children
16 of Ms. Mason were removed when Freddie was about four years
17 old and taken into custody in foster care where they stayed
18 for a relatively short period of time. She worked very hard
19 to get them back. But, again, there were -- there was
20 evidence of abuse and neglect, which is why the children
21 were removed. And some of that neglect, at least,
22 continued, because the existence of the family was pretty
23 marginal.

24 The community also was one of considerable violence and
25 concern on a regular basis. Freddie moved, and his family

1 moved, a number of times, and he also changed schools a
2 number of times.

3 In this instance he was somewhat of an outsider, and so
4 he was always having to prove himself and defend himself.
5 He was taught at an early age that in order for him to
6 survive, he had to fight his way to and from school almost
7 on a daily basis. His stepfather told me that it was
8 necessary for this gentleman -- this young man to learn how
9 to take care of himself and to defend himself. So, in
10 essence, what he was taught at a very early age is that he
11 had to fight. And, so again, that kind of violence
12 continued in his existence.

13 He also had what we found out some fairly significant
14 learning disabilities, learning impairments, and that was
15 even made worse by the limitations in the home, which could
16 not support him, and his educational deficits like he needed
17 to be. So school failure was a part, not only of his
18 existence, but it was a part of his family. And those
19 learning difficulties and disabilities compromised Freddie's
20 ability to really develop the skills and the competence that
21 he needed in order to feel good about himself and to
22 succeed. So, again, it didn't help him to regard himself as
23 a competent human being.

24 All of these things put together provide a picture of a
25 young man who did not have the interventions that he needed

1 and it made him -- it made it very difficult for him as a
2 child to compensate for all of those losses. He developed
3 the kind of coping strategies that made him always on the
4 defensive, and those coping strategies you can find in the
5 histories of children who are typically neglected and/or
6 abused.

7 He saw a lot of violence and he acted out on that
8 violence, and he ended up, as we know, in juvenile and adult
9 criminal activity.

10 Q. Were there any other findings or conclusions that are
11 appropriate to the discuss at this point?

12 A. Again, I mentioned the violence. I can give some more
13 specifics.

14 He experienced separation and foster care, but he also
15 experienced witnessing family members who were engaged in
16 using violence to settle problems. There was a considerable
17 amount of incarceration, that of his brothers and his uncle,
18 and a very marginal economic situation throughout his
19 existence as a young child.

20 Q. Now, my understanding is you have prepared an exhibit
21 to help us understand this family?

22 A. Yes, I have a genogram, which would enable us to take a
23 look at that family. And I could give a few more details
24 using that genogram.

25 Q. All right. May I?

1 A. May I?

2 Q. Let me address this.

3 A. There is some extra ones in there.

4 (Witness off the witness stand)

5 A. They are all the same, I'm sorry.

6 MR. ARIAIL: That's all right.

7 MR. GIBSON: Permission to --

8 MR. ARIAIL: We have no objection.

9 THE COURT: Without objection, that can be
10 published to the jury.

11 MR. GIBSON: Thank you, Your Honor.

12 MR. ARIAIL: Could we mark that as Defense Exhibit
13 1?

14 MR. GIBSON: I would appreciate that, please.

15 (Genogram marked as Defendant's Exhibit No. 1 for
16 identification)

17 A. I have a correction to make too.

18 BY MR. GIBSON:

19 Q. All right. Now, my understanding, Ms. Hammock, that
20 you have a correction?

21 A. Yes, I do. I have a correction to make. If you will
22 take a look at Freddie Owens, Sr., common law, this was at
23 that time common law, because they had been married, and
24 Freddie's stepfather. That should be Masey, M-A-S-E-Y,
25 instead of Owens.

1 Q. Now, my understanding of this exhibit is it was a
2 genogram, is that right?

3 A. This is a picture of the family, yes, the family
4 composition.

5 Q. Okay. Well, would you please, using this genogram,
6 explain to us the family situation of Mr. Owens?

7 A. Okay. As you can see, mother and actually the father
8 and then the stepfather, and he was actually married. This
9 constitutes Freddie's family. And he has, as you can see,
10 two sisters, Marie and Satail. Freddie, of course is the
11 second born. And then you have Donald and Lorenzo. Donald
12 is sometime known as Andy.

13 Lorenzo is mentally disabled. Maria is stable, has
14 children. Satail lives in the home. Donald and Lorenzo
15 currently are incarcerated.

16 This family, Mary Mingo, who was Freddie's grandmother
17 also was a very influential person in his family. She also
18 was incarcerated for assault.

19 This is the family of Marie Mingo and David Mingo, who
20 are maternal grandparents. And this family also has
21 considerable strife and violence in the family.

22 Currently David, who is an uncle of Freddie's, lives
23 with his mother, and lived with his mother at the time that
24 Freddie was born, and he is a disabled person who Ms. Mason
25 takes care of.

1 So the family composition considered -- had five
2 children and a mentally disabled young man. And this family
3 lived fairly marginal existence in terms of economics and
4 education and resources.

5 Freddie Owens -- Freddie, I'm sorry, Masey, was -- is
6 Freddie Owens' dad had very, very little contact with the
7 family. Also described as an extremely violent person, who
8 was abusive to Dora Mason. Freddie has had very little
9 contact with him when he was growing up. There has been
10 subsequent contact in recent years.

11 Bernard Mason came into Freddie's existence, Freddie's
12 life, when he was about five years old, and he was
13 instrumental to a degree in reestablishing the family. As I
14 told you, they were all in foster care for awhile, but also
15 extremely violent toward Ms. Mason. And this was the
16 gentleman who taught Freddie that he must at all times be
17 vigilant and violent in order to protect himself.

18 The Freddie Owens, Sr. ^family also is said, so we
19 really have literally very little information, but we do
20 know there are at least five relatives who have been
21 incarcerated in this group.

22 Drug use and alcohol run through the family. Very,
23 very little in the way of formal education, and very few
24 members of the family have completed high school. So this
25 is what this family looks like.

1 Freddie was, as I said, involved in witnessing or being
2 around a great deal of violence in the family and in the
3 community. His -- as I indicated, his grandmother did time
4 for assaulting, shooting a family member. And, of course,
5 he was very close to her and felt very strongly about her,
6 and she also leaves him at a period of time when she goes --
7 when she's incarcerated. So a history of losses, some
8 violence, a great deal of instability, and this was
9 Freddie's existence.

10 I think that's it.

11 MR. GIBSON: Your Honor, we would ask that this
12 genogram be moved into evidence so the jury may consider it
13 at a later point, should they see fit.

14 THE COURT: Okay, Defendant's Exhibit No. 1.

15 MR. GIBSON: Yes, sir. Thank you.

16 BY MR. GIBSON:

17 Q. Now, Ms. Hammock, I think you alluded to some of these
18 already. Would you tell me and tell the court what that
19 genogram that you just talked about tells you about Mr.
20 Owens family?

21 A. Well, as I indicated, this is a family that had a very
22 marginal existence, both financially, economically. Very
23 limited resources and skills that would enable them to
24 provide for their children a fairly healthy stable
25 existence.

1 It also says that the family used a great deal of
2 violence in solving their problems, and this is a lesson
3 that was taught very early on to Freddie. And it's also a
4 family that perceived themselves as being on the outside of
5 society because they didn't have the kind of resources that
6 they needed to have.

7 Q. Now, in your years of experience have you noticed any
8 correlation between this type of family circumstance and a
9 person committing crime or violence or anything like that?

10 A. Yes, I have. There is -- there appears to be, both in
11 the literature and then in casual observation, the kind of
12 association with limited resources, considerable violence,
13 neglect as a child, abuse in the environment and criminal
14 behavior.

15 Q. Okay. Now, I just want to ask a couple of questions
16 that I know the State is going to probably ask you. He's
17 got -- Mr. Owens has four other siblings, is that correct?

18 A. That's correct.

19 Q. How did they turn out?

20 A. Well, as I indicated before, at least two brothers --
21 well, three of his siblings have been exposed to the
22 Department of Juvenile Justice for a variety of criminal
23 activity. Two brothers are currently incarcerated. That's
24 my understanding.

25 His oldest sister leads a fairly stable life and has

1 not been involved with the law.

2 Q. Now, in your years of experience, how would you
3 characterize or rate the badness, in search of a better
4 word, of Mr. Owens family situation?

5 A. Well, again, you always have individuals who receive,
6 or do not receive, the kinds of interventions which make
7 them successful or less successful. There are -- there are
8 always those factors which can contribute to someone being
9 in the same set of circumstances, and yet for some reason
10 they emerge. And then there are those who appear to have
11 all of the -- who appear to have very few resources to help
12 them go beyond the limitations that they have been dealt.

13 Q. Give me just a second, please.

14 (Off the record)

15 (Back on the record)

16 BY MR. GIBSON:

17 Q. Thank you Ms. Hammock. Would you please answer any
18 questions that the solicitor's office may have.

19 MR. ARIAIL: No questions, Your Honor.

20 THE COURT: Thank you, ma'am. You may come down.

21 MR. GODFREY: Defense would call Fain Maag.

22 FAIN MAAG, having been first duly sworn, testified
23 as follows:

24 THE CLERK: Please state your full name for the
25 record.

1 THE WITNESS: Fain Cones Maag.

2 THE CLERK: Thank you. Be seated.

3 DIRECT EXAMINATION BY MR. GODFREY:

4 Q. What is your name?

5 A. My name is Fain Cones Maag.

6 Q. And do you live here in Greenville?

7 A. I do.

8 Q. Tell us what you do and how you come to be with us
9 today.

10 A. Okay. I'm an educator. I have taught all grade
11 levels. And in doing this particular vocation I have
12 learned an awfully lot about my students.

13 Q. Well, how long have you been a teacher?

14 A. I have been a teacher for 29 years.

15 Q. How did you come to know Freddie Owens?

16 A. I had Freddie Owens in the 3rd grade.

17 Q. And what kind of start did you have with Freddie Owens?

18 A. I would say the start was a little rocky, because the
19 first day of school I think Freddie was looking to make his
20 name known and just being a person in a classroom. So to do
21 that he chose sort of an incorrect way. He threw a desk
22 across the room and asked me what I was going to do about
23 it. And I told Freddie I didn't know at that point, but
24 that I was going to do something.

25 Q. Well, do you have any other first impressions of

1 Freddie?

2 A. Yes. I remember Freddie -- it was very difficult for
3 him on the playground, because his peers, recognizing that
4 Freddie was smaller than they, would chase him all over the
5 playground, into the classroom, and Freddie would come
6 crying for help. Not literally crying, but in his heart
7 crying for help, so I stopped a lot of fights when I could.

8 Q. Well, why are you here today?

9 A. I'm here today because the teacher in me knows that
10 there are people who have difficulty adjusting to society.
11 They have learning deficiencies, and Freddie came with that.
12 He had a tremendous trouble trying to read, and his social
13 skills were certainly lacking. And if you are a teacher who
14 cares and you are in the classroom because you care, you
15 reach out to every one of them, and Freddie Owens caught my
16 attention.

17 Q. Well, what did you eventually learn about Freddie and
18 his home life?

19 A. Well, I have been to his home and I know that -- I know
20 that his mother did the best she could under the
21 circumstances, but as already been stated here in the
22 courtroom, it was a sparse environment and sometimes there
23 was no food in the house, and he shared it with a lot of
24 people. And if I'm not mistaken, his stepfather -- at the
25 time in the neighborhood, which happened to be very violent,

1 as has already been stated, he was chased constantly at
2 school and at home by these same boys. And when he got home
3 frightened, his father would lock the door and tell him he
4 wasn't letting him in, that he had to fight. He wanted him
5 to grow up to be a man.

6 Q. Well, did you do anything to assist Freddie and his
7 family?

8 A. My teammate and I -- you know, you really don't like
9 saying things like this. We took him a turkey for
10 Thanksgiving. And I don't remember seeing Freddie with
11 anything. He never told us if he got anything for
12 Christmas, so we made sure that if he didn't have a coat or
13 he didn't have something, he got something.

14 Q. Did you help out any other ways at holidays?

15 A. Not that I can think of. My goal was to help him in
16 the classroom, to help him build his skills, to have him
17 tested, and to have him looked at by our resource people, by
18 our psychologists, and to see if we could not -- my goal was
19 to establish the skills that he was going to need in order
20 to survive. And with the help of the resource teacher, he
21 made some progress in reading, and was quite proud of that
22 fact.

23 And I never had trouble with Freddie in my classroom
24 after the desk incident. I think kids sort of do what you
25 expect of them, and my expectations of Freddie were higher

1 than what expectations were of himself.

2 Q. Well, did you learn any other things about Freddie's
3 mother and his home life?

4 A. It would be only an assumption in the fact that being
5 there, I didn't -- I don't think we ever had a conference, a
6 classroom conference, but I do know that in her own way she
7 had been doing the best she could be doing, but I cannot --
8 I cannot judge her, because I was not in the home and could
9 not do so.

10 Q. Well, I understand that you got Freddie some testing
11 and some help. What kind of learner or student was Freddie?

12 A. Well, Freddie, as I said, was lacking in the most
13 important thing -- two of most important things that we
14 wanted in the classroom; one, the ability to read and learn;
15 and two, the social skills to get along with those around
16 you.

17 We did, as I said, have him tested. He went out to a
18 resource room an hour I think every day. And with the help
19 of the resource teacher he began to make some strides.

20 The other thing that I think became evident was that
21 Freddie had some real gifts, because there isn't a child
22 that walks in your classroom that doesn't have gifts along.
23 You see the positive and you see the negative. I guess
24 because Freddie was chased a lot in the neighborhood and
25 school ground, Freddie was one heck of a runner. And I

1 think he told me one time the only time his name was ever
2 mentioned in school over the loudspeaker was when he won the
3 400 yard dash, I believe it was, he may have to correct me,
4 out on the school playground for the events that we have in
5 physical ed.

6 Freddie also -- it became very -- it became apparent to
7 me when I went to visit him or to see how he was doing in
8 middle school, that he was an artist, and he was a very good
9 artist, and he could use words quite well. He may not spell
10 them correctly, but he had a great way of expressing
11 himself.

12 Q. Well, you were Freddie's teacher for what, one year?

13 A. Just one year, uh-huh.

14 Q. But are you saying that you continued to follow him
15 after he had graduated from your grade?

16 A. How could you not? And one of the reasons is this.

17 He -- there is some kids that just sort of make an
18 impression on you and you want to reach out to them and you
19 know they are trying for you, if that makes sense. And
20 Freddie tried very hard, minus some of the skills that he
21 needed to do what was expected of him.

22 And Freddie perhaps taught me more than I taught
23 Freddie, because he taught me that I didn't know everything
24 that I thought I knew and how to reach every child I thought
25 I should reach. So that course led me to research how you

1 identify a student in those situations, what type of
2 learning, what type of instructional strategies do you use
3 to work with kids who are very, very diverse, what social
4 skills and how do you help them in that area. And this all
5 became a gift to me, because I could help more than just
6 Freddie, hopefully.

7 Q. And have you continued to keep up with Freddie over the
8 years?

9 A. I have. My husband and I visited him when he was -- I
10 can't think of the name of the prison down in Summerville.
11 I'm sorry, I can't think of name of it. We did visit him.
12 And then after my husband died in 2002, I did not correspond
13 with Freddie any more.

14 Q. Well, in your visit did you learn of Freddie's current
15 love of learning and reading?

16 A. I have heard about that. I do not know the details,
17 but if that's -- I'm anxiously awaiting hearing what he has
18 done in the area of reading, because that's a powerful tool
19 to give him. And I can already tell you that he could
20 express through his writings, his poetry, he could express
21 himself beautifully. So I'm awaiting that, because I would
22 be very, very proud of him to hear that he had worked hard
23 at the things he lacked and had built up those skills.

24 Q. Thank you. Please answer any questions that the
25 prosecution may have.

1 MR. ARIAIL: No questions, Your Honor.

2 THE COURT: Thank you, Ms. Maag.

3 THE WITNESS: Yes, sir.

4 MR. GIBSON: Your Honor, may we break for about
5 five or ten minutes? I got a sense we are moving so fast
6 along, I have got another witness who I might need to try to
7 get here and I need to just check something else with the
8 witness coming up next.

9 THE COURT: Okay. Keep y'all moving as a result
10 of all that chocolate pie some of y'all had for lunch.

11 (The following takes place outside the presence of
12 the jury panel)

13 THE COURT: Okay. We will be at ease.

14 (Whereupon, proceedings were recessed)

15 (Whereupon, proceedings were reconvened)

16 THE COURT: Ready, Mr. Gibson?

17 MR. GIBSON: I am, Your Honor. Thank you.

18 (The following takes place in the presence of the
19 jury panel)

20 THE COURT: All right, Mr. Gibson.

21 MR. GIBSON: Thank you, Your Honor.

22 The defense will call Dr. Tora Brawley.

23 DR. TORA BRAWLEY, having been first duly sworn,
24 testified as follows:

25 THE CLERK: State your name for record, please,

1 ma'am.

2 THE WITNESS: Tora Brawley.

3 THE CLERK: Thank you. Be seated.

4 DIRECT EXAMINATION BY MR. GIBSON:

5 Q. Good afternoon, Dr. Brawley.

6 A. Good afternoon.

7 Q. I want to try to submit you as an expert in
8 neuropsychology, but before I do that I want to get some
9 information about your qualifications for that role, okay?

10 A. Certainly.

11 Q. So would you please tell me your educational
12 background?

13 A. I have a Bachelors Degree in psychology from the
14 University of Texas, at Austin.

15 I obtained my Master's Degree and my Ph.D. in clinical
16 psychology and neuropsychology at California School for
17 Professional Psychology.

18 I did my internship at Baylor College of Medicine in
19 Houston, Texas, and I did a fellowship at Duke University
20 Medical Center in Durham, North Carolina.

21 Q. Did you have any academic honors during those time
22 frames?

23 A. The deans list in graduate school.

24 Q. Are you licensed in any way?

25 A. I'm licensed in the State of South Carolina as a

1 clinical psychologist.

2 Q. All right. Now, can you tell me something about your
3 professional experience or work history?

4 A. I started my work history at Baylor College of Medicine
5 in the Department of Neurology, performing
6 neuropsychological evaluations. While there -- I was there
7 for approximately nine years, and I was also co-director of
8 the post-concussion behavioral clinic there.

9 I got married and moved to the Carolinas and worked at
10 Duke University. I also worked at Wake Med Rehab Hospital,
11 both as a neuropsychologist.

12 Then we moved to Columbia, South Carolina. My husband
13 is an F-16 pilot in the military and his base was in
14 Columbia, South Carolina, so we moved to Columbia, and I
15 took a job with the Department of Mental Health. I was
16 hired by Dr. Pam Crawford to come and perform forensic
17 evaluations and specifically where a neuropsychologist was
18 needed, where there was a question of brain function,
19 although I did some general forensic evaluations there too
20 with the psychiatrists.

21 After the birth of my son in 2002 -- at the same time I
22 was at DMH, I was also doing some private practice work
23 through the University of South Carolina Medical School.

24 After the birth of my son in 2002, I did not go back to
25 full-time work at DMH. I wanted to focus on being a mom

1 too, but I kept my part-time private practice, which is what
2 I'm still doing now, performing neuropsychological
3 evaluations on clinical patients, on legal cases.

4 I'm also an evaluator for the Federal Aviation
5 Administration for pilots who are trying to get back in the
6 cockpit after treatment for drug and alcohol, or after they
7 have had something happen to their brain and they need to be
8 certified to get back in the cockpit.

9 Q. Now, would you explain to the jury exactly what
10 neuropsychology is?

11 A. Right. A neuropsychologist looks at brain behavior
12 relationships, and the neuropsychological evaluations
13 consists of a battery of testing. I test. I come in and I
14 perform a clinical interview with the patient and I get
15 background history from them, and then perform various
16 tests. I look at memory, attention, concentration, language
17 skills, motor skills.

18 Basically where an MRI gives you a picture of the
19 brain, this battery of tests that I do tell you how the
20 different areas of the brain are functioning, how they are
21 working. So I get referrals from neurologists or
22 psychiatrists, because, you know, they have got a picture of
23 the brain, but they want to see quantitatively and
24 qualitatively where the patient is. I see a lot of dementia
25 cases, Alzheimer's, Parkinson's, MS, a variety of

1 neurological. I see quite a bit of head injury as well.

2 Q. Dr. Brawley, have you ever done this, this neurological
3 assessment evaluation context of a court case?

4 A. Yes, sir.

5 Q. And have you ever been qualified as an expert as a
6 neuropsychologist?

7 A. Yes, sir.

8 Q. How many times?

9 A. Between state and federal court in South Carolina,
10 maybe 20 times.

11 MR. GIBSON: Your Honor, at this point I would
12 offer Dr. Brawley as an expert in neuropsychology.

13 MR. ARIAIL: We don't have any voir dire.

14 THE COURT: All right. She can express her
15 opinion in that field.

16 BY MR. GIBSON:

17 Q. Now, Dr. Brawley, how did you become involved in the
18 evaluation of Mr. Owens?

19 A. Well, my evaluations all start from a referral, and the
20 referral for me to see Mr. Owens came from Dr.
21 Schwartz-Watts, who is a forensic psychiatrist, who has seen
22 him, noted that he had a history of head injury and some
23 learning problems. And so she wanted a full assessment of
24 how he was doing from a cognitive standpoint.

25 Q. And what did your evaluations consist of with respect

1 to Mr. Owens?

2 A. As mentioned before, I did a clinical interview and I
3 do a full battery of tests. With Mr. Owens I gave --

4 Do you want me to list the tests? I don't want to bore
5 you all, but I basically the repeatable battery for the
6 assessment, the neuropsychological status. I gave him a
7 reading -- Wechsler test of adult reading. I gave him the
8 Weschler Adult Intelligence Scale. Some motor testing,
9 Trail Making Part A, Trail Making Part B, a test of verbal
10 fluency. Group peg board, which is a motor test that looks
11 at the motor strip in the brain.

12 And I also assess effort. Any time we do a battery of
13 tests like this, you need to ascertain that the patient is
14 giving you their best itself. And so there is some tests
15 that you put in there to look and see how hard they are
16 trying, because you want to be able to say that your results
17 are valid.

18 Q. What kind of tests did you use to assess him?

19 A. I did the test of memory malingering.

20 Q. What, for the jury's understanding, is that test?

21 A. Again, it's presented as a test that's very hard, but
22 it's actually very easy. It's been normed or standardized
23 on a variety of clinical populations - dementias, head
24 injuries. And so you know where the patient should perform.
25 And Mr. Owens got a perfect score. He put forth an

1 excellent effort. He got a perfect score on the test.

2 Q. Now, after you did all these tests, did you have any
3 what you would consider to be clinically significant
4 findings?

5 A. I did. The areas that fall below where we would
6 expect, given his history, were primarily with verbal memory
7 and verbal learning.

8 Q. All right. And did you find anything else noteworthy
9 about your testing?

10 A. It was interesting to me, because I also asked for any
11 records from any previous cognitive evaluation that had been
12 done on Mr. Owens, and what I noted was his IQ's in school
13 and DJJ and the IQ's that had been done on him in the past
14 were, you know, eighties, high eighties, somewhere around
15 there. And with me he received a full scale IQ of one
16 hundred. So that tells me his IQ is improved.

17 So then I go back and look and see what were the
18 individual subtests that actually brought his scores up, and
19 they were things that he has been self-teaching, you know,
20 the vocabulary, general knowledge. He's been doing a lot of
21 reading and bettering himself and it actually shows on his
22 IQ scores.

23 Q. So basically through his own effort he has improved his
24 intellect?

25 A. His scores on IQ tests, yes.

1 Q. Now, you mentioned that you reviewed a number of
2 records. Would you please tell us what records that you
3 reviewed?

4 A. I basically asked for any previous testing, so I looked
5 at school records, because he had been diagnosed with a
6 learning disability, and, you know, various other problems
7 in the classroom. He has a couple of evaluations in the
8 school system. He also had an evaluation at DJJ and then by
9 some other psychologists. I believe Dr. Horne and Dr. Evans
10 had seen him, so I asked for records pertaining to that.

11 Q. Okay.

12 A. Previous psychological evaluations.

13 Q. And based on those records, did you find any other
14 things that you would deem noteworthy?

15 A. Basically just, you know, what I have talked about
16 already, that he did, you know, show some improvement when
17 you look at the school records compared to where he is now.

18 Q. Did you find a history of any learning disability?

19 A. Well, that's clearly documented in the school records.
20 He has a problem -- he had a documented learning disability,
21 problems with impulsivity, poor attention.

22 I also did -- I forgot to mention, I interviewed Ms.
23 Maag, who you all heard here earlier, over the phone,
24 because sometimes there is only so much that you can get
25 from school records. You know, maybe put down a one

1 sentence description. And so I called and spoke with her on
2 the phone to get more information about what she had known
3 about his learning ability, about his cognitive functioning,
4 and she told me that he just -- he really had trouble
5 focusing, that he couldn't put his attention where it needed
6 to be. And she noted significant difficulties with that,
7 and that is documented throughout teacher ratings and a
8 variety of things like that in the records, the problems in
9 those areas.

10 Q. So a lot of those problems were documented as early as
11 elementary school?

12 A. Right, particularly the learning problems. The
13 problems with depression, things like that, came a little
14 bit later.

15 Q. Okay. Now, you mentioned depression. I don't think
16 you had mentioned that before. Would you tell us what your
17 record review or whatever you found about depression with
18 Mr. Owens?

19 A. There were -- and we always need to look for
20 depression, because depression can affect your brain ,
21 function. If you are depressed or anxious, you are not
22 going to think as clearly. You are not going to think as
23 quickly. And in my interview with Mr. Owens, there were
24 some indicators that he's had some lifelong problems with
25 that. And I went back and looked in the records and he had

1 been diagnosed with dysthymia, which I'm sure you will hear
2 more about later when the psychiatrist testifies, which is a
3 form of depression. He's been diagnosed with major
4 depression.

5 And so I asked Ms. Magg. I mean, I'm not a child
6 expert. I'll tell that you right now. Until I had my
7 child, I seen them in the malls. That's about as much as I
8 knew about children, but in the limited training that I did
9 with kids, what I noticed is that sometimes those children
10 who were depressed showed it as aggression. Kids didn't
11 know how to say I'm sad, I'm depressed, but they would get
12 angry. My four year old does that, you know, will get
13 frustrated and gets angry. And so I had asked Ms. Maag did
14 you see any indication of, you know, that he may have been
15 having some depression early on, and she -- yeah, she says
16 well, there's certainly a possibility, given what she knew
17 about him and his situation. But those -- those were the
18 type of things that I look at.

19 So I know that it was at least diagnosed in '97, the
20 problems with depression, and it may certainly may have been
21 present before that.

22 Q. Now, you just talked -- I want to touch on one thing.
23 You talked about how depression sometimes manifests itself
24 in children, and I think you said it could manifest in
25 children as irritability?

1 A. Yes.

2 Q. Impulsivity?

3 A. Yes.

4 Q. Resistance?

5 A. Yes.

6 Q. Now, do you have any overall impressions that you think
7 would be helpful for the jury, based on all the tests and
8 the research and evaluation that you conducted with Mr.
9 Owens?

10 MR. ARIAIL: Well, I will object to the form of
11 that question. She's here as an expert to testify as to her
12 opinion based on her analysis, not overall information she
13 might provide the jury.

14 THE COURT: Repeat your question, Mr. Gibson.

15 MR. GIBSON: Thank you, Your Honor.

16 BY MR. GIBSON:

17 Q. Do you have an overall opinion that you have come to,
18 based on your evaluation or review and everything else that
19 you have done with Mr. Owens?

20 A. And I think Mr. Ariail and I were thinking along the
21 same line. What I was about to say is my scope was very
22 limited. In this proceeding, in this evaluation, I was
23 asked to look at his brain function, you know, present and
24 past too. And so from that standpoint, from the
25 neuropsychological standpoint on what I have documented is,

1 yeah, there are some select areas of deficit in Mr. Owens
2 brain and he does have a history of lifelong problems with
3 brain function and also psychiatric issues.

4 Q. Thank you Dr. Brawley. Would you please answer any
5 questions that the State may have?

6 CROSS EXAMINATION BY MR. ARIAIL:

7 Q. Going back to that last statement, the
8 neuropsychological, I'm assuming that as part of that,
9 although -- you don't have a report?

10 A. I certainly do.

11 Q. Oh, do you?

12 A. Yes, sir.

13 Q. Do you have one written?

14 A. I do.

15 Q. Oh, good. Could I have a copy?

16 A. Sure.

17 Q. Oh, great. Thanks. It will help me from wandering.

18 We've heard from Dr. Brunetti earlier who testified.

19 Are you familiar with his report?

20 A. I did read his report, yes, sir.

21 Q. So you are aware of what his findings were back in
22 1999?

23 A. Yes, sir.

24 Q. Did you also concur that the evidence there was no
25 evidence of head injury as a result of -- I think it was a

1 bus wreck, or something, that he was looking at?

2 A. Yeah, well, he had -- he has had a previous head
3 injury. You know, I only found select deficits. There were
4 not big things wrong with Mr. Owens brain when I saw him, so
5 I don't put a whole lot of clinical significance on that.
6 You know, everybody's brain is different. You can have a
7 head injury and really not have any residual -- significant
8 resilient problems from it.

9 Q. Right.

10 A. You know, I can't say, you know, did that wreck,
11 however many years ago, cause the problems with verbal
12 memory or attention. I wish I could, but, you know, it's
13 something that you need to consider, but it's not something
14 that I'm putting a lot of significance on.

15 Q. All right. So the things that you did find going on,
16 you said they are not significant?

17 A. It doesn't rise to the level of me diagnosing him with
18 a dementia or, you know, any kind of brain syndrome.

19 Q. And what he does have is some verbal memory?

20 A. And learning.

21 Q. And learning?

22 A. Yes, sir.

23 Q. And then also you said hyperactivity or attention
24 deficit?

25 A. Right.

1 Q. But nothing that rises to the level of any mental
2 illness or brain malfunction?

3 A. Not from a neuropsychological standpoint. Like I'm
4 just a small part, and Dr. Watts takes my results and
5 everything else and puts it together and goes from there.

6 Q. Thank you.

7 MR. GIBSON: Thank you Dr. Brawley.

8 THE COURT: Thank you, ma'am.

9 MR. GODFREY: Call Dr. Thomas Cobb.

10 DR. THOMAS COBB, having been first duly sworn,
11 testified as follows:

12 THE CLERK: State your name for the record,
13 please.

14 THE WITNESS: Thomas Cobb.

15 THE CLERK: Thank you. Be seated.

16 DIRECT EXAMINATION BY MR. GODFREY:

17 Q. What is your name?

18 A. It's Thomas Cobb.

19 Q. And what is your occupation?

20 A. I'm a forensic psychiatrist and an assistant professor
21 at the Medical University of South Carolina, where I teach
22 forensic psychiatry to fellows, as well as general
23 residents.

24 Q. Do you have any other job?

25 A. Yes, I do. I also do treatment of folks that are

1 incarcerated and also that are in the legal system. Some of
2 these are folks that are on an outpatient basis that may be
3 part of their probation and they have to have mental health
4 treatment.

5 In particular, in this particular area, I have treated
6 folks in maximum security units at the Leiber prison.

7 Q. Please tell us about your education and training.

8 A. I received my undergraduate degree in psychology at the
9 University of South Carolina honors college.

10 I went to medical school at the Medical University of
11 South Carolina, where I received my medical doctor.

12 I then went to the University of Michigan, where I
13 received my general psychiatric training and did a
14 subspecialty year in forensic psychiatry at the Case Western
15 Reserve.

16 Q. Are you board certified?

17 A. Yes, I am, in both general and forensic psychiatry.

18 MR. GODFREY: Your Honor, at this time we would
19 offer Dr. Cobb as an expert in forensic psychiatry.

20 THE COURT: Anything from the State on
21 qualifications?

22 MR. ARIAIL: Have you testified in the courts of
23 South Carolina as an expert witness in the area of
24 psychiatry before?

25 THE WITNESS: Yes.

1 MR. ARIAIL: And you have been qualified as an
2 expert previously?

3 THE WITNESS: Yes.

4 MR. ARIAIL: That's all I have.

5 THE COURT: I'll qualify him to express opinions
6 in that field.

7 BY MR. GODFREY:

8 Q. Dr. Cobb, how long have you been providing services,
9 psychiatric services, for the prison?

10 A. For approximately two years. One to two years.
11 Currently right now what I'm doing is supervising my
12 trainees who are now going out there to provide care.

13 Q. And that's an association with your job at the medical
14 school?

15 A. Yes, it is.

16 Q. And at the medical school you are a professor. What
17 are you professor of? What do you teach?

18 A. Forensic psychiatry, which is basically anywhere the
19 law and mental health cross. If somebody has a mental
20 disorder and they happen to be in the legal realm and that
21 disorder may have some impact on whatever legal decision is
22 asked of by the court, then they would ask an expert to come
23 in and evaluate them and answer their specific question, and
24 that's what I do.

25 Q. How did you come to see Freddie Owens as a patient?

1 A. I was working in the maximum security unit at the
2 Leiber, which was sort of a regular assignment for me, and
3 was actually talking to an inmate that was next to him when
4 he asked to speak to me and basically asked me for some
5 help, that he had been getting in a lot of trouble and
6 wanted some help to stay out of trouble.

7 Q. And when did you first see him?

8 A. I believe August of '05, around that time.

9 Q. How do you usually come to have patients at the prison?

10 A. Usually what happens is that a social worker will go by
11 and do assessments. People that have psychiatric illnesses
12 a lot of times don't volunteer them, so when there is some
13 suspicion that somebody does have an illness, they are
14 screened by a social worker or a psychologist and then
15 referred to me for an evaluation. Unfortunately that
16 doesn't always catch the folks that are mentally ill that
17 are incarcerated, but that is the general process in which
18 they are referred to me for treatment.

19 Q. How often would you -- how often do you go to Leiber to
20 provide the psychiatric services?

21 A. Currently I'm not going to Leiber. But when I was
22 going to Leiber, it would be anywhere between 20 percent of
23 my time to 50 percent of my time, depending on the needs of
24 the prison and the staffing. Sometimes it was many days out
25 of the week, and the month of July I believe I spent 50

1 percent of my time out at Leiber providing psychiatric care
2 for the inmates.

3 Q. And you are doing this at the same time that you are a
4 professor at the medical school?

5 A. Yes, that's correct.

6 Q. Was it unusual for someone to ask you for help?

7 A. It's not so much unusual for somebody to ask for help,
8 but to ask for help to keep them out of trouble is kind of
9 an unusual question that somebody would come to me and ask
10 for help for.

11 Q. Well, in your job with the South Carolina Department of
12 Corrections, at the time that you were seeing Freddie, how
13 often would you see inmates at Leiber?

14 A. I would see -- every Tuesday I basically had a clinic
15 and would see maximum security every week. And usually the
16 inmates in the maximum security I might see every other
17 week. Sometimes it might be a month. Sometimes it might be
18 several weeks in a row, depending upon what's going on
19 clinically and what problem I'm addressing with them.

20 Q. On an average week when you went to prison, how many
21 patients would you normally see?

22 A. Anywhere between 15, 25 patients.

23 Q. And how much time would you be spending with those
24 patients?

25 A. Most patients around fifteen minutes. Sometimes if it

1 was a more of an intense issue that they were dealing with,
2 like the folks at maximum security, a lot of times, you
3 know, needed more time. So I would spend anywhere up to 30
4 minutes sometimes talking to inmates, counseling them and
5 helping them deal with whatever psychiatric issues were
6 going on at the time.

7 Q. Do you remember about when it was that you first
8 started seeing Freddie?

9 A. I believe it was around August of '05.

10 Q. What were your first impressions?

11 A. I thought that Freddie was a likeable person. It's --
12 sometimes it's hard to do what I do when you go into a
13 prison and provide care for folks, but Freddie came off to
14 me as somebody that I enjoy talking to. He was very
15 intellectual, very philosophical, and I actually learned a
16 lot from him, so I liked him, and thought it was interesting
17 that he could recognize that he had some difficulties and
18 wanted to have those treated.

19 Q. Did you look at his prior record before you started
20 talking with him?

21 A. No, I did not.

22 Q. Is there any reason for that?

23 A. Typically when I work out at the prisons, I don't look
24 at anybody's prior record. When I go to work, as soon as I
25 walk through the gates, it's kind of under the assumption

1 that everybody in there had done something bad, and my job
2 is to provide them care as a psychiatrist. And if I'm
3 looking at all of this information, it may bias me too much
4 as far as whatever feelings I get, you know, from whatever
5 may have been committed, that may hinder me in providing
6 treatment for somebody. So I tried to be as objective as
7 possible and leave that information aside and do the job
8 that I am assigned to do.

9 Q. Well, do you feel that you formed a good rapport with
10 Freddie?

11 A. Yes, I do.

12 Q. Did Freddie seem to respond to you when you talked with
13 him?

14 A. Yes, I certainly would like to think so. He seemed to
15 enjoy my counseling and talking about his difficulties that
16 he was having, as well as other things that were of interest
17 in his life; his situation in the maximum security unit; how
18 he was being treated there and what sort of problems that
19 caused for him.

20 Q. Well, what seemed to be Freddie's favorite topics of
21 conversation with you?

22 A. Freddie liked to talk about religion, which I enjoyed.
23 He also -- we talked a lot about existential issues of life.
24 You know, being in a place that's a maximum security unit
25 where you know what your outcome may be and the

1 ramifications of how you were treated by the correctional
2 staff there.

3 Q. Did you ever witness any treatment by the correctional
4 staff?

5 A. I'm sorry, could you clarify the question?

6 Q. Did you ever witness any incidents or treatment of
7 Freddie by the correctional staff?

8 A. Not other than transporting him to the recreation yard.

9 Q. When you usually -- when you talked with Freddie, what
10 was the physical location of the prison?

11 A. Freddie was in a cell, which was also inside of a cage,
12 which is a little bit different than all the other cells on
13 the cell block.

14 Q. And where would you actually sit down and talk with
15 him?

16 A. I would sit right in front of his window, so I would
17 actually physically go in the cage and talk with him.

18 Q. About how many weeks after you first met Freddie did
19 you begin to form an opinion or a diagnosis of his
20 condition?

21 A. Probably about one or two weeks. Maybe a little bit
22 more than that, because I like to collect as much
23 information before I start using any medications or
24 developing some sort of treatment plan. I need to get to
25 know the person and figure out what I want to do clinically,

1 which may help them the best.

2 Q. Did you talk with him about how he grew up?

3 A. I did. He many times kind of glossed over it, but, you
4 know, he let me know that he had a very rough childhood. He
5 let me know that -- he would just say frankly "most of my
6 family is in jail." He said "all my family. I'm serious,
7 doc, all my family is in jail."

8 Q. Does child development or theory of child development
9 have an impact on where Freddie is now how you look at him?

10 A. It does. As I had mentioned before, it's hard to do
11 the work that I do, because a lot of times you see folks
12 that sometimes they don't want to see you. Sometimes -- you
13 know that they have done something, so you have to withhold
14 judgment. And many of -- many times you see folks out in
15 prisons that are diagnosed -- that are diagnosed with what's
16 called Antisocial Personality Disorder, which is sort of
17 lifelong pattern of behavior. And it's in a group of
18 disorders where these people kind of know how to get under
19 your skin. They know how to push your buttons and how to
20 irritate you.

21 What I came to understand and my sort of
22 conceptualization of these individuals was that having a two
23 and a half year old daughter and seeing her interactions
24 with me where she would throw a tantrum because she didn't
25 have the coping skills emotionally to deal with her feelings

1 and not express her feelings, I was looking at and seeing in
2 a lot of the inmates that I was treating. So I'm sitting
3 here thinking, trying to figure out as part of my job how do
4 I treat these folks, how do I help them, and how do I also
5 keep them from being a danger to society if let out. And my
6 conceptualization of that was that in some ways the inmates
7 that were diagnosed with those personality disorders have
8 sort of stopped somewhere along the developmental line,
9 because a lot of it was just sort of mirrored in my child.
10 So they have not developed those skills to deal with those
11 emotions.

12 You know, my daughter is very impulsive and can't wait
13 very long. You know, she blows a gasket at every little
14 thing and takes a while to figure out what's going on. And
15 I'm sure anybody who has had children has experienced that.
16 So after I kind of conceptualized it that way, it didn't get
17 under my skin as much, because you realized that these
18 people are working with what they have. They are working
19 with the coping skills that they have. Sometimes you don't
20 like them and sometimes they are trying to push your
21 buttons, but if you can figure out why, then it doesn't
22 bother you as much. And that's the way I kind of
23 conceptualized my treatment of many individuals.

24 Q. What was your impression or diagnosis of Freddie?

25 A. I diagnosed Freddie with impulse control disorder, not

1 otherwise specified; and anxiety disorder, not otherwise
2 specified.

3 Q. What does impulse control disorder mean?

4 A. An impulse control disorder is an inability to not
5 react to something that may cause yourself harm or may cause
6 harm to somebody else. Sometimes there are specific impulse
7 controlled disorders, like kleptomania, which may lead to
8 criminal behavior, such as shoplifting, but the not
9 otherwise specified part is that -- well, we haven't figured
10 out exactly what it is, but what I'm seeing is that this
11 person is acting before they are able to think. Sort of on
12 a more instinctual level. You know, the impulse is there,
13 the thought is there, and the act happens. There is not
14 enough time to process those thoughts appropriately.

15 Q. And what was the second part -- the other diagnoses
16 impulse control disorder, NOS, and --

17 A. Anxiety disorder not otherwise specified.

18 Q. And please explain that to the jury.

19 A. Again, it's an anxiety disorder in which somebody says,
20 you know, I'm worried -- you know, certainly being in a
21 maximum security setting and being in that situation and
22 under those conditions, I actually treat a lot of inmates
23 for anxiety because of the issues that they are dealing with
24 and their day-to-day living.

25 Q. Did you decide to prescribe medication for him?

1 A. Yes, I did.

2 Q. And what were your reasons for providing him with
3 medication?

4 A. A lot of times there are inmates on the cell block that
5 will request meds for other reasons to abuse meds, but after
6 seeing Freddie and talking to him, we developed a plan and
7 he agreed with it that we need to do something to give you
8 maybe five seconds, ten seconds, a little bit longer to
9 think before you act out, and this may cut down on the
10 number of incidents that are happening and allow you to
11 process things and also not be so keyed up and anxious.

12 Q. Well, what particular medications did you give him and
13 why did you choose the medications that you gave him?

14 A. Initially I gave him Vistaril, which is a medication
15 that's commonly used for allergies, but it also has a side
16 effect of making somebody a little bit calm. It can also
17 help somebody sleep. That medication was chosen because the
18 fomulary in the SCDC system is very limited and we have to
19 kind of work with what we have.

20 I also prescribed to him Risperdal, which is generally
21 used for -- is an anti-psychotic, somebody that has a
22 psychotic disorder, such as schizophrenia, but it is also
23 used to help control aggression and to slow people down.

24 And I prescribed to him Depakote, which is a mood
25 stabilizer, so it helps somebody with their mood swinging up

1 and down. And I used that combination to -- my plan was to
2 give him that time to think.

3 Q. Well, did the medications help slow Freddie's brain
4 down and give him time to think?

5 A. Yes, they did.

6 Q. Has Freddie been compliant with your treatment plan?

7 A. Yes, he has.

8 Q. Has Freddie been frank with you in his counseling
9 sessions?

10 A. As far as I know, Freddie has always been very frank
11 with me and any questions that I have for him he would
12 answer. For instance, there was one time we were talking
13 about anger in him, and he was talking about how he has
14 anger towards, you know, all of the correctional officers
15 because of the way he's treated. He just said he had a lot
16 of anger. I asked him frankly, you know, being in that
17 situation, "well, do you have any anger towards me?" And he
18 said "no, doc, I don't have any anger towards you. I would
19 never do anything to you because my anger is directed at
20 folks that are doing something to me. If I feel threatened,
21 then I will react." So that was pretty frank.

22 Q. Do you believe that his behavior has improved since
23 taking the medications?

24 A. I believe so. I think he has been able to calm down
25 and has not had -- to my knowledge, has had a reduced number

1 of incidents. I don't have those exact numbers. There were
2 some records that were not released by the South Carolina
3 Department of Corrections.

4 Q. Do you believe that if Freddie is properly maintained,
5 managed with medication, that he will continue to have less
6 problems with the Department of Corrections?

7 A. Well, I think -- I think so, because that's already
8 happened. If you put together the fact that he is in the
9 environment that in and has also improved with medications
10 being in that very extreme environment, and then he's placed
11 in a less restrictive, less -- well, actually punitive
12 environment sometimes, that I don't see why that progression
13 would not continue, and he would continue to benefit from
14 medications, as well as having interaction, having some type
15 of person to bond with and discuss these issues of temper,
16 anger, things of that nature.

17 Q. If Freddie were to continue on medications, would his
18 prognosis improve?

19 A. I believe so, yes.

20 Q. The impulse control disorder, NOS, that you were
21 talking about, is there any relationship between that
22 disorder and a person's age? In other words, would the
23 prognosis -- would the prognosis improve with age?

24 A. Certainly. I think as somebody gets older, and I have
25 seen this in the inmates at Leiber, they sort of transition