

VOLUME FOUR OF FOUR

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM GREENVILLE COUNTY

Larry R. Patterson, Circuit Court Judge

ORIGINAL

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

FREDDIE EUGENE OWENS,

APPELLANT

RECORD ON APPEAL

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1 from dorm to dorm at Leiber. In particular, you have the
2 Ashley Dorm, where all of the young gentleman are that are
3 very impulsive and nobody wants to be placed in Ashley, and
4 then there is another dorm, which the name -- I can't
5 remember the name, but it's where some of the older inmates
6 reside. They have figured out that, you know, it doesn't do
7 them any good to do types of behaviors. They have calmed of
8 calm down, and, for lack of a better word, burnt out.

9 Q. Now, Dr. Cobb, even though you are not going to Leiber
10 presently, is there a psychiatrist going to Leiber?

11 A. Yes, there is.

12 Q. And is that psychiatrist actually working under your
13 control?

14 A. Yes, he is.

15 Q. Please answer any questions that the prosecution may
16 have.

17 A. Okay.

18 CROSS EXAMINATION BY MR. ARIAIL:

19 Q. Dr. Cobb, do you have a report?

20 A. No, I do not.

21 Q. All right. And you -- I believe you said that you
22 didn't -- before dealing with Freddie, you didn't look into
23 his background, or what he was in for, or what his
24 disciplinary record may be, or how many incidents he may
25 have? You just began a conversation with him?

1 A. That's correct.

2 Q. And how many conversations did you have with him?

3 A. I would approximate maybe 20 to 25.

4 Q. And as you would have these conversations, these are
5 these 15 minutes as you would go to the institution?

6 A. Some of them would be longer, yes.

7 Q. Yeah, right, but the ones that you were talking about
8 when you would go and you would have certain days set aside.

9 Now, when you had these conversations over that period
10 of time, did you go back and review any records?

11 A. No, I did not.

12 Q. Have you reviewed, like Dr. Brawley was talking about,
13 Dr. Brunetti, have you gone back to look at any of his past?

14 A. Since being asked to testify, I was sent his Department
15 of Juvenile Justice records and some older correctional
16 records, so I -- now I have seen some of that history.

17 Q. Okay. Well, I'm not -- I'm more interested in what you
18 had -- what you had reviewed at the time that you prescribed
19 him medication.

20 A. I had -- I'm sorry.

21 Q. Go ahead.

22 A. Basically I had done a clinical interview with him to
23 ask him what his systems were. And as many times what
24 psychiatrists do, as much as we would like to say we are
25 treating a specific disorder, sometimes it comes down to

1 treating symptoms, and we may not be able to call it
2 anything in particular. That's why we might say impulse
3 control disorder, not otherwise specified, but basically I
4 was going on my clinical interview.

5 Q. All right. And the clinical interview was the ones
6 that you have talked about that you had the meetings.

7 How many meetings did you have before -- starting in
8 August, did you have before you prescribed medication?

9 A. Approximately two or three. I think it was probably
10 three.

11 Q. So sometime in August, late August of 2005, you put him
12 on medication?

13 A. Yes, that's correct.

14 Q. And has he stayed on the same medication regimen?

15 A. I believe there was a change in the Vistaril. I think
16 that that was discontinued. I don't have the records right
17 in front of me, but for the most part that particular
18 regimen stayed the same, with the Risperdal and the
19 Depakote.

20 Q. And did you look at his records --

21 Well, when was the last time that you saw him?

22 A. The last time that I saw him was in July of this year.

23 Q. July of '06?

24 A. Actually -- let me correct that. Actually that's -- it
25 would be in August.

1 Q. August of '06?

2 A. Yes.

3 Q. Did you check his record between August of '05 and
4 August of '06, to actually see what his disciplinary
5 infractions were?

6 A. No, I did not.

7 Q. Then what is the basis of your testimony that you said
8 that you believed that his disciplinary infractions or
9 acting out had, I believe what you told us was that had
10 improved?

11 A. As Major Nettles had mentioned, that Freddie had been a
12 very problematic inmate on the maximum security unit. So
13 basically, one, I asked Freddie; and two, the correctional
14 officers there I got to know very well, because I saw them
15 all the time and basically told me that he's doing better,
16 he's not getting in as much trouble.

17 Q. But you didn't look at his record?

18 A. No.

19 Q. So that correctional officer may not know everything
20 that was going on?

21 A. Right, there are many correctional officers.

22 Q. And if you saw those records, do you think -- and they
23 indicated that there were numerous infractions between
24 August of '05 and August of '06, would that change your
25 opinion that Mr. Owens' behavior has improved?

1 A. Not necessarily just the number, but, you know, the
2 nature of the incident, you know, the details, those things,
3 because there are many different things that you can receive
4 an infraction for.

5 Q. Okay. Would you think that the possession of a 12 inch
6 weapon hidden between the mattresses would be an indication
7 of improved behavior?

8 A. I asked Freddie about that, because there was one day I
9 went to his cell to see him, as I usually do, and he had the
10 lights turned off and said "no, I didn't feel like talking."
11 I came back and they had searched his room and found the
12 shank. And I asked him point blank, you know, "why are you
13 doing this sort of thing?" And he said "well, you know,
14 from time to time I make things, but I only do it for
15 protection. If anybody comes in the cell to hurt me, I'm
16 going to defend myself."

17 I think that that in itself may not show improvement,
18 but, for one, I mean, he didn't use that shank.

19 Q. He did what?

20 A. He did not use that shank.

21 Q. So that's an indication of improvement, that he didn't
22 use it?

23 A. No, that's -- not exactly, but the overall sense. And
24 I admit I heavily rely on the correctional officers there,
25 as well as my frankly asking Freddie, because I didn't have

1 a list of all the disciplinary actions, "how are things
2 going? Are you feeling better? Are you getting into less
3 trouble? Are you sleeping better?" And all the indications
4 that I received were that they were not having as much
5 trouble with Freddie.

6 Q. All right. And after the February incident with the 12
7 inch shank, the April incident he had an eight and a half
8 inch shank. Did you ask him about that?

9 A. No, sir, I did not.

10 Q. Would that be an indication that it wasn't used, that
11 that would be a -- that his behavior was improving?

12 A. What was the time period between these two incidents?

13 Q. The 12 inch shank was February 28, '06.

14 The next shank, eight and a half inch, was April 4,
15 2006, about six weeks later.

16 A. The fact that he didn't use the shank is not
17 particularly an indicator that there is an improvement, but
18 there has always been this -- and, again, he's spoke freely
19 with me. In this environment it's very rough. He felt that
20 many times he was mistreated by the correctional officers
21 and he made things for protection. So it's an infraction to
22 have a weapon, but the reason for having that weapon maybe
23 in question.

24 Q. Thank you, sir.

25 MR. ARIAIL: That's all I have.

1 MR. GODFREY: Nothing further.

2 THE COURT: Thank you, doctor.

3 MR. GODFREY: May this witness be excused, judge.

4 THE COURT: Does the prosecution have any problem
5 with him being excused?

6 MR. ARIAIL: No, sir. No, sir.

7 THE COURT: Thank you, sir.

8 MR. GIBSON: I need to check to see if that
9 witness I told you about has arrived yet.

10 (Off the record)

11 (Back on the record)

12 DR. DONNA SCHWARTZ-WATTS, having been first duly
13 sworn, testified as follows:

14 THE CLERK: State your name for the record,
15 please.

16 THE WITNESS: Sure. Donna Marie Schwartz-Watts,
17 S-C-H-W-A-R-T-Z W-A-T-T-S.

18 DIRECT EXAMINATION BY MR. GODFREY:

19 Q. What is your name?

20 A. Donna Marie Schwartz-Watts.

21 Q. And how are you employed?

22 A. I work at the University of South Carolina School of
23 Medicine. I'm a professor of psychiatry there, and I'm
24 Director of Forensic Services.

25 Q. Please tell us about your education and training.

1 A. Sure. I graduated from Furman University in 1985, with
2 a Bachelor of Arts in psychology, and then I went on to
3 medical school in Columbia.

4 I graduated from the University of South Carolina
5 School of Medicine in 1989.

6 I completed a residency in general psychiatry at the
7 Department of Mental Health facility in Columbia, the
8 William S. Hall Institute. And I completed that training in
9 1993.

10 Then I also took an additional year of study in
11 forensic psychiatry, which is a subspecialty of psychiatry,
12 just like cardiology is a subspecialty of internal medicine,
13 and I completed that extra year of training in 1994.

14 I was employed by the Department of Mental Health for a
15 number of years. I was performing evaluations that were
16 court ordered. I also worked for a period of time providing
17 treatment for the chronically mentally ill, and I went over
18 to the university around 1995, and have been there since.

19 Q. Okay. Do you have any board certifications?

20 A. Yes.

21 Q. And what are they in?

22 A. I'm board certified in general psychiatry, and then
23 we -- technically it's called added qualifications in
24 forensic psychiatry.

25 Q. Have you ever been qualified as an expert before in

1 this state?

2 A. Yes.

3 Q. Do you have any idea how many times?

4 A. It's over five hundred.

5 MR. GODFREY: Your Honor, at this time we would
6 offer Dr. Schwartz-Watts as an expert in forensic
7 psychiatry.

8 MR. ARIAIL: We would so stipulate.

9 THE COURT: Okay. Without objection, she's
10 qualified.

11 BY MR. GODFREY:

12 Q. Dr. Schwartz-Watts, as Director of Forensic Services
13 and a professor of psychiatry, what are your present
14 teaching duties?

15 A. A good bit. Of course, because it's a university we
16 have to teach, so we have to -- we have to see patients. We
17 have to write papers and we have to teach, so that's part of
18 my duties there.

19 I teach presently -- and the University of South
20 Carolina, we have a medical school there, so there is all
21 different specialties, but in psychiatry, in our department,
22 we have a child psychiatry fellowship, and that's a two year
23 training program, where the residents finish their general
24 training in psychiatry and then they spend an additional two
25 years to be licensed to treat children in this state. So

1 the child residents -- each one of the child residents has
2 to spend two months with me as part of their rotations to
3 look at legal issues that affect children.

4 I also teach -- we have a forensic psychiatry training
5 program, which is the year of additional study. And the
6 forensic residents spend six months with me out of the year
7 to special -- to have further educational experiences in
8 legal issues that have to deal with mental health.

9 I also teach medical students that come and rotate with
10 me. High school students. We are -- pretty much anyone
11 that wants to learn, as long as they are in college or
12 above, they will spend time with me. I have mentored a
13 number of students from Furman University. They have come
14 and spent -- volunteered and spent some summers with me as
15 well.

16 Q. And do you have any contracts, employment contracts,
17 outside of the university at the medical school?

18 A. Yes. None of them are outside the walls then. I'm a
19 salaried employee at the university, but at USC we have a
20 number of contracts.

21 The Department of Juvenile Justice, I have been out
22 there providing treatment for about 12 years, or so.
23 Presently I'm taking a break from that, but I have a number
24 of doctors that I supervise that go to the Department of
25 Juvenile Justice and actually provide treatment to the

1 juveniles.

2 I am presently -- we have a contract with the South
3 Carolina Department of Corrections, and that's me and a few
4 other doctors, so I go -- I have been going out to the
5 prison now for about three years one day a week also,
6 similarly to Dr. Cobb, and I treat the inmates there.

7 I also have a contract with the Department of Mental
8 Health, where I perform forensic evaluations. There is a
9 group of individuals that are confined secondary to a law
10 that when it's determined if they are safe to be at large,
11 the Department of Mental Health consults with me to see if
12 they are safe to be released.

13 Q. Have you ever published anything?

14 A. Yes.

15 Q. And what was that?

16 A. Oh, a number of things. This year I published a
17 correctional handbook for people that work in the Department
18 of Corrections. I published a chapter, along with another
19 doctor at the university, on crisis intervention in
20 correctional settings. A number of articles.

21 My areas of interests are stalking. I have published
22 quite a few articles in that area.

23 I also studied in Asperger, which is a form of autism.
24 It's a developmental disorder. I've done a lot of research
25 in that area, and plenty of research about death penalty.

1 Q. Now, you indicated that previously you had done
2 evaluations at William S. Hall, court-ordered evaluations?

3 A. Yes.

4 Q. Do you have any idea how many times you have testified
5 for the State or prosecution?

6 A. A fair amount. Probably -- it's always going to depend
7 on times and years and what the contracts are and what
8 the -- what the agencies are, but overall it's pretty close
9 to even. I have testified a good bit of time for the
10 Attorney General's office.

11 It's hard to say. It's a pretty fair mix.

12 Q. And you also testify for the defense?

13 A. Certainly, and certainly in cases like this more
14 than -- I have testified for prosecution. I have been
15 retained by prosecution in death penalty cases, but usually
16 in these sorts of cases it's much more for defense.

17 Q. Okay. When you have been contacted to evaluate
18 someone, do you always testify in a court case?

19 A. No.

20 Q. And is there any reason for that?

21 A. Well, the attorney doesn't like my opinion.

22 Q. How many -- do you have any idea how many defendants
23 you have evaluated over the years in capital proceedings?

24 A. Over seventy now. I was counting the other week. Just
25 offhand probably around seventy.

1 Q. Now, turning your attention to Freddie, in a few
2 minutes I'm going to be asking you questions about your
3 opinion.

4 Would you please start out by telling us what
5 methodology you use to reach opinions?

6 A. Sure. Forensic psychiatry is a little bit different
7 than general psychiatry. In general psychiatry, if a
8 patient comes into the office, we are going to do similar --
9 when we are providing treatment, similar to what Dr. Cobb
10 has done. We will get a history from that person and try to
11 understand. There is some areas that might qualify for some
12 sort of mental disorder or diagnosis.

13 Forensic is a little bit different, because there may
14 be some legal involvement. And so for Mr. Owens case is
15 specific, because he has criminal charges, the standard
16 methodology I used is to have -- and Mr. Ariail's office was
17 very kind. I had a lot of information about Mr. Owens. I
18 looked at all of the witness statements. I had the police
19 reports, the incident report. I had the autopsy of Ms.
20 Graves. I had a lot of the police evidence that had to do
21 with this case.

22 Also through your office that also provided a lot of
23 records. I had -- Mr. Owens had a history of being treated.
24 He was committed to the Department of Juvenile Justice when
25 he was in his early teens, and I had those records. Not

1 only his treatment records, but also the disciplinaries
2 there and access to the write-ups there. So while he's been
3 confined, I had access those treatment records as well. And
4 I'm also aware of many of his disciplinaries since he's been
5 confined in the Department of Corrections.

6 I also had his medical records. I have reviewed all
7 the treatments he's had at Greenville Memorial Hospital in
8 the past.

9 I also had access to -- I have interviewed him three
10 times. I spent about ten hours with Mr. Owens. I saw him
11 on three separate occasions.

12 And then I have also talked with a number of people
13 about Mr. Owens and also consulted with Dr. Brawley. I have
14 talked with his mother. I have talked with the teacher, Ms.
15 Maag.

16 I actually also was able to talk to some of the doctors
17 that had provided him treatment in the past; the forensic
18 psychiatrists at the Department of Juvenile Justice that
19 treated Mr. Owens when he was 15 or 16 years old. I have
20 been able to speak with her.

21 And I didn't know that -- earlier on I didn't know Dr.
22 Cobb had testified, but I had also, as soon as I found out
23 he had received treatment from Dr. Cobb, I got what's called
24 a medical release. Now, we are not allowed to talk to
25 psychiatrists without permission, because they have to

1 protect their patients confidentiality, but Mr. Owens had
2 signed those releases in my office and gave me permission to
3 talk with those doctors as well.

4 Q. And could you tell us why you got a neuropsychological
5 evaluation?

6 A. Yes, a number of reasons. Mr. Owens -- and you have
7 heard the testimony. He's very impulsive. He's a very
8 impulsive individual. And if you review his psychiatric
9 notes and treatments and look at all the -- the history of
10 all the trouble he's been in while he's been confined in the
11 past, that caused me some concern.

12 Impulsivity, it's kind of like a medicine. When you
13 have abdominal pain, there can be a lot of causes for it.
14 And so what we do in psychiatry, you have to tease out what
15 the causes of that symptom are. And he has given me a
16 history of a head injury and I was concerned that it may or
17 may not have been significant. He states and he and his
18 cousin -- there was a van, and I believe it was his aunt was
19 driving off in a van when they were young children, and they
20 had got on the back of the bumper. They were holding onto
21 the back of the van, and Mr. Owens was holding onto the rim
22 that held the tire. And instead of letting go, his cousin
23 jumped off quite early, Mr. Owens held on. So by the time
24 he jumped off the van, it was he said speeding at least
25 about 30 miles per hour and he let go and fell off and hit

1 the back of his head. He described a brief period of a loss
2 of consciousness.

3 So just because of the nature of these proceedings,
4 they are so serious, he had a history of a head injury, he
5 had some impulsivity, but it rose to the level of concern,
6 but I just wanted to make sure that some of his impulsivity
7 wasn't coming from brain damage.

8 Q. Well, as part of your evaluation, did you work on a
9 developmental history for Freddie?

10 A. Yes, I did.

11 Q. What is a developmental history?

12 A. Basically when we are performing an evaluation, we will
13 look at lots of different parts of development in terms
14 of -- there is many different areas that we assess. And
15 what a developmental history is what happened to your brain
16 and what happened to your personality as you are a very
17 small child. So the developmental history focuses on the
18 first few years; for me, up to about ten years of life when
19 children's brains are developing. And you look for things
20 that maybe could have caused problems in development.

21 Q. Well, did Freddie have any significant findings in his
22 developmental history?

23 A. Yes, he did.

24 Q. And what were they?

25 A. Well, there were a number of things.

1 First of all, his mother was 18 years old when she gave
2 birth to him. And I was concerned because you will hear
3 later one of the things I diagnosed him with is Attention
4 Deficit Disorder. And it's very common in that disorder
5 that there is a history maybe with some birth abnormalities.
6 It's not a form of brain damage, although certainly part of
7 your brain doesn't work correctly, but one of the things
8 psychiatrists do is we will try to get a good history of the
9 mother's pregnancy with the child to make sure that there
10 weren't trauma to the fetus while it was developing, and
11 there were no traumas.

12 I talked with Mr. Owens' mom, and although she's been a
13 victim of physical abuse, she denies that at any time when
14 she was pregnant with Mr. Owens that she was abused in any
15 way.

16 She denied that she did any drugs, which is also one of
17 the other things when children develop Attention Deficit
18 Disorder, sometimes the mother may have been using drugs
19 while pregnant, and there was no history of that.

20 But what was significant is in looking in her,
21 comparing him to her other children, she noted that he was
22 much more hyper. He had a lot more energy than the other
23 children, and was able to tell me that by the time he was in
24 the sixth grade, that she remembered he was referred to be
25 evaluated for being hyper. And she began to go through that

1 assessment process and that it was stopped, and so he never
2 continued to have the full complete assessment by a
3 psychiatrist to see if he needed to be placed on medicines,
4 like Ritalin and/or Setera, medicines that we use to treat
5 that problem.

6 The other thing that was interesting in his development
7 is that Mr. Owens, his IQ is I think a good bit higher than
8 his brothers and sisters. In looking at schools records and
9 school records of his siblings, I think it was important to
10 note that his IQ, even when he had a learning disability,
11 was substantially higher than the siblings, and so I took
12 that into account as well.

13 The final thing that I thought was significant is that
14 his mother was able to confirm -- he was -- he experienced a
15 lot of physical abuse as a child, and she was able to
16 confirm many of those instances. He witnessed a lot of
17 physical abuse as a child. He -- actually I think Ms.
18 Hammock referred to earlier the grandmother that was in jail
19 for shooting someone. Freddie was there and reports he
20 witnessed that shooting when he was a small child. She
21 had -- the grandmother had shot a family member. So he was
22 present when that happened. So he had been exposed to some
23 abuse.

24 And what was important there is she states that a lot
25 of times Freddie did not go to school. And that the reason

1 he didn't do that is because he would go to the bus stop and
2 come back home to make sure that his mother was okay.

3 She describes one situation where the stepfather took a
4 machete to her and chased her through the house, and Mr.
5 Owens was present during that period of time, and noted that
6 after that that his school attendance did drop off some and
7 that he would often spend the days home with her. So those
8 were the significant things in his childhood.

9 Q. Did you also consider his medical history?

10 A. Yes.

11 Q. Did Freddie have any significant findings in his
12 medical history?

13 A. Some, yes. Again, we have to look at all kind of
14 medical illnesses, because they have psychiatric components
15 to them, as you can imagine.

16 And I think what's important here is that Mr. Owens is
17 pretty healthy, I think overall. He has some low back pain.
18 He was involved in a car accident and he had some chronic
19 low back pain, which has caused him some problems over time.

20 And he also has a history of kidney stones, and he's
21 been hospitalized for that on a few occasions.

22 But, overall, I think other than his low back, his
23 health is in good -- he's in good health.

24 Q. Now, what about his psychiatric history?

25 A. Yes, I did obtain psychiatric history on him.

1 Q. What is significant?

2 A. What we do when we are completing a psychiatric
3 history, we look for a history of in-patient treatment,
4 meaning that you have been put in the hospital, or
5 outpatient treatment. Mr. Owens has no history of
6 in-patient treatment. All of his psychiatric care he's
7 received has actually been while he's been institutionalized
8 in one way, shape, or form. And so I have had the luxury of
9 going back through records. And as early as 1995, Mr. Owens
10 was in the Department of Juvenile Justice. He was being
11 evaluated. And as far as back as 1995, the psychologists
12 there noted that he had some symptoms of depression.

13 In 1997 was the first record that we have that where he
14 was actually treated for depression by Dr. Lillian Tidler.
15 I actually was working at DJJ at the time that Mr. Owens was
16 there, but I was working in a different campus, so I never
17 treated him, but Dr. Tidler and I actually had clinic on the
18 same day and we would share the same office space, the same
19 office suite area.

20 Dr. Tidler is a board certified child forensic
21 psychiatrist, which is very rare. That means she had to do
22 the two years at child psychiatric training and then the
23 other year of forensic psychiatric training, so it took six
24 years for her to complete the training. And she worked at
25 the Department of Juvenile Justice for a number of years.

1 She diagnosed Mr. Owens with major depression. And what
2 that means, that's -- depression is a depression that for
3 every day for at least two weeks in a row you have a really
4 bad mood. You are really sad, and you have to have five
5 other systems: You are not sleeping well; you are feeling
6 guilty; you are ruminating; you may be suicidal; and it's
7 serious enough, it's a medical condition that it requires
8 medical treatment.

9 And the symptoms that Mr. Owens was having at the time,
10 he was very hopeless about the future of his siblings. It
11 seems that in Dr. Tidler's report that he was very concerned
12 about the well-being of his family and that he realized that
13 they didn't have a lot of resources, and he was concerned
14 about their life and was having very negative thoughts about
15 his family members. He was not sleeping. He was very
16 irritable. He was getting into trouble.

17 She started him on an antidepressant, Zoloft, which is
18 a medicine we commonly use for depression, and she gave him
19 some sleeping medicine.

20 Shortly after that she saw him and he improved. He
21 seemed to do much better on the medications.

22 While he was under her care he turned 18 and he had to
23 be transferred to the Department of Corrections.

24 I followed up in the Department of Corrections records
25 when he was transferred. He asked for psychiatric help. He

1 was put on a schedule to receive psychiatric help, but he
2 received none. There was no record that the medications
3 that he was discharged from the Department of Juvenile
4 Justice on. Those medications were not continued, once he
5 was confined.

6 He also, again, as you have heard from Dr. Cobb, he's
7 had treatment since he's been confined at Leiber. And there
8 he's had a diagnosis of Impulse Control Disorder, Antisocial
9 Personality Disorder and Anxiety Disorder, and he is
10 presently still on the medications Dr. Cobb testified to,
11 the Depakote, which is the mood stabilizer; Risperidone,
12 which is for impulse control in his case. There is no
13 evidence he doesn't have any type of thought disorder. And
14 I believe that -- I don't think he's on the Vistaril anymore
15 because the Department of Corrections, they have stopped
16 that medication right now.

17 Q. Did you also consider substance abuse history?

18 A. Yes.

19 Q. And what were your findings?

20 A. Mr. Owens consistently denies that he's used substances
21 to me, but I found a few records that I'm not sure. There
22 may be some conflicting reports, but there has certainly
23 been none since he's been confined.

24 There is some records -- when you review the Department
25 of Juvenile Justice records, there are some records that

1 allude to periods of time during teenage years where he
2 certainly used marijuana and alcohol, and there is questions
3 whether he may have experimented with cocaine or not. He
4 denies that to me, though.

5 Q. Now, you have talked a little bit about the DJJ
6 experience, or Department of Juvenile Justice, when he was
7 there?

8 A. Yes.

9 Q. Is there anything else to add to his juvenile history?

10 A. Yes, I think there is some significant things about
11 that. He received treatment very late. He had been at the
12 Department of Juvenile Justice for a few years. But even
13 though he had been there and had not seen a psychiatrist
14 yet, he still was receiving some group treatment. He was
15 seen by a psychologist. He participated in some anger
16 management training.

17 And I think two things are very significant about his
18 stay in Juvenile Justice. Number one is that despite -- and
19 I will tell you, despite his horrible behavior, he had a lot
20 of write-ups in the Department of Juvenile Justice; very
21 disruptive. Write-ups for singing in class, disrupting
22 school. Write-ups sometimes for fighting other juveniles.
23 He had a number of write-ups there.

24 But even despite his behavior, he excelled and he was
25 promoted, I believe, to the highest rank in ROTC that

1 existed on the John G. Richard campus.

2 So at the same time all his behavior continued to be
3 impulsive, it appeared that he was able to proceed with the
4 through the ROTC training, until there was a time where he
5 was essentially discharged from that, but he seemed to excel
6 and do well under that supervision.

7 Q. And while he was under that supervision, is that at the
8 end when he was receiving treatment, medication?

9 A. No, actually it would have been going on most of that
10 time probably before his treatment. He was under the
11 structure of that program. And then once he saw Dr. Tidler,
12 he was about to be discharged to the adult correctional.
13 And by that time he was no longer in the ROTC program.

14 Q. Then when he got to prison, to the regular prison,
15 there was no treatment?

16 A. No, and he asked. There was a clear record. There is
17 psychiatric record where he was seen by a mental health
18 professional. He asked for treatment. He requested to be
19 placed on his medications, stated his medications helped
20 him, and he had no treatment.

21 Q. Did you also consider his criminal history?

22 A. Yes.

23 Q. What was significant?

24 A. Mr. Owens has had a lot of charges. He was out -- once
25 he was released from the Turbeeville Correctional Institute,

1 he was out a very short period of time. And in that period
2 of time he accrued a number of charges, a number of armed
3 robbery charges. Some of those I'm not sure of the status.
4 There is some records that indicate they may have been
5 dismissed. There is others that indicate they may be
6 pending, but there is a number of armed robbery charges,
7 some assault charges, in addition to his present charges.

8 Q. Now, what about institutional history, did you look at
9 that?

10 A. Yes.

11 Q. What was significant?

12 A. I have already mentioned some of his adjustment to the
13 Juvenile Justice System. I'm very familiar with that
14 program. Again, I have been there about 15 years. And I
15 think it's fair to say Mr. Owens behavior was very
16 consistent with juveniles who are not medicated, who have
17 Attention Deficit Disorder and have not had treatment; very
18 impulsive, disruptive, and at times aggressive.

19 He was in the Burchwood Dorm, which is the one of the
20 more -- as Dr. Cobb was mentioning earlier, that was one of
21 the dorms where the juveniles were older and had more
22 serious charges. So he was certainly in an environment that
23 was more -- where the juveniles were considered maybe more
24 dangerous than others, compared to other campuses.

25 While in the Department of Corrections, I think it's

1 been very fair to say that he's had a lot of write-ups, even
2 compared to most other inmates. He's had, I believe I
3 counted, about 56 write-ups over the years. Those write-ups
4 have ranged from some things that are assaultive, to, again,
5 him still in his late twenties, now being disruptive at
6 times, being very impulsive, but it's certainly been
7 characterized he's had a long disciplinary history.

8 Q. Now, you testified that you work at the Department of
9 Corrections some?

10 A. Yes.

11 Q. And you do that presently, right?

12 A. Yes.

13 Q. Would you please tell us exactly what it is that you do
14 there?

15 A. Yes, the Department of Corrections has a psychiatric
16 hospital. There is an 89 bed unit in Columbia on the
17 Kirkland campus, so actually I treat inpatients, inpatients
18 of -- psychiatric inmates, but I also consult in a very -- a
19 lot of other areas.

20 The Department of Corrections is very short of
21 psychiatrists right now and there has been a number of
22 clinicians in the community that, I won't say volunteer.
23 Everyone gets paid, but they are certainly not -- the income
24 there is much lower than what they would be making if they
25 were billing for their services out in the public, but there

1 is a number of fine doctors that go in, but there is still a
2 shortage. So I have gone to the super max's. I have
3 provided treatment.

4 There is what's called an ICS programs, where there is
5 450 inmates with mental illness that have been identified
6 throughout the Department of Corrections and they reside on
7 the Kirkland campus. It's a treatment program. And I also
8 have a number of patients I follow there as well.

9 Q. You have heard the medications. You have reviewed the
10 records. What is your opinion about Freddie Owens treatment
11 presently?

12 A. I didn't find out Mr. Owens was being treated with
13 anything until the first time that I evaluated him back in
14 September of this year, and I think it's very fair to say
15 that he's improved. He still has -- he is still impulsive,
16 but he's not as impulsive. When I say improved, then I
17 think it's very fair to say he's not as impulsive as he has
18 been in the past, and he's -- he's on a -- the medications
19 prescribed by Dr. Cobb are certainly reasonable for his
20 conditions.

21 Q. Now, did you also consider Freddie's social history?

22 A. Yes.

23 Q. Now, you have heard the testimony of Dr. Hammock. Do
24 you have anything to add to what she said about his social
25 history?

1 A. Just a few things. I think what's important is he's
2 not had many attachments. If you look at -- one of the
3 things we do is we look at who is someone attached to
4 growing up. And I think it's very fair to say he's attached
5 to his mother. He's certainly attached to his teacher. And
6 I think he's been attached to any -- Dr. Cobb, as well, any
7 person that's provided help to him. And I think that's very
8 fair to say. He's very attached to his family members, but
9 overall he's had very little chance for a relationship.

10 Q. Now, what about his mental status examination?

11 A. What a mental status examination is, that's kind of the
12 psychiatrist's way of looking for how your brain functions.
13 We are testing things like your memory, the different lobes
14 of your brain, how they work. We are also looking for --
15 there is physical or observable kinds of mental illness that
16 patients have. So what we are looking for in that mental
17 status examination are physical tangible symptoms of mental
18 illness that can be better objective, versus just based on
19 someone reporting those symptoms.

20 Q. Did he have any significant findings?

21 A. Yes, he had some.

22 Q. What were they?

23 A. Well, one of the things that's very fair to say about
24 Mr. Owens, his speech -- I know I talk fast, but he talks
25 faster than me. Mr. Owens has periods of time where he's

1 speech is quite rapid, and that -- and he becomes quite
2 animated. He can -- he would frequently let out -- but
3 under circumstances where he might be happy about something,
4 he could let out outbursts of, you know, he might say wow
5 very loudly. My secretary next door could often hear him
6 talking, just, you know, remnants of his voice through the
7 door next door.

8 I think the most significant things about his mental
9 status exam, though, were that he admits to a depressed
10 mood, and he admits -- he has some insight. He understands
11 that he's been depressed for quite a long period of time,
12 and he was able to say that he hides his depression with a
13 smile, which was certainly very consistent. He could talk
14 about very sad things and have a smile on his face, and
15 that's just one of the ways he's learned to cope over the
16 years.

17 Q. After considering all of this information, were you
18 able to arrive at a diagnosis?

19 A. Yes.

20 Q. Let me ask you, can you explain the system of making a
21 diagnosis?

22 A. Yes. In psychiatry we have what's called a multi-axial
23 system, and there is five axis we use. And we have a grade
24 book. It's called a DSMTR, and it's been revised too many
25 times, and it's undergoing another revision. And what

1 happens is over the years they may take away criteria to
2 diagnose a mental illness. But the purpose of that book is
3 so if I call a psychiatrist in California and I say patient
4 Joe has a major depression, we all understand we are talking
5 about the same illness.

6 It's also -- that book is also what's used for the
7 insurance coding, so when you go to your doctors and they
8 write the little code on your bill, that's also -- our DSM
9 is what we use for our insurance coding when we are billing
10 for treatment.

11 And Axis I is for illnesses that are so severe that
12 they are major mental illnesses, or those are conditions
13 that could be -- where anybody could have problems. So say,
14 for example, if you lost a loved one, if you lost a spouse
15 and you came into a psychiatrist and had depression, we
16 would expect that under those circumstances. That's called
17 adjustment disorders. So they are for severe major mental
18 illnesses, or conditions that anyone experienced them, they
19 would most likely have psychiatric symptoms.

20 Q. Well, does Freddie have an Axis I diagnosis?

21 A. Yes, I gave him two Axis I diagnoses.

22 Q. And what are those?

23 A. One is called Dysthymic Disorder. And that's just the
24 psychiatric term. That means he has a chronic depression.

25 To qualify for the diagnosis of dysthymia, you have to

1 have at least a two year history of depression. And, in my
2 opinion, going back through the records, Mr. Owens has had
3 that history since 1995. There has been clear indications
4 from the records that in 1995, he presented with symptoms of
5 depression.

6 In 1997, he was treated for a severe depression, major
7 depression.

8 And even in Dr. Horne, who was a psychologist that saw
9 him back in '97, and Dr. Brunetti, who was the psychologist
10 who saw him in '99, even their psychological testing showed
11 even then that Mr. Owens, amongst other things, did have
12 symptoms of depression.

13 So going back in time, I think it's very fair to say
14 that he has a chronic depression.

15 And he's not received treatment specifically for
16 depression since he's been confined in the Department of
17 Corrections, but the Depakote that Dr. Cobb has prescribed
18 for him, that is a mood stabilizer. So most likely that's
19 probably helped with some of his symptoms of depression over
20 time.

21 Q. Does he also have an Axis II diagnosis?

22 A. Yes, but he has another Axis I diagnosis too.

23 Q. Go ahead with the other one.

24 A. I did diagnose him with Attention Deficit Disorder.

25 And I put in partial remission, and there is a reason for

1 that. Most -- if you take a hundred percent of children
2 that have Attention Deficit Disorder, only six percent of
3 them go on into adulthood to persist to have those systems.
4 Most kids will outgrow ADHD by the time they are about 16 or
5 so, but I think it's very fair to say that a lot of the
6 impulsiveness that we see in Mr. Owens is still a remnant of
7 childhood Attention Deficit Disorder. So there is many
8 parts of that illness that are remission. He can pay
9 attention now. He reads. He -- he is fluent. He has
10 taught himself Arabic. He has taught himself Swahili. He
11 is studying French. He reads. He reads scholars. He won't
12 read any books unless it's a scholar that's been published
13 for 15 years. He reports that he has taught other inmates
14 how to read. He teaches them to read using the book
15 Alexander the Great, because he doesn't want them reading
16 the books that aren't well written. So he's able to focus
17 his attention. Now, he's outgrown that symptom very
18 clearly, and I think he's able to attend to things when he
19 chooses to. He's able to read and process and learn those
20 things.

21 I also discovered that's he's fluent in sign language,
22 which I didn't know. I saw him signing in court. So he's
23 taught himself many things. He's able to attend enough
24 where he can learn new skills, but he still has the
25 impulsiveness and it's very apparent.

1 Q. Well, before we go to Axis II, let me ask you this.
2 Based on your testimony, you have reviewed a great number of
3 records?

4 A. Yes.

5 Q. Can you tell us how many times that you actually met
6 with Freddie?

7 A. Yes, I saw him three different occasions. Then, again,
8 I spent about ten hours with him. Each time, three -- three
9 hours on two occasions and three -- and three and two-thirds
10 hours on another occasion.

11 Q. And it was after those meetings and after review of the
12 records that you were able to come up with a diagnosis?

13 A. Yes, because we had to rule out that -- the problem
14 there is you have to rule out other causes.

15 Again, impulsivity is one of those symptoms, and they
16 have many different causes. It can be brain damages, drugs.
17 It could be your personality structure. Some people are
18 very impulsive because they don't care. And Mr. Owens has a
19 little -- a part of his impulsivity also comes from his
20 personality structure. I'll be glad to talk about that, but
21 his impulsivity comes from many sources. So you have to
22 review the records. You have to interview the patient,
23 understand what's going on with him, and then that's why I
24 had Dr. Brawley to consult. We were able to go through his
25 school records and look back in time. And sure enough,

1 there had been many documentations where the teachers noted
2 he was impulsive and he had difficulty paying attention.

3 Q. Now, does he have an Axis II diagnosis?

4 A. Yes.

5 Q. And what is that?

6 A. As he's carried in the past, and I agree, it's
7 Antisocial Personality Disorder. And what that means, some
8 of Mr. Owens' impulsiveness does come from his personality.
9 Not all of it comes from the Attention Deficit Disorder.
10 Not all of it comes from depression. There is also things
11 about Mr. Owens -- and if you look at his life, you have to
12 go backwards to make a Personality Disorder diagnosis, and
13 look at how he has coped. And he does, he has a long
14 history of illegal behaviors. He has a history of being
15 reckless at times and being impulsive. So in all fairness,
16 no one can look at the symptoms of impulsivity and say 20
17 percent comes from ADHD, 20 percent comes from depression.
18 His impulsivity comes from having Attention Deficit
19 Disorder, having the chronic depression and his own
20 personality structure.

21 Q. Are there medications that could make him less
22 impulsive?

23 A. Yes.

24 Q. And what are those?

25 A. There is many. He's never actually been tried on any

1 of the medicines for Attention Deficit Disorder, which are
2 very helpful in controlling impulsivity. The Department of
3 Corrections, we certainly don't have Ritalin or things
4 there, because those are drugs that are often abused, but
5 there are antidepressant medications, and I can think of one
6 called Wellbutrin, which treats both impulsivity from
7 Attention Deficit Disorder and it also treats depression.
8 So there is other medications, but the medications he's on
9 right now, the Depakote and Risperidone, certainly help with
10 impulsivity.

11 Q. And is there any question that he would be able to get
12 the medications if he was in the South Carolina Department
13 of Corrections?

14 A. Oh, yes, the Department of Corrections has a lot of
15 budget cuts right now, but they are still -- they are -- we
16 are very limited in the medications we can use, but the
17 medications they have, they are ample. They are enough.
18 They require creative thinking sometimes, because we don't
19 have quite all access to all the medications we can use if
20 we were treating patients that were on the street, but there
21 is enough meds there certainly that can treat his condition.

22 Q. Well, if Freddie were to get a life sentence, where
23 could he be housed in the Department of Corrections that
24 would take care of his mental health treatment?

25 A. Right now the Department of Corrections has what I

1 call, and they call, we all call, three levels of care. We
2 have the inpatient psychiatric unit where I work, which is a
3 Gilliam Psychiatric Hospital.

4 We have a 450 bed unit, but I think they just --
5 actually they are kind of revamping that unit and they took
6 away a number of the beds, because they are having some
7 problems with crowding right now, but they have a unit in
8 Columbia called the ICS program. And in that program
9 mentally ill offenders are housed there. There is case
10 managers assigned to them that see them every day. There is
11 a psychiatrist assigned to that unit that sees their client
12 and prescribes medications, and there is specialized staff
13 that deal with mentally disordered offenders.

14 Then we have the area mental health treatment, and
15 that's where Dr. Cobb works. There is some institutions in
16 South Carolina where there is psychiatrists that come in.
17 The institutions were Lee County. There is one in
18 Dorchester County, Leiber, and there is one here in the --
19 Perry Institute. So there is psychiatrists also throughout
20 the State that go in and do clinics at the area mental
21 health centers.

22 Q. So you believe that Freddie would be able to maintain
23 his counseling and treatment if he were in prison?

24 A. Yes. Now, that he's in the system, he's been
25 identified, he's on medications, that's much more likely

1 than compared to when he was in Turbeeville at the age of
2 18.

3 Q. Thank you. Please answer any questions that the
4 prosecution may have.

5 THE COURT: I'm going to give everybody a stretch
6 break. I'm going to let y'all walk out across the hall for
7 five or ten minutes anyway.

8 (The following takes place outside the presence of
9 the jury panel)

10 (Whereupon, proceedings were recessed)

11 (Whereupon, proceedings were reconvened)

12 THE COURT: We had reached the cross-examination.

13 MR. GODFREY: Yes, sir, Your Honor.

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

16 THE COURT: Okay, sir, Mr. Ariail.

17 CROSS EXAMINATION BY MR. ARIAIL:

18 Q. Dr. Schwartz-Watts, it's good to see you again.

19 A. The same.

20 Q. Thank you for your report.

21 A. You are welcome.

22 Q. It helps a lot.

23 Let me just go over a couple of things to make sure.

24 First, as we will follow through the report, you were
25 questioned sort of in chronological order of what's in here,

1 and I just want to flip to the section, to start with,
2 dealing with criminal history.

3 A. Yes.

4 Q. You detailed a number of charges and things that you
5 went over, but you didn't mention that he still had a
6 pending murder charge from the events of February 16th,
7 1999.

8 A. Yes, and if I did not -- I'm very aware of that. That
9 may have been an oversight. I'm absolutely aware of that.

10 Q. Involving Mr. Lee?

11 A. That's right, his cellmate, yes.

12 Q. And I don't want to belabor this point, but in your
13 report it talks that you referred to the disciplinary
14 reports of the South Carolina Department of Corrections from
15 2001 through 2006?

16 A. Yes, sir.

17 Q. You had copies of all those infractions, incident
18 reports?

19 A. Yes, sir. I would have had a list of them and then I
20 think for probably the majority of them, there would have
21 been a narrative to describe what happened.

22 Q. Right, the internal report --

23 A. Yes.

24 Q. -- that describes all that.

25 A. Yes.

1 Q. Now, I don't want to stand up here and read or have you
2 read all those reports, but you did consider and use those
3 reports as part of your review and diagnosis?

4 A. Absolutely, yes.

5 Q. And I assume you also used the material contained in
6 the report as to who said what and who did what?

7 A. Yes, sir.

8 Q. All right. So if we needed to, we could go through
9 those with you, but I just want to summarize in the end your
10 comments were that Mr. Owens had substantial disciplinary
11 infractions during his course of incarceration?

12 A. That is very fair to say.

13 Q. In fact, I believe you said he had something more than
14 the ordinary?

15 A. I counted 56, and -- of course, in the course of my
16 career I look at -- it's very common in doing evaluations
17 I'll look at the list of assaultive disciplinaries, and it
18 was a lengthy list.

19 Q. And we have -- and you may have been in the courtroom.
20 We put in, through Mr. Nettles, a summary, a very brief
21 summary, of each one of those events, 28 of them to be exact
22 we put in, and were you in the courtroom when we --

23 A. No, sir.

24 Q. Okay. Well, there is a summary or a list of those that
25 I would like to show you, State's Exhibit 30.

1 A. Thank you.

2 Q. And just so you will understand what that is, that is a
3 summary of all of -- of 28 of those reports that -- you had
4 the whole report. That's just a summary of what the heading
5 of it was.

6 A. Yes, these all look familiar. Each one of these I have
7 some recollection of reading the reports that went with
8 them.

9 Q. Uh-huh. That's what -- I was going to ask you, are you
10 familiar with that?

11 A. Yes, sir.

12 Q. You said as part of your testimony that under his
13 medication, while he's been on medication, his impulsive
14 behavior has improved?

15 A. Yes.

16 Q. All right. Now, looking at the list of the things that
17 have occurred, I want to draw your attention specifically to
18 number 25.

19 A. Yes.

20 Q. February 28, 2006, a 12 inch weapon hidden between
21 mattresses?

22 A. Yes, sir.

23 Q. And then again on April 4, 2006, an eight and a half
24 inch shank made from flat metal, sharpened at edge, wrapped
25 with ace bandage?

1 A. Yes.

2 Q. Now, is that, in your opinion, possession of a shank
3 and those -- description of those things, and you have, of
4 course, the full report, if you need to refer to it, are
5 those impulsive acts, or are those acts of planning?

6 A. No, that would certainly be -- that -- to me that would
7 indicate some kind of plan, whether it's for self-defense or
8 to attack someone, but what would be considered impulsive is
9 if someone came into his room and he was just upset with
10 them and had bad works and brandished it.

11 But, no, certainly having those, that would indicate
12 some kind of planning. That's fair.

13 Q. Okay. And the medication that he's on doesn't impact
14 his ability to plan?

15 A. No, I don't think that's -- that's correct.

16 Q. And then May 1st, 2006, he set fire to his mattress.

17 May 20th, 2006, he threw a cup of coffee on officer
18 Smith?

19 A. Yes.

20 Q. Are those acts of impulse?

21 A. Yes, those are certainly impulsive, and it was
22 interesting, Mr. -- I asked him especially about setting
23 fire to his mattress, that's very serious to me, because
24 that could injure himself. That could injure others, but
25 that's very impulsive. I mean, he's setting fire to a

1 mattress when he lives in a cage and he can't get out, so
2 that's very impulsive.

3 Q. Now, I don't want to belabor the point, but I do have a
4 couple of others questions about all of these reports that
5 you read and your testimony that -- or your response to the
6 question by Mr. Godfrey that maybe -- or that he could be
7 housed in separate units within the Department of
8 Corrections.

9 A. Correct, if the -- what my statement is, just make sure
10 it's clear, that wherever he's housed in the Department of
11 Corrections, he will need mental health followup, and the
12 Department of Corrections has set up, no matter where he is,
13 he's going to have some access to mental health treatment.

14 Q. Correct.

15 And you mentioned some other facilities; an in-house
16 facility, and an inpatient facility, and that sort of thing?

17 A. Yes.

18 Q. Based on your knowledge of the working of the
19 Department of Corrections, and based upon your knowledge of
20 the details of the numerous infractions that you referred
21 to, do you think it is a possibility that Mr. Owens would
22 ever be housed in anyplace different than he is now?

23 A. Gosh, I don't know. I don't know. It certainly --
24 where you are housed is going to depend on behavior, how you
25 are doing, if you have assaults. I don't know.

1 Q. Then let me follow up with the next question.

2 Based on your assessment of him, your review of all of
3 the those records, your review of the nature of the crimes
4 and the pending cases that he has against him, do you
5 believe that he is a safe person to be anywhere housed other
6 than where he is presently housed, as a psychiatrist?

7 A. That's a good question. I think -- I think the answer
8 I'll give you in psychiatric terms. I think he needs a
9 level of structure and supervision. And I can't answer that
10 for the Department of Corrections, because they have
11 facilities. The Department of Corrections has a lot of
12 services and resources I don't know about. They have
13 supermax units where, of course, there is psychiatric care,
14 and they have step-downs from their supermax units. They
15 have the most secure units where no one ever gets out. You
16 don't even get out of your cell. You are within the walls
17 of the institution for 24/7. They have other step-down
18 supermax units where once your behavior is calmed down or
19 you have completed --

20 I know the supermax is in Columbia at Kirkland, and I
21 have worked there. I have consulted out there and they have
22 a wonderful captain that runs that program, but they have
23 three levels. And some inmates -- some inmates have spent
24 10 or 15 years in that level of supervision. They have a
25 level system and -- if they go through the level system,

1 they are allowed to step down to another lockup unit.

2 So in terms of how the prison operates -- I think he
3 could be -- wherever he is, he can be managed, but you are
4 asking me do I ever think he would get out of a lockup?

5 Q. No, I'm not asking you that. I'm asking you if as a
6 psychiatrist you believe that it would be safe to have him
7 anywhere other than in a cell, as Dr. Cobb testified, a cell
8 that is inside a cage?

9 A. Oh, yes, I do think he -- he will eventually -- yes,
10 with the medications he's on, he's getting more mature as he
11 ages, I think he would certainly be able at some point to be
12 housed in a less secure environment than a cage, but in
13 terms of would I ever foresee him on a yard with privileges,
14 no.

15 Q. All right. Now, go to that part of your report where
16 we talked about medications. If he's on medications, you
17 believe that he might get to the point that he could
18 actually get out of the cell inside a cage?

19 A. Yes, sir.

20 Q. Medication ingestion is always voluntary?

21 A. Absolutely.

22 Q. And, in fact, in your report you document where Mr.
23 Owens has already attempted to wean himself off of his
24 medications during Ramadan?

25 A. That's correct, for a very brief period of time he did.

1 Q. So he has indicated in the one year that he's been on
2 the medications that he can take himself off of them or
3 might take himself off of them?

4 A. Certainly. Mr. Owens has always -- he's always been a
5 volunteer patient. We have patients that -- that's why Dr.
6 Cobb said what he did. We have -- the most common situation
7 in the Department of Corrections is that you have people
8 kicking and screaming. They really need medications and
9 they won't let you, and we have to go through forced
10 medication, which is a lot of paperwork. You have to have
11 three doctors see them, get them to agree the patient needs
12 the medicine and you have to force the patient.

13 So Mr. Owens is a volunteer patient. He doesn't have
14 to be on any medications. He chooses to do that. And we
15 can monitor -- the Depakote he's on, it has a blood level,
16 so we know when Mr. Owens is taking it, and his levels --
17 you know, in the past when he reports he's compliant with
18 his medications. His levels reflect that.

19 But you are right. It's a choice. He could wake up
20 tomorrow and say he wouldn't want medications. That's not
21 been his history. If you look back since '95, he's always
22 asked for treatment. And overall he's been a pretty good
23 patient in terms of, you know, being cooperative with what
24 his doctor prescribes.

25 Q. Did you find it significant that Mr. Owens had been

1 incarcerated since 1997, and he didn't ask for the
2 medications until August of 2005?

3 A. No, actually he asked for -- in 1995, in the Department
4 of Juvenile Justice, he was seen at the reception and
5 evaluation center. And in the social worker report there it
6 was clear he was asking for counseling.

7 Also in Turbeeville in 1998, when he was at the
8 Department of Corrections, he asked for treatment.

9 Q. But after that, from 1997, when he was incarcerated
10 through 2005, August of 2005, there is no record of his
11 request for any medications?

12 A. Actually I may be mistaken, but I think he's been -- he
13 was under the care of Dr. Cusack, who is a psychiatrist
14 there for a number of years, even before Dr. Cobb came. So
15 he's had a history. He was getting some medications while
16 he was confined in that unit. It was just from a different
17 doctor. So he's had some history, but certainly I think
18 it's very fair to say he's not gotten the level of care that
19 he is receiving today, until August of 2005.

20 Q. And in 2005 -- excuse me, 1995, when he was in the
21 Department of Juvenile Justice, what was he in the
22 Department of Juvenile Justice for?

23 A. Lynching. He -- from my recollection, he, and I
24 believe it was children at a bus stop, had gotten involved
25 in a fight and I believe, and please correct me if I'm

1 wrong, that he chased after someone and may have fired a gun
2 I think towards someone.

3 Q. Okay. Let me -- I may have caught you off guard there.
4 Let me show you this. This is a record that I have from the
5 Department of Juvenile Justice. Are you familiar with that?

6 A. Yes.

7 Q. All right. And what are the charges listed? This was
8 1995, and he was how old?

9 A. He would have been -- let's see, '78, he would have
10 been --

11 Q. 17?

12 A. 17. 16. Yeah, 16. He didn't have his birthday yet.
13 16 years old.

14 Yes, he's there for burglary, second degree, two
15 counts; unlawful possession of a pistol; and assault with
16 intent to kill. And it states that he had shot a .38 in the
17 direction of some other boys.

18 Q. Okay. Thank you.

19 (Off the record)

20 (Back on the record)

21 BY MR. ARIAIL:

22 Q. Thank you.

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

24 THE WITNESS: You are welcome.

25 MR. GODFREY: Your Honor -- excuse me, Your Honor,

1 the defense rests.

2 THE COURT: Thank you, Dr. Schwartz-Watts.

3 THE WITNESS: Thank you.

4 THE COURT: I'm going to let y'all step out just
5 for a few minutes and don't talk about it.

6 (The following takes place outside the presence of
7 the jury panel)

8 THE COURT: Before you rest I need to review with
9 Mr. Owens. I thought I had asked you that a little bit
10 earlier.

11 Mr. Owens, you have a Constitutional Right to
12 either take the witness stand or not. You can testify in
13 front of this jury under oath, or you do not have to
14 testify. There is no way that you can be required to
15 testify in any way under the Constitution of the United
16 States or the State of South Carolina.

17 Mr. Owens, it is entirely your decision whether to
18 testify in your own behalf or not to testify. And I will
19 instruct the jury that that cannot be considered against you
20 in any way or in any manner. The fact that you choose to
21 remain silent, Mr. Owens, cannot even enter into the
22 discussions of the jury in the jury room. And we have told
23 frankly every juror during voir dire, and you were present,
24 that if you -- you had no burden of proof in this case, and
25 if you did not testify, they could not consider that against

1 you, and most of them understood the concept and indicated
2 that they could follow that instruction.

3 But by saying that, and you being here when we
4 went through that, I don't want that to be the basis for
5 your decision. I want you to make this decision. You have
6 to do it after you talk to your lawyers and consult with
7 your lawyers about whether you should testify or not
8 testify.

9 And I want you to understand that you have every
10 right to take this witness stand and testify under oath to
11 this jury, or you have the right not to testify. And I
12 would instruct them that that could not be considered
13 against you in any way. The failure of you to testify is
14 just embedded in our law that it cannot be held against you
15 in any way, and I would fully instruct the jury of that.

16 As to these aggravating -- statutory aggravating
17 circumstances, the State has got to prove them beyond a
18 reasonable doubt. And as I told you, there is no burden of
19 proof at all on you in any of this proceeding.

20 Mr. Owens, do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Have you fully discussed it with your
23 lawyers?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. I don't know if you need

1 anymore time to do that or not, but do you?

2 THE DEFENDANT: No, sir.

3 THE COURT: Have you made your decision?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. What is your decision, Mr.

6 Owens?

7 THE DEFENDANT: I will not.

8 THE COURT: You are not going to testify?

9 THE DEFENDANT: I will not.

10 THE COURT: Okay. Mr. Godfrey and Mr. Gibson,
11 both of y'all have discussed this I know before today, and
12 how many previous occasions we don't have to go into that,
13 but are you convinced -- and you have discussed it before
14 today, have you not?

15 MR. GODFREY: Yes, Your Honor, we have discussed
16 this with him at Perry Correctional Institution on visits
17 about a month and a half ago, and we have talked about this
18 throughout the week at various times. I talked to him again
19 this afternoon about it, and I am absolutely -- I absolutely
20 believe that he understands what the law is. He understands
21 that he has a right to testify and nobody can take it away
22 from him. He understands that if he doesn't testify, the
23 court will instruct the jury that they can't hold it against
24 him.

25 He also understands that it doesn't matter what

1 opinion Ken or I may have about whether he should testify or
2 not testify, that the Constitutional Right belongs solely to
3 him. And he understands all that, and with that knowledge,
4 judge, he prefers not to testify.

5 THE COURT: Okay. I am going to tell them they
6 can't consider that against him in the slightest degree.

7 Normally I would explain to him about the prior
8 record that it could only come in for a limited purpose, but
9 in this particular case, under Lyle and prior convictions
10 and whatnot, other evidence of crimes of bad act has come
11 in, and it's permissible in this proceeding for sentencing
12 where it focuses on the individual characteristics of the
13 defendant, and some -- and those things -- a lot of those
14 things have already come in.

15 But I'm convinced that Mr. Owens understands his
16 right to testify or not to testify. Mr. Owens is an
17 intelligent man, and I have observed him during the trial,
18 and I would find for the record that he has freely,
19 voluntarily, knowingly, and intelligently made the decision
20 on his own, after consulting with his attorneys, not to
21 testify. Mr. Owens is -- his demeanor and everything, when
22 he answered the question, is fine, and I am just firmly
23 convinced of that.

24 Okay. We will --

25 Are you going to have anything else in evidence?

1 MR. ARIAIL: No, sir.

2 THE COURT: Okay. Then it's probably going to be
3 appropriate that we adjourn for the evening.

4 And what time in the morning, Mr. Godfrey, can you
5 get here?

6 MR. GODFREY: Well, judge, Ken and Betty and I
7 have talked about it and we would respectfully request that
8 the court consider beginning at ten o'clock.

9 We would also request, if it would be possible,
10 for you to give us some idea of what you intend to charge so
11 we can think about it tonight, but we would like to begin at
12 ten o'clock.

13 THE COURT: Okay. All right.

14 MS. STROM: We had discussed that with him, Your
15 Honor, and I'm in agreement with that.

16 THE COURT: We have been working late almost every
17 night and I know y'all need some time to get your thoughts
18 together, and I have no problem with that. So we will
19 starts at ten o'clock in the morning.

20 And I would anticipate that we would -- I'm just
21 going to tell the jury that we are going to have closing
22 arguments tomorrow morning and the charge on the law.

23 Now, have you fully discussed with your client
24 whether or not he will make a statement in closing
25 arguments? Both you as a defense lawyer and Mr. Owens have

1 an opportunity to address the jury last.

2 MR. GODFREY: May it please the court, Freddie and
3 I and Ken have talked about that also, beginning at Perry,
4 and, judge, he does not wish to make a closing statement to
5 the jury.

6 THE COURT: And just like the question I asked you
7 earlier, Mr. Owens, you have every right under the law to
8 make a statement to the jury after everyone else has made
9 statements to the jury. Do you understand your right to do
10 that under the law, Mr. Owens?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And have you fully discussed that with
13 your attorneys?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. And what's your decision on
16 that regard?

17 THE DEFENDANT: I will not.

18 THE COURT: Okay. And if you change your mind,
19 and you think about it tonight, I'll review the -- at least
20 the issue about whether you want to make a statement at the
21 end of the case to the jury, I'll go over that with you
22 again in the morning. Okay, sir.

23 THE DEFENDANT: Yes.

24 THE COURT: Thank you. All right. We will start
25 back tomorrow morning at ten o'clock.

1 I tell you what. I better let the jury go before
2 y'all go.

3 (Juror Note marked as Court Exhibit No. 4 for
4 identification)

5 (The following takes place in the presence of the
6 jury panel)

7 THE COURT: All right, ladies and gentlemen of the
8 jury, that's all the evidence and testimony.

9 Do not discuss the case tonight. We are going to
10 break tonight. We will come back tomorrow. Everyone has
11 worked hard and late this week, every night this week, and
12 maybe y'all -- we were here with the jury qualifications,
13 and the attorneys and everyone needs it, because they are
14 tired and they need some chance to get rest and get their
15 thoughts together before we have closing arguments and
16 before I charge you on the law. So we are going to -- we
17 are going to bring you back tomorrow morning at ten o'clock.
18 At that time -- both sides agreed to that. We fully
19 discussed it. You would hear closing arguments at that
20 time. After the closing arguments or the summations, then
21 I'll go over the law that applies to this sentencing
22 proceeding, and then you will have to go back and deliberate
23 until you reach a unanimous verdict on the issues. I will
24 present to you the issues and I will give you verdict forms
25 that you can review in the jury room. I'll cover those with.

1 you in detail in my closing instructions.

2 Have a good evening tonight. There's not going to
3 be a Rutgers-Louisville football game on tonight, so suffer
4 through that, or whatever. I stayed up a little bit and
5 watched that thing too.

6 Y'all have a good evening and I'll see you back at
7 ten o'clock in the morning.

8 Do not discuss the case at all. Just talk about
9 your families, and football game, or whatever else, but do
10 not discuss this case at all. Thank you so much. See you
11 tomorrow morning at ten o'clock.

12 (The following takes place outside the presence of
13 the jury panel)

14 THE COURT: I haven't gotten my charge lined up.
15 I just got a mock charge here in this capital case book that
16 I prepared for myself.

17 I can tell you generally the way it's going to be,
18 so y'all may or may not have to work diligently on jury
19 charges, but that's up to you. You can submit to me
20 anything that you want to for the record, but I would
21 instruct them that, of course, and they know that the
22 defendant has been found guilty of murder. They have to
23 determine how we are going to sentence him.

24 And I would instruct them that they are the sole
25 judges of the facts and credibility and the believability of

1 all the witnesses. And I will talk to them a little bit
2 about the demeanor of the witnesses and how they come to
3 know the facts about which they testified, things of that
4 nature, as to fact witnesses. And they would give weight to
5 whatever -- the credibility and weight for the facts would
6 be up to them.

7 And I, of course, would tell them that I was the
8 judge of the law and I could not discuss the facts with
9 them. I would be prohibited from doing that under the
10 Constitution, and I would not do that. And that was a
11 matter for them to decide. And if I have done anything
12 during the trial, and that I don't have a feeling about one
13 way or the other about the sentencing issues. And I do not.

14 Then I would have to charge them an expert witness
15 charge. And the expert witness charge is the education,
16 training and experience of the expert witness or a person
17 qualified as an expert witness and the reasons given for
18 that opinion. They can consider that and give the expert
19 opinion. This is really a -- I can't tell. This is not
20 maybe the exact language I'm going to use, but it's pretty
21 much what -- I have a charge in every case, but they can
22 give it whatever weight that they think it deserves. And
23 they evaluate the testimony of an expert witness the same
24 way they would other witnesses.

25 Then I would go through the -- I would tell them

1 about Mr. Owens not testifying. They could not consider
2 that in the slightest degree, or that could not weigh
3 against him in any manner whatsoever, and that was his
4 Constitutional right to remain silent. They can't even
5 consider that. They would have to accept the law as I
6 explained it to them, and I would -- I think I have already
7 mentioned that.

8 And then to the extent that any issue remains
9 requires proof beyond a reasonable doubt, I would tell
10 them -- I would define reasonable doubt for them, and
11 reasonable doubt is the kind of doubt that would cause a
12 reasonable person to hesitate to act; and a reasonable doubt
13 is the kind of doubt that would leave them firmly convinced
14 of the issues presented; and a reasonable -- that nothing
15 can be proven beyond every doubt. I don't have that charge.
16 I can refer to, but they have to be firmly convinced of the
17 defendant's guilt. And if there is a real -- not the guilt.
18 I have got -- I will have that written out. And I will
19 change guilt to the issue in the case. And if there is a
20 real possibility that the issue has not been established
21 beyond a reasonable doubt, it would not be proven beyond a
22 reasonable doubt. Firmly convinced, real possibility, and
23 hesitate to act. Reasonable person hesitate to act. In
24 that order.

25 And the -- I am not sure about direct evidence and

1 circumstantial evidence under the State v. Grippon charge,
2 but my initial thinking was I probably should charge that,
3 because a lot of things are circumstantial evidence. And I
4 use just the short State v. Grippon charge.

5 Then I would tell them that -- after the
6 reasonable doubt charge, I would emphasize that -- I would
7 explain to them that about the statutory aggravating
8 circumstances.

9 And the -- in there somewhere I will at the
10 appropriate place put in a charge about the prior criminal
11 record prior bad acts and it only comes in as would it bear
12 upon his particular individual characteristics, not as any
13 evidence as to the statutory aggravating circumstance. The
14 State must prove the statutory aggravating circumstance
15 beyond a reasonable doubt. In this case they assert two. I
16 will have those written out on a -- typed out on a sheet of
17 paper, a sheet of statutory aggravating circumstances and
18 statutory mitigating circumstances. It's robbery in the
19 commission of a murder -- I have forgotten how the State has
20 got it worded, or however it's worded in the statute, but
21 it's just going to be that language while armed with deadly
22 weapon, robbery, or larceny.

23 I will define for them what robbery is and
24 larceny. As I recall it, larceny is included in robbery,
25 except robbery is the taking through force and intimidation.

1 And then they would have to prove beyond a
2 reasonable doubt deadly weapon.

3 I would explain to the jury what a deadly weapon
4 is. It's almost common knowledge, almost take judicial
5 notice, that a pistol -- I'm not saying whether it's true,
6 if you believe the evidence a .32 is a deadly weapon. I'm
7 not going to tell them a .32 is a deadly weapon, but I'll
8 tell them a pistol, or whatever. And sometimes they wonder
9 why you mention the other things when there is absolutely no
10 evidence of it being in here, like a dirk, or a slingshot,
11 or a knife, or whatever, but sometimes I just tell them a
12 pistol is a deadly weapon under our law. And I may just do
13 that, because I don't think there is any evidence of any
14 other -- well, no, on deadly weapons I would probably have
15 to charge them fully on that, because of the incident in the
16 second incident.

17 Be that as it may, after that -- and then I would
18 tell them if they proved that statutory aggravating
19 circumstance, then the jury would determine the sentence.
20 That's my understanding of the law.

21 If they do not -- if they do not find a statutory
22 aggravating circumstance beyond a reasonable doubt, then the
23 case stops. It ends there and they do not have to go any
24 further.

25 But if they find a statutory aggravating

1 circumstance beyond a reasonable doubt, then they would
2 consider the specific circumstances surrounding this offense
3 and the individual characteristics of the defendant and any
4 evidence in extenuation, aggravation, or mitigation and
5 determine a sentence of life imprisonment or death.

6 And I would tell them life imprisonment in this
7 case means life until the death of the defendant, without
8 any possibility of parole.

9 And that death means -- some judges read the
10 statute. I'm just going to tell them that death means by
11 lethal injection or electrocution.

12 And after that I will tell them that they have to
13 meaningfully and seriously consider evidence of aggravating
14 circumstances and any evidence of mitigating circumstances
15 in arriving at their decision.

16 And I will give them a list of the statutory
17 mitigating circumstances. I will define for them what an
18 aggravating circumstance is. It's the same thing that we
19 talked about in voir dire. It's something that aggravates
20 the offense of murder.

21 And I'll explain to them that a mitigating
22 circumstance is something that reduces the seriousness of
23 the crime. But I'll tell them that each one is facts,
24 incident, detail or occurrence.

25 And after I define the statutory aggravating

1 circumstances, I will list -- tell them their statutory
2 mitigating circumstances, but they can consider any evidence
3 in mitigation.

4 And I would explain to them that the statutory
5 mitigating circumstances do not have -- there is no burden
6 of proof to establish those, and they can consider the
7 statutory mitigating circumstances and any evidence of
8 mitigation in determining their sentence.

9 And, of course, I'm going to explain to them that
10 the verdict must be unanimous as to the statutory
11 aggravating circumstances and as to any sentence they
12 impose.

13 And I would have a sentence of life or death on
14 separate sheets.

15 A sentence of life in prison only needs to be
16 signed by the foreperson.

17 The sentence of death would have to be signed by
18 all twelve jurors. I would have it written out and I would
19 have each juror's name listed there. We will probably go
20 ahead and prepare that this evening and then just wait to
21 see if we have to use another alternate juror, or not. You
22 never know what happens overnight. If we do, we can just
23 hopefully do it on the computer and just work out -- change
24 one name, if we have to.

25 Of course, I will tell them that I know that their

1 sentence cannot be based on passion, prejudice or sympathy.

2 And that -- I am probably going to tell them,
3 after looking at a number of cases, that they can sentence
4 him to life imprisonment. Of course, they can do that
5 whether they find a mitigating circumstance or not. And,
6 simply stated, they could give him life imprisonment for any
7 reason or no reason at all. I think that's what y'all
8 referred to as the mercy charge. I may not use the word
9 mercy, but I know that there are a number of cases that have
10 not been reversed where the judge says for any reason, or no
11 reason at all.

12 Now, I was giving that to you as just kind of off
13 the cuff.

14 All judges tell them that their recommendation
15 will be followed by the court. And the purpose for that,
16 under the law, is not to lessen this heavy decision that
17 they have to make in any way and let them think anyone else
18 can change it. I'm convinced our courts want the jury to
19 understand. They are the only people in Greenville County,
20 or in this state, or anywhere right now in this world, that
21 can sentence Mr. Owens to death, where we are in this
22 proceeding, as far as I understand it. If they -- if those
23 twelve people don't write a sentence of death, no one can.
24 So for that reason I will tell you that I will emphasize to
25 them that their recommendation would be followed by the

1 court. That is not to say that I do not have a legal
2 obligation to find that there is evidence to support the
3 decision that's not based on passion, prejudice, or bias.
4 Okay? That's about all I can tell you right now.

5 And, again, I didn't -- I didn't -- I didn't think
6 we would get this far, but generally that's what -- that's
7 pretty much what I'm going to charge, and you can count on
8 it. And if there is anything else you want to tell me in
9 the morning, I will be glad to consider it, or anything else
10 you want to tell me tonight, I will be glad to consider.

11 Yes, ma'am.

12 MS. STROM: You may have said this. I just didn't
13 catch it, if you did. When you were talking about that they
14 could find a life sentence -- they could sentence him to
15 life even without finding a mitigating circumstance. I
16 think you also have to charge them that -- and it's what you
17 have been telling them in voir dire, that even if they find
18 a statutory aggravating circumstance, they still can impose
19 life. I think you said it, but I wasn't sure. I just
20 wanted to bring that up.

21 THE COURT: Yeah, I think I said that.

22 MS. STROM: I know you told them, you know,
23 constantly, but I just wanted to make sure of that.

24 THE COURT: Yeah. I'm not going to tell them or
25 charge them anything about if they can't reach a verdict,

1 because that would be -- if they find unanimously that there
2 is a statutory aggravating circumstance, it's life or the
3 death penalty --

4 MS. STROM: And --

5 THE COURT: -- under our law.

6 MS. STROM: Yes, sir.

7 And also as to the mitigating circumstances, you
8 said --

9 THE COURT: Oh, yeah, I have got to do statutory
10 mitigating circumstance.

11 MS. STROM: So I was just seeing which ones they
12 wanted to submit.

13 THE COURT: I have to -- first of all, the law
14 requires me to make a finding of what evidence supports a
15 statutory mitigating circumstance, and I make that
16 determination under the law. And then I tell you what my
17 determination is. And as I understand the law, you can
18 either object to me submitting a statutory mitigating
19 circumstance, and I haven't known about that being done, but
20 the case law says that you can -- you can either -- you can
21 suggest or tell me that you believe that the evidence
22 supports other statutory mitigating circumstances, or that
23 you do not want me to submit one. I understand that to be
24 the law.

25 MS. STROM: Correct.

1 THE COURT: I'm not sure it's the statutory law or
2 the case law, but I'm pretty sure that's the law, but I have
3 never known a defense lawyer to not to ask that I submit a
4 statutory mitigating circumstance, or anyone else.

5 And I'll just tell you my thinking right now is
6 statutory mitigating circumstances, I think there were four,
7 and I'm not sure that -- I haven't had a chance to sit down
8 and analyze those since I have heard all the evidence and
9 testimony. I had no idea what the mitigation testimony was
10 going to be. And I can't tell you for sure my decision on
11 that until in the morning, and I'll go ahead and get it
12 typed up and show you, but my thinking was, having reviewed
13 the statutory aggravating circumstances, I didn't see
14 what -- I got the statutory aggravating circumstances what
15 Macaulay did, but I have looked at the statutory mitigating
16 circumstances that Macaulay submitted, and I believe those
17 are the ones, statutory mitigating circumstances, that -- my
18 thinking prior to the trial was that that I might use those,
19 those four. I think it was four. It might have been three.
20 I think it was -- I'm pretty sure it was four.

21 I don't know if y'all had a chance to look at
22 those or not, but -- I don't want to keep y'all any longer.

23 Do you need any more -- do we need to discuss
24 anything else before tomorrow morning?

25 MS. STROM: Nothing from the State, Your Honor.

1 MR. GODFREY: Nothing from the defense, judge.

2 THE COURT: Okay. Well, y'all have a good evening
3 and I'll see y'all back ten o'clock in the morning.

4 MS. STROM: Your Honor, may I suggests that -- and
5 I know that --

6 THE COURT: Do not come on in -- do not be here
7 before ten. You don't have to be here before ten.

8 MS. STROM: Okay.

9 THE COURT: Because I think you need that time.

10 MS. STROM: Okay. We can look at the charge then?

11 THE COURT: Once you come in the courtroom, I'll
12 show you the verdict forms and the charge.

13 MS. STROM: Right.

14 THE COURT: Well, I'll tell you, my charge is -- I
15 don't think y'all want to read it, but I may not have it
16 all. I maybe will use a different sheet.

17 MS. STROM: Doesn't -- the charge goes back to the
18 jury in writing.

19 THE COURT: The charge?

20 MS. STROM: Yes, sir, I believe in a death penalty
21 it does.

22 MR. ARIAIL: That's required.

23 MS. STROM: Yes, sir.

24 MR. ARIAIL: You need to borrow my secretary?
25 She's coming in.

1 THE COURT: I did not the charge was required.

2 MS. STROM: I believe it.

3 THE COURT: She says they send the charge back, so
4 we will do that.

5 MS. STROM: I just didn't want you to get caught
6 off guard.

7 THE COURT: I have got half of it typed up. We
8 just got to do the rest of it.

9 MS. STROM: That's fine. I just didn't want you
10 to get caught up with that.

11 (Whereupon, proceedings were adjourned to November
12 11, 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 11, 2006
8) Greenville, South Carolina

9 (VOLUME VI)

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 ROBERT M. ARIAIL, SOLICITOR
17 BETTY C. STROM, DEPUTY SOLICITOR
18 LETICIA VERDIN, ASSISTANT SOLICITOR
19 Attorneys for the State

20
21 E.P. GODFREY, ESQUIRE
22 KEN GIBSON, ESQUIRE
23 Attorneys for the Defendant

24
25
Michael R. Watts
Circuit Court Reporter

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(PROCEEDINGS, November 11, 2006)

THE COURT: First of all, I would ask my clerk if he would provide y'all with a copy of the statutory aggravating circumstances and the statutory mitigating circumstances that the court would find that may be supported by evidence in the record. Initially it's the responsibility of the court to make that determination. Then I would hear from the defense as to any additional factors they may like to be -- that they think is supported by the evidence, and if they would like any of those factors deleted, or waived, or not charged.

MR. GIBSON: Your Honor, these are fine with the defense.

THE COURT: I'll hear from the State.

MR. ARIAIL: Your Honor, we would -- we have no objection to 1, 3, 4 and 5, but number 2 is contrary to the facts in the case. The defendant has been found guilty of the murder. He was not an accomplice to anything. He is the murderer. And his participation was relatively minor? He was found to be the one who pulled the trigger by a jury.

THE COURT: I don't know that, Mr. Ariail. We got two people convicted of murder in this case, as I understand it.

MR. ARIAIL: We do not have two people convicted of murder.

1 THE COURT: There is one --

2 MR. ARIAIL: There is one person convicted of
3 murder, one person convicted of voluntary manslaughter.

4 Mr. Golden was not convicted of murder.

5 THE COURT: I'm not familiar with that.

6 MR. ARIAIL: Well, then it's a matter of public
7 record, and I can --

8 THE COURT: I thought he was serving life.

9 MR. ARIAIL: No, no.

10 THE COURT: I don't dispute that.

11 MR. ARIAIL: Okay.

12 THE COURT: But --

13 MR. ARIAIL: He was -- he was -- there is no
14 evidence of any accomplice, because if you get into
15 accomplice, then you are going to have to get into a full
16 charge on the hand of one, hand of all. You are going to
17 have to explain to the jury that participation in a murder
18 was a group effort of planning, and I think it's going to
19 take us way beyond what we have already told this jury, that
20 this defendant has been convicted of murder. He's not an
21 accomplice in murder. He's convicted of murder. Accomplice
22 gives him the idea that he's something after the fact. He's
23 a principal. He was convicted as a principal in the murder.
24 There is no way around that legally. So accomplice -- if we
25 are talking about accomplice liability is something that

1 occurs after the fact.

2 THE COURT: Well, why is it a statutory mitigating
3 circumstance under any murder then, Mr. Ariail?

4 MR. ARIAIL: As an accomplice?

5 THE COURT: Yeah.

6 MR. ARIAIL: Well, it would be that if you had a
7 situation where you couldn't determine which one was the one
8 who fired the shot. And in those situations where the
9 courts have made distinguishing -- or distinguished between
10 the shooter and those people who are accomplices, who are
11 primary accomplices and they are secondary accomplice. You
12 know, the ones that, you know, they talked about -- Mr.
13 Wood. Do you remember the probation officer and his -- I
14 think that -- I can't remember the defendant's name, but the
15 question being if he was outside the building, not inside
16 the building, could he be held to be convicted of murder,
17 even though he was an accomplice not inside. So it's
18 accomplice liability being inside the building.

19 But in this case, this defendant was convicted of
20 being the shooter and that's what he was tried on. That was
21 the facts of the case. In other words, the testimony in
22 that case was that he was the shooter and all the proof was
23 directed that he was the shooter.

24 THE COURT: You don't think that's argument to the
25 jury? Let me -- let me -- look --

1 MR. ARIAIL: This --

2 THE COURT: This is a sentencing proceeding. And
3 in a sentencing proceeding the statute says that that is a
4 mitigating factor, if there is any evidence to support it.

5 Now, the only -- I have to make a determination
6 about any evidence? And the document that was presented --
7 the statement by Mr. Owens presented through the detective,
8 he said "I was convicted of the crime which I did not
9 commit," and then he killed Mr. Lee. And that's in the
10 statement and that's in evidence.

11 MR. ARIAIL: I think --

12 THE COURT: Two of them went into the building.

13 MR. ARIAIL: I understand.

14 THE COURT: And the --

15 MR. ARIAIL: Well, going back to the statement of
16 Mr. Lee, the jury -- the jury had found otherwise. And I
17 don't know how a subsequent statement of a defendant after
18 his conviction could ever be used as a basis to override a
19 jury's verdict. In other words, he may -- he was guilty.

20 THE COURT: You didn't make this argument when
21 Judge Macaulay tried the case because he charged that
22 aggravating circumstance.

23 MR. ARIAIL: He charged this aggravating
24 circumstance?

25 THE COURT: He absolutely did. It's been

1 previously charged.

2 And if both people went in there, they could have
3 been convicted of murder for that.

4 MR. GIBSON: Your Honor, as a point of
5 clarification, Mr. Golden did actually plead to murder
6 initially. He came back on a PCR and --

7 THE COURT: I have not looked at those
8 proceedings. I thought he was convicted -- I thought I saw
9 where he pled to murder.

10 MR. GIBSON: He did, Your Honor.

11 THE COURT: And they both were convicted of
12 murder, and that's the only -- I do not intend to charge any
13 detail or anything about accomplice liability and the hand
14 of one is the hand of all. That's not an issue for this
15 jury. I don't know how y'all are going to approach that,
16 but it's not and I -- I made independent determinations, but
17 it was charged in the previous case.

18 MR. ARIAIL: All right.

19 But to go back, Mr. Golden was ultimately
20 convicted of manslaughter, voluntary. Even though he
21 initially he pled, he was subsequently convicted of
22 voluntary manslaughter.

23 THE COURT: Okay. Now, none of that is in
24 evidence.

25 MR. ARIAIL: No, that's not in evidence.

1 THE COURT: That is not permissible. Neither one
2 of you can argue that.

3 MR. ARIAIL: No, no, I was just telling you since
4 he --

5 MR. GIBSON: Your Honor, what happened was
6 actually he filed a PCR. They needed him to testify at the
7 second phase --

8 MR. ARIAIL: That's not -- that's not so.

9 THE COURT: That's not allowed. Whatever
10 happened, he initially pled to murder and they both were
11 stood convicted of murder. And so I think that I have to do
12 that.

13 Is there anything else that we need to take up in
14 regard to those?

15 MR. GIBSON: That's fine, Your Honor.

16 MS. STROM: Your Honor?

17 THE COURT: Yes, ma'am.

18 MS. STROM: The only thing, I was just -- nothing
19 as to the charge or as to the mitigating or aggravating
20 circumstance. I don't have anything else on that.

21 I didn't know if you were going to appoint a
22 foreperson or allow them --

23 THE COURT: I am.

24 MS. STROM: Okay.

25 THE COURT: I'm going to appoint Ronald D.

1 Dillard. We've already typed up the verdict forms and put
2 his name in there as the foreman.

3 MS. STROM: I had just written down that you had
4 said that you were going to wait until the he did, so it's
5 simply a reminder.

6 THE COURT: In regard to the -- I want to -- Mr.
7 Owens, I need to address you one more time this morning
8 before we proceed any further with this trial.

9 I have to make a finding on the record that you
10 waive any Constitutional or statutory right that you have.
11 You have an absolute right, and I went over that with you,
12 just to refer back to it, your right to testify or remain
13 silent. And I went over that in detail and your attorney
14 made a statement for the record that he helpfully discussed
15 that with you. But now I need to -- again, I asked you this
16 last night, but I want to cover it again and make sure that
17 you have fully discussed with your attorneys and that you
18 have personally made a decision whether you would like to
19 argue to the jury or make a statement to the jury.

20 Now, I don't know if y'all discussed it again
21 since last night, but y'all had fully discussed that.

22 Mr. Owens, do you need any more time to discuss
23 that with your attorneys?

24 THE DEFENDANT: No, sir.

25 THE COURT: Okay. And it's your desire in that

1 regard that you not make a statement, is that correct?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. You do not want to make a final
4 argument to the jury and you are waiving your right to do
5 that, is that right?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: So you fully understood your
8 Constitutional Right to testify and you fully understand
9 your Constitutional statutory right to make a final argument
10 to this jury?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you are freely, voluntarily,
13 knowingly and intelligently waiving that right?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. I so find for the record.

16 Are y'all prepared to go, or do you want a couple
17 of minutes? Do you need any more time, Mr. Ariail?

18 MR. ARIAIL: No, we are ready. I'm ready.

19 THE COURT: Okay.

20 MR. GODFREY: We are okay.

21 THE COURT: I have already printed out the verdict
22 forms and the -- where they have to make a personal finding
23 of the aggravating circumstances and things of that nature.

24 Okay, bring the jury in. Put Mr. Dillard in the
25 foreperson's seat.

1 My charge is unusually long. I usually give a
2 very short succinct charge, but make sure that I covered
3 everything, I'm going to give them a break after the two of
4 you make your arguments, and then I'll charge and -- bring
5 them back in and charge them.

6 (The following takes place in the presence of the
7 jury panel)

8 THE COURT: Ladies and gentlemen of the jury, each
9 person on the jury panel has an equal vote and an equal
10 voice in the verdict. And any verdict that you reach must
11 be unanimous, and I'll cover that in detail with you, but
12 someone has to preside. I could have chosen any one of you,
13 but it's kind of pull someone out. Mr. Dillard, I'm going
14 to ask you to be the foreperson. You will just preside.
15 Everybody has as an equal voice and an equal vote and equal
16 input into the verdict.

17 We are now ready for the closing arguments. We
18 will first hear from the State, and then we will hear from
19 the defense. And following that I will instruct on the law
20 that applies to this case.

21 Now, we certainly can take a break at your
22 convenience, if you need to do that.

23 Mr. Ariail.

24 MR. ARIAIL: Thank you, Your Honor.

25 Mr. Foreman, ladies and gentlemen, I feel like I

1 haven't introduced myself. It's been so long since I met
2 you and I didn't have an opportunity to talk to you.

3 We now coming to the close of this case and what
4 we are going to talk about now is what we refer to as a
5 summation or a closing argument, to bring together what we
6 have heard and evidence and what you are going to hear in
7 terms of the law. As soon as we complete these arguments
8 and jury charge, your deliberations, you are going to get to
9 return to your normal lives so you can enjoy some part of
10 the weekend. But we appreciate your service. And the judge
11 has told you that, and I for the State will tell you that
12 also.

13 I hope as a result of this service you realize how
14 important it is that we have fair and conscientious jurors
15 available to resolve the thousands of cases that we have to
16 handle in this court system every year. This prosecutor
17 certainly appreciates your willingness to be a part and to
18 be fair-minded, but the only decision left to be decided now
19 concerns the punishment, and there are two steps to
20 determining punishment, and there are two possible
21 punishments - life imprisonment without parole until the
22 death of the defendant and the death sentence, which the
23 court has explained to you.

24 Now, before you can reach or begin deliberations
25 on what sentence is appropriate, the law requires, as the

1. judge had told you, you must find an aggravating
2. circumstance; that is, we talked about it has to be a murder
3. committed during -- accompanied by an aggravating
4. circumstance.

5. In this case the State has identified or submitted
6. to the court for consideration by you two aggravating
7. circumstances which exists under our law.

8. The first is murder during a robbery while armed
9. with a deadly weapon. We colloquially call that armed
10. robbery, but the definition is murder committed during a
11. robbery, while armed with a deadly weapon.

12. And the second is murder during a larceny while
13. armed with a deadly weapon.

14. The judge has explained to you that larceny is
15. stealing, taking the property of someone else.

16. Robbery is the taking of the property, goods and
17. chattels, or personal property of someone else by force or
18. intimidation and accompanied, in this case, by the use of a
19. deadly weapon.

20. So actually there is some overlap in those two,
21. but under the law both of those circumstances exists as
22. aggravating circumstances, and the State has identified
23. those.

24. If you find one, or both, of those exists, then
25. you can proceed to consider the sentence. And we submit

1 that the evidence supports not one, but both of those, but
2 let's just review that evidence briefly.

3 The first evidence that you are going to see is,
4 or that you saw, was the video, the video of two masked
5 people coming in and carrying weapons, the deadly weapons,
6 the armed weapon that the law refers to, a pistol. Both of
7 them had the pistols. The guns were used by both and they
8 had masks. They were robbers. So robbery is taking place
9 on video in front of you that you can see.

10 Ms. Graves is shot with a pistol. So pistol is
11 used during the course of the robbery. There is money in
12 the cash drawer. The money has been taken, and the audit
13 reveals that there is a shortage of funds that have been
14 taken in versus that which is left. So those facts are
15 established from circumstances that existed at the store and
16 surrounding the crime.

17 The defendant, Mr. Owens, admitted to his
18 girlfriend, Aisha, that he, in fact, robbed the store when
19 she confronted him about it.

20 And, secondly, he admitted to his girlfriend that
21 he, in fact, had shot the lady. And, in fact, Ms. Graves
22 was shot and murdered during the course of an armed robbery
23 and a larceny.

24 Mr. Vance, Kiko, testified that when they got back
25 into the car, Freddie mentioned that "he had shot the

1 bitch," and that "he had shot the whore," because she
2 wouldn't give him the money. Kiko testified also that
3 Steven Andre Golden, who accompanied Mr. Owens into the
4 store, also said "I didn't get to shoot mine." So the
5 evidence is overwhelming that Mr. Owens is the perpetrator
6 in the robbery.

7 Lastly, Mr. Vance, when he received his weapon
8 back, do you remember they had the discussion about where
9 the weapons were and who swapped off. He got it back. He
10 opened it up and it was, in fact, missing a shell that had
11 been fired.

12 So we submit to you that the aggravating
13 circumstances have been established for you to proceed to
14 consider the sentences or appropriate sentence to be imposed
15 upon Mr. Owens for this crime.

16 The judge charged you, and you should keep in
17 mind, that Mr. Owens has been convicted of the murder in
18 which Ms. Graves was killed and was the victim of the armed
19 robbery.

20 Now, I'll remind each of y'all that you swore when
21 you came in here that you would fairly consider both forms
22 of punishment, both life imprisonment without parole and the
23 death penalty. Each individual juror will consider what
24 sentence they believe they should impose, and each will hear
25 and consider the opinions of others, because jury service

1 and jury deliberations to reach its verdict is a
2 collaborative effort. It is something that -- a fair and
3 reasonable jury verdict is the process of exchange of ideas
4 and information, so it's expected that you should discuss
5 these ideas amongst yourselves.

6 If for any reason when you return or go to the
7 jury room you find that you cannot comply with that oath, or
8 that one of your fellow jurors cannot comply with that oath
9 and participate in the jury deliberations, you should report
10 that to your foreman, who will then report it to the court.

11 The judge will tell you in his charge that you can
12 consider both the evidence of the circumstances surrounding
13 the crime in considering your sentence and you can consider
14 the evidence surrounding the character and characteristics
15 of the defendant, and he's told you that. We have talked
16 about that on a number of occasions, but when we get into
17 specifics we will talk about the character and
18 characteristics of the defendant, and certainly talk about
19 the circumstances of the death of Ms. Graves.

20 But let me -- because I am required under the law
21 to make the first argument, let me anticipate a couple of
22 things that you may hear and respond to those now in
23 anticipation that it may occur.

24 The first thing is that the defense may suggest to
25 you that this process that we are going through is really

1 killing someone and that the word killing of the defendant
2 may be used in argument. If it is, I want you to put it in
3 context, and let's talk about what this process is. The
4 State is entitled, under the law, to ask for the death
5 penalty. It is an approved punishment in this state by our
6 legislature. Only limited circumstances are allowed for us
7 to seek the death penalty, and rarely do we seek the death
8 penalty in all those cases that are eligible. In only
9 certain cases do we choose to seek the death penalty.

10 This is a legal process. It is a process -- it is
11 a function of government. It is a process that is
12 established by our legislature and has been approved by our
13 courts as the manner in which a sentence will be passed in a
14 case of this nature. It is a function of you, as citizens,
15 acting and carrying out a process of government. The
16 legislature has designated you in this particular case to
17 carry out a function of government, to pass a sentence in
18 criminal case. So it is a lawful process, and you are
19 shaping a lawful punishment to an unlawful act. You are
20 serving the function of a judge. It's a responsibility
21 given to you by both our legislature and our courts to carry
22 out fairly, and there is nothing wrong with what you are
23 doing. It is a legal process, and your verdict, if it is
24 the death penalty, is not killing someone. It is the
25 passing of legal punishment under our law.

1 Now, that's a tough decision. We all know it's a
2 tough decision. You talked about it, some of you in voir
3 dire, how tough it would be, and we recognize it's a tough
4 decision. It's a tough decision for me to ask you to do it
5 when we seek the death penalty, but responsible people make
6 tough decisions all the time. We make those decisions in
7 our marriages. We make them in regard to our families. We
8 make them in regard to our children, our jobs. Every day
9 people, responsible people, make tough decisions. So this
10 process makes you responsible for a tough decision, but we
11 can't run and hide from that responsibility. It is a
12 responsibility that's placed on you as a part of our
13 governmental function.

14 But it means that we approach the decision the
15 same as you do any other tough decision that you make. You
16 consider the facts. You consider the evidence. You
17 consider the alternatives available and the solutions, and
18 you choose the most appropriate. You simply need to follow
19 the process and imagine yourself making a tough decision for
20 your family and handle it in the same way. And if you do,
21 we trust that you will -- if you use that approach, you will
22 reach the right result.

23 Also in this case you may hear the term mercy.
24 Mercy is a term that is talked about in death penalty cases,
25 and the defense may suggest to you that mercy is something

1 that you should give and impose a life sentence as an act of
2 mercy, and it's natural. It's natural that they want to
3 have mercy. It's natural to want to have mercy on a living
4 human being that's standing in front of you. That's human
5 nature, but mercy is not automatic. Otherwise, we would
6 never have a death penalty. Mercy is something that you
7 receive, but you do not deserve.

8 I would prefer to focus on justice. This process
9 is about justice which is receiving what you do deserve.
10 Justice is what this process should be about.

11 What punishment does this defendant deserve? If
12 you want to give mercy, that's your right, but Irene Graves
13 deserves justice. This is her day in court too. Just
14 because she's not here doesn't mean that it's not her day in
15 court. Her life was senselessly cut short and justice is
16 what she deserves for that. Don't forget her just because
17 she's not here. What is justice for the bullet that Freddie
18 Owens put in her brain and that split second of fear when
19 she knew death was on her?

20 If they ask for mercy, ask them to show you one
21 shred of evidence for any reason why he deserves mercy more
22 than he deserves justice.

23 Now, as I said earlier, it's not enjoyable for me
24 to ask you to impose the death penalty, but it's necessary.
25 We don't want to hurt his family. We don't want to hurt

1 anybody's family, but you have got to remember we are here
2 because of the acts of Freddie Owens. He brought all of us
3 here to this courtroom today. It is his responsibility. He
4 wrecked all these peoples lives and he can't just argue that
5 he had a bad upbringing, or his parents didn't treat him
6 right, or that he should have had a better chance in life
7 and get a minimal sentence. Surely there is more than
8 punishment in a case like this.

9 They have said earlier that the solicitor is not
10 satisfied with a life sentence, and I am not, and that's why
11 we have asked for the death penalty. They told you that I
12 was going to want the death penalty, and I do.

13 Why is the death penalty the appropriate
14 punishment? That's a fair question for you to ask, and
15 that's a fair one for me to answer. And the answer is very
16 simple. There are mean and evil people in this world who do
17 not deserve to continue to live with the rest of us,
18 regardless of how confined they may be. The law limits the
19 right to seek the death penalty to a very select number of
20 cases, very few, and we seek the death penalty in only a
21 few, but the circumstances where we seek it is available for
22 mean and evil people who commit atrocious acts of murder;
23 the worst of the worst. That is what the death penalty is
24 reserved for. Those whose behavior sets them apart even
25 from the criminal world, and that is Freddie Owens, and this

1 murder and his behavior are one of those cases.

2 Punishment and the death penalty are about
3 accountability and responsibility for choices made. I told
4 you earlier we are here because Freddie Owens acted the way
5 that he did. He is responsible for bringing us here. Now
6 is the time to talk about accountability.

7 Freddie Owens had a choice on November the 1st,
8 1997. He had a choice before him to kill or let Irene
9 Graves live. He made the choice, so we are here because
10 Freddie Owens made a terrible choice, a terrible choice. It
11 was an intentional and willful choice to kill her. He made
12 the intentional and calculated choice to kill and his
13 punishment should reflect the degree and the magnitude of
14 that choice. Bad decisions and bad judgment have
15 consequences, but intentional and premeditated acts or
16 violence carries severe consequences. We must hold people
17 accountable for their acts to the most severe punishment
18 when their acts are so atrocious as to justify that severe
19 punishment.

20 Freddie Owens had the ability to make choices. He
21 knew right from wrong. He could conform his behavior to the
22 law. Instead he chose evil. He chose brutality. He chose
23 unnecessary killing, and the punishment should reflect
24 accountability for that choice.

25 We must measure the extent of the culpability and

1 determine the proper punishment. The greater extent of the
2 culpability, the more severe the punishment. Remember, the
3 worst of the worst.

4 After you have found the aggravating circumstances
5 in this case and proceed to sentencing, there are only two,
6 and you know that. Life imprisonment then becomes the
7 minimum penalty for this crime. Does this case deserve the
8 minimum penalty?

9 Let's review the extent the degree of culpability.
10 The damage and destruction of Irene Graves' life. Irene
11 Graves was a mother of two small children. She had a right
12 to continue to live. She had a right to continue to work.
13 She had a right to see her children go to the cheerleading
14 competition. She had a right to see them grow up. She had
15 a right to work three jobs, if she wanted to, and she had a
16 right to ride a bicycle if she couldn't afford a car. She
17 had a right to care for her children. She had a right to
18 love them. She had a right to hold them. She had a right
19 to protect them. She had a right to enjoy life through her
20 children, just the way the rest of us do, but Irene Graves
21 had that stolen from her when Freddie Owens made that
22 horrific choice. Senseless destruction.

23 They suggests to you give him life in prison.
24 Let's put him on medications. He can adapt. He can adapt
25 in prison. And I guess I would have to agree to some extent

1 that we could probably, in the Department of Corrections,
2 medicate enough people and lock them in a cage inside -- or
3 lock them in a cell inside a cage and they would be away
4 from us, but that misses the point of why we are here. We
5 are not here to do what is the least and the easiest. We
6 are here to talk about accountability and responsibility and
7 shaping the punishment to fit the extent of the crime.
8 That's what this proceeding is about.

9 The defense has presented you evidence that he
10 Attention Deficit Disorder, had depression, had Antisocial
11 Personality Disorder. Could control his behavior from now
12 on with medications, but that's not so. If you look at his
13 record of disciplinary infractions since he went on his
14 medication, there is no significant difference than it was
15 before. He has no mental illness. He knew right from
16 wrong. He could assist in his own defense. He could not --
17 but he can still not be allowed to be outside of solitary
18 confinement. Dr. Brunetti knew that in 1999, when he made
19 his analysis.

20 Even in that environment of the cell inside a cage
21 his assaultive behavior still exists. Dr. Cobb told you
22 yesterday, and I don't know if you caught this, but he said
23 "when I talked to him, I go in the cage. When I talk to him
24 through the window." He doesn't even go inside the cell
25 with Freddie Owens.

1 He is still planning. He's still making shanks.
2 He is still planning for assaultive behavior. He has those
3 shanks under his mattress and he has them in his possession,
4 after he's been on medication.

5 But what we really have, Freddie Owens is playing
6 a game. Halloween night was a game. Ride around and rob
7 and then kill Irene Graves, because she wouldn't open the
8 safe or cash register fast enough, because it was in grocery
9 order mode. He has no respect for life. His statement was
10 "I shot the bitch. I shot the whore." The mother of three
11 children, working three jobs, he called her a bitch. He has
12 no respect for life. He has no respect for other people.
13 In fact, his disrespect is so apparent that it put chills on
14 the neck of Joe Wood, who said he had been a detective for
15 over 25 years, and he was only one of two people, Freddie
16 Owens, who put chills on his neck. And that's the reason,
17 because Freddie is a unique person. He killed Irene Graves
18 and he went home and went to bed. He killed Christopher
19 Lee. Hands on, horrific, predator killing; beat him the
20 whole time he was unconscious; rammed his head into the
21 floor; kicked him; stomped his chest; twisted his neck until
22 he ripped the skin off of him; broke two ribs; rammed the
23 pen up his nose to make him stop moaning; kicked him; burned
24 him. Then he threw his lifeless body up on a bunk like a
25 sack of potatoes and went to sleep. He could care less.

1 He's cold. He's unfeeling. And in the Department of
2 Corrections he continues to manifest that: Cold;
3 assaultive; planning for assaults; shanks; stabbing. He
4 continues as a predator.

5 Freddie wanted to be a person in Greenville who
6 killed the most people and got by with it. He said it best
7 what he is when he told Joe Wood "I'm a real menace." And
8 Major Nettles summed it up for you when he said "he's still
9 at this date my most problematic inmate in the population of
10 the worst of the worst inmates in this state."

11 The greater the extent of his culpability, the
12 greater the punishment. So what is the appropriate sentence
13 to fit this crime and hold him responsible for his actions?
14 Life imprisonment is not appropriate. You can't put him in
15 prison for life and expect him to suffer, because he has to
16 think about it every day? He's not going to give another
17 thought to Irene Graves. He's not going to give another
18 thought for her two children. He's not going to give
19 another thought for Christopher Lee. And he's not going to
20 give another thought to any of those correctional officers
21 that he assaults. Nobody is going to be there to talk to
22 him and say "do you remember the murder you did?" So he's
23 not going to suffer with any memory in prison. He will go
24 on with his self-teaching and making himself better and
25 reading his books, learning languages and doing the things

1 that he's doing. There is nobody going to be there to
2 remind him.

3 Sure, you and I may think going to prison would be
4 a serious thing, and it would be, but what about Freddie
5 Owens? Big prison is like a little city. In prison he will
6 have all the necessities of life. Sure, he will be in
7 solitary, but he will still have food to eat. They will
8 provide him clothes. He will have books to read. He will
9 be able to recreate and exercise. He will have doctors to
10 take care of him. He will have the clothing that they
11 provide, and he will have contact with his family and loved
12 ones, and TV at times, and he will have family business.
13 Not much more than a change of address for Freddie Owens.
14 So don't think putting Freddie Owens in prison for the rest
15 of his life is going to be a significant punishment for him.

16 The death penalty is the appropriate punishment.
17 Remember that Freddie could have made something of himself.
18 He had a mother who did the best she could by him. That's
19 what was testified by the psychiatrists. A teacher who
20 cared about him, beyond normal expectations, gave him
21 special help. He had average intelligence. In fact, his
22 intelligence, IQ, has increased over the years. He was
23 artistic. He was athletic, but he chose another route. He
24 chose a route to be a predator and he chose a route to be a
25 killer.

1 Remember, Irene Graves was a living, breathing
2 human being, who had a right to continue to live. She had
3 never harmed a soul. A good and sweet person. She loved
4 her children and she deserved to live, but he invaded her
5 workplace and he took her life. And when you consider the
6 punishment, I want you to consider the extent of the crime
7 and extent of his culpability. Killing Ms. Graves was a
8 horrible crime and it deserves the most severe punishment.
9 It was a senseless crime. Killing Christopher Lee was the
10 same. Senseless, unnecessary, brutal, predator. His
11 behavior in prison has been the same. Correctional officers
12 don't deserve the continuing abuse of Freddie Owens. He
13 should be held accountable.

14 And in closing, let me tell you this in
15 considering the proper punishment. You have been entrusted
16 under our law as the twelve people as representatives to
17 speak for the community as to what is an appropriate
18 sentence under the facts of this case. You know this case
19 as well as anybody, and it's your decision. And as you
20 speak for this community and make this decision, whatever
21 decision that you will make, it will ring like a bell
22 outside of this courthouse. It will ring like a bell to be
23 heard by all who are listening and all who will listen. And
24 I urge you on behalf of the State of South Carolina and this
25 community to let that bell ring, to let people know that

1 people who commit murders of this atrocity and have conduct
2 of this type is something that we will not tolerate without
3 the maximum punishment. Those who commit this type of crime
4 must pay the ultimate price. Thank you.

5 THE COURT: Mr. Gibson.

6 MR. GIBSON: Thank you, Your Honor.

7 Good morning, ladies and gentlemen. I just want
8 to start off, I just want to thank you for your time. I
9 know this has been a tremendous inconvenience for all of
10 you. You spent a lot of time on this, between the jury
11 selection, sitting and listening to the testimony, and now
12 listing to these arguments and deliberating and deciding
13 what should happen in this case. I thank you. Mr. Godfrey
14 thanks you and my client thanks you.

15 As Mr. Ariail said, this is a time that we are
16 going to start talking about our summations. And in
17 listening to his argument, I got one question that keeps
18 bugging me. If you remember Donna Schwartz-Watts, the
19 psychiatrist in this case. She got on the stand and she
20 testified about the condition that Mr. Owens suffers from.
21 The primary condition that she talked about and Dr. Cobb
22 talked about was impulsivity disorder, but yet he never
23 talked about that disorder. He talked about the other ones,
24 but he never talked about that. I wonder why? Let me get
25 back to that.

1 Before I start off I want to make sure that you
2 understand a couple of things, okay. Now, it wasn't my
3 intention to use the word kill, but since he used it, he's
4 absolutely right. You can say it's passing judgment,
5 passing legal judgment, or whatever, but if you decide to
6 sentence Mr. Owens to death, he will die. Your act will
7 lead directly to his death. Now, sometimes that's
8 appropriate. In some situations some people so heinous,
9 some people really are so bad, so intentionally bad, that
10 that is the proper punishment. I submit to you that in this
11 case it is not. It is not.

12 Now, I talked to some of you in the jury in the
13 voir dire and we talked about what was going on and what was
14 going to happen in this case, and I want to make sure that
15 you all understand what happens in that deliberation room as
16 to your sentence is your choice. The law does not mandate
17 death. It does not mandate that. It does not require that.
18 There is no fact sequence that you can go through and check
19 off and all of the sudden say okay, ah-hah, we have met our
20 requirements, we have to sentence him to death. That is
21 your choice. We are going to be asking that you choose
22 life, not death, in that situation.

23 Now, one more thing I want to cover before I get
24 into the facts of this case, my argument regarding the facts
25 of this case, and that is your decision has to be your

1 individual decision. This is not a situation where majority
2 rules. You can't get back there in that room and figure out
3 were the votes are and then everybody else caves. You have
4 to stand by your decision. Now, if after deliberations you
5 change your opinion, you truly change your opinion, then you
6 should vote that way. But if you were not absolutely
7 certain of one sentence or another, you should not vote for
8 it, and particularly in this case, sentence being death. If
9 you are not absolutely certain that that is the sentence
10 that you want to hand down, you should not vote for it.

11 Now, that gets me to the point where I reiterate
12 to you what I want you to do, and that's -- again, I want
13 you to choose life. I want you to spare Mr. Owens life.
14 And to use his words, I want you to give mercy. I want you
15 to be merciful.

16 Now, the question is what do I tell you to make
17 you rule the way that I want you to rule? What do I tell
18 you to make you choose life in this instance? What do I
19 tell you to make you spare a man's life? I don't know. You
20 know, and I have thought this about this long and hard. And
21 quite frankly, I really did not sleep a wink last night,
22 because I'm sitting there thinking what do I say to you.
23 I'm sitting in my office and I'm thinking I wish I could
24 look into their minds. I wish I could know what they are
25 thinking. I wish I could know what questions they are

1 asking themselves so I could give them that information.
2 With all of that nothing came to me except for one thing. I
3 need to make you see Freddie Owens, and I mean see Freddie
4 Owens for what he is, not what the solicitor says he is, but
5 what he actually is. And the way I'm going to try to do
6 that is I'm going to try to go back through the testimony
7 that we put up.

8 Now, if you remember Marjorie Hammock, who took
9 that witness stand, and she told you about Mr. Owens family,
10 his situation. And ladies and gentlemen, it was horrific.
11 It was bad. He was born into a situation where his mother
12 was only 18 years old and had extremely limited resources.
13 She had a -- he had a father who lived with him who
14 brutalized him, brutalized his mother, eventually abandoned
15 him and his four siblings and his mother to fend for
16 themselves.

17 When Ms. Maag came into the situation, there was
18 hardly any resources whatsoever. They often didn't have
19 food on the table. The neglect got so bad that at some
20 point the children were taken away from their mother and
21 placed in foster care. Now, he's absolutely right, and we
22 said it and it's true. She worked very hard to get her
23 children back, but that doesn't change the fact that it was
24 a horrific situation in which he grew up in.

25 And, ladies and gentlemen, it only got worse. She

1 married another man, a stepfather of this situation, and he
2 was as violent as his biological father. You heard Ms.
3 Hammock, I believe, testify about him chasing -- about
4 Freddie seeing his stepfather chase his mother through his
5 house with a machete. The stepfather went further than
6 that. Not only did he expose him to violence, he taught him
7 violence. He told him "you got to fight, and I'm going to
8 lock you out of this house until you learn how to fight.
9 You are going to resolve your situation with violence, the
10 same way that I do." And that's what he learned. That's
11 what he was taught. I wasn't taught that. I'm not that
12 way, because I was not taught that, but I can't say that if
13 I grew up in that same environment that my first response to
14 resolving a problem, to coping with a problem, would not be
15 violence. I can't say that. And, ladies and gentlemen, I
16 don't think any of you can really say that either.

17 Now, with that said, Ms. Hammock talked about his
18 situation. And at the end of her testimony she basically
19 summed up what his situation was. She used that genogram,
20 and I invite you to take a look at it when you are back in
21 that jury room and see what his family situation is like.
22 Take a look at that. It's going to be back there with you.
23 Take a look at that genogram, because it's going to show you
24 a history of abuse, violence, family disruption, poverty,
25 alcohol and drug abuse dependence, school failure,

1 interruption and incarceration throughout many members of
2 their family. I mean, I can't think of coming into a worse
3 situation than what he came into.

4 Now, ladies and gentlemen, at the same time this
5 is happening, on a parallel track and maybe even directly
6 because of it, he's also suffering a number of severe
7 psychological conditions. He has a history of depression as
8 early -- major depression as early as elementary school.

9 Now, Dr. Brunetti, the State's expert, told you
10 that in children depression can present itself as
11 irritability, impulsivity and resistance. That impulsivity
12 is a thread which goes throughout his entire life. As Dr.
13 Cobb explained, basically what it means is this. When he
14 gets an impulse -- or back up. When I get an impulse to do
15 something, I can control it. There is a timer or some type
16 of delay situation in my body that works, that keeps me from
17 acting on everything that I just have a guttural animal
18 instinct to do. That doesn't work normally in him. That
19 doesn't work normally in him.

20 Now, ladies and gentlemen, the tragic part about
21 this is is that he doesn't want to be that way. He's asked
22 for help. That's why we know he doesn't want to be that
23 way. As early as 1995, when he's having all these problems,
24 he gets down at DJJ, he asked for help.

25 In 1997, they finally diagnose him with severe

1 major depression. They put him on medicine and then kick
2 him out and send him to Turbeeville Correctional
3 Institution. He gets to Turbeeville Correctional
4 Institution and tells them I really would like to stay on my
5 meds. They say take him off his meds, and undo all that
6 work and then release him out into society.

7 He's a ticking time bomb at that point, ladies and
8 gentlemen, but not because he wants to be one. He's a
9 ticking time bomb because of his situation, his background,
10 and because of a psychological disorder that he can't
11 control.

12 Now, you put him in this situation and then you
13 have situation with Ms. Graves and you get the result that
14 you get. I'm not in any way trying to say that it was not
15 senseless and a horrible, horrible incident what happened
16 with Ms. Graves. I sat there and I watched -- saw the
17 photos, saw the pictures, saw her children, and my heart
18 leaps out to them, and yours should too, but at the same
19 token, by reaching out for her and feeling sympathy for her,
20 I ask that you also open your heart to feel some sympathy
21 for Mr. Owens. This was not something that happened solely
22 because of his choice. This was not something that
23 happened, something that he could have controlled. He was
24 placed -- because of his family situation, he was raised in
25 criminality. Those were the impulses that he was raised to

1 have. They were beaten into him, literally beaten into him.
2 And then top that off with an impulsivity disorder that he
3 can't control and you have got exactly what I said, a
4 ticking time bomb.

5 Now, ladies and gentlemen again, we know that he
6 doesn't want to be that way. And the reason why we know is
7 because when he gets down to Lieber and he finally meets Dr.
8 Cobb -- Dr. Cobb is not there to see him. He asks Dr. Cobb
9 "I'm getting in trouble. I need something to help me stay
10 out of trouble. Can you help me, please?" And Dr. Cobb
11 does. And he finally diagnosis him with what he needs and
12 he gives him the medication that he needs.

13 Now, does he have some incidents after that?
14 Absolutely. But, ladies and gentlemen, those incidents are
15 not as severe as the others before, and quite frankly if you
16 look at those records for the last five and a half months,
17 he's had no incidents whatsoever. Not a one. Not a shank.
18 Not an assault. Nothing. So we know that it's working. We
19 know that it's working. And this is not some fake thing.
20 Donna Schwartz-Watts or Dr. Schwartz-Watts testified that
21 they check his blood to see if he's on his medication and he
22 is.

23 Now, ladies and gentlemen, like I said before, the
24 death penalty can be appropriate in some particular
25 situations. But when you have a situation where you have a

1 man, a human being, who has a psychological disorder that he
2 cannot -- that causes him to not be able to control his
3 behavior, what does it say about us if we killed that man?
4 What does it say about our society if we kill a man who
5 can't control his actions?

6 Now, ladies and gentlemen, talk about character.
7 Freddie Owens, has he done some bad things? Absolutely.
8 He's assaulted some inmates? But in addition to that he's
9 also helped some inmates. He's taught inmates to read.
10 He's taught himself things. He's tried to make up for all
11 of the inadequacies of the school system in which he went
12 up, all the learning disability problems, he works to try to
13 improve himself and the solicitor makes light of it. What's
14 he supposed to do? He's just supposed to sit there and
15 become worse, become more animalistic, become worse and not
16 try to help himself?

17 There is good in Freddie Owens, and I'm going to
18 tell you how you know it, ladies and gentlemen. The way
19 that you know is Fain Maag, his 3rd grade teacher. She
20 comes in this courtroom and testifies on his behalf, crying,
21 telling you, crying. Ladies and gentlemen, I don't know --
22 I don't have a 3rd grade teacher who would come in here and
23 speak on my behalf if I had done half the things that
24 Freddie Owens has done. Obviously she sees something in
25 him. She's not a family member. She doesn't have to be

1 there. We haven't paid her to come up here. She came up
2 here on her own free will. And, ladies and gentlemen, I
3 think if you -- if you don't believe me, trust her. There
4 is good in that man.

5 And again, ladies and gentlemen, treat him as his
6 word. He was on the medicine for eight months. After eight
7 months started to kick in, he started to do a whole lot
8 better. In fact, in the last five and a half months no
9 incidents whatsoever. He's trying to make himself a better
10 man. He's trying to improve himself. Isn't that what we
11 want of somebody in that situation? Don't we want him to
12 try to improve himself? That's what he is doing, and he's
13 showing that he can. He is redeemable. He's not a threat
14 to anybody now, now that he's on medication, now that he's
15 finally receiving the treatment that he needs, that he's
16 finally receiving the help that he's called out for for
17 numerous occasions and did not get it. What does that say
18 about us as a society if we kill a man who has been asking
19 for help, but never getting it? What does that say about
20 us?

21 Like I say, ladies and gentlemen, sometimes the
22 death penalty is appropriate, but it's not appropriate here.

23 Now, the tragic part is a lot of us, it wasn't
24 found out until just recently, but we found it out now.

25 Now, I want to address a couple of things. I want

1 to go back to the question that I started off with. Why did
2 the solicitor not say anything about the impulsivity
3 disorder? Why did he not address it at all? The reason
4 why, ladies and gentlemen, is because it doesn't fit his
5 theory. He wants to tell you Freddie Owens is evil. He's
6 evil incarnate, and all these things he does, he does them
7 of his own free will and his own control. The impulsivity
8 disorder diagnosis does not fit that threat. That's why he
9 didn't mention it. And I assume that he was probably hoping
10 that I wouldn't mention it, hoping that you would forget
11 about it. It does not fit the script.

12 Now, ladies and gentlemen, the judge is going to
13 instruct you on several mitigating circumstances,
14 mitigating circumstances that are appropriate in this
15 instance, things that you should consider before you render
16 a death sentence, things that by statute make this situation
17 better, less bad.

18 The first thing is the defendant has no
19 significant history of prior criminal conviction involving
20 the use of violence against another person.

21 That means before Irene Graves, there is no
22 significant history, or history at all, of prior criminal
23 conviction involving the use of violence.

24 Second, the defendant was an accomplice in the
25 murder committed by another person and his participation was

1 relatively minor.

2 Now, some of you are saying to yourself now, wait
3 a minute, how is he just an accomplice? How is his
4 participation relatively minor? That piggybacks onto
5 another thing that you are allowed to consider, and that is
6 residual doubt. Well, residual doubt is this, ladies and
7 gentlemen. I have told many of you during voir dire that we
8 were stuck with the earlier jury's ruling, and we are to
9 some extent, but, ladies and gentlemen, you can consider
10 whether or not that earlier jury was right. That is
11 something that you are allowed to consider in your
12 deliberations.

13 Now, they didn't put on their whole case, but they
14 put on the best of it in this trial, and what you saw was a
15 jilted lover who was out to get him and a co-defendant who
16 very likely may have been gotten away with murder. Kiko
17 Vance. Why wouldn't he testify? In his first testimony, in
18 his first statement, the one that was read into the record
19 because he wouldn't testify this time, he says "I don't have
20 any kind of deal to testify. I'm only testifying because
21 it's the truth." If that's the case, why not get up on that
22 stand and say it again? Why not give the same testimony.
23 And if you look at his statement and you look -- and you
24 really remember what his testimony was, there were numerous
25 things which made no sense whatsoever. Kiko Vance, a .32

1 revolver which killed Irene Graves, that belonged to Kiko
2 Vance. That was Kiko Vance's weapon. Kiko Vance said "I
3 didn't have it because I gave it to Freddie. And I didn't
4 get it back because when I was going in the Waffle House, I
5 wanted to have a gun that I could pull the hammer back so I
6 could scare the people." Now, ladies and gentlemen, I don't
7 know if you have ever been in the Waffle House, but you are
8 not going to hear a hammer being pulled back on a weapon in
9 a Waffle House, not with dishes clanging, not with food
10 frying, not with people talking. That's just not going to
11 happen. And he told you that that -- from his perspective
12 he said the reason why Freddie wanted the .32 was because it
13 was more noticeable. It would seem to me that if he was
14 going in the Waffle House, that he would want the most
15 noticeable gun. The fact of the matter is, ladies and
16 gentlemen, he never went in the Waffle House. He went in
17 the Speedway with Steven Golden, and that's -- those are the
18 two people who did that crime, and you are allowed to
19 consider that in your deliberations.

20 MR. ARIAIL: Your Honor, I'm going to have to
21 object to that argument. I mean, that's outside the scope
22 of any fact in this record.

23 THE COURT: I'll note that.

24 MR. GIBSON: Second -- third, rather, the murder
25 was committed while the defendant was under the influence of

1 mental or emotional disturbance.

2 Assuming that you believe that first jury was
3 right and that Freddie Owens was the one who did kill Irene
4 Graves, we have talked about his emotional surface. We have
5 talked about that, ladies and gentlemen. We have also
6 talked about the fact -- or Kiko Vance talked about the fact
7 that that night they were all out doing drugs, smoking
8 blunts, drinking alcohol. That counts or is covered
9 underneath the influence of mental or emotional disturbance.

10 The fourth thing is that the capacity of the
11 defendant to appreciate the criminality of his conduct or to
12 conform his conduct to the requirements of law was
13 substantially impaired.

14 Now, ladies and gentlemen, we go back to the
15 impulsivity disorder. Assuming that you believe the earlier
16 jury was right, Freddie Owens had impulsivity disorder.
17 Freddie Owens had a background which made him prone to
18 violence and he could not control those impulses.

19 Finally, you can consider the age or mentality of
20 the defendant at the time of the crime.

21 Ladies and gentlemen, he's older now, but he was
22 18 when that happened. 18 years old. A child.

23 Now, finally, ladies and gentlemen, in closing I
24 want to go back to the Alpha, Omega. Let's go back to the
25 Alpha, and that is it's your choice as to what you do. It's

1 your choice. There is nothing out there which says that you
2 have to kill him, that you have to give the death sentence
3 in this case. There is nothing that says that. It's your
4 choice. And if you sign your name to that death warrant,
5 that's what's going to happen, and the judge is going to
6 tell you he's not going to disregard what you got to say.
7 There is no out on this. There is no out. If that's what
8 you guys say that you want, that's what's going to happen.
9 I would submit to you that that shouldn't happen.

10 There is one thing I want to go back to actually
11 clarify that I forgot to talk about. The solicitor in this
12 case said that life without the possibility of parole was
13 the minimum penalty. For a murder it isn't that. The
14 minimum penalty for a murder conviction is 30 years.

15 MR. ARIAIL: I'm going to object to that, Your
16 Honor. I didn't say that. I said find the aggravating
17 circumstances.

18 THE COURT: If they find the aggravating
19 circumstances, those would be the two sentences.

20 MR. GIBSON: All right. I apologize.

21 If you find the aggravating circumstances, yes,
22 he's right.

23 Ladies and gentlemen, the reason why it becomes a
24 minimum penalty is because they decide they would want that
25 to be the minimum penalty. We are not talking about a walk

1 in the park here, and he makes it seem like it is. We are
2 talking about a man who is 27 years old now. If he lived to
3 be 70, which is quite likely, we are talking about 43 years
4 living possibly inside of a cell inside of a cell. Isn't
5 that enough, particularly for a man who may not be able to
6 control his actions, a man who may not be able to control
7 the impulses that his violent upbringing gave him? Isn't
8 that enough?

9 Finally, ladies and gentlemen, I'm asking you one
10 thing. Choose life. You are going to go back there and you
11 are going to have a choice. Choose life. Thank you.

12 THE COURT: Ladies and gentlemen, my instructions
13 are a little bit long. I'm going to give y'all a stretch
14 break and let you clear your mind. Do not discuss the case
15 at this time. Step back to the jury room, please.

16 (Whereupon, the following takes place outside the
17 presence of the jury panel)

18 THE COURT: We will take about 15 minutes.

19 MR. GIBSON: Thank you, Your Honor.

20 THE COURT: All right. I'm going to give the jury
21 as much time as they need for all of them to go to the
22 restroom, or whatever.

23 (Whereupon, proceedings were recessed)

24 (Whereupon, proceedings were reconvened)

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

1 (The following takes place in the presence of the
2 jury panel)

3 (Whereupon, at 11:54 a.m., the court gave the jury
4 panel the jury instructions)

5 THE COURT: Ladies and gentlemen, as you know now,
6 when the State seeks the death penalty, the trial, there are
7 two proceedings. One is to determine -- the first one is to
8 determine the guilt or innocence of a defendant for the
9 crime for which he's charged.

10 The second proceeding before a jury -- and both
11 are conducted before a jury. The second proceeding before a
12 jury is to determine the sentence to be imposed upon Freddie
13 Eugene Owens for the murder of Mrs. Irene Graves, and that's
14 this proceeding.

15 Now, ladies and gentlemen, as jurors in this case
16 you have certain functions and responsibilities to perform,
17 which are entirely separate and distinct from those of mine
18 as the trial judge. I am prohibited by the Constitution
19 from discussing the facts of this case with you, and I would
20 not do that. It is your responsibility, and yours alone, to
21 pass upon the issues of fact in this case and write a
22 verdict. I would, therefore, instruct you that if I have
23 done anything during the course of this trial to cause you
24 to believe that I have a feeling about the facts and the
25 issues in this case, you disregard that, because if I did, I

1 did not mean too, and I would not do anything to infringe
2 upon your responsibility to do that.

3 Ladies and gentlemen, in determining the facts in
4 the case, you have to pass upon the credibility and the
5 believability of the witnesses. In that regard you have the
6 right to believe all that a witness tells you. You have the
7 right to disbelieve all that a witness tells you. You can
8 believe part of what a witness told you, and you can
9 disbelieve part of what a witness told you. You can believe
10 one witness as against several, or several witnesses as
11 against one. And I know that you would not do that lightly.
12 These witnesses have testified in your presence under oath,
13 except for the previous testimony that was read to you from
14 Mr. Vance. You have observed the demeanor of those
15 witnesses. You can ask yourself were they forthright? How
16 did they come to know the facts about which they testified?
17 Was there other evidence and testimony in the case to make
18 the testimony of that witness stronger or weaker?

19 I say these things to emphasize to you, ladies and
20 gentlemen, that the weight that you see fit to give to the
21 testimony and credibility of the witnesses is for your sole
22 determination.

23 The Rules of Evidence ordinarily do not permit
24 witnesses to testify as to opinions or conclusions. An
25 exception to this rule exists for what we call expert

1 witnesses, people who by their education and experience have
2 become experts in some art, science, profession or calling.
3 They may state an opinion as to any relevant and material
4 matter in which they profess to be an expert, and they also
5 may state the reasons for that opinion.

6 Now, you should consider each expert opinion
7 received in evidence in this case and give it such weight as
8 you think it deserves.

9 If you should decide that the opinion of an expert
10 witness is not based upon sufficient education and
11 experience, or if you should conclude that the reasons given
12 in support of the opinion are not sound, or that the opinion
13 is outweighed by other evidence, you may disregard the
14 opinion entirely. An expert's testimony is to be given no
15 greater weight than that of other witnesses simply because
16 he or she is an expert. You are not required to accept a
17 purported expert's opinion, even though it is
18 uncontradicted.

19 Now, ladies and gentlemen, it is my duty to charge
20 you the law applicable to the issues of fact presented in
21 this case. It is not a question of what you think the law
22 should be, or might be, or what the attorneys say the law
23 is, because under your oath you are to take the law as I
24 give it to you. You apply the law to the facts as you
25 determine them to be and you write a verdict accordingly.

1 Now, ladies and gentlemen, there are two types of
2 evidence which are generally presented during a trial;
3 direct evidence and circumstantial evidence.

4 Direct evidence is testimony of a person who
5 asserts or claims to have actual knowledge of a fact, such
6 as an eyewitness.

7 Circumstantial evidence is proof of a chain of
8 facts and circumstances indicating the existence of a fact.

9 The law makes absolutely no distinction between
10 the weight or value to be given to either direct or
11 circumstantial evidence, nor is a greater degree of proof
12 required of circumstantial evidence than of direct evidence.

13 In considering the issues requiring proof beyond a
14 reasonable doubt, you should weigh all the evidence in the
15 case. And if you are not convinced of its proof beyond a
16 reasonable doubt, you must find for the defendant.

17 Now, ladies and gentlemen, the fact that a
18 defendant does not testify in his own behalf cannot and must
19 not be considered against him under any circumstances or in
20 any manner whatsoever. The fact that a defendant does not
21 take the witness stand in his own behalf does not create any
22 presumption against him. And I charge you that you must not
23 permit that fact to weigh in the slightest degree against
24 the defendant, nor should this fact enter into the
25 discussions or deliberations of the jury in any manner.

1 Now, under the Constitution of South Carolina and
2 under the Constitution of the United States, it's the
3 prerogative of the defendant to testify or to remain silent,
4 and the burden is always upon the State of South Carolina to
5 prove its case by competent testimony and evidence beyond a
6 reasonable doubt.

7 Now, the term reasonable doubt will be used in
8 several instances throughout the charge. Ladies and
9 gentlemen, a reasonable doubt is the kind of doubt that
10 would cause a reasonable person to hesitate to act.

11 The government has the burden of proving their
12 case beyond a reasonable doubt. Some of you may have served
13 on juries in civil cases and you would have been told that.
14 the burden of proof is by the greater weight or
15 preponderance of the evidence. In criminal cases the
16 government's proof must be more powerful than that. It is
17 beyond a reasonable doubt. Proof beyond a reasonable doubt
18 is proof that leaves you firmly convinced of the issues.
19 There are very few things in this world that we know with
20 absolute certainty, and in criminal cases the law does not
21 require proof that overcomes every possible doubt.

22 If, based on your consideration, you are firmly
23 convinced of the issues asserted by the State where the
24 requirement is proof beyond a reasonable doubt, you must
25 find those proven beyond a reasonable doubt, if you are

1 firmly convinced.

2 If you think, on the other hand, there is a real
3 possibility that the issue is not established that must be
4 proven beyond a reasonable doubt, you must give the benefit
5 of that doubt to the defendant and find for the defendant.

6 Now, ladies and gentlemen, no statement may be
7 considered by you unless the State has proven beyond a
8 reasonable doubt that the defendant was first given an
9 explanation of his Miranda Rights before making a statement,
10 that he fully understood the warnings, and knowingly and
11 voluntarily elected to waive those rights.

12 You further must find beyond a reasonable doubt
13 that the statement was made and that it was made freely and
14 voluntarily under a totality of the circumstance. In other
15 words, I would instruct you that an alleged statement of the
16 defendant cannot be considered against him, unless he was
17 first advised of his right to remain silent; advised that
18 anything he said could be used in evidence against him in a
19 court of law; that he had a right to counsel or a lawyer;
20 and that if he could not afford a lawyer, that one would be
21 provided him without charge; and that if he elected to talk,
22 he could stop at any time.

23 If you find that the defendant was so advised, you
24 may only consider the statement if you also find beyond a
25 reasonable doubt that he fully understood the warnings and,

1 nevertheless, intelligently and knowingly elected to waive
2 his rights.

3 I would charge you that a statement cannot be
4 considered against a defendant if it was made through force,
5 fear or under duress or compulsion of any kind, or if it was
6 induced by any promise of leniency or reward of any kind.
7 Therefore, it is your duty to determine from all the
8 evidence before you whether the State has proven beyond a
9 reasonable doubt that the alleged statement was, in fact,
10 free and voluntary.

11 To summarize that, in order for you to consider a
12 statement made, a defendant must first be advised beyond a
13 reasonable doubt of his Miranda Rights; that the defendant
14 fully understood the warnings; and he knowingly elected to
15 waive his rights; that he did indeed make a statement; and
16 that the statement was freely and voluntarily made under the
17 totality of the circumstances.

18 Now, ladies and gentlemen, by your verdict in this
19 case you have no friends to reward and no enemies to punish.
20 The verdict should speak the truth, based on the law and the
21 evidence.

22 Ladies and gentlemen, any decision that you make
23 with regard to any sentence for this defendant must be
24 unanimous. All twelve of you who deliberate must agree.

25 Moreover, a sentence of death must be based on

1 proof in your judgment beyond a reasonable doubt.

2 In determining the appropriate sentence for the
3 defendant, you may consider whether a statutory aggravating
4 circumstance is supported by the evidence.

5 As the sentencing authority in this case, in
6 determining appropriate sentence, you must focus on the
7 specific circumstances surrounding this crime and the
8 character of the individual defendant.

9 You may also consider any evidence presented with
10 regard to the defendant's prior record, if any, and any
11 other alleged acts, although such evidence must not be
12 considered as evidence of any statutory aggravating
13 circumstance. Rather a defendant's criminal record, alleged
14 prior or subsequent bad acts or crimes, may be considered
15 only as evidence of defendant's character and
16 characteristics.

17 During the course of this trial there has been
18 evidence about crimes allegedly committed or bad acts
19 allegedly committed by the defendant prior to and subsequent
20 to the murder of Ms. Graves. And I would instruct you that
21 you may consider this evidence as evidence of the
22 defendant's character. You may not consider other crimes or
23 acts or bad acts, if any, as evidence of a statutory
24 aggravating circumstance.

25 Now, ladies and gentlemen, in arriving at your

1 decision, you must first determine from the evidence
2 presented during the trial and during this sentencing
3 proceeding whether the alleged statutory aggravating
4 circumstance or circumstances existed beyond a reasonable
5 doubt at the time the victim, Irene Graves, was murdered by
6 Freddie Eugene Owens.

7 The statutory aggravating circumstances or
8 circumstances are facts, incidents, a detail or an
9 occurrence which the General Assembly of the State of South
10 Carolina has declared by statute to aggravate, to make worse
11 the offense of murder, when that fact or that incident and
12 that detail or that occurrence accompanies the act of
13 murder. In other words, a statutory aggravating
14 circumstance increases the enormity of the offense, adds to
15 the injurious consequences of the offense.

16 Before you can impose a death sentence on a
17 defendant, all twelve of you must agree and find beyond a
18 reasonable doubt that the evidence in this case establishes
19 that a statutory aggravating circumstance exists, either one
20 or both of those alleged. Unless you so find, you cannot
21 sentence the defendant to death or life in prison.

22 The statutory aggravating circumstances alleged by
23 the State here will be submitted to you in writing in a
24 document which I have entitled statutory instructions.

25 At the end of this process I will have -- I have

1 fifteen copies, and I'm going to hand them out to you and
2 let you look at them. So as we review it at the end, I
3 think you will see how this flows and is consistent in the
4 manner and order in which I have given these instructions.
5 You will have these instructions with you, just the
6 statutory instructions, not what I'm saying, in the jury
7 room.

8 Now, ladies and gentlemen, the statutory
9 aggravating circumstances alleged by the State are that the
10 murder was committed while in the commission of robbery
11 while defendant was armed with a deadly weapon.

12 Number two, that the murder was committed while in
13 the commission of larceny with use of a deadly weapon.

14 Now, I need to define for you those crimes so that
15 will you know if they have been established beyond a
16 reasonable doubt. You have to know what robbery is to
17 determine if all the elements of robbery have been proven
18 beyond a reasonable doubt; and what larceny is, to determine
19 if all the elements of larceny are proven beyond a
20 reasonable doubt. Those are the words that used in the
21 statutory instructions, which the State must prove beyond a
22 reasonable doubt.

23 I'll take up larceny first, the statutory
24 allegation number two.

25 Larceny is defined as the taking and carrying away

1 by any person the goods or things personal of another with
2 the felonious or unlawful intent to permanently deprive that
3 owner of his or her property and to convert it to the
4 taker's own use.

5 Therefore, there are four elements of this
6 offense, all of which must be proved beyond a reasonable
7 doubt.

8 First, there must be a taking and carrying away of
9 the goods or things personal of another. In other words, it
10 must be chattels or personal property, including money.

11 Secondly, it must be the property of someone else,
12 another.

13 Third, there must have been a felonious or
14 unlawful intent to permanently deprive that owner of his or
15 her property.

16 And fourth, there must have been an intent to
17 convert that property to the taker's own use. Essentially
18 it's commonly known as stealing.

19 Robbery, ladies and gentlemen, one of the alleged
20 statutory instructions, is the felonious or unlawful taking
21 of money, or goods, or personal property of any value from
22 the person, or in the presence of another, by violence or by
23 putting such person in fear.

24 Robbery includes all the elements that are
25 necessary to constitute larceny as I have defined that to

1 you.

2 The aggravating circumstances necessary to
3 constitute a robbery, as distinguished from larceny, are
4 these: The taking must not only be accomplished without
5 consent, but it also must be accomplished with violence, or
6 putting a person in fear.

7 The property must be taken from the person of
8 another or taken in that person's presence. In other words,
9 for the purpose the robbery, a thing is in the presence of a
10 person if it is within the reach, inspection, observation,
11 or control, so that that person could retain possession of
12 it, if not overcome by violence or prevented by fear.

13 Now, ladies and gentlemen, as to the statutory
14 instructions, the last part of each allegation states while
15 armed with a deadly weapon as to robbery, and as to the
16 larceny allegation it says with the use of a deadly weapon.

17 I would instruct you that deadly weapon is a dirk,
18 a slingshot, metal knuckles, razor, or pistol, or other
19 deadly weapon.

20 Now, if all twelve of you who deliberate have
21 agreed and find beyond a reasonable doubt that one, or both,
22 of the alleged aggravating circumstances existed at the time
23 in this case when the victim was murdered, then you would be
24 authorized to impose either a sentence of life imprisonment
25 or a sentence of death.

1 In the event you find beyond a reasonable doubt
2 the existence of an alleged statutory aggravating
3 circumstances, a sentence of life imprisonment means life
4 without the possibility of parole until the death of the
5 defendant. In that situation, having found a statutory
6 aggravating circumstance, under sentence of life
7 imprisonment, the defendant would never be released from
8 jail.

9 If, however, you do not find beyond a reasonable
10 doubt that the alleged statutory aggravating circumstance or
11 circumstances existed at the time of Mrs. Graves murder,
12 then you would cease your deliberations and advise the court
13 of your decision by having the foreperson sign the verdict
14 form entitled no finding of an aggravated circumstance.

15 In arriving at your decision, if you find the
16 presence beyond a reasonable doubt of a statutory
17 aggravating circumstance, you must also consider, if you
18 find from the evidence the following statutory mitigating
19 circumstances, which the General Assembly of the State of
20 South Carolina has declared by statute to mitigate an
21 offense of murder. I'm going to read these to you, but they
22 will be on the form given to you in the jury room. And the
23 form states, you may also consider the following statutory
24 mitigating circumstances:

25 1. The defendant has no significant history of

1 prior criminal conviction involving the use of violence
2 against another person.

3 2. The defendant was an accomplice in the murder
4 committed by another person and his participation was
5 relatively minor.

6 3. The murder was committed while the defendant
7 was under the influence of mental or emotional disturbance.

8 4. The capacity of the defendant to appreciate
9 the criminality of his conduct or to conform his conduct to
10 the requirements of law was substantially impaired.

11 5. The age or mentality of the defendant at the
12 time of the crime.

13 You may also consider any non-statutory mitigation
14 circumstances that may exists in the record or under the
15 evidence that you have heard.

16 Now, you may find mitigation evidence beyond those
17 enumerated by the General Assembly and the Code of Laws.
18 You must consider as a mitigating factor any aspect of the
19 defendant's character or record or any of the circumstances
20 of the offense, or any other evidence presented in this
21 court for which you can find a basis for a sentence other
22 than death. In other words, you may consider any relevant
23 mitigating factors or circumstances enumerated in the Code
24 of Laws, or any other evidence that you may consider as you
25 may find.

1 A mitigating factor is treated equally under the
2 law, whether it is found in the statute, or simply found by
3 you, based on the evidence before you.

4 Mitigating circumstances are facts, details,
5 incidents, or occurrences which mitigate the offense of
6 murder. Mitigating circumstances are any facts which in
7 fairness and mercy must be considered as extenuating or as
8 reducing the defendant's culpability for the commission of
9 the act of murder or that weigh in favor of a life sentence
10 for any reason.

11 You must consider mitigating circumstances, if you
12 find them in the record or in evidence in this case, because
13 if you are to make an individualized assessment of this
14 particular defendant, which the law requires you to do,
15 evidence about the defendant's background and character is
16 relevant.

17 While it is necessary that you find beyond a
18 reasonable doubt the alleged statutory aggravating
19 circumstances existed at the time Mrs. Graves was murdered
20 in order to impose the sentence of death upon the defendant,
21 it is not necessary that you find unanimously that any
22 mitigating circumstance exists in order to impose a sentence
23 of life imprisonment.

24 Unlike the aggravating circumstance, which the
25 State must prove beyond a reasonable doubt, there is no

1 mitigating burden placed on a defendant to establish
2 mitigating factors.

3 Moreover, you are authorized to impose a sentence
4 of life imprisonment, regardless of whether you find any
5 mitigating circumstances exists.

6 Simply stated you may sentence this defendant to
7 life imprisonment for any reason, or for no reason at all,
8 or simply as an act of mercy. However, a decision to impose
9 a life sentence, like a decision to impose one of death,
10 must be unanimous.

11 If you find beyond a reasonable doubt the
12 existence of one of the statutory aggravating circumstances,
13 or both, and if you further find any mitigating
14 circumstances in the record of evidence in this case, you
15 must give serious and meaningful consideration to all the
16 factors before making a decision.

17 In arriving at your decision, you are not to allow
18 passion, prejudice, or any other arbitrary factor to
19 influence your judgment. As jurors, you must make your
20 decision without bias toward or without prejudice against
21 any party. You must not allow yourself to be governed by
22 passion or sympathy. You are to honor your oath and in that
23 regard carefully and impartially consider all the evidence
24 in the case and follow the law as I have explained it to
25 you.

1 At this time Ms. Daly is going to pass out to you,
2 all 14 of you, a copy of the various forms and we are going
3 to go over those here. They should be in the order that we
4 are going to review them. I have the originals, which I'll
5 make a part of the record. I'll just send one -- the
6 originals back to you, but I wanted all of you to have these
7 here in the courtroom so that we could go over them.

8 Okay. Your top document should say statutory
9 instructions. And the first bit of the information in this
10 case from the Code of Laws, there is one. It's set forth as
11 I have charged you. It's exactly as is written in the code.
12 They are the statutory aggravating circumstances alleged by
13 the State.

14 The aggravating circumstances state that the
15 murder was committed while in the commission of robbery
16 while armed with a deadly weapon; that the murder was
17 committed while in the commission of larceny with use of a
18 deadly weapon.

19 Okay. Now, below those statutory aggravating
20 circumstances are the statutory mitigating circumstances
21 which you are to consider. And if you find evidence
22 supports the existence of one, or all, of these, you must
23 give thorough and meaningful consideration to each one of
24 these that you find supported by the evidence.

25 Now, if you would go -- there are two pages for

1 that, statutory mitigating circumstances.

2 That the defendant has no significant history of
3 prior criminal conviction involving the use of violence
4 against another person.

5 The defendant was an accomplice in the murder
6 committed by another person and his participation was
7 relatively minor.

8 The murder was committed while the defendant was
9 under the influence of mental or emotional disturbance.

10 The capacity of the defendant to appreciate the
11 criminality of his conduct or confirm his conduct to the
12 requirements of law was substantially impaired.

13 The age or the mentality of the defendant at the
14 time of the crime.

15 And you may also consider any non-statutory
16 mitigating circumstances. That's what the form states.

17 Now, as I said, at the top of the next page it
18 states that unanimous finding of a statutory aggravating
19 circumstance. We, the jury, find beyond a reasonable doubt
20 the following statutory aggravating circumstance:

21 And if you find one, or both -- I put an S on
22 there, aggravating circumstances. If you find the existence
23 of one, or both, of the statutory aggravating circumstances
24 beyond a reasonable doubt, you would write out the
25 aggravating circumstance or circumstances that you find.

1 And it requires the signature of all twelve jurors. And I
2 have already typed your names in where you can sign. I just
3 did that for the records of the court. And if for any
4 reason we have to use an alternate juror, of course, we can
5 change the names without any difficulty.

6 Now, the second document is no finding of a
7 statutory aggravating circumstance. We, the jury, find are
8 unable to unanimously agree on the existence of the
9 statutory aggravating circumstance. If that is the case and
10 your deliberations and you reached that decision, then you
11 would sign it by the foreperson and you would notify the
12 court and that would end the jury deliberations in this
13 proceeding.

14 Now, Mr. Foreman, y'all would be required, if you
15 found the statutory aggravating circumstance, on the
16 document to completely write it out, and you have those on
17 the first document.

18 Now, the next document I believe that you have is
19 the unanimous recommendation of a sentence for life. Having
20 found beyond a reasonable doubt the existence of the
21 following statutory aggravating circumstance or
22 circumstances, again, you would write those in. It says we
23 now recommend to the court that the defendant be sentenced
24 to life. And if this is ultimately your decision, and all
25 twelve of you agree, then Mr. Foreman and ladies and

1 gentlemen, the foreperson would sign that and date it and
2 inform the court of your decision.

3 Now, the last document that you have, this is the
4 unanimous recommendation for sentence for the death penalty.
5 And it is the same lead-in. We, the jury, having found
6 beyond a reasonable doubt the following statutory
7 aggravating circumstance or circumstances, and you would
8 have to write those out, now recommend to the court that the
9 defendant be sentenced to death.

10 Now, again, there is a signature line for all
11 twelve jurors who are deliberating and a place for a date.
12 And it would have to be a unanimous decision. All twelve of
13 you would have to sign the document.

14 Now, ladies and gentlemen, any decision that you
15 make in this case must be unanimous. All twelve of you have
16 to agree.

17 Again, regardless of the sentence that you decide
18 to impose, you must first determine that the State has
19 proven beyond a reasonable doubt at least one, or both, of
20 the alleged statutory aggravating circumstances. You may
21 impose the death penalty only if you unanimously find beyond
22 a reasonable doubt the existence of one of those aggravating
23 circumstances, and you further unanimously find and agree
24 beyond a reasonable doubt that the sentence should be death.

25 You may impose a sentence of life imprisonment

1 only if you unanimously find beyond a reasonable doubt one,
2 or both, of the aggravating circumstances and agree that the
3 sentence should be life imprisonment.

4 You may sentence the defendant to life
5 imprisonment, regardless of the presence or absence of
6 mitigating circumstances. In this case life means until the
7 death of the defendant without the possibility of parole.

8 Now, ladies and gentlemen, your lunch should be
9 here about right now. If it is, I am going to allow you to
10 have lunch before you begin your deliberations. I'm going
11 to let all fourteen of you stay together and go back to the
12 jury room just for a few minutes and let me go over the law
13 as I have explained it to you. And I will cover it with the
14 attorneys. I may bring you back in to cover some other
15 points of law, and I may not. I may have covered it.

16 If you should have any questions about the law,
17 you can write those questions to me and we will answer those
18 questions for you during your deliberations.

19 Go back to the jury room. Do not start your
20 deliberations now. Do not discuss the case exactly at this
21 time, and let me go over my charge with the attorneys first
22 very carefully. And then if I should come back, if I
23 misstated something, I'll do that. If I did, I didn't mean
24 to do it, but I could have, but I'll bring you back in and
25 restate it. If not, I'll send all the evidence back. And

1 if your lunch is not here, I'm going to let the twelve begin
2 their deliberations, and we would keep the two alternates
3 with us separately while the jury is deliberating or until
4 you reach a verdict.

5 And I would instruct the alternates that they will
6 be kept in another courtroom or another jury room and you
7 cannot discuss the case. If your services were needed, at
8 that time you could do that, but until you go in to
9 deliberate with this jury or something happens before
10 deliberations begin, I would not want you to have talked
11 about the case. Okay.

12 So if all of you would just step back for a minute
13 and do not begin deliberations at this time.

14 If y'all -- I'm just going to give y'all one copy
15 of those. Would y'all just leave them in your chairs there?

16 (Whereupon, at 12:37 p.m., the jury panel went to
17 the jury room, awaiting instructions to begin deliberations)

18 THE COURT: Additions or exceptions?

19 MS. STROM: Just one addition, Your Honor, and I
20 know that you have told them if -- like during voir dire and
21 everything else, but since the forms use the term
22 recommendation --

23 THE COURT: Oh, yeah.

24 MS. STROM: I think it may be prudent that we just
25 remind them again that any sentence that you will -- I know

1 that you have told them before, but I'm thinking right here
2 at the end we need to remind them.

3 THE COURT: I had a note. I don't know how I --

4 MS. STROM: I know you said last night that you
5 were going to do it.

6 THE COURT: Bring them back in.

7 MS. STROM: Do you want to see if there is
8 anything else from them?

9 THE COURT: Yes.

10 MR. GODFREY: There is nothing else from the
11 defense. We agree with the State on the recommendation.

12 THE COURT: Ladies and gentlemen, I think I'll let
13 them have lunch before we start deliberating. I don't know
14 if they should deliberate this case while they are having
15 food or not.

16 Any problem from the State if I let them have
17 lunch before they deliberate?

18 MR. ARIAIL: We don't have any problem. I just
19 think we ought to separate the alternates just in case.

20 THE COURT: Okay.

21 MR. ARIAIL: While they are eating lunch.

22 THE COURT: Bring the jury in.

23 They are setting up the lunch in one of the other
24 courtrooms and they are just going to go through and get
25 sandwiches. They may be able to deliberate. They need to

1 make their sandwiches first.

2 (Whereupon, at 12:40 p.m., the jury panel returned
3 to the courtroom)

4 THE COURT: Ladies and gentlemen, there is one
5 very important point that I omitted, and both sides agree,
6 and I certainly did not intend to do that, and I may have
7 told you this before, I think, that it would -- some other
8 point preliminarily or in voir dire.

9 The form uses the word recommend, that the jury
10 recommends a sentence, and that's used. Let me assure you
11 under no -- this court will follow the sentence determined
12 by the jury. I did not want there to be any question in
13 your mind. This court will follow the sentence that you
14 determine should be administered punishment in this case.
15 Okay.

16 And with that, I'm going to let you go out. And I
17 believe the procedure is going to be for y'all to make
18 sandwiches from McCallisters, or maybe they have got the
19 food in another room, I don't know, but once you do that, I
20 will go ahead and separate the two alternates in another
21 place. Y'all have to stay with us throughout until their
22 deliberations are concluded, okay? And do not discuss the
23 case at all until they complete their deliberations. All
24 right. The two of you can't talk about it.

25 Okay. Y'all may step out and have lunch. I'll

1 send the evidence back. I'll permit you to go back and
2 start your deliberations while you have lunch. You cannot
3 conduct any deliberations unless that door is closed and all
4 twelve jurors are in there to hear anything that's discussed
5 in the jury room. If any person leaves to go to the
6 bathroom, or go smoke -- I don't know if you take smoke
7 breaks or need fresh air or something. You cannot conduct
8 any discussions or deliberations with any one of the twelve
9 or more that are outside of the jury room. All twelve of
10 you have got to be in that jury room for the discussions and
11 deliberations in this case. All right. Thank you.

12 (Whereupon, at 12:43 p.m., the jury panel left the
13 courtroom)

14 THE COURT: If y'all want to go to lunch, if y'all
15 got a cell phone or something that you want to leave with
16 us, because they are going to be -- I think they are going
17 to be doing it right now, and it may be a good time. I
18 don't think they would have any questions, but I intend to
19 separate the two. And as soon as they get their sandwiches
20 and whatnot, I'm going to send the evidence back and let
21 them begin. Okay.

22 We will be in recess until they reach a verdict.
23 If y'all just leave the phone numbers with Caroline so that
24 we can reach you and get you back here. We wouldn't have to
25 wait -- we don't want to wait too long if they have a

1 question, but I think you have got 40, 45 minutes or an
2 hour, probably, to get some lunch, if you want to do that.

3 MS. STROM: And, Your Honor, I would just suggest
4 that -- I think defense only put in one exhibit. I would
5 just suggest that we look at the exhibits to make sure
6 everybody agrees that, you know, it's all there before we
7 send it back.

8 THE COURT: Okay. I would ask each side to make
9 sure that all of the exhibits are there. I would ask my
10 court reporter to make sure that the appropriate exhibits go
11 back, and do not send any of the court exhibits back.

12 MS. STROM: Thank you, judge.

13 (Off the record)

14 (Back on the record)

15 THE COURT: I want to make a part of the record --
16 Ms. Strom --

17 MS. STROM: Sir?

18 THE COURT: I'm going to make a part of the record
19 the order that I gave to the qualified jurors.

20 MS. STROM: Yes, sir.

21 THE COURT: Because -- I thought I had already
22 done that.

23 MS. STROM: Yes, sir.

24 THE COURT: In case I have not, it's dated
25 November the 6th, and we had all these copies, about 70 or

1 80 copies that we passed out to each juror after they were
2 qualified.

3 MS. STROM: Yes, sir.

4 THE COURT: And I'll make that part of the record
5 at this time, if it's not already a part of the record, as a
6 Court's Exhibit.

7 MS. STROM: Yes, sir.

8 THE COURT: We have kept those in a separate
9 binder. Thank you.

10 (Off the record)

11 (Back on the record)

12 MR. GIBSON: We concur with the exhibits as marked
13 as going back to the jury room.

14 MS. VERDIN: We agree with the exhibits.

15 (Summary of SCDC Records marked as Court's Exhibit
16 No. 5 for identification)

17 (Order For Qualified Jurors marked as Court's
18 Exhibit No. 6 for identification)

19 (Statutory Instructions marked as Court's Exhibit
20 No. 7 for identification)

21 (Unanimous Finding of a Statutory Aggravating
22 Circumstance marked as Court's Exhibit No. 8 for
23 identification)

24 (No finding of a Statutory Aggravating
25 Circumstance marked as Court's Exhibit No. 9 for

1 identification)

2 (Unanimous Finding of Sentence for Life
3 Imprisonment marked as Court's Exhibit No. 10 for
4 identification)

5 (Unanimous Recommendation of Sentence for Death
6 Penalty marked as Court's Exhibit No. 11 for identification)

7 (Juror Information Packets marked as Court's
8 Exhibit No. 12 for identification)

9 (Whereupon, at 1:30 p.m., the Jury Panel was
10 instructed to begin deliberations)

11 (Whereupon, at 3:00 p.m., proceedings were
12 reconvened)

13 THE COURT: I have been informed --

14 I'll give you the original indictment, Madam
15 Clerk, which we didn't have to use in the sentencing
16 proceeding.

17 I have been informed that the jury has reached a
18 verdict. I normally have to caution the audience, but we
19 don't have that many people here about any outbursts or
20 anything like that. Just maintain order and decorum, and
21 order in the decorum in the courtroom when the verdict is
22 rendered. Everyone has worked - bailiffs, and all the
23 agents, the SLED agents, and defense counsel and defendant -
24 everyone have conducted themselves on both sides. Both
25 lawyers have done an excellent job in presenting the case

1 and been very professional, and the court appreciates that.

2 We will bring the jury in.

3 Is the state ready to take the verdict?

4 MR. ARIAIL: Yes, Your Honor.

5 THE COURT: Defense ready?

6 MR. GODFREY: Yes, Your Honor.

7 THE COURT: Bring the jury in, please.

8 (Whereupon, at 3:03 p.m., the jury returned to
9 open court to report its verdict)

10 THE COURT: Mr. Foreman, ladies and gentlemen of
11 the jury, I understand that you have reached a verdict, is
12 that correct?

13 JURY FOREMAN: We have, Your Honor.

14 THE COURT: Okay. Would you hand it to the
15 bailiff, please, sir?

16 At this time the twelve jurors have come in. At
17 this time I'll bring the two alternate jurors who have been
18 separated and in a separate courtroom, without any objection
19 from either side.

20 MR. GODFREY: Without objection.

21 MS. STROM: No objection.

22 MR. ARIAIL: No objection.

23 THE COURT: Bring the alternates in.

24 (Whereupon, the alternate jurors were brought into
25 the courtroom)

1 THE COURT: The verdict appears to be in proper
2 form and I would ask the clerk to publish the verdicts.

3 THE CLERK: Your Honor, 98-GS-5220, the State of
4 South Carolina versus Freddie Eugene Owens, unanimous
5 finding of a statutory aggravating circumstance, we, the
6 jury, find beyond a reasonable doubt the following statutory
7 aggravating circumstance:

8 1. That the murder was committed while in the
9 commission of robbery while armed with a deadly weapon.

10 2. That the murder was committed while in the
11 commission of larceny with the use of a deadly weapon.

12 Signed foreperson Ronald D. Dillard.

13 Juror Joseph Hedrick.

14 Juror William Law.

15 Juror Pamela Benfield.

16 Juror Christian Zeimet.

17 Juror Nathan Asire.

18 Juror Sherry Gratzner.

19 Juror Sharon Breazeale.

20 Juror Donna Hanvy.

21 Juror Pamela Jennings Gregg.

22 Juror Susan B. Campbell.

23 And juror Randy R. Mathena.

24 Unanimous recommendation of sentence for death
25 penalty. We, the jury, having found beyond a reasonable

1 doubt the following statutory aggravating circumstance, to
2 wit:

3 That the murder was committed while in the
4 commission of robbery while armed with a deadly weapon.

5 2. That the murder was committed while in the
6 commission of larceny with the use of a deadly weapon.

7 Now recommend to the court that the defendant be
8 sentenced to death.

9 Signed Ronald D. Dillard, foreperson.

10 Juror Joseph G. Hedrick.

11 Juror William J. Law.

12 Juror Pamela S. Benfield.

13 Juror Christian L. Zeimet.

14 Juror Nathan K. Asire.

15 Juror Sherry L. Gratzner.

16 Juror Sharon Breazeale.

17 Juror Donna Hanvy.

18 Juror Pamela Jennings Gregg.

19 Juror Susan B. Campbell.

20 And juror Randy R. Mathena.

21 Ladies and gentlemen, the verdicts that I have
22 just published were the verdicts that you reached in the
23 jury room, I ask you are they your -- were they your
24 verdicts then and are they your verdicts now.

25 As I call your names, please answer yes or no.

1 THE COURT: This is the polling of the jury.
2 Standard procedure in these matters.
3 THE CLERK: Ronald Dillard.
4 JURY FOREMAN: Yes.
5 THE CLERK: Joseph Hedrick.
6 JUROR NUMBER 194: Yes.
7 THE CLERK: William Law.
8 JUROR NUMBER 252: Yes.
9 THE CLERK: Pamela Benfield.
10 JUROR NUMBER 29: Yes.
11 THE CLERK: Christian Zeimet.
12 JUROR NUMBER 474: Yes.
13 THE CLERK: Nathan Asire.
14 JUROR NUMBER 12: Yes.
15 THE CLERK: Sherry Gratzner.
16 JUROR NUMBER 458: Yes.
17 THE CLERK: Sharon Breazeale.
18 JUROR NUMBER 51: Yes.
19 THE CLERK: Donna Hanvy.
20 JUROR NUMBER 184: Yes.
21 THE CLERK: Pamela Gregg.
22 JUROR NUMBER 221: Yes.
23 THE CLERK: Susan Campbell.
24 JUROR NUMBER 66: Yes.
25 THE CLERK: And then the alternates are the

1 remaining names on the list.

2 And Randy R. Mathena.

3 JUROR NUMBER 272: Yes.

4 THE CLERK: Is there any more questions in regards
5 to the form of the verdict?

6 MR. GODFREY: No, Your Honor.

7 MR. ARIAIL: Nothing from the State.

8 THE COURT: All right.

9 Ladies and gentlemen, I want to thank you for your
10 conscientious service in this case this week. It was a very
11 heavy responsibility and difficult matter.

12 At this time I'm going to ask you to step back to
13 the jury room just for a few minutes until I take up some
14 legal matters with the court, and then I'll -- with the
15 attorneys, and then I'll come back and speak with you.
16 Okay. Y'all may step back there.

17 (Whereupon, at 3:13 p.m., the jury panel was
18 discharged)

19 THE COURT: From the State it would appear -- do
20 we have any people from the victim?

21 MR. ARIAIL: None that would wish to be heard.

22 THE COURT: All right. And I would be glad to --
23 if you want to -- we can take a brief recess or we will
24 entertain any motions that you have. Anything at this time?

25 MR. GODFREY: May it please the court?

1 THE COURT: Yes.

2 MR. GODFREY: On behalf of Freddie Owens, we would
3 move that the verdict be set aside and move for a new trial
4 and that the finding of the jury does not follow the
5 evidence that they had.

6 THE COURT: I would have to deny that motion.

7 Has the defense discussed with Mr. Owens if he
8 wants to make any statement to the court?

9 MR. GODFREY: I have not discussed that with him,
10 judge.

11 THE COURT: All right, sir.

12 MR. GODFREY: Judge, he's telling me that he does
13 not wish to make a statement.

14 THE COURT: Okay. If counsel and Mr. Owens would
15 approach the bench, please, for -- if you would come forward
16 for sentencing.

17 If the counsel would want to say anything, or Mr.
18 Owens, you have an absolute right to make statements to the
19 court, if you would like. Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you have any statement that you
22 would like to make?

23 THE DEFENDANT: No, sir.

24 THE COURT: All right. Then the law requires me
25 to at this particular point make two findings.

1 I have heard all the evidence and testimony, as
2 all of you have, and it is a tragic situation for everyone
3 involved, but as the trial judge in this matter and prior to
4 the imposition of any sentence of death upon the defendant,
5 I find as an affirmative fact that the evidence in this case
6 warrants the imposition of the death penalty and its
7 imposition is not a result of prejudice, passion, or any
8 other arbitrary factor, and it is so ordered by the court,
9 November the 11th.

10 And the defendant, Mr. Owens, has been found
11 guilty by a jury of the offense of murder. This jury has
12 recommended that the defendant be sentenced to death.

13 Therefore, the judgment and sentence of the court
14 that the defendant Freddie Eugene Owens be taken to the
15 Greenville County -- or be turned over to the Department of
16 Corrections and then to be housed by the Department of
17 Corrections, be kept in close and safe confinement until the
18 15th day of May, 2007, upon which date between the hours of
19 six o'clock p.m. and six o'clock a.m. on May the 16th of
20 2007, or upon an order of execution issued by the South
21 Carolina Supreme Court, the defendant Freddie Eugene Owens
22 shall suffer death in the manner provided by law.

23 May God have mercy on his soul. Thank you.

24 MS. STROM: Judge, I was just thinking, do you
25 have to advise him of his right to appeal?

1 THE COURT: Okay. If you would bring him back in.

2 MS. STROM: That's the only thing.

3 THE COURT: Within ten days?

4 MS. STROM: Within ten days, yes, sir, he has to
5 serve his notice of appeal.

6 THE COURT: I'm sorry, Mr. Owens, you have right
7 to appeal this case within ten days, sir.

8 THE DEFENDANT: Okay.

9 THE COURT: Thank you very much.

10 MS. STROM: Thank you, Your Honor.

11 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for GREENVILLE County, South Carolina, on the 6th, 7th, 8th, 9th, 10th, 11th days of November, 2006.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

February 14, 2007



Michael R. Watts
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
State of South Carolina)
v.)
Freddie Eugene Owens)
_____)

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT
C.A. No. 1998-GS-23-5220

STATUTORY INSTRUCTIONS

In determining whether to recommend that the defendant be sentenced to life imprisonment or to death, you may consider the following statutory **AGGRAVATING CIRCUMSTANCES**:

1. That the murder was committed while in the commission of robbery while armed with a deadly weapon.
2. That the Murder was committed while in the commission of larceny with use of a deadly weapon.

You may also consider the following statutory **MITIGATING CIRCUMSTANCES**:

1. The defendant has no significant history of prior criminal conviction involving the use of violence against another person.
2. The defendant was an accomplice in the murder committed by another person and his participation was relatively minor.
3. The murder was committed while the defendant was under the influence of mental or emotional disturbance.

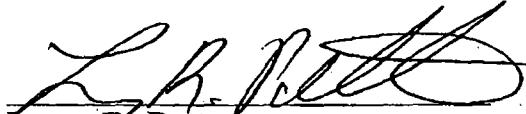
PSSD-10011-003	COURT'S
	EXHIBIT NO. <u>7</u>
	IDENTIFICATION/EVIDENCE
	OKT. # _____ DATE: _____

4. The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.
5. The age or mentality of the defendant at the time of the crime.

You may also consider any **NON-STATUTORY** mitigating circumstances.

AND IT IS SO ORDERED.

November 11, 2006
Greenville, South Carolina


Larry R. Patterson
Presiding Judge

1671

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
State of South Carolina)
v.)
Freddie Eugene Owens)

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT
C.A. No. 1998-GS-23-5220

UNANIMOUS FINDING OF A STATUTORY AGGRAVATING CIRCUMSTANCE

We, the jury, find beyond a reasonable doubt the following statutory aggravating circumstance(s): 1. THAT THE MURDER WAS COMMITTED WHILE IN THE COMMISSION OF ROBBERY WHILE ARMED WITH A DEADLY WEAPON.
2. THAT THE MURDER WAS COMMITTED WHILE IN THE COMMISSION OF LARCENY WITH USE OF A DEADLY WEAPON.

Foreperson Ronald D. Dillard
Ronald D. Dillard

Juror Joseph G. Hedrick
Joseph G. Hedrick

Juror William J. Law
William J. Law

Juror Pamela S. Benfield
Pamela S. Benfield

Juror Christian L. Zehmet
Christian L. Zehmet

Juror Nathan K. Asire
Nathan K. Asire

Juror Sherry L. Gratz
Sherry L. Gratz

Juror Sharon Breazeale
Sharon Breazeale

Juror Donna L. Hanvy
Donna L. Hanvy

Juror Pamela Jennings Gregg
Pamela Jennings Gregg

Juror Susan B. Campbell
Susan B. Campbell

Juror Randy R. Mathena
Randy R. Mathena

November 11, 2006
Greenville, South Carolina

FILED - 11/15/06	COURT'S
	EXHIBIT NO. <u>8</u>
	IDENTIFICATION/EVIDENCE
	DKT. # _____
DATE: _____	

16-12

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
State of South Carolina	)	C.A. No. 1998-GS-23-5220
v.	)	
Freddie Eugene Owens	)	

NO FINDING OF A STATUTORY AGGRAVATING CIRCUMSTANCE

We, the jury, are unable to unanimously agree on the existence of a statutory aggravating circumstance.

November ____, 2006
Greenville, South Carolina

Foreperson

COURT'S	
EXHIBIT NO.	9
IDENTIFICATION/EVIDENCE	
DKT. #	
DATE:	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
State of South Carolina	)	C.A. No. 1998-GS-23-5220
v.	)	
Freddie Eugene Owens	)	

UNANIMOUS RECOMMENDATION OF SENTENCE FOR LIFE IMPRISONMENT

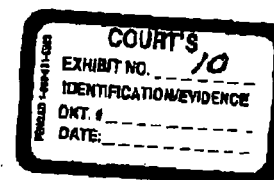
We, the jury, having found beyond a reasonable doubt the existence of the following statutory aggravating circumstance(s), to wit:

_____ now recommend

to the court that the Defendant be sentenced to life.

November ____, 2006
Greenville, South Carolina

Foreperson



STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

State of South Carolina)

v.)

Freddie Eugene Owens)

IN THE COURT OF GENERAL SESSIONS

THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 1998-GS-23-5220

UNANIMOUS RECOMMENDATION OF SENTENCE FOR DEATH PENALTY

We, the jury, having found beyond a reasonable doubt the following statutory
aggravating circumstance(s), to wit:

1. THAT THE MURDER WAS COMMITTED WHILE IN THE COMMISSION
OF ROBBERY WHILE ARMED WITH A DEADLY WEAPON. 2. THAT THE
MURDER WAS COMMITTED WHILE IN THE COMMISSION OF LARCENY WITH
THE USE OF A DEADLY WEAPON.

now recommend to the court that the Defendant be sentenced to death.

Foreperson

Ronald D. Dillard
Ronald D. Dillard

Juror

Joseph G. Hedrick
Joseph G. Hedrick

Juror

William J. Law
William J. Law

Juror

Pamela S. Benfield
Pamela S. Benfield

Juror

Christian L. Zeimet
Christian L. Zeimet

Juror

Nathan K. Asire
Nathan K. Asire

Juror

Sherry L. Gratzner
Sherry L. Gratzner

Juror

Sharon Breazeale
Sharon Breazeale

Juror

Donna L. Hanvy
Donna L. Hanvy

Juror

Pamela Jennings Gregg
Pamela Jennings Gregg

Juror

Susan B. Campbell
Susan B. Campbell

Juror

Randy R. Mathena
Randy R. Mathena

November 11, 2006
Greenville, South Carolina

FBI/DOJ 10-100-100	COURT'S	
	EXHIBIT NO.	<u>11</u>
	IDENTIFICATION/EVIDENCE	
	DKT. #	
DATE:		

1675

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MURDER AND
POSSESSION OF A FIREARM DURING THE
COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on October 20, 1998,
the Grand Jurors of Greenville County present upon their oath:

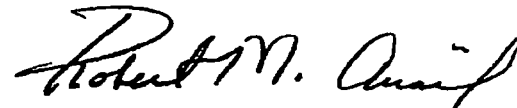
COUNT ONE – MURDER

That FREDDIE EUGENE OWENS did in Greenville County on or about November 1, 1997, while aiding, abetting and assisting Steven Andra Golden in the commission of an Armed Robbery, kill one Irene Graves by means of shooting her, and that the said victim died as a proximate result thereof. This is in violation of South Carolina Code of Laws § 16-03-10.

**COUNT TWO – POSSESSION OF A FIREARM DURING THE COMMISSION
OF A VIOLENT CRIME**

That FREDDIE EUGENE OWENS did in Greenville County on or about November 1, 1997, possess or visibly display a firearm during the commission of a violent crime, to wit: Murder and/or Armed Robbery. This is in violation of South Carolina Code of Law § 16-23-490.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

98-GS-23

005220

DOCKET NO.

BCS

The State of South Carolina,

County of GREENVILLE

COURT OF GENERAL SESSIONS

OCTOBER 20

TERM 1998

GUILTY THE STATE
vs.

FREDDIE EUGENE OWENS

ARREST WARRANT NO. E-658835

ACTION OF GRAND JURY

TRUE BILL

Mann & Tynan

FOREMAN GRAND JURY

Foreman of Grand Jury

VERDICT

Count 1 Guilty
Count 2 Guilty

Agnes M. Williams 2-15-99
Foreman of Petit Jury Date:

MURDER AND
POSSESSION OF A FIREARM DURING THE
COMMISSION OF A VIOLENT CRIME

VIOLATION § 16-03-10
VIOLATION § 16-23-490

SCANNED

67

STATE OF SOUTH CAROLINA)

COUNTY OF CHESTERFIELD)

STATE OF SOUTH CAROLINA)

vs.)

FREDDIE EUGENE OWENS)
Defendant)

IN THE COURT OF GENERAL SESSIONS

C.A. No. 98-GS-23-5218

98-GS-23-5220

98-GS-23-5222

VERDICT

We, the Jury, unanimously find, on the above mentioned indictments, that the Defendant, Freddie Eugene Owens, is:

98-GS-23-5218☒ Guilty of Armed Robbery.

OR

☐ Not Guilty of Armed Robbery.98-GS-23-5220 -- Count One☒ Guilty of Murder.

OR

☐ Not Guilty of Murder.AND -- Count Two☒ Guilty of Possession of a Firearm During the Commission of a Violent Crime.

OR

☐ Not Guilty of Possession of a Firearm During the Commission of a Violent Crime.98-GS-23-5222☒ Guilty of Criminal Conspiracy.

OR

☐ Not Guilty of Criminal Conspiracy.

February 15, 1999
Greenville, South Carolina

Robert H. Williams
Foreperson

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

STATE OF SOUTH CAROLINA)

vs.)

FREDDIE EUGENE OWENS,)
Defendant)

IN THE COURT OF GENERAL SESSIONS

STATUTORY INSTRUCTIONS

Ca. No. 98-GS-23-5220

In determining whether to recommend that the Defendant, Freddie Eugene Owens, be sentenced by the Court to Life Imprisonment or to Death, you may consider the following statutory AGGRAVATING CIRCUMSTANCE(S):

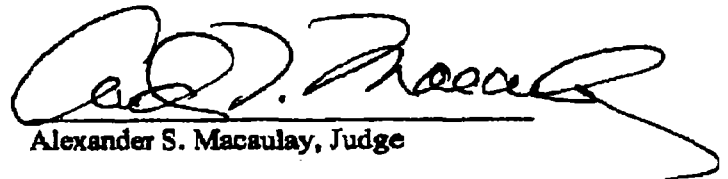
The murder was committed while in the commission of the following crimes or acts:

1. Robbery while armed with a deadly weapon.
2. Larceny with use of a deadly weapon.

You may also consider the following statutory MITIGATING CIRCUMSTANCE(S):

1. The defendant has no significant history of prior criminal conviction involving the use of violence against another person.
2. The murder was committed while the defendant was under the influence of mental or emotional disturbance.
3. The defendant was an accomplice in the murder committed by another person and his participation was relatively minor.
4. The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.
5. The age or mentality of the defendant at the time of the crime.

You may also consider any NON-STATUTORY mitigating circumstance(s).


Alexander S. Macaulay, Judge

February 17, 1999
Greenville, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

STATE OF SOUTH CAROLINA)

vs.)

FREDDIE EUGENE OWENS,
Defendant)

IN THE COURT OF GENERAL SESSIONS

AGGRAVATING CIRCUMSTANCES

Ca No. 98-GS-23-5220

We, the jury in the above-entitled case, find beyond a reasonable doubt the following statutory aggravating circumstance(s):

The murder was committed while in the commission of the following crime
① Robbery while armed with a deadly weapon

Foreperson *Agnes D. Williams*Juror *Pedro W. Boley*Juror *John A. Smith*Juror *Christa R. Raby*Juror *Sherry J. Wilson*Juror *Donald B. Linder*Juror *Catherine S. Elmes*Juror *Martha Barnhart*Juror *Robert J. Luther*Juror *William J. R. Raby*Juror *Judith E. Wilson*Juror *John M. Raby*

February 17, 1999
 Greenville, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS)

COUNTY OF GREENVILLE)

THIRTEENTH JUDICIAL CIRCUIT)

THE STATE)

VS.)

FREDDIE E. OWENS,)

DEFENDANT.)

STATE'S NOTICE OF EVIDENCE
IN AGGRAVATION

98-GS-23-05218, 98-GS-23-5220, 98-GS-23-5222

COMES NOW THE STATE OF SOUTH CAROLINA, by and through its attorney, Robert M. Ariail, Solicitor for the Thirteenth Judicial Circuit and hereby gives notice to the defendant, through his counsel of record, Steve Sumner, of the evidence the State may introduce as evidence of aggravation.

1. That the murder occurred during the commission of a robbery while armed with a deadly weapon pursuant to 16-3-20(C)(a)(1)(d);
2. That the murder occurred during the commission of a larceny while armed with a deadly weapon pursuant to 16-3-20(C)(a)(1)(e);
3. Victim Impact Testimony;
4. Defendant's prior criminal history;
5. The character/characteristics of the defendant and the circumstances of the crime; and/or
6. Defendant's propensity for future dangerousness, to include any and all acts of misconduct and/or criminal activity on the part of the defendant while he has been incarcerated in any detention or corrections facility and any and all acts of misconduct and/or criminal activity on the part of the defendant which may occur during the commission of this proceeding.

Respectfully submitted this 15th day of August, 2006.


Robert M. Ariail, Solicitor
Thirteenth Judicial Circuit

Original
Sent to
Linder

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

STATE OF SOUTH CAROLINA)

vs.)

FREDDIE EUGENE OWENS,
Defendant)

IN THE COURT OF GENERAL SESSIONS

RECOMMENDATION OF SENTENCE
DEATH PENALTY

Ca. No. 98-GS-23-5220

We, the jury in the above entitled case, having found beyond a reasonable doubt the existence of the following statutory aggravating circumstance(s),

The murder was committed while in the commission of the following crime

① Robbery while armed with a deadly weapon

now recommend to the Court that the Defendant, Freddie Eugene Owens, be sentenced to death.

Foreperson *Agnes A. Williams*Juror *Richard A. Bello*Juror *John A. Smith*Juror *Christina Rente*Juror *Sherry J. White*Juror *Donald B. Cook*Juror *Catherine S. Edmes*Juror *Martha Larnhart*Juror *Robert C. Porter*Juror *Leddie L. Lauer*Juror *John A. Linder*Juror *John A. Reynolds*

February 17, 1999
Greenville, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

STATE OF SOUTH CAROLINA)

vs.)

FREDDIE EUGENE OWENS,)
Defendant)
_____)

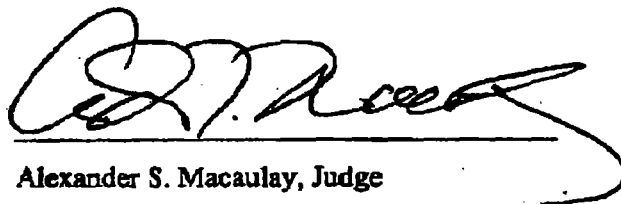
IN THE COURT OF GENERAL SESSIONS

SENTENCE

Ca. No. 98-GS-23-5220

The Defendant, Freddie Eugene Owens, has been found by the jury to be guilty of the offense of murder. The jury has recommended that the Defendant should be sentenced to death.

It is, therefore, the judgment of the law and the Sentence of the Court that the Defendant, Freddie Eugene Owens, be taken to the Greenville County Detention Center, and thence to the State Department of Corrections, henceforth to be kept in close and safe confinement until the 16th day of April, 1999, upon which day between the hours of six o'clock P.M. and six o'clock A.M., or upon an Order of Execution issued by the South Carolina Supreme Court, the Defendant, Freddie Eugene Owens, shall suffer death by electrocution or by lethal injection in the manner provided by law.


Alexander S. Macaulay, Judge

February 17, 1999

Greenville, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT
State of South Carolina) C.A. No. 1998-GS-23-5220
v.)
Freddie Eugene Owens) ORDER

*FILED MAY 14, 2006
Greenville County Clerk
of Court
Greenville County
S.C.*

Defendant has been found by a jury to be guilty of the offense of murder. This jury has recommended that Defendant should be sentenced to death.

It is, therefore, the judgment and sentence of the court that Defendant, Freddie Eugene Owens, be taken to the Greenville County Detention Center, and thence to the State Department of Corrections, henceforth to be kept in close and safe confinement until the fifteenth day of May, 2007, upon which day between the hours of six o'clock P.M. and six o'clock A.M. on May sixteenth, 2007, or upon a order of Execution issued by the South Carolina Supreme Court, Defendant, Freddie Eugene Owens, shall suffer death in the manner provided by law.

AND IT IS SO ORDERED.

November 11, 2006
Greenville, South Carolina


Larry R. Patterson
Presiding Judge

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

State of South Carolina)

v.)

Freddie Eugene Owens)

IN THE COURT OF GENERAL SESSIONS

THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 1998-GS-23-5220

Filed Nov 11, 2006
Greenville Court Clerk
of Circuit
Greenville County
SC

As the trial judge in the above entitled action, and prior to the imposition of the death sentence upon Defendant, I find as an affirmative fact that the evidence of this case warrants the imposition of the death penalty and its imposition is not a result of prejudice, passion, or any other arbitrary factor.

AND IT IS SO ORDERED.

November 11, 2006
Greenville, South Carolina


Larry R. Patterson
Presiding Judge

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

March 5th, 2008



Joseph L. Savitz, III
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT