

VOLUME FIVE OF FIVE
STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY

ORIGINALS

John C. Few, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARION ALEXANDER LINDSEY,

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NOTE: THE FOLLOWING EXHIBITS AND TAPES ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT 21 (A)	ENHANCED CD
STATE'S EXHIBIT 21	911 TAPE
STATE'S EXHIBITS 27 – 31.....	PHOTOGRAPHS OF THE CAR
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1 Engineering from the University of Tulsa in 1986. I then
2 worked as an engineer for several years before attending
3 medical school in Oklahoma State College of Osteopathic
4 Medicine. I graduated from there in 1997 and attended the
5 Medical University of South Carolina for four years for a
6 psychiatry residency. I then trained one more year doing
7 a forensic psychiatry fellowship at the University of South
8 Carolina in Columbia.

9 **Q** And what is your present position now?

10 **A** I am the Program Director of Forensic Psychiatry
11 at the Medical University of South Carolina.

12 **Q** How long have you been at the Medical University
13 of South Carolina?

14 **A** In August, I will have been in that position two
15 years.

16 **Q** All right. And do you have any other duties
17 besides your duties at MUSC?

18 **A** My duties at MUSC are quite varied. I work with
19 the Department of Juvenile Justice. I work with the
20 Department of Mental Health doing evaluations for
21 competency to stand trial and criminal responsibility. I
22 have occasional patient care responsibilities as well as
23 teaching medical students and residents.

24 **Q** Okay. And you do competency and criminal
25 responsibility evaluations for the Department of Mental

1 Health?

2 **A** Yes. I did those during my training in my
3 fellowship year. Starting March of this year, I do those
4 through a contract with the Department of Mental Health for
5 the low country counties.

6 **Q** Okay. Have you ever been qualified as an expert
7 in the field of forensic psychiatry?

8 **A** Yes, sir. I have.

9 **Q** How many times have you been qualified as an
10 expert?

11 **A** Probably ten.

12 **Q** Is that in General Sessions?

13 **A** In General Sessions, maybe five or six. I also
14 testified in common pleas and civil court.

15 **Q** Okay. Is that here in South Carolina?

16 **A** Yes, all of my testimony has been in South
17 Carolina.

18 **MR. BARTOSH:** Your Honor, we would offer Dr.
19 Melikian as an expert in forensic psychiatry.

20 **MR. WILLINGHAM:** No objection, Your Honor.

21 **THE COURT:** She is qualified as an expert in
22 forensic psychiatry.

23 **BY MR. BARTOSH:**

24 **Q** Doctor, were you asked to, by us to do an
25 interview with Mr. Marion Lindsey?

1 **A** Yes, I was.

2 **Q** And to prepare a diagnosis, do an examination and
3 prepare a diagnosis?

4 **A** Yes.

5 **Q** Can tell us about that?

6 **A** I saw Mr. Lindsey on May 4th of this year. I
7 also had the opportunity to review records that you
8 supplied. I spent time with Mr. Lindsey on the 4th and
9 evaluated those records. I made a diagnosis of major
10 depressive disorder. I also made the recommendation that
11 he be seen by a behavioral neurologist because of some
12 abnormalities in his psychological testing.

13 **Q** What records did you have the benefit of
14 reviewing?

15 **A** I had the benefit of reviewing his medical
16 records, the records from a psychiatric hospitalization
17 when he was a teenager, records of a head injury when he
18 was an infant, as well as neuropsychological testing. I
19 saw school records. That's all I can recall at this
20 point. I also had the opportunity to see the reports from
21 William S. Hall where he had been evaluated.

22 **Q** So you reviewed the records from Hall?

23 **A** Yes, I did. I reviewed their reports.

24 **Q** Okay. What can you tell us about Mr. Lindsey as
25 far as any cognitive deficits or any kind of problems that

1 he may have had?

2 **A** By Mr. Lindsey's report, he had problems in
3 school and required learning disability classes. He also
4 had problems with speech and reported that he needed some
5 type of help with speech therapy. I'm not sure of exact
6 words he put that in.

7 Mr. Lindsey had had an accident where he was run over
8 by a car when he was 18 or 19 months old and sustained a
9 head injury at that point. He had also inhaled kerosene
10 at one point. He had been in, I believe, a motorcycle
11 accident and a car accident. He had several head
12 injuries. Mr. Lindsey completed the ninth grade and
13 dropped out in the tenth grade. He had trouble with
14 school.

15 Reviewing his neuropsychological testing, he had some
16 abnormalities having to do with naming and being able to
17 copy designs, dexterity and fine motor skills. Based on
18 those things, I would say that Mr. Lindsey had some
19 cognitive deficits.

20 He also has a family history of depression. He had
21 been treated psychiatrically after an overdose when he was
22 15 years old. In talking him about what was going on at
23 the time of the incident, he appeared to meet the
24 diagnostic criteria for depression at that time also.

25 **Q** So does he suffer from a major mental illness?

1 **A** He suffers from major depressive disorder. He
2 is currently being treated for that.

3 **Q** Now can you tell us what is malingering?

4 **A** Malingering is the conscience fainting of
5 symptoms to appear ill. The easy explanation of that is
6 faking that you are sick.

7 **Q** Okay. You had, were there any test that were
8 given to Mr. Lindsey to determine whether or not he was
9 malingering?

10 **A** Yes. Mr. Lindsey's record had malingering on
11 them. Looking back through the results from his
12 evaluation at the Hall Institute where they diagnosed him
13 with malingering, they said that because of his discussing
14 hearing voices and a friend Jimmy, their, by the report
15 Hall had, by their objective testing, he was not
16 malingering. He was putting forth good effort.

17 Because of those concerns when he was seen by Dr.
18 Brawley, a neuropsychologist, he was tested again to see if
19 there was any symptoms of malingering. He was given a
20 test that checks for whether someone is exaggerating a
21 mental illness. He was not faking on that test. He was
22 also given test for malingered memory. He was not faking
23 on that test either. Based on those results, I did not
24 make a diagnosis of malingering.

25 **Q** Do you believe he is malingering?

1 **A** No, I do not.

2 **Q** Can you tell the jury why you don't believe he is
3 malingerer.

4 **A** Malingering requires an external incentive.
5 There is some reason why person would be malingering.
6 Mr. Lindsey would not does not have that incentive. He
7 has been suicidal much of the time since the incident
8 occurred and has no reason to faint a mental illness to get
9 any additional help or to reduce his symptoms.

10 Also, I can understand why other professionals would
11 wonder about his malingering because he presents with a
12 very atypical description of hearing voices. What Mr.
13 Lindsey reports is that when he was in the psychiatric
14 hospital at age 15 after an overdose that a mentoring or
15 imaginary friend named Jimmy came to visit him. I should
16 say just that he heard these voices. And these were
17 comforting to him.

18 He never discussed this with anyone. He did tell me
19 that his roommate in the psychiatric hospital noticed him
20 talking to unseen others. When Mr. Lindsey is stressed,
21 he reports that this friend Jimmy is with him and tells him
22 good things and supports him in some ways. When he was,
23 right after the incident and when he was being seen by
24 doctors, he was very nervous. He did report that his
25 friend Jimmy was with him. This is the way that Mr.

1 Lindsey has of coping with nervousness and stress.

2 Q When Jimmy first appeared, did he explain to you
3 the circumstances of why he said that Jimmy appeared?

4 A He explained that he had been placed in the
5 hospital after the overdose attempt. He felt very alone
6 in the world and with no friends. And this was a
7 comforting thing to him. He does, when he describes what
8 happens, he does describe hearing a voice much like an
9 auditory hallucination. This is very atypical. That
10 would be why he would be mis-diagnosed as malingering.

11 Q Was there something in particular about one of
12 the folks that, his roommate at that psychiatric hospital?

13 A Mr. Lindsey reported that he was placed in a
14 room at the psychiatric hospital with a man who looked very
15 much like Charlie Manson. He was especially afraid having
16 been in a psychological hospital and having this roommate.
17 He did report that this roommate asked him at times who are
18 you talking to. This is when Jimmy first of showed up.
19 He also related that that roommate turned out to be a very
20 nice man and only looked scary.

21 Q Can you give an opinion as to whether Mr.
22 Lindsey would have been operating under the influence of
23 mental or emotional disturbance when this incident
24 happened?

25 A Mr. Lindsey reported to me that he had been

1 suicidal for several weeks prior to this incident and was
2 actually planing a suicide. He had a decrease in appetite
3 with weight-loss, feelings of open hopelessness and
4 helplessness and sad mood. I feel he would meet the
5 criteria for depression at the time of the incident and
6 since.

7 Q Would you describe his depression as chronic or
8 acute?

9 A He has had periods of depression in the past. I
10 will describe him as recurrent. I'm not sure how long he
11 had had those feelings prior to the incident. He did
12 report that they had been present for more than two weeks.

13 Q Okay. So would that be chronic or acute?

14 A That would be a separate incident of depression
15 at that time.

16 Q Okay. Is there a diagnosis of chronic
17 depression or acute depression?

18 A Yes, chronic depression would be one that would
19 be untreated or is resistant to treatment. I'm not sure
20 when his depression started. That would be a separate
21 incident. I guess you could call it acute.

22 Q Okay. Could you explain the difference between
23 chronic and acute?

24 A Acute is something that is new, a new separate
25 illness. A chronic illness is something that you have had

1 for a while. And it continues to bother you continuously.

2 **Q** Can you tell us about Mr. Lindsey's intellectual
3 functioning?

4 **A** On testing at William S. Hall, Mr. Lindsey had a
5 well below average IQ. They actually diagnosed him with
6 borderline intellectual functioning. That is a diagnosis
7 used for someone who is functioning close to the mildly
8 mentally retarded range. His IQ, at that time, I believe
9 was 76 on testing.

10 When he was retested by Dr. Brawley, his testing
11 scores were a little better in the 80s, which is still well
12 below the average for intelligence. I would not have made
13 the diagnosis of borderline intellectual functioning
14 because he does function actually better than what his test
15 scores look like. His intelligence is low. He's had
16 trouble in school. He does have some functioning abilities
17 that I would not say were the basis of worrying or seeing
18 him clinically for decreased intelligence.

19 **Q** Okay. When you say that he has cognitive
20 deficits, can you explain what that means?

21 **A** Cognitive deficits would be problems in thinking
22 or acting. The psychological tests that were given showed
23 that he had problems with verbal fluency, meaning, his
24 finding of words. He had trouble naming words. He had
25 trouble with processing memory. He had some other subtle

1 findings of problems with his brain in that his dexterity
2 was different left and right. His motor speed was
3 different left and right.

4 Q Those tests do they indicate some, are there
5 indication of brain damage?

6 A They are an indication of an abnormality, yes.

7 Q Do you have an opinion as to whether or not he
8 does have a brain abnormality?

9 A I would say that using my professional judgment,
10 he does have some kind of abnormality that causes his low
11 test scores and sudden neurological findings.

12 Q Do you know the source of that abnormality?

13 A That could have been something he was born with.
14 It could be head trauma that he has just over the years.
15 He had a period where he ingested kerosene as an 18 or 19-
16 month-old. I don't know if he had had asphyxia associated
17 with that. Like I said, it could be something genetic
18 that he was born with. There are lots of traumatic brain
19 injury that could also contribute. I would not be able to
20 say where it came from.

21 Q But you feel that there is some?

22 A Yes.

23 Q As a matter of fact, you recommended that he be
24 referred to a neurologist?

25 A Yes, after seeing the test results from the

1 neuropsychologist I recommended that he be seen by a
2 behavioral neurologist.

3 Q And he was seen by a behavioral neurologist?

4 A Yes, he was.

5 Q On the suicide attempt when he was 15, that was
6 an overdose?

7 A Yes.

8 Q Do you know what kind of overdose that was?

9 A As I recall, the record stated Tylenol and other
10 medications. Taking basically all of the pills that he
11 could get a hold of.

12 Q Do you know the reason for the attempt? Did he
13 explain that to you at the time?

14 A I don't recall at this time. Do you have
15 material that would refresh my memory on that?

16 Q Well, I don't know if we have it.

17 MR. BARTOSH: Beg the Court's indulgence, Your
18 Honor.

19 BY MR. BARTOSH:

20 Q Let me hand up your notes that you faxed to us
21 and see if that might refresh your memory.

22 A Most of my notes here indicate that that was an
23 overdose. We were talking at the time that I saw him
24 about his auditory hallucinations of Jimmy.

25 Q Nothing as to why?

1 **A** No.

2 **Q** He never explained that to you?

3 **A** He may have. I don't have that in my notes.

4 **Q** Let me ask this. His neurological problems,
5 would you describe them as chronic or acute?

6 **A** Given the history of school problems, I would say
7 those were chronic. They were not tested until he was
8 seen at Hall Institute and by Dr. Brawley.

9 **Q** Chronic means long-term?

10 **A** Yes.

11 **Q** How would all of this is affect Mr. Lindsey's
12 ability to cope with things?

13 **A** Mr. Lindsey has a limited ability to cope with
14 things due to his decreased intelligence in general. He
15 also has poor coping skills as evidence by continuing to
16 have an imaginary friend as an adult. During the time of
17 the stress with his wife and the separation from her, he
18 was in addition depressed at that time, which would also
19 decrease his coping abilities.

20 **Q** Okay. Did he discuss with you the incident that
21 we're here, the killing of his wife?

22 **A** Yes, he did.

23 **Q** What did he tell you about that?

24 **A** He stated that his wife was taking, was leaving
25 and taking the kids. And he would never see them again.

1 He had moved into his cousin's house and had planned to
2 commit suicide by driving off the cliff. But he was
3 worried that he might not die.

4 He stated that he begged his wife to return to him.
5 Had wrote suicide notes but did not know what those said.
6 He said he had planned to shoot himself and that his cousin
7 had taken the keys and that his mother and uncle and
8 brother had talked to him. He stated that he was unable
9 to reach his wife. She was blocking the numbers on the
10 phone. He had been crying which was something very
11 unusual for him. He usually never allow anyone to see him
12 cry.

13 He had lost weight from 225 pounds down 160 pounds in
14 three weeks. He stated that he had got in touch with his
15 wife at work where the phone numbers were not blocked and
16 told her he was going to commit suicide. And she laughed
17 at him.

18 On the date of the incident, he talked to Latresse for
19 a couple of hours and drove her car home. He was tired.
20 He stated that he had planned to go to his mother-in-law's
21 home and blow his brains out, as he put it, in front of the
22 house. While he was there, he was driving and was talking
23 to his wife's cousin, saw an image in the back. There was
24 dark windows in the car. The cousin drove off.

25 Mr. Lindsey stated that he just like snapped. He

1 followed them. He stated he did not remember and he did
2 not know he had shot his wife until EMS told him. He said
3 he shot four times and shot himself one time and that the
4 police also shot him. He asked the ambulance driver what
5 had happened to his wife and stated he did not know he had
6 shot her even after he left the hospital. He was also
7 able to report to me that he had asked the EMS, the
8 paramedics who came to the scene to let him die.

9 Q Had you reviewed his hospital records?

10 A I reviewed several hospital records.

11 Q And saw a gunshot wound to his head?

12 A Yes, I did.

13 Q Can you describe that wound for the jury.

14 A It was a wound that went, Mr. Lindsey put the
15 gun to head shot himself in the head. The bullet went
16 through. An enter and exit wound is my understanding. It
17 did not penetrate his brain. He was shot there and also
18 shot multiple times by police officers at the time of the
19 incident.

20 Q There was an entrance wound and an exit wound?

21 A That is my understanding, yes.

22 MR. BARTOSH: That's all I have, Your Honor

23 MR. WILLINGHAM: May it please the Court.

24 CROSS-EXAMINATION

25 BY MR. WILLINGHAM:

1 **Q** Doctor, did you prepare a report in this case?

2 **A** No, I did not.

3 **Q** You did a year fellowship that William S. Hall?

4 **A** Yes, I did.

5 **Q** You are now the Chief Forensic Psychiatrist at
6 MUSC?

7 **A** I am the program director.

8 **Q** Is that close to the same thing?

9 **A** I guess so.

10 **Q** Is it normal to evaluate a defendant and prepare
11 a report?

12 **A** It depends on the case.

13 **Q** When you testified in General Sessions Court
14 determining competency and criminal responsibility, how
15 many of those cases did you not prepare a report?

16 **A** In those cases, I prepared a report every time.
17 I was working for the Court at that time. It was my duty
18 to report back to the Court.

19 **Q** What was the purpose of preparing a report?

20 **A** A purpose of preparing a report is to inform the
21 Court of your findings.

22 **Q** And you did not prepare a report in this case?

23 **A** That is correct.

24 **Q** You understand if you had prepared a report, that
25 would have to given?

1 **A** Yes.

2 **Q** And it would have been beneficial to proving your
3 testimony?

4 **A** I would think so, Yes.

5 **Q** That was not done?

6 **A** Right.

7 **Q** And why not?

8 **A** I was not asked to prepare a report in this case.

9 **Q** Did, do you know who Dr. Pam Crawford is?

10 **A** Yes, sir.

11 **Q** Who is Dr. Crawford?

12 **A** Dr. Crawford is sitting in the courtroom right
13 there. She was the Director of Forensic Psychiatry when I
14 was in William S. Hall doing my training.

15 **Q** Did Dr. Crawford attempt to talk to you?

16 **A** Yes, she talked to me earlier today.

17 **Q** Did you agree to talk to her?

18 **A** No, I did not have time.

19 **Q** Tell me about Jimmy.

20 **A** I'm sorry about?

21 **Q** Jimmy.

22 **A** What would you like to know about Jimmy?

23 **Q** Well, do you know when the first time Jimmy came
24 into existence?

25 **A** By Mr. Lindsey's report, Jimmy came into exist

1 when he was 15 and in the hospital.

2 Q Now, other than what he told you -- we're going
3 to get to the stuff he told you later. Other than what he
4 told you, when was the first documented evidence of there
5 ever being any Jimmy?

6 A There was mention of the Jimmy on intake to
7 Spartanburg Mental Health. I am not sure if there was
8 mention of Jimmy when he was hospitalized with the gunshot
9 wound.

10 Q Okay. Did you rely on the report of Freeman
11 Smith, Dr. Smith, during your evaluation?

12 A I did look at the information, yes.

13 Q I think that is probably the first time that he
14 mentions Jimmy. Do you disagree with that?

15 A I believe so. Can I look at those notes?

16 Q Sure, you can.

17 A (Reviewing.) I don't see Ms. Howard's notes who
18 was on the stand earlier. She had, Ms. Howard saw him
19 initially and referred him to Dr. Freeman.

20 Q Uh-huh (affirmative).

21 A And she was concerned because he did mention
22 auditory hallucinations with her at that time. I don't
23 know whether he used the name Jimmy or not. But that was
24 part of her referral to Dr. Freeman.

25 Q And that has effective 10/10/02?

1 **A** That is when Dr. Freeman saw him.

2 **Q** Okay. No mention of Jimmy in particular until
3 10/10/02?

4 **A** Correct.

5 **Q** Would, you don't think he is malingering?

6 **A** No, I do not.

7 **Q** Would it be any significance to you, Doctor, to
8 know that that is the date that the State served the notice
9 of intent to seek the death penalty on him?

10 **A** Well, that would be interesting to know. And
11 had I had that information, I would have asked him about
12 that during the evaluation?

13 **Q** I'm going to show you the notice to seek the
14 death penalty. I'll have you look at it.

15 **A** (Reviewing.)

16 **Q** It is dated what day?

17 **A** That is dated October 10, 2002.

18 **Q** I'm going to show you an affidavit of service.

19 **A** (Reviewing.)

20 **Q** It shows it was served what day?

21 **A** October 10, 2002.

22 **Q** So the same day that he came up with Jimmy or the
23 first time we have documented in the records about a Jimmy,
24 correct?

25 **A** That is correct.

1 **Q** Does that change your opinion?

2 **A** No, it does not. Mr. Lindsey has used Jimmy as
3 a coping mechanism. I'm sure that being served with a
4 notice that the State would seek the death penalty was one
5 of the most stressful things that happened in his life.

6 **Q** Okay. Tell me again what malingering is.

7 **A** Malingering is the conscious fainting of symptoms
8 for a secondary gain.

9 **Q** A secondary gain would be to avoid
10 responsibility?

11 **A** That could be one of them, yes.

12 **Q** Okay. But you don't think he was doing that?

13 **A** Well, Mr. Lindsey has been suicidal since the
14 time of the incident. He was also still suicidal in May
15 when I saw him. Fainting symptoms would not keep him from
16 his goal.

17 **Q** Would blaming Jimmy help avoid his
18 responsibility?

19 **A** Blaming Jimmy might avoid responsibility. It
20 may be a coping mechanism of Mr. Lindsey's in dealing with
21 what he had done.

22 **Q** That is exactly what he tried to do on 10/10/02,
23 wasn't it? The highlighted part.

24 **A** Yes.

25 **Q** He tried to say it was Jimmy's fault, not his?

1 **A** That is correct.

2 **Q** That is avoiding responsibility, right?

3 **A** Correct.

4 **Q** But he is not malingering?

5 **A** No, I believe that that is a manner in which Mr.
6 Lindsey copes with stress.

7 **Q** Did you look at Dr. Narayan's report from William
8 S. Hall Institute?

9 **A** Yes, I did.

10 **Q** That was done in July of 2003?

11 **A** I don't recall the date.

12 **Q** I'm sorry. The report is July 18, 2003. He
13 actually saw him before then.

14 **A** Yes.

15 **Q** During that second incident, were you aware of
16 Jimmy being present for the interview?

17 **A** I was aware that when Dr. Narayan and asked Mr.
18 Lindsey questions, Mr. Lindsey referred to Jimmy who was
19 supposedly also in the room.

20 **Q** He did more than just refer to him, didn't he,
21 Doctor?

22 **A** He had him sitting somewhere and pulled out a
23 chair for him.

24 **Q** He pulled a chair right up next to him and
25 started carrying on a conversation with him?

1 **A** That is my understanding, yes.

2 **Q** But you don't think he was malingering?

3 **A** No, sir. I do not.

4 **Q** Did you rely on Lauri Barwick's report dated
5 November 13, 2003?

6 **A** I looked through those report those notes, yes.

7 **Q** And she indicated, Dr. Barwick indicated in her
8 report that it did not appear to be attending to any
9 internal stimuli. But when asked about Jimmy, he would
10 point and say he is in the room. The doctor says these
11 are not consistent with true psychosis. Would you agree
12 with that or disagree with that?

13 **A** I would agree with that. She noted that Jimmy
14 would be appear to be more of an imaginary friend in her
15 note which would not appear to be the way that Mr. Lindsey
16 uses Jimmy as a coping mechanism.

17 **Q** But again, he is not malingering?

18 **A** By objective test, Mr. Lindsey was not
19 malingering that he cannot remember or that he was fainting
20 any psychotic symptoms on formal testing?

21 **Q** What is the Ray test?

22 **A** The Ray test is a copy of a complex design.

23 **Q** Okay. Is that an effort to determine whether he
24 is malingering or not?

25 **A** That was an effort to determine his cognitive

1 ability.

2 Q Could it be used to determine if someone was
3 malingering?

4 A It is not specific for that, no.

5 Q Could it be used for that?

6 A I suppose, yes.

7 Q What did you put down? These are your notes?

8 A Yes. The Ray test was borderline. Borderline
9 cognitive functioning.

10 Q Is Marion Lindsey competent to stand trial?

11 A I did not do a formal assessment of his
12 competence to stand trial. But in my limited interaction
13 with him, I would say yes.

14 Q Does Marion Lindsey know the difference between
15 right and wrong?

16 A Yes, he does.

17 Q Does Marion Lindsey have the capacity to conform
18 his conduct to requirements of law?

19 A Once again, I did not do that formal exam. But
20 on my limited interactions with him, yes.

21 Q So he knew right and wrong?

22 A Correct.

23 Q He knew he could conform his conduct?

24 A Correct.

25 Q And he is competent?

1 **A** Correct.

2 **Q** So tell me again what is wrong with him.

3 **A** He has cognitive deficits. He has low
4 intelligence. He was depressed and still remains
5 depressed.

6 **Q** All right. I should have asked this before I
7 asked you. It's going to take me a second. Tell me again
8 what is was wrong with him.

9 **A** He has some cognitive deficits. N-i-t-i-v-e.

10 **Q** Deficits?

11 **A** Right. Those include low IQ.

12 **Q** Okay. Okay.

13 **A** And neurologic impairments.

14 **Q** Neurologic?

15 **A** Uh-huh (affirmative).

16 **Q** Impairment?

17 **A** Yes.

18 **Q** Okay. That's one thing, right?

19 **A** Yes.

20 **Q** Those are?

21 **A** Those are part of his cognitive deficit tests.

22 **Q** And what else do you got?

23 **A** Depression.

24 **Q** Depression. Okay. Now the cognitive deficit,
25 how did you determine that?

1 **A** By neuropsychological testing done by Dr. Brawley
2 as well as IQ testing done by William S. Hall.

3 **Q** Now you said that you referred him to a
4 neuropsychologist?

5 **A** Dr. Brawley is a neuropsychologist, yes.

6 **Q** Who is the behavioral neurologist?

7 **A** That is Dr. Asburger. I'm sorry. Absher.

8 **Q** What did Dr. Absher say was wrong with him?

9 **A** Dr. Absher said he had a normal neurological
10 exam.

11 **Q** So Dr. -- I can't say his name.

12 **A** Absher.

13 **Q** Absher said there was nothing wrong with him
14 about him neurologically?

15 **A** He said he had a normal neurologic exam.

16 **Q** Tell me what that means.

17 **A** I guess I'm not being specific enough, is that he
18 would have a normal neurologic exam. And his reflexes are
19 normal and those kind of things. His neurologic problems
20 are pretty subtle. They are problems with right, left
21 things, naming. Those kind of tests. His reflexes on the
22 general neurology exam would be normal.

23 **Q** Okay. And the depression, how did you determine
24 that?

25 **A** I determine the depression by his subjective

1 report of symptoms as well as reviewing the records from
2 when he was hospitalized for the shooting as well as when
3 Spartanburg Mental Health was seeing him while in the
4 detention center.

5 Q Okay. Tell me what are the symptoms of
6 depression.

7 Q Symptoms of depression include sad moods,
8 suicidality, decreased injury, inability to enjoy things,
9 decreased concentration, decreased appetite, difficulty
10 sleeping.

11 Q Could symptoms include feeling tired and having
12 no energy?

13 A Yes, I believe I stated low energy.

14 Q Feeling down on yourself?

15 A Yes.

16 Q Problems sleeping?

17 A Yes.

18 Q Problems with appetite?

19 A Yes.

20 Q Lost of sexual interest?

21 A Could be, yes.

22 Q Feel people don't like you?

23 A Could be, yes.

24 Q Feel like people don't understand you?

25 A That is not usually listed as part of depression.

1 Q Okay. You rather stay by yourself than with
2 other people?

3 A Social isolation can be a symptom, yes.

4 Q Feel like life is hopeless?

5 A That is correct.

6 Q Sometimes feel like you are on a special mission?

7 A That is not usually listed as part of depression.

8 Q Difficulty keeping thoughts focused?

9 A Yes.

10 Q You hear voices that bother you and don't know
11 where they are coming from?

12 A That is not usually listed as part of general
13 depression but could be as part of psychotic depression.

14 Q Psychosis?

15 A Yes.

16 Q Okay. Did you have the benefit of his
17 Department of Corrections records when he served time for
18 assault and battery with intent to kill?

19 A No, I did not.

20 Q Well. Don't you think that would have been
21 important?

22 A It might have been helpful. I'm not sure.

23 Q Especially if they had done a mental assessment
24 on him, correct?

25 A At the time, it would've been helpful, yes.

1 **Q** Okay. And it would have been important to know
2 that when asked if he often feel tired and have no energy,
3 he said no. That would be important, wouldn't it?

4 **A** This would have been at what time?

5 **Q** This was after he was convicted of assault and
6 battery with intent to kill. Do you need a date?

7 **A** Yes.

8 **Q** December the 29th of 1996.

9 **A** That would really have no relevance to whether
10 Mr. Lindsey was depressed around the time of this incident
11 or not.

12 **Q** Well, I thought you said he had a major
13 depressive disorder that was not limited to this time frame
14 and you went all the way back to when he tried to commit
15 suicide when was 15 years old?

16 **A** That is correct.

17 **Q** Okay. So we are talking about more than just
18 this time frame, aren't we?

19 **A** That's what I was trying to explain in my
20 testimony is he's having acute periods of depression.
21 They were not chronic in that he did recover from his
22 depression in between.

23 **Q** Okay. So in 1996, when he shot through a
24 windshield at Stanford Wilkins and was convicted of assault
25 and battery with intent to kill, he was not suffering from

1 depression?

2 **A** I did not examine him then.

3 **Q** But these records indicate that he didn't.

4 **A** According to those records, he was not having a
5 depressed mood at the time. Without having done the
6 evaluation or looking at more than the old record, I would
7 not want to make an opinion about that.

8 **Q** When asked if he heard voices that bother you and
9 you don't know where they are coming from. He indicated
10 no, right?

11 **A** That is what it says there, yes.

12 **Q** But you did not have these?

13 **A** No.

14 **Q** You think they would have been helpful to have?

15 **A** Given how old they are, they really did not have
16 a whole lot of relevance about this incident and what's
17 going right now.

18 **Q** Well, Doctor, you relied on records a whole lot
19 older than that, didn't you?

20 **A** Just that he had had the diagnosis in the past.
21 I did not have a chronology of his moods throughout his
22 entire life.

23 **Q** You testified to this jury now, Doctor, that he
24 had a suicidal ideation back as long as 15 years old.

25 **A** I testified he made a suicide attempt at 15, yes.

1 **Q** Okay. So it is that old records can still be
2 useful records?

3 **A** Correct.

4 **Q** But those you don't think to be useful?

5 **A** Not if he wasn't suffering from depression at the
6 time.

7 **Q** You still don't think he was malingering?

8 **A** No, sir.

9 **Q** I'm certainly no expert in mental health. But
10 can't malingering also be labeled as lying?

11 **A** Yes.

12 **Q** Okay. And does he have a history of lying that
13 you are aware of?

14 **A** Not that I know of in particular. But I did not
15 address those.

16 **Q** I'm sorry. I did not hear.

17 **A** I should go back and say that lying an
18 malingerer are different things. Malingering is faking
19 an illness specifically by lying.

20 **Q** All right. Let's go all the way back to 1988.
21 That was the alleged suicide attempt.

22 **A** Okay.

23 **Q** Isn't that right?

24 **A** I don't recall the date.

25 **Q** Let me show you the date and see if that will

1 refresh your recollection.

2 A Yes.

3 Q Okay. You relied on these records?

4 A I reviewed those, yes.

5 Q Here it says in this report that the patient did
6 appear to be minimizing his problems trying to manipulate
7 to go home.

8 A Correct. He was trying to pretend that he was
9 doing better than he was because he wanted out of the
10 hospital.

11 Q The patient -- well, the patient states he did
12 this for manipulative reasons but did not realize that
13 Tylenol was so toxic. It was not that he was manipulating
14 to go home. His manipulative behavior was taking the
15 Tylenol overdose.

16 A Those were two different references to
17 manipulative behavior.

18 Q All right. Tell me what that is about.

19 A That was talking about trying to get attention.

20 Q Okay. And he got attention by taking Tylenol.

21 A Yes. He did not realize how toxic a Tylenol
22 overdose was.

23 Q So was it really a suicide attempt?

24 A I was not there at the time. It was a serious
25 problem in that he ingested that much, that many pills and

1 had to be treated for it.

2 Q But it is manipulative?

3 A In that he was trying to get attention and later
4 that he was trying to pretend that he was in better shape
5 than he was so he could go home.

6 Q But not malingering?

7 A No, not at this point.

8 Q Again, you did not have the benefits of the
9 Department of Corrections records where he told them that
10 he completed the 11th grade in school.

11 A No, I did not.

12 Q That would have been helpful though -- well, you
13 know that is not true, right?

14 A He explain to me that he completed the 9th grade
15 and quit in the 10th grade. There are many varying
16 records about his education record that are confusing. I
17 would not be surprised by that.

18 Q You had his school records, didn't you, Doctor?

19 A I had some school records, yes.

20 Q What did they show?

21 A They show incorrectly that he was in the 8th
22 grade three times. When, apparently, he was in the seventh
23 twice and repeated the first grade once. It was difficult
24 to interpret because of his school moves around what grades
25 he did where.

1 Q Did you know that he had made an application for
2 employment at BMW?

3 A In talking with him, I knew he made application
4 or that he been hired actually?

5 Q Did you see the record?

6 A No, I did not.

7 Q Well, here is his application. He told you he
8 was hired?

9 A I understood he had a job that was pending.

10 Q He told you that?

11 A I have to check but that's my recollection. I
12 don't see that in my notes. That may have been a
13 misunderstanding on my part. I know he was, had been
14 employed as a fork lift operator. I was under the
15 impression that he was going to work at BMW.

16 Q You don't know if worked there or not?

17 A I don't know.

18 Q Would it be important for you to know that he
19 lied on his application?

20 A That would be interesting to know, yes.

21 Q In fact, he said he completed Chapman High
22 School?

23 A I have not seen that document before. But it is
24 marked that Chapman High School, 12th grade diploma, yes.

25 Q We know that ain't true, right?

1 **A** Could I see the document?

2 **Q** Yes.

3 **A** This is a document I had not seen before.

4 **Q** If you need time, take all the time you need.

5 **A** I just wanted to look at the front page. Marion
6 Lindsey application for forklift driver.

7 **Q** What is the date on there?

8 **MR. BARTOSH:** Your Honor, we're going to
9 object to this. They have not laid the foundation
10 for the authenticity of the document.

11 **MR. WILLINGHAM:** There has not been any
12 authenticating laid for anything this doctor relied on
13 so far. I think experts can do that, Judge. Your
14 Honor, respectfully, I don't mean to interrupt your
15 thought process. She said it would have been
16 important for her to have reviewed that document.

17 **THE COURT:** I believe every question you have
18 asked her except questions that would elicit the
19 content of that document are appropriate. We need a
20 break anyway. Let me think about this.

21 We will take a short break.

22 (WHEREUPON, the jury exits at approximately 4:32 p.m.)

23 **THE COURT:** Let me hear your theory about that.

24 **MR. WILLINGHAM:** Your Honor, what she has
25 relied on -- any expert is allowed to rely on

1 inadmissible hearsay or other inadmissible items of
2 evidence in order form a conclusion. If she did not
3 look at the important documents, I think she would
4 have an opportunity to review those documents to see
5 if it changes any of her opinions. I'm not
6 introducing that document --

7 **THE COURT:** I agree with that. That is what I
8 said a second ago. You can ask her if she reviewed
9 that document. You can ask her if she knows of any
10 lies that he might have told. You can ask her if she
11 knows of a statement that he might have made about
12 completing high school on an application. But I
13 don't think you can introduce the content of the
14 document.

15 **MR. WILLINGHAM:** I was not trying to do that.
16 I apologize if somehow I did.

17 **THE COURT:** Okay.

18 **MR. WILLINGHAM:** I apologize. I'm a little
19 bit confused as to what I think the objection may be,
20 Your Honor.

21 **THE COURT:** I think the objection is to hearsay
22 contained within that application.

23 **MR. BARTOSH:** That's correct.

24 **THE COURT:** I think the real objection has to be
25 the authenticity of the document itself. If it is a

1 statement that is made by the defendant, -- well, the
2 statement is to authenticity and hearsay, the
3 objection is to authenticity and hearsay, right?

4 **MR. BARTOSH:** Yes, sir.

5 **MR. WILLINGHAM:** Your Honor, under Rule 703
6 basis of opinions by testimony of experts, is that it
7 both the type recently relied by experts in a
8 particular field in forming opinions upon the subject,
9 the facts or data need not be admissible into
10 evidence.

11 **THE COURT:** I agree completely. But you are
12 turning that little proposition of law upside down on
13 its head. It is saying that an expert can rely on
14 inadmissible evidence.

15 **MR. WILLINGHAM:** Yes.

16 **THE COURT:** It is does not necessarily say that
17 everything the expert relies on is admissible. It
18 does certainly not say that everything that an expert
19 did not rely on become admissible because the expert
20 might have relied on it if she had known about it.
21 Let's take a break.

22 (WHEREUPON, a short recess was taken at approximately
23 4:38 p.m.)

24 (WHEREUPON, the Court resumed at approximately 4:49
25 p.m.)

1 **THE COURT:** Are we in agreement now?

2 **MR. WILLINGHAM:** Yes, sir.

3 **THE COURT:** Bring the jury in.

4 (WHEREUPON, the jury enters at approximately 4:50
5 p.m.)

6 **MR. WILLINGHAM:** May it please the Court?

7 **THE COURT:** Yes, sir.

8 **BY MR. WILLINGHAM:**

9 **Q** Would it had been helpful to have the application
10 that he filled out for BMW on September the 9th, 2002?

11 **A** It might have been.

12 **Q** I'm sorry. September the 12th of 2002?

13 **A** It might have been.

14 **Q** You were not given this?

15 **A** No, I wasn't.

16 **Q** Would it have been helpful to talk with Celeste
17 Nesbitt, one of the witnesses to the crime?

18 **A** I am not sure.

19 **Q** Did you talk to Celeste Nesbitt?

20 **A** No, I did not.

21 **Q** Were you given a copy of the defense's case file
22 concerning the facts of the case?

23 **A** I am not sure how complete a case file. I
24 received incident reports and autopsy reports.

25 **Q** Would it have been helpful to have the full

1 discovery in formulating your opinion?

2 **A** I'm not sure. I cannot say without having seen
3 it.

4 **Q** Did you talk to -- I think we been over this --
5 Dr. Pam Crawford?

6 **A** She asked me to speak to me today. I did not have
7 time to speak with her.

8 **Q** Were you aware that she had talked to the
9 defendant?

10 **A** Yes, I was.

11 **Q** What it had been helpful to talk with her?

12 **A** I am not sure.

13 **Q** But possibly?

14 **A** Possibly.

15 **Q** How about Dr. Pratap Narayan? Did you talk with
16 him?

17 **A** No, I did not.

18 **Q** Would it had been helpful?

19 **A** I'm not sure.

20 **Q** Have you seen him before?

21 **A** Yes, I have.

22 **Q** He was the one that diagnosed him with
23 malingerer?

24 **A** That is correct.

25 **Q** You said he ain't malingerer?

1 **A** I disagreed with him. That is correct.

2 **Q** Would it had been helpful to talk with him about
3 why he came up with that diagnosis?

4 **A** No, I did not feel like it would. I had his
5 report.

6 **Q** Okay. You talked with Officer Benny Godfrey?

7 **A** No, I did not.

8 **Q** Would it had been helpful to know how the
9 defendant was acting at the time of the crime?

10 **A** It might have been. I was not doing a
11 evaluation for responsibility in terms of how he was acting
12 at the time of the crime. I was asked for help with the
13 mitigation.

14 **Q** Was it not important as to whether or not he was
15 suffering from these things at the time of the crime?

16 **A** Yes, it could have been.

17 **Q** It could have been important.

18 **A** It could have been important to talk to that
19 person. I felt like I had enough information to make that
20 diagnosis.

21 **Q** Did you talk to Latreese Smith?

22 **A** No, I did not.

23 **Q** Would it have been important to talk to one of
24 the last people he saw that day before he gunned down his
25 wife?

1 **A** It might have been.

2 **Q** But you did not do that?

3 **A** I did not do that.

4 **Q** But you did talk to Marion Lindsey?

5 **A** Yes, I did.

6 **Q** Now, a lot of what you testified to is based on
7 what he told you?

8 **A** That is correct

9 **Q** You don't believe he is malingering?

10 **A** That is correct.

11 **Q** But if he was or if he was lying, that would
12 affect your opinion, wouldn't you?

13 **A** If he was malingering?

14 **Q** If he was lying to you. You said there's a
15 difference between malingering and lying. I'm using the
16 word lying.

17 **A** Right. If he were lying about his symptoms,
18 that would have changed my opinion.

19 **Q** If he was lying about his behavior, would that
20 have changed your opinion?

21 **A** I was not looking at his behavior so much. I
22 was looking for signs and symptoms of mental illness.

23 **Q** You were not looking at his behavior, but you are
24 coming in to explain his behavior?

25 **A** I'm coming to explain things that I found

1 including mental illness and cognitive problems.

2 Q What was he suffering from back in 1994 when he
3 can gunned down Stanford Wilkins?

4 A I did not evaluate him at that time. I cannot
5 say.

6 Q What was he suffering from back in the year 2000
7 when he assaulted his wife at Applebee's?

8 A I did not evaluate him at that time. I can not
9 say that either.

10 Q You used the old phrase trash-in/trash-out. If
11 you got the bad information coming in, bad information is
12 going out, correct?

13 A That is correct. That's why in a forensic exam
14 you use some collateral information also because you are
15 not evaluating him as a treater in that you look for other
16 things that were going on. That is why I looked for the
17 records for when he went in the hospital and his other
18 mental health records. I was looking at things over time.
19 Whereas, if I was going to take him on as a patient, I
20 would take him where he sits.

21 Q Part of that trash-in possibly, arguably could
22 have been the fact that Jimmy never came up until the death
23 notice was served, is a fair statement?

24 A Jimmy does not really have to do with diagnosis
25 of mental illness. He is suffering from depression

1 regardless of whether he had the hallucination of the
2 imaginary friend or not. I'm not sure that that would
3 change, that would not change his neurological impairment
4 or his low IQ.

5 Q Tell me, Doctor, tell this jury what about his
6 depression makes it okay for him to gun down his wife.

7 MR. BARTOSH: Objection, Your Honor, as to the
8 form of the question.

9 THE COURT: Uh, approach the bench, please.

10 (WHEREUPON, a bench conference was held off of the
11 record.)

12 THE COURT: Sustained as to the form of the
13 question.

14 Let me see you.

15 (WHEREUPON, a bench conference was held off of the
16 record.)

17 BY MR. WILLINGHAM:

18 Q Doctor, what about his depression caused him to
19 gun down his wife?

20 A I never made the statement that his depression
21 caused him to gun down his wife.

22 Q What about his low IQ caused him to gun down his
23 wife?

24 A I did not make the statement that his low IQ
25 caused this. My testimony is that these should be

1 considered as mitigating factors.

2 Q What about his neurological impairment caused him
3 to gun down his wife?

4 A Once again, I did not state that it caused but
5 should be considered as mitigating factors.

6 Q What about his cognitive deficit caused him to
7 pull that trigger four times hitting his wife?

8 A As I said, I did not testify that these were the
9 cause. It is my testimony that these are mitigating
10 factors and should be considered in the imposition of a
11 death penalty.

12 Q Thank you.

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION

15 BY MR. BARTOSH:

16 Q Doctor, on the malingering issue, Doctor,
17 malingering if I understand it, the purpose of that is to
18 give some benefit to you?

19 A That is correct. Faking an illness to get some
20 other benefit.

21 Q Do you know of any benefit that Mr. Lindsey
22 could receive by malingering?

23 A Not that I could discern.

24 Q Okay. And you still stand by your original
25 diagnoses of cognitive deficit, depression and neurological

1 deficit?

2 **A** Yes, I do.

3 **Q** on September 18th, was Marion Lindsey functioning
4 under any mental or emotional disturbance, chronic, acute
5 or recurring?

6 **A** I believe that on September of 2002, Mr. Lindsey
7 was suffering from acute depression.

8 **Q** Thank you.

9 **RECROSS-EXAMINATION**

10 **BY MR. WILLINGHAM:**

11 **Q** But you never talked to a single soul that saw
12 him on that day?

13 **A** I reviewed notes. I did not speak to anyone
14 other than Ms. Howard who takes care of him at the
15 detention center.

16 **Q** Well, that was not the answer to my question.
17 The question was you had not talked to anyone, not one
18 single soul that saw him on the day that he murdered his
19 wife?

20 **A** That is correct.

21 **Q** Thank you.

22 **THE COURT:** You can step down, ma'am.

23 **MR. BARTOSH:** Your Honor, we ask that Dr.
24 Melikian be excused.

25 **MR. WILLINGHAM:** No objection.

1 **THE COURT:** You're excused.

2 **MR. BARTOSH:** Are you ready for the next
3 witness, Your Honor?

4 **THE COURT:** Yes, sir.

5 **MR. BARTOSH:** Virginia Lindsey.

6 **VIRGINIA LINDSEY**

7 having first being duly sworn testified as follows:

8 **DIRECT EXAMINATION**

9 **BY MR. BARTOSH:**

10 **Q** You are Virginia Lindsey?

11 **A** Virginia Lindsey.

12 **Q** Ms. Lindsey, Marion Lindsey is your son. Is that
13 correct?

14 **A** Yes.

15 **Q** How old is Marion?

16 **A** Marion is 30 years old.

17 **Q** How many children do you have, Ms. Lindsey

18 **A** I have three boys. I had four boys. I lost one
19 in a drowning.

20 **Q** Where does Marion fall in your children?

21 **A** Marion would be my third child.

22 **Q** Okay. He has two older brothers?

23 **A** Yes.

24 **Q** Really he had three older brothers at one time,
25 is that correct?

1 **A** Two older.

2 **Q** And one younger?

3 **A** One younger.

4 **Q** One of the older brothers drowned?

5 **A** Yes.

6 **Q** You also had a daughter, didn't you, Ms. Lindsey?

7 **A** Yes. I had a daughter. In 1969, she was killed
8 in a car accident at seven months old.

9 **Q** You were never married to Mr. Lindsey's father,
10 were you?

11 **A** No.

12 **Q** Did you raise Marion basically by yourself?

13 **A** Yes, I did.

14 **Q** Was there any man or male influence in your home?

15 **A** Only his Uncle Steve.

16 **Q** What is Marion's father's name?

17 **A** Leon McDowell, Senior.

18 **Q** Let's talk about how Marion grew up. You had
19 how many children in the house?

20 **A** I had four boys at the time.

21 **Q** And yourself?

22 **A** And myself.

23 **Q** The house that you lived in, how large was it?

24 **A** A two-bedroom home.

25 **Q** The boys would stay in one room and you were in

1 the other?

2 A Yes.

3 Q Okay. Would the boys have to sleep in the same
4 bed?

5 A The boys shared beds. Yes, they did.

6 Q So it was a small home?

7 A Small home. Very small.

8 Q Were you working at that time?

9 A Yes, I were.

10 A Where were you working?

11 A Howard Johnson Motel.

12 Q Okay. What were your hours there?

13 A My hours was from 8:00 in the morning until 4:00
14 in the evening.

15 Q Who would watch the children while you were
16 working?

17 A Their Uncle Steve was there with them when I
18 would go work. So I guess you could consider him watching
19 them while I was at work.

20 Q Okay. What kind of child is Marion?

21 A Marion is a very loving, sweet child. He would
22 do anything for anybody. He was a very loving child.

23 Q Do you remember some injuries Marion received as
24 a young child?

25 A Yes.

1 **Q** Can you tell the jury about the first one when he
2 was 19 months old and inhaled some kerosene.

3 **A** Yes, Marion was 19 months old. I was in the
4 kitchen doing dishes. We had a wood heater. We would
5 always start our fire with kerosene. So we had a jar
6 sitting behind the heater with kerosene in it.

7 He was crawling around the floor at that time. All
8 of a sudden, I heard a screen. When I turned around to
9 look to see why he was screaming, he had poured kerosene
10 all over his face and down his clothes. So I grabbed him
11 up to try to give him milk. I could not get the milk in
12 him fast enough. So I grabbed him up and rushed him to the
13 rescue squad.

14 **Q** You took him to the hospital?

15 **A** Yes.

16 **Q** He was treated for that?

17 **A** Yes.

18 **Q** Did anything else happen to him when he was
19 younger?

20 **A** Yes, a month later, Marion got ran over by a car
21 driven by my brother Paul Pilgrim. He always had a thing
22 with following his Uncle Steve. He thought Steve was
23 driving a car so he was going to run and go with Steve.
24 It was a bank side on the side of the road where the car
25 sit. So when Paul got in the car to back up, Marion

1 crawls up the back hill. My brother did not know he was
2 there. He backed over his head with the car.

3 **Q** Did he receive a severe head wound?

4 **A** Yes. He still have the scars in his head.

5 **Q** What happened after that? Can you tell us who
6 took him to the hospital.

7 **A** His Uncle Steve took him to the hospital. I was
8 at work at the time. So his Uncle Steve carried him to
9 the hospital.

10 **Q** He was treated for that?

11 **A** He was treated for that.

12 **Q** You know how long he stayed in the hospital?

13 **A** He came back home that night.

14 **Q** Did he have a normal childhood in the sense of,
15 how was he at school? Was he a good student?

16 **A** No, he was slow in school. He never been a good
17 student in school.

18 **Q** What kind of problems did he have at school?

19 **A** The only problem I know he had in school was a
20 fight at Junior High School with another little boy. That
21 is the only problem that I know he had at school.

22 **Q** I'm talking about educational problems. Did he
23 have problems with his studies?

24 **A** Yes. He did not study. He did not like to
25 study. He would go to school. He would come home and put

1 his books down. He did not like to study books.

2 Q All right. Was anybody there to help him study
3 or to make sure that he did his homework?

4 A No, because they was all running around to the
5 T.K. Greg Center and all that. He did not have anybody to
6 just sit down and help him with his homework.

7 Q He did not have a dad or --

8 A No.

9 Q -- someone to help him with his work?

10 A No.

11 Q He did not have an easy time in school?

12 A No, he did not.

13 Q Did he have problems with his speech?

14 A Yes, he had problems with his speech.

15 Q Did he have to go to speech class in school?

16 A Yes, he went to speech class in school.

17 Q Did he repeat any grades?

18 A Yes, he repeated the 8th grade three times.

19 Q Did he repeat the first grade?

20 A (No response.)

21 Q If you don't remember.

22 A I don't remember.

23 Q Now, your other three sons, had separate fathers,
24 right?

25 A Yes.

1 Q Could you tell us about what would happen on
2 weekends with your other boys?

3 A My other two sons, their father would always come
4 and pick them up on the weekend. He would leave Marion.
5 He did not have a father to come pick him and take him to
6 visit him for the weekend because he never did.

7 Q His father never took any interest in anything
8 about Marion?

9 A No.

10 Q How did that affect Marion? How did he react to
11 that?

12 A Marion would get very upset because he did not
13 get to go with his brothers. I always explained to Marion
14 that's their father. Their going to spend the weekend with
15 them. You have to stay with mama.

16 Q How did he react to that?

17 A He cried. He cried because he wanted to go.

18 Q At some point, how old was he when he left the
19 house?

20 A (No response.)

21 Q When he moved out?

22 A When Marion moved out of my house, I think he was
23 about 20 years old.

24 Q Do you know how old he was when he quit school?

25 A I think he was 17.

1 Q What did he do when he quit school?

2 A He went to work.

3 Q Did he help support the family?

4 A He helped. He gave me money and helped me pay
5 bills and stuff. It wasn't very much because he was not
6 making very much, but he did try to help.

7 Q When he talked to you about the fact that he did
8 not have father in house and the fact that he did not have
9 a father to do things with, did he ever talk to you about
10 that?

11 A No, he never talked me about it. But I could
12 see it in him that he wanted a father in his life.

13 Q And at some point, Marion moved out of the house?

14 A Yes.

15 Q Did you know Nell Lindsey?

16 A Yes.

17 Q Okay. Did you know when Marion first meet Nell
18 Lindsey?

19 A I don't know the exact date.

20 Q Can you estimate?

21 A I estimate it would be around '95.

22 Q '95 or '96?

23 A Uh-huh (affirmative).

24 Q All right. And when they first met, did they
25 move in with each other? Was he living with her?

1 **A** No.

2 **Q** Was he living by himself?

3 **A** No, he was living with a girl named Stephanie
4 Petty.

5 **Q** Eventually did he and Nell move in together?

6 **A** Eventually, they did.

7 **Q** And they had a child?

8 **A** They had a child.

9 **Q** Do you remember when that child was born?

10 **A** I am sure that he was born July 23rd of '95.

11 **Q** He was born before they were married?

12 **A** Yes.

13 **Q** You remember where they were married?

14 **A** I don't remember when they were married because I
15 did not know they had gotten married.

16 **Q** Marion told you afterwards.

17 **A** I heard through one of Marion's friends. Marion
18 did not tell me.

19 **Q** Then they had another child?

20 **A** Yes, they had another boy.

21 **Q** When was that little boy born?

22 **A** That little boy was born November the 26th.

23 **Q** You remember the year?

24 **A** 2002, I believe.

25 **Q** Can you describe Marion's relationship with Nell?

1 **A** The relationship with Nell was good to me. I
2 don't know what they did in their home. But all the time
3 when they was around me, it was good. And Nell, she was
4 like a daughter to me. I loved Nell as a daughter. I
5 always told Nell that she would be the only daughter-in-law
6 that I would have.

7 **Q** You never saw any of the violence or the arguing
8 that has been described here?

9 **A** I saw a little arguing between them. I never
10 saw Marion hit Nell.

11 **Q** During their relationship, did a pattern develop
12 where they would separate and then reconcile?

13 **A** Yes, they would separate. But they would go back
14 together. They would separate. They would go back
15 together. That happened several times.

16 **Q** Can you estimate about how many times?

17 **A** Approximately five.

18 **Q** And how long would the separation last?

19 **A** Not very long. About a month, maybe two months.

20 **Q** Then eventually, they would reconcile?

21 **A** They would reconcile and go back together.

22 **Q** When they would separate, would Nell take the
23 children with her?

24 **A** Yes, she would.

25 **Q** She went to her mother's house?

1 **A** Yes.

2 **Q** Marion would stay with friends or with you or who
3 would he stay with?

4 **A** Yes, he would stay with friends. He would never
5 stay with me. He would stay with friends.

6 **Q** When they would reconcile, who would initiate
7 that? Would it be Marion or would it be Nell or would it
8 be, sometimes be one or sometimes be the other?

9 **MR. GOWDY:** Your Honor, I hate to do this
10 but I have to object. I don't believe this witness
11 is going to be able to answer who is initiated
12 reconciliation.

13 **THE COURT:** Mr. Bartosh, why don't you first
14 ask her whether or not she knows.

15 **BY MR. BARTOSH:**

16 **Q** Ms. Lindsey, do you know when they got together,
17 who would approach them about getting back together?

18 **A** I don't know who approached who.

19 **Q** Okay. But that was the pattern?

20 **A** That was the pattern.

21 **Q** They would separate --

22 **A** Go back together.

23 **Q** -- and stay apart a while then back go back
24 together?

25 **A** Yes.

1 Q It would go back and forth?

2 A Yes.

3 Q What was Marion's relationship with or feeling
4 for his sons?

5 A Marion loved his sons very much. That's all he
6 talked about his sons. He always see that his kids wore
7 the best.

8 Q Did he ever tell you that he was trying to give
9 them what he never had?

10 A He told me he wanted to give them a father that
11 him and Nell neither one had never had. He did not want
12 his kids to grow without a father like him and Nell did.

13 Q Would it be fair to say that his children were
14 probably the most important thing in his life?

15 A His children were the most important thing in his
16 life.

17 Q Did he ever tell you when he was a child what his
18 feelings were for his father?

19 A Yes. He told me he feel like his father did
20 more for his other kids then he did him. He did not need
21 his father. He feel like that he loved his other kids
22 better than he did him. And he didn't want anything to do
23 with his father.

24 Q How many brothers and sisters do you have?

25 A Now, I have four brothers and three sisters.

1 **Q** Okay. Do you have one sister who is dead?

2 **A** No, I have a brother who was dead.

3 **Q** Do you have a sister named Bess Smith?

4 **A** Bessie Smith.

5 **Q** Has she ever attempted suicide?

6 **A** Yes, she have.

7 **Q** Do she suffer from any kind of mental illness?

8 **MR. GOWDY:** Your Honor, I hate to object,
9 but I'm going to have to for lack of foundation.

10 **THE COURT:** Sustained.

11 **BY MR. BARTOSH:**

12 **Q** Do you know if she has been treated for anything?

13 **A** Yes, I do.

14 **Q** What has she been treated for?

15 **MR. GOWDY:** I'm going to have to --

16 **THE COURT:** Sustained.

17 **BY MR. BARTOSH:**

18 **Q** Let me go back to, let me ask you one question
19 about when Marion was 15 and was hospitalized for attempted
20 suicide.

21 **A** Yes.

22 **Q** Did he ever describe his experiences to you?

23 **A** About the suicide?

24 **Q** About his experiences at the hospital.

25 **A** Yes.

1 Q What did he tell you?

2 A Marion told me that he was very afraid because
3 the man who was in the room with him look like Charles
4 Manson. He was very afraid.

5 Q How long did he stay in the hospital for that?

6 A He stayed in the hospital about four days.

7 Q When Marion was in school, did any of his
8 teachers ever call you and tell you that he was failing?

9 A No. Not as I can remember.

10 Q Let's go back to the incident. How long had
11 Marion and Nell, the last time, been separated?

12 A I cannot remember.

13 Q Would it be weeks or months or can you say?

14 A A few months.

15 Q Okay. During that period of time, had you
16 attempted to contact her to see your grandchildren?

17 A Yes, I did.

18 Q Were you able to see your kids or your
19 grandchildren?

20 A No, I was not.

21 Q Would she not allow you to see the grandchildren?

22 A No.

23 Q Would Marion attempt to contact her?

24 A Yes, he did.

25 Q Was that about seeing his children?

1 **A** Yes, it was.

2 **Q** All right. Was he allowed to see his children?

3 **A** No, he was not.

4 **Q** How long did that go on before the incident?

5 **A** Two months.

6 **Q** Can you tell the jury what affect that had on
7 Marion.

8 **A** It made him kind of upset because he could not
9 see his kids. His kids were always with him. It made
10 him upset that he could not be with his kids. He wanted
11 to see his kids. I don't think that he should have been
12 kept from seeing his kids.

13 **Q** Was either he or you able to call Nell or her
14 mother on the telephone?

15 **A** Yes, I called.

16 **Q** Was the phone ever blocked?

17 **A** Yes, it was.

18 **Q** About how much before this incident?

19 **A** About four days.

20 **Q** Okay. What affect during that week or so or
21 those four days, what affect did that have on Marion?

22 **A** It had an affect on him because he could not get
23 in touch with them to see his kids. He just wanted to see
24 his kids. He said mama, all I want to do is see my kids.
25 That's all I want is to see my kids.

1 **Q** Did he talk about hurting himself?

2 **A** Yes, he said if he did not get his family back,
3 he could not live any longer if he could not get his family
4 back.

5 **Q** Did you, when was the last time you saw Marion
6 before this incident?

7 **A** The last time I told saw Marion before the
8 incident, it was three days after this -- three days
9 before.

10 **Q** Had he lost weight?

11 **A** Yes.

12 **Q** How did he appear to you?

13 **A** Worried, upset.

14 **Q** Did he seem to be depressed?

15 **A** He was very depressed.

16 **Q** When did you hear about the incident?

17 **A** I heard about the incident 15 minutes after 8
18 o'clock on September 18th of 2002.

19 **Q** I am sure that you will remember that time for
20 the rest of your life?

21 **A** Yes, I will.

22 **Q** Ms. Lindsey, I know this is going to be
23 difficult. But I'm asking you if there's anything, this
24 is going to be your only opportunity to talk to the jury.
25 I would ask you if there is anything that you have to tell

1 them about Marion or about your relationship with him?

2 **A** Well, Marion is my son. I love him very much.
3 And I ask the mercy for my son not be sentenced to death.
4 I know I know that somebody else's child life was took.
5 But I don't want my child sentenced to death.

6 **MR. BARTOSH:** That's all I have.

7 **MR. GOWDY:** Your Honor, very brief.

8 **CROSS-EXAMINATION**

9 **BY MR. GOWDY:**

10 **Q** Good evening, Ms. Lindsey. My name is Trey
11 Gowdy. I just want to ask you a couple of questions.

12 **A** All right.

13 **Q** Do you know a man by the name Rod Tillus?

14 **A** Yes, I do.

15 **Q** He is an attorney here in town, right?

16 **A** Yes, he is.

17 **Q** He represented your son?

18 **A** Yes.

19 **Q** Are you familiar with a group of lawyers here in
20 Spartanburg called Legal Aid?

21 **A** Yes.

22 **Q** Did you know that you son had talked to lawyers
23 at Legal Aid?

24 **A** No, I did not.

25 **Q** Do you know whether or not your son made any

1 efforts to talk to a lawyer about getting a court order to
2 be able to see the children that he wanted to see?

3 **A.** No, I don't.

4 **MR. GOWDY:** That is all I have, Your Honor.

5 **THE COURT:** You can step down, Ms. Lindsey.

6 **BILL BURTON**

7 having first being duly sworn testified as follows:

8 **DIRECT EXAMINATION**

9 **BY MR. BARTOSH:**

10 **Q** You are Bill Burton?

11 **A** I am.

12 **Q** Do you know Marion Lindsey?

13 **A** I do.

14 **Q** Let's start out, what kind of work do you do, Mr.
15 Burton?

16 **A** I run a chemical company for a German firm.

17 **Q** Where do you live?

18 **A** Macon, Georgia.

19 **Q** Where are you originally from?

20 **A** Spartanburg.

21 **Q** Were you born here?

22 **A** No, I was born in San Diego. But I lived here
23 for the bulk of my youth.

24 **Q** How old were you when you left?

25 **A** When I went to college, I suppose I was 18.

1 **Q** Okay. You know Marion Lindsey?

2 **A** I do.

3 **Q** How do you know Marion Lindsey?

4 **A** When I was in college at the summer job working
5 for the city, I was a lifeguard at a public pool I met
6 Marion as a kid while life guarding.

7 **Q** How old was Marion when you first met him?

8 **A** Six and seven, I believe.

9 **Q** You would see him and his brothers at the pool?

10 **A** Yes, the public group pool was just behind Vic
11 Bailey near what Marion and this brothers lived on Jolly
12 Street.

13 **Q** Okay. And you and Marion and his brothers became
14 friends?

15 **A** Right. The little kids would come to the pool
16 almost every day. That was their major recreation in the
17 summer, to swim. And through swimming lessons and just
18 hanging out with the kids, I met Marion and his brothers.
19 And I guess became attached to them.

20 **Q** Okay. As a matter of fact, you taught Marion
21 how to swim, didn't you?

22 **A** I did.

23 **Q** Would you and Marion and his brothers do things
24 together?

25 **A** The kids lived in a pretty rough situation. I

1 would take them to Braves, I think it was Spartanburg
2 Braves games. No, maybe it wasn't Braves. Phillies,
3 Spartanburg Phillies games and to Burger King or, I would
4 take them occasionally to my house to go fishing in a pond
5 that we have out in the country.

6 Q That is your parent's home?

7 A Yes.

8 Q And you knew Marion when he and his family were
9 living on Jolly Street, right?

10 A Yes.

11 Q Jolly Street is back by the First National Bank,
12 is that correct?

13 A Jolly Street, their house is where I believe the
14 First National Bank is now. Near just towards Vic Bailey
15 from the Chamber of Commerce.

16 Q Would you go over to their house?

17 A I did.

18 Q To pick the kids up and take them places?

19 A Sure.

20 Q Can you describe that house?

21 A I would have to say it was desperate poverty.

22 Q Do you know how many folks were living in it?

23 A Eight or so, I believe, maybe nine.

24 Q Can you estimate the size of the house?

25 A Probably less than 1000 square feet or 1000

1 square feet maybe or less.

2 Q And the sleeping arrangements. All of the boys
3 slept in one bed?

4 A Right. Ms. Lindsey had a bedroom. Then all
5 of the children slept in the same bed. It was a neat
6 house but it was desperately poor.

7 Q That house, it does not exist anymore, does it?

8 A I believe it was condemned.

9 Q It was pulled down?

10 A Right.

11 Q What was your impression of Marion?

12 A I think Marion was a kid like many other kids
13 from poverty looking for attention. Some adult figure to
14 look up to, to do things with them. Maybe like a father.

15 Q Did you know about his situation as far as --

16 A Yes.

17 Q -- as far as his father?

18 A Yes, I went to the house many times to give him
19 clothes or presents or whatever I could.

20 Q Okay. Did you ever see any of the violence or
21 anger or -- you have heard described, you have been sitting
22 here during the trial, haven't you?

23 A Yes.

24 Q Did you ever see any of that in Marion as a
25 child?

1 **A** No, I knew Marion until he was about 20, I
2 suppose. Later on, during the period that I knew him on
3 and off for some 13 years, I guess, I never saw any of that
4 kind of behavior from him or his brothers.

5 **Q** He and his brothers would go out to your parent's
6 home?

7 **A** Yes. When they are young, of course, I took
8 them. When I was off in school or working later on as
9 they were growing up, they would go out to my house to fish
10 in our lake probably 20 times over that period, I suppose.

11 **Q** And they would interact with your parents?

12 **A** Yes, they would always call my mother for
13 permission to come and fish and then show her what they
14 caught and then head back home.

15 **Q** How was Marion towards your parents? Did you
16 ever see any of the, anything but politeness from him?

17 **A** No, never. He was the picture of politeness you
18 might say.

19 **Q** You knew him up until he was about 20?

20 **A** Yes. When he was 19, I had, of course,
21 graduated from college. I was in a position to get him a
22 job. It seems as though he contacted me. I can't remember
23 through my mother or what. I was in a position with a
24 company where I could get him a job and did so.

25 **Q** And he went to work for your company?

1 **A** Yes.

2 **Q** Okay. Do you know how long he worked for the
3 company?

4 **A** It's possible that I was transferred to another
5 location during his employment. But I believe it was a
6 year or so. Give or take.

7 **Q** He had a problem on the job, didn't he?

8 **A** (No response.)

9 **Q** Did you know about it?

10 **A** I only know about it from our discussions. I
11 believe that I was transferred to another facility while he
12 was still employed there. I don't remember the exact
13 circumstances under which he left.

14 **Q** Okay, let me ask you this, in the company that,
15 you were a plant manager for a company, right?

16 **A** Correct.

17 **Q** In the operation of that plant, would it be
18 unusual for there to be friction between supervisors and
19 employees?

20 **A** From time to time that kind of things happen,
21 sure.

22 **Q** It is not unusual.

23 **A** It was not every day. But from time to time,
24 certainly altercations between employees or management to
25 different degrees of occur.

1 **Q** It usually ended up, when there was a
2 disagreement, it usually ended up with the employee being
3 terminated.

4 **A** It usually did. Not to say that if the manager
5 was not at fault, it could be the case the other way.
6 Most often that was the case, yes.

7 **Q** I guess the thrust of my question is while it did
8 not happen every day, it certainly was not unusual?

9 **A** True.

10 **Q** This was a manufacturing facility?

11 **A** True.

12 **Q** And there was a lot of pressure to get product
13 out.

14 **A** That's correct.

15 **Q** Sometimes, tempers can run high?

16 **A** That is true.

17 **Q** Is there anything you would like to tell the jury
18 about Marion Lindsey?

19 **A** I could only say that he grew up in an abject
20 poverty without the benefit of parents like normal
21 families. I knew him until he was 20 years old
22 approximately. I never saw the kind of behavior or
23 violent behavior of any sort during that period.

24 **Q** Thank you.

25 **MR. GOWDY:** May it please the Court?

1 **THE COURT:** Yes, sir.

2 **CROSS-EXAMINATION**

3 **BY MR. GOWDY:**

4 **Q** Good evening, Mr. Burton.

5 **A** Good evening.

6 **Q** My name is Trey Gowdy. I'm with the solicitor's
7 office. I just want to ask you a couple questions.

8 **A** Yes, sir.

9 **Q** I suppose in your work at that pool and in your
10 travels to the Lindsey household, you saw quite a few
11 little kids that grew up in what you described as abject
12 property, would you not have?

13 **A** Yes.

14 **Q** Quite a few kids growing up in Spartanburg in
15 1970 that did not have a father around, weren't there?

16 **A** I suppose there are.

17 **Q** You saw some of them at the pool. These were
18 not the only --

19 **A** I did not know all of the kids. But I'm
20 certainly aware that there were a lots of kids, like Marion
21 situation that grew up without a father, yes.

22 **Q** You mentioned that up to the age of 20, you never
23 saw any episodes of violence whatsoever?

24 **A** That is true.

25 **Q** When did you learn that at the age of 20 that he

1 shot Stanford Wilkins through the windshield with a hand
2 gun?

3 A I'm sorry to say I did not learn it until I came
4 to the trial or maybe with Mr. Bartosh prior to the trial.
5 I guess I lost touch with Marion.

6 Q That is fine. I wasn't trying to trick you.
7 Something obviously changed I suppose is my point, Mr.
8 Burton, didn't it?

9 A It seems to have.

10 Q Mr. Burton, let me ask you this one final
11 question. Actually two final questions. You and I think
12 and agree that if there were a number of children in
13 Spartanburg in the 1970's that grew up poor without a mama
14 or a daddy, do we agree on that?

15 A We agree.

16 Q Mr. Lindsey was lucky to have someone like you in
17 his life that would stopped by and do things with him,
18 wasn't he?

19 A I suppose he was.

20 Q There were plenty of kids that that did not even
21 have that, did they?

22 A That is true I suppose.

23 Q And if Mr. Lindsey had called you in 2002 and
24 said I want to hire a lawyer so I can get visitation rights
25 to see my two kids, you probably would have helped him?

1 **A** I would have.

2 **Q** Thank you, Mr. Burton.

3 **REDIRECT EXAMINATION**

4 **BY MR. BARTOSH:**

5 **Q** One final question, Mr. Burton. Did Marion
6 ever ask you for anything at all?

7 **A** For money?

8 **Q** Did he ever ask you for money?

9 **A** (Shakes head negatively.) Not that I recall
10 ever I think. I might have offered it. But I don't
11 think he ever once asked me for money. Ever.

12 **Q** That is all.

13 **THE COURT:** You can step down, Mr. Burton.

14 **MR. BARTOSH:** Next witness, Your Honor?
15 Leon McDowell.

16 **LEON McDOWELL**

17 having first being duly sworn testified as follows:

18 **DIRECT EXAMINATION**

19 **BY MR. BARTOSH:**

20 **Q** You are Leon McDowell?

21 **A** I am Leon McDowell.

22 **Q** Mr. McDowell, do you know Marion Lindsey?

23 **A** Yes, I do.

24 **Q** How do you know Marion?

25 **A** He is my son.

1 Q Were you married to Mrs. Lindsey?

2 A No, I'm not married to Mrs. Lindsey. I had a
3 wife when I got Myron.

4 Q You were married at the time --

5 A I was married at the time.

6 Q -- to someone else --

7 A To someone else.

8 Q -- when Marion was born?

9 A When Marion was born. Yes, sir.

10 Q Mr. Lindsey, you and I have had a lot of
11 conversations about your role in Marion's upbringing.
12 What did you do? What part did you play in his upbringing?

13 A I really wasn't a father to Myron. I never been
14 there with him to go with him to a baseball game or to go
15 out to a movie. Like I said, I was working. As far as
16 giving him money and stuff like that, I give his mama money
17 to buy clothes. But as far as being a father to Myron, I
18 was never a father to Myron Lindsey.

19 Q You had never been a force or a factor in his
20 life?

21 A No, I have not. Like I said, I gave him money.
22 If he wanted a bicycle, I gave it to him. But you can not
23 buy love. I never really been a father to Myron.

24 Q You have always been forthright and honest about
25 that?

1 **A** Yes, sir. I told Myron, I said I do what I can.
2 When you grow up, if you become a father, it's all right.
3 If you don't, I can understand that.

4 **Q** That's not something to be proud of, is it?

5 **A** No, it's not something I'm proud of. No, sir.

6 **Q** Is it something you regret?

7 **A** Yes, sir. I regret it.

8 **Q** You would give financial support every now and
9 then?

10 **A** Yes, sir. I sure would.

11 **Q** When it came to going to school functions or
12 baseball games --

13 **A** I was never there.

14 **Q** Mr. McDowell, is there anything you'd like to
15 tell the jury?

16 **A** If they can see fit not to execute Marion maybe
17 he can benefit to his kids somehow.

18 **MR. BARTOSH:** That's all I have, Your Honor.

19 **MR. BARNETT:** I have no questions of this
20 witness, Your Honor.

21 **MR. BRENNAN:** Your Honor, I call Chris Wilkins to
22 the stand.

23 **CHRIS WILKINS**

24 having first being duly sworn testified as follows:

25 **DIRECT EXAMINATION**

1 **BY MR. BRENNAN:**

2 **Q** You are Chris Wilkins?

3 **A** Yes, sir.

4 **Q** You are related to Marion Lindsey, is that
5 correct?

6 **A** Yes, sir.

7 **Q** Tell me about your relationship with Marion
8 Lindsey.

9 **A** We were like brothers.

10 **Q** Like brothers?

11 **A** Yes.

12 **Q** How were you like brothers? What did you do?

13 **A** We hung around together. He lived with me part
14 of my life. We raised our kids practically together.
15 Just about everything, we did.

16 **Q** All right. How long have you known Marion
17 Lindsey?

18 **A** I know him all my life. We started hanging, I
19 guess, when we was around 13 or 14.

20 **Q** Did you see Marion Lindsey with his children?

21 **A** Yes, I did.

22 **Q** Tell me about his relationship with his children.

23 **A** He was very close to his kids.

24 **Q** How did you know that?

25 **A** Like I said, part of his life, part of Alex life,

1 he stayed with me.

2 Q Was he a loving father?

3 A Yes, he was.

4 Q Did he play with his children?

5 A Yes.

6 Q Was he proud of his boys?

7 A Yes, he was.

8 Q Did you know Ruby Nell Lindsey?

9 A Yes, I did.

10 Q Were there times when Ruby Nell Lindsey lived
11 with you?

12 A Yes, she did.

13 Q That was, she was living with you with Marion, is
14 that correct?

15 A Yes, sir.

16 Q Did that occur on more than one occasion or just
17 one occasion?

18 A More than one occasion?

19 Q Are you aware that during their marriage, they
20 would separate and get back together?

21 A Yes, sir.

22 Q During their marriage, did you ever see Marion
23 Lindsey inflict damage or harm to Ruby Nell Lindsey?

24 A I never did see him hit her. They argued a
25 little bit but I never did see him hit her. No.

1 **Q** Do you believe that he loved her?

2 **A** Yes, I do.

3 **Q** Did you ever hear Marion talk to himself?

4 **A** He would mumble to himself sometime. He had a
5 habit of playing with quarters or something in his hand.
6 He would be thinking and you see him maybe like chewing on
7 his tongue or whatnot and mumbling something to himself.

8 **Q** When would he do that?

9 **A** When he was thinking about something hard or
10 something was on his mind or something, something like
11 that.

12 **Q** Maybe when he was down?

13 **A** Yes.

14 **Q** When, let me ask you this. Before they separated
15 this last time, where was Marion living?

16 **A** Before they separated this last time?

17 **Q** Yes.

18 **A** With Nell and her mother.

19 **Q** At Ms. Wright's house?

20 **A** Yes.

21 **Q** Were you allowed or did you go visit with Marion
22 and Ruby at Carol's house?

23 **A** Yes, I did.

24 **Q** You know that he was living there?

25 **A** Yes, I do.

1 Q Were they getting along?

2 A Yes.

3 Q Do you believe that Marion tried hard to provide
4 for Ruby Nell?

5 A I know he tried hard to provide for his family.

6 Q Would he do whatever it took to care for them?

7 A Whatever it took to care for them.

8 Q Did you ever know Marion to be a hurtful person?

9 A Not as far as hurting anybody. If somebody mess
10 with him, that's anybody. But not just far as just
11 hurting nobody on purpose.

12 Q Okay. Is there anything you want to tell the
13 jury?

14 A Just please take in consideration the kind of
15 father he was. Please have mercy on him. I know what
16 happened was a big tragedy to everybody. But I mean he is
17 a good person.

18 Q Thank you. Please answer any questions that the
19 State may have.

20 **CROSS-EXAMINATION**

21 **BY MR. WILLINGHAM:**

22 Q Mr. Wilkins, you said you were like brothers with
23 him?

24 A Yes, sir.

25 Q If he wanted to have custody of his kids and get

1 a lawyer, you would help him, wouldn't you?

2 A I would help all I could. I have a family of my
3 own.

4 Q I'm sorry?

5 A I have a family of my own. I would help him as
6 much as I could.

7 Q You said you considered him family.

8 A Yeah.

9 Q Like a brother?

10 A Yes.

11 Q If he come to you and said I need help and want
12 to see my kids, I miss them, you would help him?

13 A I would help him.

14 Q That did not happen, did it?

15 A No.

16 Q You said you never knew him to be hurtful. Did
17 you know Myron when he was 20 years old shooting through a
18 windshield at Stanford Wilkins?

19 A Yes, I know about that.

20 Q How about in 2001 when he cold copped Nell in the
21 a parking lot of Applebee's? Did you know him then?

22 A At the time, I was staying in Greenville.

23 Q Pardon me?

24 A I knew him. But at the time, I was staying in
25 Greenville.

1 **Q** But you learned of that incident?

2 **A** Yeah. I heard of the incident.

3 **Q** But you never knew him to be hurtful?

4 **A** I never knew what happened on that situation, no.

5 **Q** Thank you.

6 **THE COURT:** You can step down, Mr. Wilkins.

7 **MR. BARTOSH:** Steve Pilgrim.

8 **THE COURT:** Go ahead.

9 **MR. BARTOSH:** Steve Pilgrim.

10 **THE COURT:** Let me speak to the lawyers while
11 Mr. Pilgrim is coming up. And we will put this on
12 the record.

13 (WHEREUPON, the following bench conference was held on
14 the record.)

15 **THE COURT:** That was the last closing argument
16 from the witness that I'm going to allow. I'm not
17 going to allow any other witnesses to answer the
18 question is there anything you want to tell the jury.
19 Okay?

20 **MR. BARTOSH:** Yes, sir.

21 (WHEREUPON, the bench conference was concluded.)

22 **STEVEN PILGRIM**

23 having first being duly sworn testified as follows:

24 **DIRECT EXAMINATION**

25 **BY MR. BARTOSH:**

1 **Q** You are Steve Pilgrim?

2 **A** Yes, sir.

3 **Q** Mr. Pilgrim, are you working now?

4 **A** No, sir, I don't.

5 **Q** Do you know Marion Lindsey?

6 **A** Yes, I do.

7 **Q** How do you know Marion Lindsey?

8 **A** He is my nephew.

9 **Q** Okay. When Marion was growing up, were you
10 living with Marion and his mother and his brothers?

11 **A** Yes, I was.

12 **Q** How long did you live there during that period of
13 time?

14 **A** I lived with him about seven years.

15 **Q** You were present when Marion had the automobile
16 accident as a child?

17 **A** Yes.

18 **Q** And you were the one that took him to the
19 hospital, right?

20 **A** Yes, I picked him up and took him to the Inman
21 Emergency Squad. Then they took him to the hospital. I
22 rode with them.

23 **Q** You stayed at the hospital with him?

24 **A** I stayed at the hospital with him.

25 **Q** And you were also present, well, I don't know if

1 you were present. But you knew about the incident when he
2 inhaled kerosene?

3 **A** That's right.

4 **Q** Mr. Pilgrim, do you suffer from any illnesses?

5 **A** Yes, sir.

6 **Q** What is that?

7 **A** High blood pressure, panic attack and anxiety
8 attack.

9 **Q** Do you have a daughter?

10 **A** Yes, I do.

11 **Q** Do she suffer from any illness?

12 **A** Yes, she do.

13 **Q** What is it?

14 **A** It's panic attacks.

15 **Q** And she is being treated for that?

16 **A** Yes, sir. She is.

17 **Q** That's all I have.

18 **MR. BARNETT:** No questions for this witness, Your
19 Honor.

20 **THE COURT:** You can step down, Mr. Pilgrim.

21 **MR. BARTOSH:** Bessie Smith.

22 **BESSIE SMITH**

23 having first being duly sworn testified as follows:

24 **DIRECT EXAMINATION**

25 **BY MR. BARTOSH:**

1 **Q** You are Bessie Smith?

2 **A** Yes, I am.

3 **Q** Ms. Smith, are you related to Marion Lindsey?

4 **A** Yes, I am.

5 **Q** What is your relationship to him?

6 **A** I married -- his aunt.

7 **Q** Did you know Marion when he was growing up?

8 **A** Yes, I did.

9 **Q** Did you live with the family or with your
10 husband?

11 **A** I lived with my husband. I was married. But at
12 one time, I was living in the house with Marion and his
13 mother.

14 **Q** Okay. Do you remember an incident in Marion's
15 childhood involving a cat?

16 **A** Yes, I do.

17 **Q** Would you tell us about that?

18 **A** Marion had a little old black and white cat. It
19 wasn't really a cat. It was a kitten. It was small.
20 Marion was crazy about this kitten. He just took a liking
21 to it. And one day, my brothers took the cat and threw it
22 in the heat without his knowledge. It hurt him for them to
23 throw his cat in the heat. Marion was very hurt about
24 that. And he talked about it for a long time too. When
25 you do things like that to a child, it tends to --

1 **MR. BARNETT:** Your Honor, I'm going to object.

2 **THE COURT:** Sustained. Sustained.

3 Ma'am, you can tell what happened. But you don't
4 need to be putting any kind of characterization on it.

5 **BY MR. BARTOSH:**

6 **Q** Ms. Smith, did you attempt suicide?

7 **A** Yes, I had a --

8 **MR. BARNETT:** Your Honor, I --

9 **THE COURT:** Sustained.

10 **MR. BARNETT:** -- don't understand the relevance
11 of this.

12 **THE COURT:** Sustained.

13 **MR. BARTOSH:** That's all I have, Your Honor.

14 **MR. BARNETT:** I have no questions for this
15 witness.

16 **THE COURT:** You can step down, ma'am.

17 Let me do this. We've been at this for a little
18 over an hour. It's a good time to take a break.

19 Ma'am, I'm sorry to have brought up here. Would
20 you go back to your seat for a minute please.

21 We will take a short break. And we will be back
22 in about 10 or 15 minutes.

23 (WHEREUPON, the jury exits at about 5:59 p.m.)

24 **THE COURT:** I realize that the scope of relevance
25 is greatly expanded during the penalty phase of the

1 trial but I don't see how the fact that this aunt of
2 Mr. Lindsey's has at one point in time committed
3 suicide has a sufficient connection to this penalty
4 phase to become relevant.

5 There's probably not anybody in this courtroom
6 who doesn't have somebody in their family who hasn't
7 attempted suicide. The same goes for the panic
8 attacks. And I assume that if there was something of
9 that nature in the future, that will be objected to
10 and that will be the basis of my ruling to sustain the
11 objection. And if you want to discuss that with me,
12 if you think I'm mistaken about that, I would like to
13 hear about that now.

14 **MR. BARTOSH:** Well, Your Honor, just for the
15 record to protect our objection. We feel the
16 relevance is to show that there is a strong string of
17 mental illness that runs through the family. They
18 have attacked the validity of Dr. Melikian's
19 diagnosis.

20 **THE COURT:** Well, then you have given me
21 additional basis for sustaining the objection. You
22 are then seeking to introduce a lay diagnosis of
23 mental illness to support Dr. Melikian's opinion of
24 mental illness. I don't believe you can do that. I
25 believe that any diagnosis even in the penalty phase

1 has got to be properly substantiated as an opinion.

2 **MR. BARTOSH:** Well, Your Honor, as I say out of
3 abundance of caution.

4 **THE COURT:** Well, I just want to make sure I
5 haven't missed something.

6 **MR. BARTOSH:** No, sir. You have covered it
7 all.

8 **THE COURT:** All right.

9 **MR. BARTOSH:** Out of abundance of caution, we
10 would respectfully object to your ruling on that.
11 (WHEREUPON, a short recess was taken at approximately
12 6:02 p.m.)

13 (WHEREUPON, the Court resumed at approximately 6:26
14 p.m.)

15 **THE COURT:** Bring in the jury.

16 **MR. BARTOSH:** Your Honor, do you want to do
17 the --

18 **THE COURT:** Hold on a minute. Close that door
19 please.

20 Okay. Mr. Bartosh, it is my understanding that
21 you think this is the appropriate time for me to talk
22 to Mr. Lindsey as to whether or not he wishes to
23 testify in the sentencing phase of the trial?

24 **MR. BARTOSH:** That is correct, Your Honor.

25 **THE COURT:** All right. Mr. Lindsey, raise your

1 right hand please.

2 (WHEREUPON, Mr. Lindsey was duly sworn.)

3 **THE COURT:** All right. Mr. Lindsey, I know we've
4 been over this before. Do you recall our discussion
5 on Friday about your right to testify, your right to
6 remain silent? Do you recall that?

7 **MR. LINDSEY:** I do.

8 **THE COURT:** Do you still understand everything
9 about the discussion that we had?

10 **MR. LINDSEY:** Yes, I do.

11 **THE COURT:** Now, you recall that you have the
12 right under the Fifth Amendment of the United States
13 Constitution to remain silent and that no one can make
14 you testify in this trial. Do you understand?

15 **MR. LINDSEY:** Yes, I do.

16 **THE COURT:** You understand also that you have the
17 right to testify in this sentencing phase?

18 **MR. LINDSEY:** I do.

19 **THE COURT:** And you heard me say at least once
20 that the things that you could, that there are a lot
21 more you can say during this phase of the trial. I
22 say the scope of relevance is broad. But in words
23 that might be more clear to you, you can say a lot
24 more or a lot of different things if you want to
25 testify during this phase. You understand?

1 **MR. LINDSEY:** Yes, sir.

2 **THE COURT:** All right. Just like in the guilt
3 phase of the trial, if you decide not to testify, then
4 I will instruct the jury that you have a
5 constitutional right to remain silent and that they
6 can not hold that, the exercise of that right against
7 you. If you choose to testify, then you are like any
8 other witness. You are subject to cross-examination
9 on any subject that might be relevant to your
10 testimony. You understand that?

11 **MR. LINDSEY:** Yes, sir.

12 **THE COURT:** Now, just like I told you on Friday,
13 you should consult with your lawyers and you should
14 consult with family or anybody else that you want to
15 consult with. But in the end, the decision as to
16 whether or not you wish to testify comes down to it
17 being your decision. You must make the decision. You
18 understand that?

19 **MR. LINDSEY:** Yes, sir.

20 **THE COURT:** You have any question that you want to
21 ask me or any question that you want to ask your
22 lawyers about your decision as to whether or not to
23 testify?

24 **MR. LINDSEY:** No, sir.

25 **THE COURT:** Keep in mind that --

1 Mr. Bartosh, you have talked to him separately
2 and advised him separately about his decision to
3 testify in this phase as opposed to his decision not
4 to testify in the guilt phase?

5 **MR. BARTOSH:** I have, Your Honor. I told him
6 that this was a separate proceeding and he has the
7 same rights as he does in the first half.

8 **THE COURT:** Right. And you, of course, went over
9 with him the fact that the decision is different in
10 the guilt phase if he had testified. The jury would
11 have found out about the ABWIK conviction and some
12 other convictions perhaps. But now they already know
13 about that. So the factors that he weighs in making
14 that decision are different now then they were in the
15 guilt phase.

16 **MR. BARTOSH:** Yes, sir.

17 **THE COURT:** And he understands all of that?

18 **MR. BARTOSH:** He does.

19 **THE COURT:** And that's true, Mr. Lindsey, you do
20 understand all of that?

21 **MR. LINDSEY:** Yes, sir.

22 **THE COURT:** Now, let me also say this, Mr.
23 Lindsey. We had a discussion on Friday as to whether
24 or not you wish to address the jury in the form of
25 closing argument. And you said that you did not then

1 but that you expected to want to address the jury at
2 the end of the sentencing phase?

3 **MR. LINDSEY:** And I do.

4 **THE COURT:** You do want to address the jury?

5 **MR. LINDSEY:** Yes, I do.

6 **THE COURT:** So we will do that tomorrow morning.

7 But I want to make sure that you understand that when
8 you address the jury, you will not be permitted to
9 testify.

10 **MR. LINDSEY:** Yes, sir. I understand that.

11 **THE COURT:** You can argue concerning the evidence
12 that's already in the record. But if you want to
13 testify, your time to testify is now. So in other
14 words, I'm sure you understand this from your
15 conversations with Mr. Bartosh, if there's something
16 that you want to tell the jury in the way of facts or
17 circumstances or anything about you that has not
18 already been testified to, the only time for you to do
19 that is now. You understand that?

20 **MR. LINDSEY:** Yes, sir.

21 **THE COURT:** If there's something that's already
22 been testified to by another witness or if there's
23 something in the record then you can talk about that
24 in your closing argument.

25 **MR. LINDSEY:** Do you want to examine this, Your

1 Honor, what I'm going to read?

2 **THE COURT:** No, sir. I don't. I simply want to
3 make sure that you understand that you are not able to
4 testify when you make your closing argument. I simply
5 want to make sure that there was no confusion. I
6 don't want you to think that you will be allowed to
7 testify and that's why you are not testifying today.

8 **MR. LINDSEY:** Okay.

9 **THE COURT:** All right. Now, do you want any time
10 to talk to your lawyer about your decision not to
11 testify?

12 **MR. LINDSEY:** No, sir. We already discussed it.

13 **THE COURT:** And you are ready to make your
14 decision?

15 **MR. LINDSEY:** Yes, sir.

16 **THE COURT:** What is your decision?

17 **MR. LINDSEY:** I don't want to testify. I just
18 want to address the jury.

19 **THE COURT:** All right. Mr. Bartosh, are you
20 satisfied that he understands the difference between
21 those two?

22 **MR. BARTOSH:** I am, Your Honor. We've gone
23 over that.

24 **THE COURT:** All right. Bring in the jury.

25 I find that his decision not to testify is made

1 voluntarily and knowingly and intelligently.

2 (WHEREUPON, the jury enters at approximately 6:31
3 p.m.)

4 **THE COURT:** Mr. Bartosh?

5 **MR. BARTOSH:** Your Honor, the defense would
6 rest.

7 **THE COURT:** Is there going to be any reply
8 testimony from the State?

9 **MR. GOWDY:** No, there is not, Your Honor.

10 **THE COURT:** All right. Ladies and gentlemen, you
11 have now heard all of the testimony and the evidence
12 that you will hear in this phase. I have some matters
13 of law that I need to take up with the lawyers. That
14 could take a little while. Given the hour of 6:25, I
15 have decided that we will resume tomorrow morning at 9
16 o'clock with closing arguments. I will charge you on
17 the law. Then you will have the case to begin your
18 deliberations some time around mid-morning.

19 So I'm going to send you back to the hotel now.
20 Please have a very nice night. Remember the
21 instructions that you have heard repeatedly throughout
22 this week. You may not discuss this case at all. We
23 look forward to seeing you all in the morning.

24 (WHEREUPON, the jury exits at approximately 6:33 p.m.)

25 **THE COURT:** All right. I want to talk for a

1 second about one matter that was brought up back in my
2 office. That is the placement of security officers in
3 the courtroom when Mr. Lindsey gives his remarks to
4 the jury.

5 Captain, is there anything you want to say about
6 that? I was planning on putting Carl over here in the
7 chair that Mr. Scruggs is sitting in.

8 Any objection to that, Mr. Bartosh?

9 **MR. BARTOSH:** No, sir.

10 **THE COURT:** And I'm sure there is no objection
11 from the State?

12 **MR. GOWDY:** There is none, Your Honor.

13 **THE COURT:** All right. Why don't we just, for all
14 of tomorrow so that it won't look conspicuous, Carl,
15 why don't you sit over there in that chair that Mr.
16 Scruggs is in.

17 All right. We need to talk about the charge.
18 Any special requests? Since I have this in my mind,
19 let me mention it. Mr. Lindsey offered me to look at
20 the remarks that he was going to make, I don't know if
21 they were typed out or whatever. But if they are, it
22 certainly would be helpful if you have advised him on
23 what he can and can't say so that we can avoid having
24 to interrupt his argument with an objection.

25 **MR. BARTOSH:** I have, Your Honor.

1 **THE COURT:** All right.

2 **MR. BARTOSH:** Your Honor, as to the jury
3 charge, are you ready?

4 **THE COURT:** I'm ready.

5 **MR. BARTOSH:** We would ask that the Court
6 charge evidence of prior bad acts or convictions not
7 be used to prove the aggravating circumstance but must
8 be limited to character.

9 **THE COURT:** Well, I was -- I will do that. I have
10 structured it slightly differently to say that the
11 only aggravating circumstance is the one that we've
12 been discussing and specifically they can not consider
13 any prior convictions as an aggravating circumstance.
14 Then explain of course the burden of proof. And if
15 they don't find beyond a reasonable doubt the
16 existence of an aggravating circumstance, they stop
17 right there and their deliberations are over.

18 **MR. BARTOSH:** Yes, sir.

19 **THE COURT:** I was going to then say that if they
20 do find the existence of the aggravating circumstance
21 beyond a reasonable doubt then they can consider all
22 of the other evidence in the record in deciding what
23 punishment to impose with specifically telling them
24 that the prior convictions are limited to character.
25 Is that okay?

1 **MR. BARTOSH:** Yes, sir.

2 **THE COURT:** All right.

3 **MR. BARTOSH:** Also, Your Honor, we ask that the
4 Court charge that following mitigating circumstances,
5 the murder was committed while the defendant was under
6 the influence of mental and emotional disturbance.

7 **THE COURT:** Wait a minute.

8 **MR. BARTOSH:** That's number two, Your Honor.

9 **THE COURT:** All right.

10 **MR. BARTOSH:** And number seven, the age or
11 mentality of the defendant at the time of the crime.

12 **THE COURT:** All right.

13 **MR. BARTOSH:** And also the non-statutory
14 mitigators charge.

15 **THE COURT:** Okay.

16 **MR. BARTOSH:** That would be all, Your Honor.

17 **THE COURT:** Okay. Anything from the State?

18 **MR. GOWDY:** Your Honor, I don't think two is
19 appropriate and seven to the extent that it uses the
20 word mentality. I frankly am not sure what the
21 difference between two and seven is. But I would
22 think out of abundance of caution, we would have no
23 objection regarding seven.

24 **THE COURT:** Okay.

25 **MR. GOWDY:** And of course we want statutory

1 aggravators.

2 **THE COURT:** All right. I am going to have the
3 charge available for you tonight before I leave. And
4 if you would like me to, I will be happy to email it
5 to you.

6 **MR. BARTOSH:** Yes, sir.

7 **THE COURT:** So that you can look at it and make
8 sure that you don't have any objections or give you
9 time to think through whether or not you have an
10 objection. So if you give me the designated email
11 address for both sides, I'll be happy to email it.

12 Approximately how long, Solicitor, do you think
13 your argument will take?

14 **MR. GOWDY:** About 30 minutes, I believe, is
15 generally what it takes.

16 **THE COURT:** All right. I'll give you 15 minutes.

17 **MR. GOWDY:** Thank you, Your Honor. I should
18 have asked for an hour. I'd like to ask you for an
19 hour now.

20 **THE COURT:** All right. Since you have asked for
21 an hour, I will give you an half hour.

22 **MR. GOWDY:** Thank you, Your Honor.

23 **THE COURT:** We were joking in the back about that
24 being the model. We both learned to ask for twice
25 what you need.

1 Mr. Bartosh?

2 **MR. BARTOSH:** Somewhere between 30 minutes and
3 45 minutes.

4 **THE COURT:** And let me be clear. I'm just
5 curious. I just kind of wanted that information to
6 plan out the morning. I'm not limiting either one of
7 you. I trust both of you will get it done as
8 efficiently as is necessary. So 30 to 45 minutes you
9 think? Do you have any idea about the time that it
10 will take Mr. Lindsey to do his?

11 **MR. BARTOSH:** Less than 10 minutes. Probably
12 less than five.

13 **THE COURT:** Okay. Then we will go Solicitor, then
14 y'all decide in the morning or do you know which one
15 is going to go first now?

16 **MR. BARTOSH:** No, we need to talk about that.

17 **THE COURT:** All right. Anything else y'all want
18 to talk about tonight?

19 **MR. GOWDY:** Not from the State, Your Honor.

20 **MR. BARTOSH:** You want to discuss the juror?

21 **THE COURT:** Uh, I'm not ready to rule yet but I've
22 read those cases. I'm pretty satisfied that there is
23 not any problem with that juror. But I was going to
24 hold off on ruling until I have had a chance to think
25 about it over night.

1 **MR. BARTOSH:** Okay. That will be everything
2 from the State, I mean, from the defense.

3 **THE COURT:** All right. We'll be in recess until
4 tomorrow morning. We will be ready to begin closing
5 arguments at 9:00. I'm going to be prompt about it.
6 And I will be here at least by 8:00. If there's
7 anything y'all need to take up whether it relates to
8 the charge or the arguments or anything, bring it to
9 my attention early enough for us to be done discussing
10 it before 9 o'clock. All right. See you tomorrow.

11 (WHEREUPON, the Court adjourned at approximately 6:41
12 p.m.)

13 (WHEREUPON, the Court resumed on May 24, 2004 at
14 approximately 9:04 a.m.)

15 **THE COURT:** All right. Mr. Bartosh.

16 **MR. BARTOSH:** Your Honor, I been over your
17 instructions for the jury. What we would ask you is
18 there is no doubt that this is a public place. We
19 would ask for a definition of what a public place is.
20 I don't believe there's any testimony that this was a
21 public place.

22 **THE COURT:** What do y'all want me to tell them
23 that a public place is?

24 **MR. BARNETT:** Well, that a public place is a
25 place for which the general public has a right to

1 resort. Not necessarily a place run solely to the
2 uses of the public but a place which is a public or
3 prime place of business by many persons and usually
4 accessible to the neighboring public.

5 **THE COURT:** Where did Lockclair happen?

6 **MR. GOWDY:** On a street, Your Honor, if I
7 remember correctly.

8 **THE COURT:** In front of a private residence?

9 **MR. GOWDY:** In a front yard, yes, sir.

10 **THE COURT:** Pass that page up. Do you have any
11 objection to that definition?

12 **MR. BARTOSH:** Is that South Carolina Law, Your
13 Honor?

14 **MR. GOWDY:** I don't think that is out Black.

15 **MR. BARTOSH:** I was informed also, Your Honor,
16 that the case law does cite that definition in South
17 Carolina.

18 **THE COURT:** Well, now, as with so many places
19 where you find the law, a public place is defined by
20 six or eight different ways in this one definition.
21 So I will tinker with it for a minute and come up with
22 one way of defining a definition and I will show it to
23 you and see if you have any objection.

24 **MR. BARTOSH:** Okay, sir. The other, uh, the
25 other issue is --

1 **THE COURT:** Let's go back to the jury charge.
2 You've had a chance to review the entire printed
3 charge that I gave you?

4 **MR. BARTOSH:** I have, Your Honor.

5 **THE COURT:** You have no objection other than that
6 one omission?

7 **MR. BARTOSH:** Yes, sir.

8 **THE COURT:** There is nothing in the charge that is
9 objectionable?

10 **MR. BARTOSH:** No, sir.

11 **THE COURT:** And other than the definition of
12 public place, there is nothing else that you want in
13 there?

14 **MR. BARTOSH:** No, sir.

15 **THE COURT:** All right. From the State?

16 **MR. GOWDY:** Nothing, Your Honor.

17 **THE COURT:** About the charge?

18 **MR. GOWDY:** We have reviewed it. We've had
19 nothing to add or subtract.

20 **THE COURT:** All right. Mr. Bartosh.

21 **MR. BARTOSH:** Your Honor, the next issue I
22 guess, if you want to deal with the issue of the
23 juror.

24 **THE COURT:** Okay. Any further argument on that or
25 any more law you want to give me?

1 **MR. BARTOSH:** Your Honor, you -- the cases that
2 we found were the same ones that you cited yesterday.
3 Rudy versus Anderson which is a 1940 case and Stone
4 versus the City of Florence which is a 1943 case. And
5 basically, I think what they stand for is that a juror
6 may not perform an experiment, that is, testimony and
7 evidence outside of the trial.

8 Stone describes an experiment. They go the
9 dictionary. It's a trial or special test made to
10 confirm or disprove something doubtful. That's on our
11 page three. I don't know whether that would be yours.
12 So I think that's the holding of the case. If a juror
13 performs an experiment, it's improper.

14 The one in Rudy where they talk about there was a
15 case where, I think it was an escape case. They took
16 the jurors out to the jail. The guy had a hammer and
17 knocked a hole in the wall and got out. They went up
18 to look at it and several of the jurors picked up the
19 hammer and started hitting on the side of the
20 building. They held that was improper and they set
21 aside the verdict.

22 What I would respectfully request, Your Honor, is
23 basically that what that juror did was conduct an
24 experiment under that definition. A trial of special
25 test made to affirm or disprove something doubtful.

1 What he was attempting to determine would be the
2 distances. I would respectfully suggest that that is
3 an experiment. And as an experiment, it is improper.
4 We would say that the only remedy that I can see would
5 be to replace him with an alternate.

6 **THE COURT:** All right. Thank you. I think
7 our mutually finding those cases have made it obvious
8 that nothing the juror did is improper under the law.
9 And I don't really need to explain my answer in
10 denying the motion to strike the juror. All the
11 juror did was to observe. There was nothing that the
12 juror did where the results could be varied. The
13 results of what the juror, everything that we heard
14 that the juror did, the results are going to be what
15 they are.

16 Whereas in the case where they had thrown the
17 hatchet up against the wall, that is something the
18 juror did to see what happens. It could be variable.
19 In other words, if the juror did that experiment in
20 one way, the result might come out a certain way. If
21 the juror did that experiment a different way, it
22 might have come out a different way. If did the same
23 way twice, it might come out a different way.

24 Same with the experiment in the Stone case where
25 the juror asked the sheriff to drive 35 miles and hour

1 around the curve to see what happens. It is a
2 totally different situation. I deny the motion.

3 **MR. BARTOSH:** Your Honor, once again --

4 **THE COURT:** You don't need to accept. I
5 think you are covered.

6 **MR. BARTOSH:** Okay. There's one other item,
7 Your Honor, that we had a brief discussion about.
8 Mr. Lindsey wishes to address the jury. We've
9 reviewed his statement that he was going to read to
10 the jury. Overnight, he added a very brief addition
11 to it. I have read it.

12 **THE COURT:** Let me stop you right there. I
13 did not require that you let me see that or that you
14 discuss that or that you reveal that in any way before
15 he gives his closing statement. However, if in order
16 to avoid the possibility of his train of thought being
17 interrupted by an objection or his being embarrassed
18 by an objection on your just not wanting to have an
19 objection, if you want me to look at it, then I will
20 be glad to look at it.

21 If the State would allow me to do it ex parte, I
22 will do it ex parte. I am not going to require
23 anything here. I will do what you want me to do in
24 terms of looking at that statement.

25 **MR. BARTOSH:** Thank you. Your Honor, in

1 discussing it with Mr. Lindsey, he indicates that he
2 does not want to run the risk of being interrupted.
3 So we would respectfully ask the Court if you would
4 review it ex parte.

5 **MR. BARNETT:** Your Honor, the State agrees with
6 that request.

7 **THE COURT:** All right. Pass it up. Pass up
8 the specific portion that you want me to review.

9 **MR. BARTOSH:** Your Honor, it is handwritten on
10 his statement. It is that portion right there.

11 (WHEREUPON, the Court reviewed the document.)

12 **THE COURT:** Just the handwritten part is all
13 you want me to look at?

14 **MR. BARTOSH:** Your Honor, I have now informed --

15 **THE COURT:** Let me just look at it.

16 **MR. BARTOSH:** All right. I will allow it.

17 **MR. BARTOSH:** Okay, sir. There's one
18 point. That paragraph right at the top.

19 (WHEREUPON, the Court reviewed the document.)

20 **THE COURT:** The only thing in here is that
21 there may be some statements that are not supported by
22 the evidence.

23 **MR. BARTOSH:** Yes, sir.

24 **THE COURT:** Wishing that I do have perfect
25 recall of all the evidence, I don't. Let me --

1 (WHEREUPON, the Court reviewed the document.)

2 **THE COURT:** I suspect that that is not
3 supported by the evidence.

4 (WHEREFORE, a bench conference was held off of the
5 record.)

6 **THE COURT:** Here is where we are. I have
7 looked at it. I have given you an indication of how
8 I see it. I am not saying that he cannot say that.

9 **MR. BARTOSH:** Yes, sir.

10 **THE COURT:** You take the information, you take
11 my response and you advise your client based on that.
12 If you want to make some sort of, I just have to add,
13 that is not a ruling.

14 **MR. BARTOSH:** Yes, sir. I understand.

15 **THE COURT:** Even so, if you want to make an
16 offer proof about it, you can do it.

17 **MR. BARTOSH:** Okay, sir. Can we just discuss
18 that with our client?

19 **THE COURT:** Yes. One more thing and then I'm
20 going to step out of the courtroom and give you a
21 chance to consult with your client. In the guilt
22 phase, you introduced into evidence State's Exhibit 21
23 and 21(a). You stopped the publication of those
24 exhibits at a certain point. How do we stand now on
25 the admission of that entire exhibit? What is the

1 State's position?

2 **MR. GOWDY:** Your Honor, we were discussing
3 that this morning. I think the most cautious
4 position for the State to take is that we only
5 introduced that portion of the tape that we actually
6 played for the jury.

7 I am prepared in fact this morning to stop the
8 tape again where I did in the guilt phase and go
9 through the same process if the jury wishes to hear
10 the tape or the CD to just keep track of where the
11 tape ends. In other words, I don't have confidence
12 that we admitted the rest of the document. In any
13 event to avoid that uncertainty, I'm not going to go
14 anything past what I played in the first stage.

15 **THE COURT:** I assume you have no objection to
16 that, Mr. Bartosh.

17 **MR. BARTOSH:** No objection.

18 **THE COURT:** All right. That is good enough.
19 You all have also looked at the forms that I gave you?

20 **MR. BARTOSH:** Yes, sir.

21 **THE COURT:** The verdict forms?

22 **MR. BARTOSH:** Yes, sir.

23 **THE COURT:** And they are approved then?

24 **MR. BARTOSH:** Yes, sir.

25 **THE COURT:** We will be in recess until you let

1 me know that you already.

2 **MR. BARTOSH:** Thank you, Your Honor.

3 **THE COURT:** Until you let me know that you are
4 ready, then we will begin.

5 (WHEREUPON, a short recess was taken at approximately
6 9:16 a.m.)

7 (WHEREUPON, the Court resumed at approximately 9:33
8 a.m.)

9 **THE COURT:** You ready?

10 **MR. BARTOSH:** Yes, sir.

11 **THE COURT:** All right. Solicitor's going to
12 go first. And then you two will decide who goes first
13 between the two of you.

14 **MR. BARTOSH:** Mr. Lindsey will go first, Your
15 Honor.

16 **THE COURT:** All right.

17 **MR. BARTOSH:** We have discussed that.

18 **THE COURT:** You and Mr. Lindsey have?

19 **MR. BARTOSH:** Yes, sir.

20 **THE COURT:** I don't know when we will take a
21 break. But we will certainly take a break before I
22 charge.

23 Bring in the jury.

24 (WHEREUPON, the jury enters at approximately 9:34
25 a.m.)

1 (WHEREFORE, a bench conference was held off of the
2 record.)

3 **THE COURT:** Good morning, ladies and gentlemen.
4 We are now ready to begin the closing arguments phase
5 of the second phase of the trial. We will hear from
6 the Solicitor first.

7 **MR. GOWDY:** May it please court, Your Honor?

8 **THE COURT:** Yes, sir.

9 (WHEREUPON, State's Exhibit 21 was played.)

10 **MR. GOWDY:** Ladies and gentlemen of the jury, this
11 is the last time anyone from the State of South
12 Carolina stands before you in this trial. I would be
13 remiss if I do not thank you just like I did in the
14 guilt phase for sacrificing your service. It was a
15 week ago today that we met in this courtroom. We
16 began the process of being qualified to serve on this
17 jury.

18 You stayed a week in a hotel room and a courtroom
19 away from friends, family and loved ones. I think I
20 speak on behalf of everybody involved in this case.
21 We thank you for your service.

22 You have found this defendant guilty of murder.
23 Now is the time to settle the proper punishment for
24 that crime. And a week ago, you began by sitting in
25 this chair right here where so many witnesses have

1 sat. You told the State and you told the defense and
2 you told the Court that you can give death if you
3 thought that was appropriate sentence and you could
4 give life if you thought that was the appropriate
5 sentence and that you would listen with an open mind
6 and fairly consider both and that you would do what
7 you thought was right.

8 Now comes the time to decide what was right for
9 that crime that you just solved in this case. There
10 are at least three things that you are entitled to
11 consider. I know that it is not easy to sit in
12 judgment of your fellow man. I know that. It is
13 not easy to try pass judgment issues of death. I
14 cannot think of anything more difficult.
15 Nevertheless, that is your task in this case.

16 There are at least three things that you are
17 permitted to consider. I am going to talk about
18 those in just a second. First, I want to tell you
19 that all murder cases are not the same. That is a
20 factual statement. That is a legal statement.
21 Legally, for a case to be eligible for the death
22 penalty, there has to be an aggravating circumstance.

23 The State of South Carolina have alleged in this
24 case that the offender Marion Lindsey by his act of
25 murder knowingly created a great risk of death to more

1 than one person in a public place by means of a weapon
2 or device which normally would be hazardous to the
3 lives of more than one person. So I will begin this
4 morning in talking about the State's aggravator.

5 There are three elements. Public place. I
6 think can scarcely think of anything more public than
7 the parking lot of a government building, a public
8 entity, a police station where citizens can go and
9 come as they like, as they choose for the purpose that
10 they want. There is a back parking lot of this
11 courthouse. There is a back park lot of the
12 Sheriff's Department. There is a back parking lot of
13 a municipal police station like Inman. It is a
14 public parking lot.

15 If you are like me and you were growing up before
16 video games and other things like that, you have
17 played a game called tag. I remember playing it with
18 my three sisters. When we played that, there would
19 always be a place that you can go and be safe. We
20 called it base. When you got to base, people left
21 you alone. They could not tag you. A police station
22 is base. It is base for the entire public. There
23 can be no serious discussion about whether the back
24 parking lot of a police station is a public place.

25 So then we move to a gun. Is a gun capable of

1 killing more than one person? It is hard to imagine
2 a weapon more commonly used to kill more than one
3 person than a gun. This defendant had a gun. He
4 had ten bullets. Is that capable of the killing than
5 one person? The issue is not whether or not he did.
6 The issue is is it capable of doing that. And the
7 answer is a resounding yes.

8 Then we come to the crux of the matter, did this
9 defendant on April, September 18th 2002, did he create
10 a great risk of danger to anyone other than Nell
11 Lindsey. We know what he did to her. You have seen
12 the car. You have touched the car. You have looked
13 in and seen the dimensions in the back seat. If you
14 study that picture, you will see that five foot seven
15 or five foot eight Nell Lindsey took up her share of
16 that back seat.

17 You've got a car seat. You know it took up its
18 share of that seat. Then you've got to make room for
19 a nine-year-old girl in the middle. You think back
20 where that bullet hole is. You think back to her
21 testimony. She was asleep on the arm of Nell
22 Lindsey. When those bullets started firing and you
23 heard her screams just a few moments ago, she ducked
24 her head or she tried to under her sister's car seat.

25 You imagine for a minute if she did the opposite,

1 if she went from the car seat to Nell's shoulder.
2 She would have passed exactly where that bullet
3 passed. Imagine if she had done what we tell our
4 kids to do, sit up straight. She would be dead.

5 I don't have to prove to you that more than one
6 person was injured. She was. She was cut, she was
7 injured physically. She was injured psychologically.
8 I don't have to prove that to you. I have to prove
9 to you that he created a risk by shooting into a car
10 that had five people in it.

11 Tinted windows and he knew that two of those
12 people in that car were children. He knew it. One
13 of them sat up and said Hi, Uncle Ron. He was told
14 the other one was asleep in the back. And he shot
15 through the back window. Then he walked around to
16 the side. And he fired two bullets in the direction
17 of two children.

18 When the defense stands up and tells you that
19 these were point blank shots that really were not
20 going to endanger anybody else you think back to where
21 that bullet hole is in the back seat. You think back
22 to the fact that that is the same man they want you to
23 believe tried to shoot himself. Well, he missed them
24 and he missed when he shot at Nell. And a bullet went
25 straight through the trunk. And it could have gone

1 through a little girl's head or her heart. That is
2 all I have to say on the State's aggravator.

3 It is before you beyond a reasonable doubt. I'm
4 not even going to discuss Benny Godfrey, the police
5 officer, the sixth person in the parking lot who
6 testified he had the gun pointed at him. This is a
7 public place. This is a weapon capable of killing
8 more than one person. And he endangered the lives of
9 others. The State has met its burden on an
10 aggravator.

11 So now we come to what is the proper sentence for
12 what happened on September the 18th, 2002. What is
13 the right sentence for this defendant? There are
14 three things that you can consider. You can consider
15 the circumstances and the context of the crime. You
16 can consider the character of the defendant. You can
17 consider the impact that Nell Lindsey's death has had
18 on others.

19 You know, for the first day of this trial, I bet
20 most of y'all had no idea what Nell Lindsey looked
21 like. You had no idea because we could not show you
22 her face. That is the way the justice system works.
23 The guilt phase is not about the victim. It is about
24 him. Well, I'm tired of talking about him. I want to
25 talk about her. We'll get to him in a minute.

1 Let's talk about Nell Lindsey who was a loving
2 mother by everyone's knowledge. She not only loved
3 her children, she loved other people's children. She
4 taught day care. I cannot help but think as I saw
5 her in the back seat of that car that even as she is
6 dialing 911 in fear for her safety, she's got somebody
7 else's child laying on her shoulder. She was a
8 loving, good kind person.

9 She was industrious. She worked. She had a
10 nursing uniform on the night she was shot. She
11 worked in a day care, a nursery. Her mom, her daddy,
12 her adopted sister Sharon, her best friend Celeste
13 Nesbitt have all created a picture of you, of a woman
14 who was independent and strong at one point in her
15 life until Myron Lindsey walked into it.

16 Then because she wanted a father for children she
17 put up with being called a bitch and being hit in the
18 face, being slapped on family vacation. She listened
19 as one of her sons was called something I am not going
20 to repeat to you. And she listened and watched as
21 another son was given beer at the age of one.

22 Her father told you it was because she wanted a
23 dad for her boys. We can look back in retrospect and
24 say that ain't the kind of dad anybody needs. But
25 she wanted a dad for her sons. She was a good, kind

1 woman. And she did not deserve to die like that,
2 slumped down in the back seat of a friend's car on the
3 phone with a stranger from 911 trying to get that man
4 to finally follow a court order that told him to leave
5 her the hell alone. She did not deserve to die like
6 that. Not on his terms.

7 You know we live in a culture that so-called full
8 of death. It is in the movies. It is in the music.
9 It is in the video games. It is everywhere.
10 Sometimes we become desensitized to the fact that
11 death is the greatest finality of all. When you are
12 dead, it's over.

13 The last things that Nell Lindsey said to her two
14 boys, Alex and Trey, is the last thing she will ever
15 say to them. The last thing that Carol Wright said
16 to her daughter is the last that she will ever say to
17 her. Death is final. There is no retreat from it.
18 You know how much we want to go out on our own terms,
19 but not slumped down in the back seat of a parking lot
20 outside of a police station talking to a stranger
21 trying to get away from a man that beats you. That
22 was Nell Lindsey. That is her character.

23 Stanley Staggs will have to come to the
24 realization that there will be no more Christmases
25 with Nell Alex and Trey playing by the fire. That is

1 over. Mr. Staggs, if he wants to go and see his
2 daughter, he can go to the cemetery. Ms. Wright,
3 you have had, she has had her last conversation with
4 Nell Lindsey. Alex and Trey won't have a mom again.
5 That is the character of Nell Lindsey.

6 I want to tell you about the context of this
7 crime. I want to talk to you about it just briefly.
8 It is important that you remember this. Nell Lindsey
9 had been beaten in private. She had been beaten in
10 public. She was going to divorce Marion Lindsey.
11 She took out a warrant because he hit her in the
12 Applebee's parking lot.

13 When that warrant was served, Mr. Lindsey went
14 before a judge. And he asked for a PR bond. He was
15 told at least four different times, Judge Simmons
16 tells us, to stay away from your wife. It took him
17 less than 24 hours to gun her down. You want to know
18 the context of the crime? I hear from that table
19 over there that he wanted to see his sons. That is
20 the context of this crime. Yet he insures that they
21 will grow up without a mother or a father.

22 I hear he was hellbent on suicide. But he had
23 all day and ten bullets and not one of them wound up
24 in his head. Suicide? She wanted wound up with an
25 autopsy. He gave himself a little nick on the neck.

1 Suicide? Ten bullets? All day to do it. Never
2 got around to killing himself.

3 But in a matter of minutes of seeing his wife or
4 suspecting that she was in the back of the car, she
5 was dead. It has nothing to do with wanting to see
6 boys. Think back to Stanley Staggs' testimony.
7 Since September the 18th, 2002, no cards, no letters,
8 no birthday, no Christmas. The context of this crime
9 was not a father who even though he is familiar with
10 lawyers and even though there are people in his life
11 that would give him the money to go hire one to get
12 whatever visitation he thought he needed, he does not
13 do that.

14 I've got these two images doling in my mind.
15 I've got a woman who follows the system. She
16 believes in the system. She takes out an arrest
17 warrant. He is processed. He is served. A judge
18 tells him to stay away from his wife. That is
19 somebody on that side. Then you've got Marion
20 Lindsey who ignores what a judge tells him and takes
21 justice in his own hands and guns his wife down. You
22 want the context of the crime? There is the context
23 of the crime.

24 Let's talk about Marion Lindsey. September 18,
25 2002, we learned yesterday was not the first time that

1 he shot into a windshield with a gun. He shot
2 Stanford Wilkins. He shot in a car that had Jessica
3 Campbell. He sold drugs. I'm not putting those two
4 crimes on the same bar. But you want to know the
5 character of Marion Lindsey? There is the character
6 of his Marion Lindsey. He's shoots indiscriminately
7 in a car of two people in 1994. He cracks his wife
8 in the jaw at the beach because he thought that -- he
9 could not tell time.

10 You know, Sharon Smith, I think you remember her.
11 She was a adopted sister of Nell Lindsey. She
12 testified that she wanted Nell to fight back, to not
13 sit there and get hit. She says you are bigger than
14 he is. Fight back. She tried to fight back. She
15 tried to fight back through a justice system that let
16 her down.

17 Marion Lindsey has shot indiscriminately in cars
18 before. He has made his living selling crack cocaine
19 while Nell was working at a hospital. He has beaten
20 his wife. He hit her and knocked her over one of his
21 own children. Then he shot her sitting next to
22 somebody else's child. You want to know the
23 character of Marion Lindsey? You've got it.

24 You can be certain that his lawyers will stand in
25 front of you and ask you for mercy. They will ask

1 you to show compassion to a man who has never shown it
2 to anybody else. Now why is it that the people who
3 will ask you for mercy can't show it to anybody else?
4 Where was the mercy for Stanford Wilkins? What had he
5 done? Where is the mercy for Kiera Potlow who is
6 going to go through life with the scars that she got
7 on her heart right now? Where is her mercy? Where
8 is the mercy for his wife? They will stand in front
9 of you and ask you for mercy for a man who has never
10 shown it to anybody else.

11 You can rest assured that they will talk about
12 his psychiatric problems. They brought Dr. Melikian
13 in here. Here's what I remember from Dr. Melikian.
14 When she was asked about depression, what part of
15 depression will make somebody shoot somebody in the
16 back of the head three times in a parking lot? She
17 said nothing. What part of having cognitive deficits
18 makes you shoot somebody in the back of the head in a
19 parking lot? Nothing.

20 Then we come around to, we come around to a
21 little character called Jimmy. Jimmy was born the
22 day death notice was served in this case. Don't ever
23 forget that. The suicide attempt when he was 15, we
24 know that was just an attempt to manipulate his mom.
25 Dr. Melikian conceded that. That is in the medical

1 records.

2 Then when he shoots Stanford Wilkins, is there
3 one word of mental health? Do we hear Jimmy's voice
4 in 1994 when he shoots Stanford Wilkins? No. Do we
5 hear Jimmy's voice when he's cracking his wife in the
6 jaw? No. We hear about Jimmy the day that the State
7 of South Carolina serves a death notice on him. That
8 is the most incredible coincidence I think I have ever
9 heard.

10 I am not minimizing psychiatric issues or
11 problems. They are real. There are people who
12 suffer from them. And they are real. They should
13 not be trivialized by concocting some character name
14 Jimmy. Well, just like psychiatric problems are
15 real, so are meanness and self-absorption and the
16 unwillingness to let your wife move on. I submit to
17 you those are far more common than any mysterious
18 voices that go tell you to kill somebody.

19 **MR. BARTOSH:** Your Honor, I'm going to object
20 to that. There was never any evidence that a voice
21 told him to kill somebody. There was never any
22 testimony to that.

23 **MR. GOWDY:** I thought that Melikian
24 testified that he heard voices, Your Honor. I am
25 happy to withdraw that.

1 **THE COURT:** Let me say this to the jury. You
2 will recall what the testimony was. The Solicitor's
3 argument is not evidence. Your recall of the
4 evidence is what is important. And the arguments are
5 simply to comment on the evidence.

6 **MR. BARTOSH:** Thank you, Your Honor.

7 **MR. GOWDY:** Thank you, Your Honor.

8 We live in a culture where sometimes we confuse
9 excuses with explanations. Growing up poor can be an
10 explanation. It should never been an excuse. You
11 can walk five miles in any direction in this
12 courthouse and you can find kids that have grown up
13 poor right now. And this is a single-parent family.
14 There may be educational issues. They will grow up
15 to be just as law-abiding as you ever want somebody to
16 do.

17 There are kids growing up that don't have someone
18 like Bill Burton who came from Georgia. There are
19 plenty of people who grew up poor. There are people
20 in this courtroom who grew up poor. Never let that
21 be an excuse for what you saw on that overhead
22 picture. It just cannot be.

23 Let me talk to you for just a second about death.
24 Before I talk to you about death, let me say this
25 about saying good bye. Let me say one more thing to

1 you about good bye. School ends this week in most of
2 Spartanburg County and maybe next week but it is this
3 week for my children. And this fall, the cycle will
4 begin again. There will be parents dropping their
5 kids off at school.

6 You want to see something beautiful if you watch
7 as moms and dads and grandparents say good bye to
8 their kids on the first day of school. That's for
9 one day but you go watch the tears. And that's for
10 one day. Can you imagine saying goodbye to somebody
11 for ever? If you will imagine never being able to
12 say the last thing you wanted to say to your mom or
13 your children or your dad or your friend.

14 Death will visit everyone of us. It is the
15 greatest constant in life. That is not what scares
16 us. We can handle dying. It is the way that we die
17 that scares us. If death would knock gently at the
18 front door of our life and give us all the time we
19 want to prepare, we can walk as slowly as we want to
20 to the front door to open it in the later years or the
21 older years of our life. That is how most of us want
22 to meet death, on our terms, walking slowly telling
23 everybody goodbye as we open that door.

24 Sometimes death can kicks in the front door like
25 a violent intruder and you ain't even got time to say

1 a prayer. Whatever the state your life was when that
2 death knocked in your front door, that is going to be
3 the state of your life forever. It ain't death that
4 scares us. It is how we die.

5 Nell Lindsey died in a way that nobody would
6 pick. Talking on the cell phone to a stranger,
7 trying to get away from an abusive husband. This
8 defendant can say the goodbye to anybody he wants to.
9 If he ever decides that he wants to see his two sons
10 again, he can say goodbye to them. If he wants to
11 say goodbye to his mom or his dad or his friends, he
12 can say what he wants to. He can go out of life on
13 his terms. Not so with Nell Lindsey. Not so with
14 Nell Lindsey.

15 You will have before you the circumstances and
16 the context of this crime. You will have before you
17 the character of Marion Lindsey. You will have
18 before you say impact that life and her death had on
19 her friends and family. I told you earlier.

20 I will tell you again that you've got on one
21 spectrum of life mercy. We all need mercy. We all
22 have tasted mercy. It can come in the form of a one-
23 year prison sentence for shooting somebody. It can
24 come in the form of a man named Bill Burton who took
25 an interest in you as a child. It can come in the

1 form of God blessing you with two children. This
2 defendant has been shown my mercy and it did not take.

3 At the other end of the spectrum, we got
4 vengeance, retribution, an eye for an eye, a tooth for
5 a tooth. I ain't asking you for that either. I'm
6 not asking you to kill Marion Lindsey the way that he
7 killed his wife. I am not asking you to shoot him in
8 the head while he's slouched down in the back of
9 somebody's car talking on the cell phone to a
10 stranger. I'm not asking you to rob him of his
11 goodbyes.

12 I'm going to walk in the middle of mercy and
13 vengeance. And I'm going to stand on a rock called
14 Justice. And I'm telling you that there some crimes
15 in this community that we can not tolerate. You
16 cannot stalk your wife to a police station and shoot
17 her while she is cowering in the back of a friend's
18 car on the phone with 911 and expect this community to
19 accept it.

20 Justice does not require death for all murders.
21 But Justice does demand that there are some crimes
22 that you just cannot ignore. I stand on a rock
23 called Justice. I tell you that the character of
24 this defendant and the circumstances of this crime,
25 the shooting into a car when you know there are two

1 children and you shoot your wife in the head, that is
2 a crime that this society, this community, you as the
3 collective conscience of this community have got to
4 say that is too much. That is not an ordinary
5 murder. That is aggravated.

6 As I told you when I stood up, this will be the
7 last time any of us stands before you in this trial.
8 It is time for me to sit down. I don't want to sit
9 down yet because I can't help but think that I have
10 not done a good enough job in telling you what Nell
11 Lindsey was like. When I sit down, I'm afraid that
12 she is going to sit down with me.

13 Tonight in Spartanburg, there will be a pair of
14 boys and a pair of girls going to bed. A pair of boys
15 are named Alex and Trey. They will go to bed tonight
16 like they have for the past year and a half without
17 the gentle kiss or hug from their mother. They will
18 go to bed tonight with the knowledge that their father
19 killed their mother.

20 Then up in Inman, there will be two little girls
21 that go to bed named Kiera and Keysha. Thank the
22 Lord for young memories because her mama tells us that
23 Keysha is okay. Kiera is not. She's got a little
24 scar on her arm. She's got a big scar on her soul
25 from having had a woman be shot to death right beside

1 her.

2 Those are the circumstances of this crime. That
3 is the character of Marion Lindsey. Nell Lindsey,
4 Nell Lindsey died on the phone with a stranger and the
5 last thing she heard was that going off before three
6 of those went into her head. And one of them missed
7 the back of her neck and went into a car seat. We
8 thank the Lord --

9 **MR. BARTOSH:** Your Honor, I object to that
10 because it did not going into the car seat.

11 **MR. GOWDY:** It went into the seat of the car,
12 Mr. Bartosh.

13 **THE COURT:** I overrule the objection.

14 **MR. GOWDY:** You decide where it went in.
15 You saw the car. If that is not a car seat, then I
16 apologize to you. It went smack into the center of
17 that car seat. Not that car seat, the one in the
18 parking lot. The last thing that she heard was the
19 sound of that gun going off as three bullets went into
20 her skull and one missed her neck and went into a car
21 seat. Her voice went blank.

22 She went through the system of justice to get her
23 justice. She wound up dead. Now I am back before
24 you asking you through your verdict, may justice be
25 done to Nell Lindsey. Through your verdict forms,

1 may justice roll off the pages of those verdict
2 forms. May you conclude that this is one of those
3 cases where life in prison just isn't enough. Thank
4 you.

5 **THE COURT:** Solicitor.

6 (WHEREFORE, a bench conference was held off of the
7 record.)

8 (WHEREUPON, the following bench conference was held on
9 the record.)

10 **THE COURT:** I ask Mr. Bartosh if I had
11 adequately addressed, did I adequately address the
12 objection that he made during closing argument. He
13 said yes.

14 (WHEREUPON, the bench conference concluded.)

15 **THE COURT:** Let me see you.

16 (WHEREFORE, a bench conference was held off of the
17 record.)

18 **MR. BARTOSH:** Your Honor, Mr. Lindsey would
19 like to make a statement.

20 **THE COURT:** Ladies and gentlemen, we will now
21 hear from the defendant.

22 **MR. LINDSEY:** This is something I want to
23 say. Ladies and gentlemen of the jury, as the
24 Solicitor said, I was scared of the death penalty. I
25 never even cared about the death penalty. First, I

1 really wanted the death penalty. I know you've heard
2 some bad things about me. This is the most bad thing
3 anybody could do.

4 But the issue is not what you care about me and
5 what you think about me. I don't care about that.
6 The issue is my kids. That's how I feel. That's the
7 only concern I have. Ladies and gentlemen of the
8 jury, before you go and deliberate on my life, I would
9 like for you to think about my kids.

10 At first, I felt that they really did not need
11 me. But after thinking, thinking and a lot of things
12 that have been happening with them, I realize that
13 even if I'm locked up for the rest of my life I could
14 still be of some use to my boys. Now I feel like a
15 deadbeat dad, something I always tried not to be.
16 That is how I feel.

17 My kids need me to be here when they get older.
18 So they can ask that question what the hell was daddy
19 thinking about when he took our mother's life. Once
20 my kids get older and experience life and love and
21 heartbreak, they can come and ask me what not to do.
22 Plus they can get fatherly advice from me not to ever
23 be in jail like their father.

24 I don't care what nobody says about me being a
25 good dad. I was the damn best dad that I could ever be

1 to my kids. My kids never went without. If you all
2 take my life today, my kids may feel they have nothing
3 to live for. Their mother will be gone and their
4 father will be gone too. They might be rebel and
5 become a problem child. I know that they have people
6 that love them. There was no love like their mother
7 and father.

8 No matter how close you are to someone, no matter
9 how much people love you, you have people around you
10 that love you, there is some things you just can't go
11 to them and talk about like you can with your mother
12 and dad. I'm sorry for what I've done, all the pain
13 I have caused to the family and everybody who love and
14 miss my wife and especially to my kids because now
15 they'll go without a mother and a father.

16 All I ever want, the only thing I ever wanted for
17 my kids my whole life is to have a mama and dad and
18 not grow up like me and Nell did without a dad and mom
19 around. That's how we both did. I thought of my
20 kids needing me that day. It just made me snap. I
21 lost control, something I cannot take back and I wish
22 that I could.

23 If I could give my life today, ladies and
24 gentlemen, I would do it right now right here in front
25 of you. I would finish what I tried to do and kill

1 myself, as the Solicitor said I did not, without a
2 second thought. If I could bring my wife back to my
3 kids and everybody who loved her and miss her today
4 and give my life, without a second thought I would.

5 Ladies and gentlemen, whatever you decide of my
6 life I can accept that because I have done wrong. I
7 just know that I could still teach my boys to be good
8 college boys and good businessman and to become
9 respectful in life. I never been through college.
10 I would like to see my boys go. Even though I did
11 not finish school, I still have some skills to pass
12 on. Most of all, I would like to teach them to be
13 good fathers and good husbands to their wife and to
14 learn from the mistakes that I made which I have made
15 a lot.

16 I am asking my wife's family to please share my
17 kids with my family because God only knows they need
18 all of that --

19 **MR. GOWDY:** I object to that.

20 **THE COURT:** I sustain the objection.

21 **MR. LINDSEY:** Ladies and gentlemen, that's all
22 have to say to you. I ask that you take that into
23 consideration. If you take my life today, that is
24 what my punishment deserves. But if you spare my
25 life and let me teach my boys some more stuff in life

1 because one day they're going to come to me and they
2 are going to say -- because once they get older,
3 they're going to come to me and they're going to say
4 daddy what the hell was you thinking about.

5 You know what? I'm going to sit down with them
6 if I have that chance and I'm going to talk to them.
7 And I'm going to tell them daddy don't even know what
8 the hell he was thinking about. All he was thinking
9 about was his whole life and many of the things he
10 fought all of his life for --

11 **MR. GOWDY:** Judge?

12 **THE COURT:** Sustained.

13 **MR. LINDSEY:** But you, and, but thank you,
14 ladies and gentlemen. This all I have to say.

15 **MR. BARTOSH:** May we approach, Your Honor?

16 (WHEREUPON, a bench conference was held off the
17 record.)

18 **MR. BARNETT:** Can we take a break right now?

19 **THE COURT:** Uh-huh (affirmative).

20 All right. Ladies and gentlemen, we will take a
21 short break before we hear from Mr. Bartosh.

22 **MRS. LINDSEY:** Lord, please have mercy on my son.
23 Please have mercy on my son. Oh, Lord. Please, God.

24 (WHEREUPON, the jury exits at approximately 10:17
25 a.m.)

1 **MR. GOWDY:** Your Honor, if she's going to
2 continue to speak out, I can understand the cries.
3 That's all across the courtroom. But speaking out
4 asking for a verdict, if she continues to do that I'm
5 going to have to ask the Court just not let her come
6 back in. It is unfair to the State.

7 **MR. BARTOSH:** Your Honor --

8 **THE COURT:** We all know that that is
9 impermissible. And I'm going to ask that she
10 convince me, somebody's going to need to convince me
11 that she can control herself in the courtroom before I
12 let her back in.

13 **MR. BARTOSH:** Yes, sir. I don't think that's
14 possible.

15 **THE COURT:** I want her not only out of the
16 courtroom but I want her far enough away to where she
17 can not be heard inside of this room.

18 **MR. BARTOSH:** Yes, sir.

19 **THE COURT:** We will take about a five minute
20 break.

21 (WHEREUPON, a short recess was taken at approximately
22 10:20 a.m.)

23 (WHEREUPON, the Court resumed at approximately 10:30
24 a.m.)

25 **THE COURT:** Bring in the jury.

1 All right. Let me say this as the jury is
2 coming. Ladies and gentlemen, I expect that everyone
3 in this courtroom will be able to contain themselves
4 within reason. I realize this is an emotional moment
5 for a lot of people, for everybody. But anybody who
6 feels like they can not control their emotions needs
7 to leave the courtroom now.

8 If anybody says anything or makes any kind of
9 communication whatsoever with the courtroom, then I'm
10 going to hold them in contempt of court and put them
11 in jail. If there is anybody who doesn't understand
12 that or who feels they can not control themselves,
13 leave the courtroom now.

14 (WHEREUPON, the jury enters at approximately 10:31
15 a.m.)

16 **MR. BARTOSH:** Thank you, Your Honor. May it
17 please the Court?

18 **THE COURT:** Yes, sir.

19 **MR. BARTOSH:** Ladies and gentlemen of the jury,
20 when we first started this trial, I told you in the
21 beginning that this was a very emotional situation and
22 that you are going to see and hear a lot of tragedy.
23 A lot of horror. And that's the only way I can
24 describe some of these photographs. A lot of human
25 suffering. A family torn asunder.

1 And I ask you at that point, to please put aside
2 any of the sentencing or the wish to punish or the
3 wish to reward any of the folks involved in this.
4 What your job is in this phase of the trial is two-
5 fold. The first thing you have to do is you have to
6 decide whether or not the State has proved beyond a
7 reasonable doubt the sole aggravating circumstance
8 that they are relying on to make this a death penalty
9 case.

10 You have to do that unanimously. All twelve of
11 you have to believe that they have proven each and
12 every element of that aggravating circumstance beyond
13 a reasonable doubt before you can ever consider what
14 the penalty should be. Now, I ordinarily don't use
15 notes. But I was sitting thinking about this last
16 night. I wanted to be sure that I was able to cover
17 everything that I needed to cover. I hope that you
18 will indulge a little bit if I have to refer to some
19 of my notes. I hope that it won't distract you is
20 what I'm trying to tell you.

21 That aggravating circumstance that the State is
22 relying on is that the offender, by his act of murder,
23 knowingly created a great risk of death to more than
24 one person public place or by means of a deadly weapon
25 or device which normally would be hazardous to the

1 lives of more than one person. So what you have got
2 to do is you've got to have consider, first of all,
3 did Marion knowingly create the risk. Second of all,
4 was it a great risk? Not just a risk, but a great
5 risk of death of more than one person in a public
6 place by means of a weapon or device which normally
7 would be hazardous to the lives of more than one
8 person.

9 Now, what I ask you to consider is this. As the
10 solicitor pointed out, this happened in the parking
11 lot of the Inman Police Department. So, I don't
12 think there's any doubt. And no one can contest it
13 was a public place. However, let's look at the other
14 elements of this aggravating circumstance. Beyond a
15 reasonable doubt. I believe the Judge will tell you
16 that if you have a doubt, a reasonable doubt as to any
17 of the elements in this crime or this aggravator, you
18 must resolve that doubt in Mr. Lindsey's favor.

19 So, the first one is knowingly. Now, you've
20 heard testimony both from Dr. Melikian who testified
21 about Mr. Lindsey's cognitive defects, about Mr.
22 Lindsey's depression, about Mr. Lindsey's possible
23 brain damage. Now the defense is in no way trying to
24 excuse or explain away what Mr. Lindsey did. I don't
25 believe that there's any doubt that Mr. Lindsey did

1 what he did and that he was insane at the time that it
2 happened.

3 However, he did have some significant mental
4 issues which affected his decision. I think this is
5 shown in the fact that when he first came upon the car
6 that Ms. Nesbitt was driving that he followed the car
7 to the police department. Now if he had intended or
8 had thought about it rationally, I don't think he
9 would've done something like that. That is the
10 action of a desperate man who isn't thinking about
11 anything.

12 The next element is a great risk of death to more
13 than one person. You've seen the automobile. You
14 have also heard the testimony of the folks who were
15 involved. I think one of the things the judge is
16 also going to instruct you on as he did in the first
17 phase that you can judge the credibility of witnesses
18 by their demeanor, by whether or not they had any bias
19 or prejudice. And I would ask that you look at the
20 folks who testified as to what happened at the police
21 station.

22 Celeste Nesbitt was the only witness other than
23 her daughter who testified about the events in the car
24 at the station. As she said, and you can hear it on
25 that tape, they pulled into the police station. You

1 can hear Ms. Lindsey say roll the windows and lock the
2 doors. And then she says I am not getting out. Then
3 you hear a car. Ms. Nesbitt testified that she got
4 out of the automobile. This was all before you hear
5 the shots.

6 There were four people in the car. There was
7 Ms. Nesbitt's mother who as Ms. Nesbitt says was in
8 the front seat. There was Mrs. Lindsey in the back
9 seat behind the driver. According to Ms. Nesbitt,
10 her two children when the back seat also.

11 You've seen the position of the bullet hole.
12 You have seen also that, Ms. Nesbitt's daughter.
13 This was a little less than two years ago. And I
14 respectfully submit to you, ladies and gentlemen, that
15 if her daughter was sitting in the position that she
16 described at the time that this happened with that
17 bullet hole where it is, that bullet would have struck
18 her. You have also seen the car. I don't believe a
19 child her size could scoot down underneath the car
20 seat. I respectfully suggest that that would be a
21 reasonable doubt as to whether or not she was placed
22 in a great risk of death.

23 Now we come to the means, to the use of weapon
24 and a device that is normally, normally would be
25 hazardous to the lives of more than one person. The

1 State is saying that they are relying on the fact that
2 a .38, a five-shot .38 pistol fits that description.
3 Well, under that definition, just about every hand gun
4 would be, everyone that was shot on the handgun, it
5 would be a device that would normally be hazardous to
6 the lives of more than one person.

7 I don't believe -- I ask you to consider the
8 facts about a gun. It was a five-shot .38. It is
9 not exceptionally powerful. It's not like a .34
10 Magnum or anything like that. It does not spray like
11 shot gun. It is less likely pass through the body of
12 one person and go through another. It has a small
13 number of rounds in its capacity. It is not a 9 or a
14 12 or a 16-shot pistol.

15 It is a fairly low velocity weapon. It is not
16 an automatic. It is not even a semiautomatic. It
17 is a double action revolver that is slow to fire as
18 compared to the other automatics. There's been no
19 evidence of any kind of armor piercing bullets or any
20 any ammunition. It was a .38 bullet.

21 I would respectfully suggest, ladies and
22 gentlemen, that in your review this that you think
23 about that, as to whether or not a 5-shot .38 revolver
24 would come under the definition of a device which
25 would normally be hazardous to the lives of more than

1 one person.

2 As I said, if you have a reasonable doubt as to
3 any of the elements of the aggravator, aggravating
4 circumstance, then you must resolve that doubt in
5 favor of Mr. Lindsey. If you find the State has not
6 proving its burden of proving beyond a reasonable
7 doubt beyond a reasonable doubt. Deliberation stops.
8 You don't go any further.

9 If you do you think that this sole aggravating
10 circumstance has been proven beyond a reasonable
11 doubt, and all twelve of you agree do that, then you
12 move on to determine what the appropriate penalty is.
13 In doing that, you can consider the aggravating
14 circumstances of the crime, the character of the
15 defendant, of Mr. Lindsey. You can also consider the
16 mitigating circumstances. His mental state, his
17 cognitive deficit and any other factor that you may
18 consider appropriate.

19 You can find for life or you can find for death
20 for a reason or for no reason. It is entirely up to
21 you. It is an individual decision. You have to
22 decide whether or not to execute Marion Lindsey. It
23 is an individual decision, ladies and gentlemen. You
24 each have to make that decision on your own.

25 You have heard about Marion's, you heard from his

1 mother. She talked about the incidents in his early
2 life and how he was injured in an automobile accident
3 and that he ingested kerosene, that he's slow, was
4 poor in school. He had speech problems. Yes, he
5 was poor. Yes, he was lucky that he had a friend
6 like Bill Burton. A lot of kids don't have that.
7 That is true.

8 A lot of kids grew up the way Marion grew up and
9 don't end up sitting in the courtroom with their life
10 hanging in the bounds. But Marion did. We are all
11 given talents. Some greater talents, some lesser
12 talents. Some of us are stronger. Some of us are
13 weaker.

14 But in no way are we offering any of this
15 testimony or any of the background that Marion grew up
16 in to excuse what he did. It is not an excuse. What
17 we are trying to do is trying to explain to you how
18 Marion Lindsey can end up sitting at that table.

19 He had no father in his life. That was the one
20 biggest regrets in his life growing up. His step-
21 brothers, their dads would come and get them on the
22 weekends and take them out. And he would stay. You
23 heard from Mr. McDowell who said that he played no
24 part of Marion's life. You also heard testimony that
25 this was, as I said, he swore, Marion swore that once

1 he got to be a father that his kids would never have
2 the environment and the lack of a father that he had.

3 You heard about the relationship of Bill Burton
4 and how they naturally seem to kind of mesh. Marion
5 viewed, came and viewed Mr. Burton as he told you,
6 almost as a dad. His dad was never in his life.
7 Bill Burton told you that he knew Marion Lindsey from
8 the age of six or seven until about 19 years old.
9 And he never ever in all of those years saw any of the
10 conduct or any of the incidents or any of the violence
11 or any of the anger that you've heard described from
12 the witness stand.

13 As I said, Marion had trouble in school. Dr.
14 Melikian believes that a lot of it stemmed from his
15 problems as a child, the injuries he received as a
16 child, receiving a head injury by an automobile,
17 inhaling kerosene. They all went to contribute to his
18 problems in school. As I said, he had speech
19 problems. He repeated the eighth grade three times.

20 When he got old enough, he quit school. And he
21 went to work to support his family. You have heard
22 about the condition that they lived in. Once again,
23 ladies and gentlemen, as Solicitor Gowdy said, there
24 are plenty of people who would be within a half-mile
25 of this courtroom, we could find people who had grown

1 up in worst situations than Marion did and have not
2 come to the point that Marion has.

3 As I said, we all go through different talents,
4 we all are given different strengths. None of us can
5 sit here and say how we view the situations like
6 Marion did with his handicap.

7 He and Nell Lindsey were together about 10 years.
8 They had two children. The most important thing in
9 Marion's life were his kids. Your heard about the
10 pattern of the relationship. They would separate for
11 a month or two. Then they would reconcile and get
12 back together. It was back and forth and back and
13 forth over those years of marriage. But they always
14 got back together. Marion could always see his kids.
15 And his kids always came home along with his wife.

16 Then we have that faithful time, that last
17 separation when she left and took the children. And
18 she told Marion that he would never see his kids
19 again. His mother testified that they put a block on
20 the telephone so they could not call Nell or her
21 mother where the children were. Nell was ending the
22 relationship.

23 The Solicitor has made a great deal about the
24 fact that there were alternatives available for Marion
25 to handle the problem of custody with his children.

1 I ask you to consider this, given Marion's education,
2 his upbringing, his situation in life, I don't know
3 whether or not he really knew about those that you go
4 and get a lawyer. And you go up to Family Court and
5 you get your kids. I don't know if that ever entered
6 his mind that that was an option to him.

7 We have heard about the week before, how he was
8 depressed, suicidal, how he lost weight during this
9 last separation. And on that faithful day, when he
10 met Celeste Nesbitt on the street, where they turned
11 and talked, he talked to Celeste. And according to
12 Celeste, he talked to the younger daughter. And then
13 he asked to see who was in the backseat. According
14 to Ms. Nesbitt, she said the window was broken and
15 she could not run the window down.

16 You folks have seen the automobile. You see the
17 tinting on the other windows. I will leave it to your
18 judgment as to whether someone can see through that
19 tint to see whether someone was there. I think the
20 evidence demonstrates that Mr. Lindsey knew that his
21 wife was in the automobile.

22 And as he told you just a few minutes ago and as
23 you heard it from Dr. Melikian, it all came together
24 at that point. All of the frustration, all of the
25 depression, all of loss of his children all came

1 together when the car pulled off. As Ms. Nesbitt
2 turned and headed toward the police station, he
3 followed.

4 You have seen the photographs. There's no doubt
5 in the world that if he were thinking clearly, it
6 would not had been like that. He was not thinking
7 clearly. Ms. Nesbitt pulled up next the police car
8 and got out of the car. Marion pulled up on Ms.
9 Nesbitt's car and got out and walked around to a back
10 window and shot twice. He hit Ms. Nesbitt, Mrs.
11 Lindsey both times in the back of the head.

12 If you look at the autopsy photographs, you will
13 see the bullets. One is above the other. He walked
14 around to the side and shot twice more. One went
15 into the left side of Mrs. Lindsey's head. You're
16 going to see that on the autopsy photographs. And the
17 other bullet, were it not were not that way, we
18 probably would not be sitting here talking about that.
19 But what that bullet did was grazed the back of this
20 of her neck and went into the backseat and into the
21 trunk. That is what they are relying on for you to
22 kill Marion Lindsey. The misplacement of that
23 bullet.

24 What did Mr. Lindsey do after that? He walked
25 around to the front of the police car. Officer

1 Godfrey said he pointed a gun at him, but he put the
2 gun to his head. There has been a great deal of
3 testimony, there's been a great deal of argument that
4 this was not a sincere attempt. It was a graze. It
5 was a nick.

6 You heard Dr. Melikian testify. There was an
7 entrance of the wound and there was an exit wound in
8 his head. The bullet went into his head and came
9 out. Now, if you can somehow figure that Marion
10 figured well, I need to put the gun at this particular
11 angle in this particular place and pull the trigger so
12 that the bullet would go in through my head and come
13 out but it won't kill me. I just don't think that is
14 possible, ladies and gentlemen. That was a sincere
15 attempt at suicide. He shot himself in the head. And
16 then Officer Godfrey shot him. Then he was arrested
17 and went to the hospital. He's been in jail every
18 since.

19 Now the solicitor also said no phone calls, no
20 cards nothing at Christmas. During this entire
21 almost two year period, Mr. Lindsey has had this
22 legal problem. He is charged in this death penalty
23 case that is hanging over his head. And he acted on
24 legal advice to have no contact with Mrs. Lindsey's
25 family or with his children. Not because he did not

1 want to. I'm sure that every --

2 **MR. GOWDY:** Your Honor, I object to that.
3 There's been no testimony about that.

4 **THE COURT:** Sustained.

5 **MR. BARTOSH:** The solicitor has talked about
6 justice. What I would ask each and every one of you
7 to consider in deciding whether or not to execute
8 Marion Lindsey is this, you have heard what Mr.
9 Lindsey said to you at the beginning of the case.
10 Which would be the worst punishment?

11 I suggest to you, ladies and gentlemen, that it
12 is waking up every day of your life, and Mr. Lindsey
13 is 30 years old, every day of your life in a prison.
14 And you have heard from a representative of the
15 Department of Corrections about what life is like in a
16 prison. Mr. Lindsey is more than likely to go to a
17 maximum-security prison. When he is not working or
18 when he is not going to school, he is in his cell.
19 He can have 8 visits a month. That will be his
20 routine for the rest of his life. He would never
21 ever get out again until he dies.

22 Would that be Justice? I suggest to you that it
23 is ample justice. Killing Marion Lindsey is not
24 going to bring back Nell Lindsey. Killing Marion
25 Lindsey is not going to help his kids. If you can

1 imagine knowing that your father's on death row going
2 down there to visit him if you do and then getting the
3 word to execute, that you two are now orphans. Which
4 is the most just punishment? I would suggest to you,
5 ladies and gentlemen, it is life in prison because
6 life means life.

7 Once again, I want to thank you for your patience
8 with us. This is the eighth day that we have been
9 involved in this. Some of you have been qualified
10 earlier and have been here longer. Some you have been
11 here shorter. I know it has been difficult. It is
12 difficult being away from your family. It has been
13 difficult being in a hotel room. It has been
14 difficult being minded by folks who watch you all the
15 time. I want you to know that Marion and the rest of
16 us that represent him have been grateful to you.

17 As the Solicitor also said, each and every one of
18 you were picked because you said you could be fair and
19 that you could listen to both sides and make your
20 decision based upon what you heard, not upon some
21 emotion, not upon sympathy, not upon wanting to punish
22 somebody but based on what you've heard and then
23 taking that back into the jury room.

24 And if you decide that the aggravating
25 circumstance has been proven beyond a reasonable

1 doubt, then you have to decide what is the fair thing
2 to do, what is the just thing to do. I disagree with
3 the Solicitor on that this is about is revenge. That
4 is what this is. Nell Lindsey was killed. And
5 Marion Lindsey gets to die for it. That is what
6 they're asking you to do is to execute Merion Lindsey
7 for that on that basis.

8 Ladies and gentlemen, I have a tendency to
9 sometimes get a little emotional. And perhaps during
10 this trial, I appeared to show my emotions a little
11 bit much. If there's anything that I said has
12 offended any of you then I am asking you to not hold
13 it against Marion. That is just the way I am. I'm
14 trying to work on it. That is me. If you want to
15 hold it against somebody, hold against me.

16 Once again, I want to thank you for your time.
17 And I want to thank you for your consideration. I
18 want to ask you not so much for mercy although I am
19 asking you not to kill Marion Lindsey. I'm asking you
20 to give him the punishment that would be fair and
21 would be just, that he spend the rest of his life in
22 prison. Thank you.

23 **THE COURT:** Mr. Bartosh and Mr. Gowdy, just
24 very briefly let me see y'all at the bench please.
25 (WHEREUPON, the following bench conference was held on

1 the record.)

2 **THE COURT:** The objection as to when you started
3 saying not that he did not contact the boys not
4 because he didn't want to.

5 **MR. GOWDY:** Yes, sir.

6 **THE COURT:** There's no testimony in the record
7 that he wanted to. I think that what I thought you
8 were headed towards is a statement along the lines
9 that he wanted to disobey your advice. If that is
10 where you were headed, then my objection, my ruling
11 was clearly correct.

12 But if he was simply going to argue based on the
13 visitation evidence and things that he has done with
14 his kids that he is the kind of person who would have
15 wanted to do that, then I think that would be a fair
16 argument. So I give you the opt -- I don't know if
17 you want to go back.

18 **MR. BARTOSH:** No, sir.

19 **THE COURT:** I don't think I really stopped
20 you --

21 **MR. BARTOSH:** No, sir.

22 **THE COURT:** If you want to go back --

23 **MR. BARTOSH:** No.

24 **THE COURT:** You are satisfied that you done
25 everything you wanted to do?

1 **MR. BARTOSH:** Yes, sir.

2 **THE COURT:** One more question. You eventually
3 conceded that it's a public place. You still want me
4 to charge it?

5 **MR. BARTOSH:** Yes, sir.

6 **THE COURT:** All right.

7 (WHEREUPON, the bench conference concluded.)

8 **THE COURT:** Ladies and gentlemen, now that you
9 have heard all the evidence and the arguments of both
10 the State and the defendant in this phase, it again
11 becomes my responsibility to tell you the law that is
12 applicable to this phase of the trial.

13 Just as I told you during the first phase, only
14 the jury can make the findings of fact in this case.
15 I am not permitted to indicate to you how I might feel
16 about the testimony and evidence that is been
17 presented. If I have said anything or if I have done
18 anything during the course of this phase of the trial
19 that might indicate to you how I may feel about the
20 facts or that may indicate to you how I feel about the
21 penalty, then you must disregard that because both of
22 those questions must be answered exclusively by the
23 jury.

24 Also as I told you in the first phase, I am the
25 exclusive judge of the law. If you have some idea as

1 to what the law is or what the law should be and if
2 that differs from that what I now tell you the law is,
3 then you are obligated under the oath that you have
4 taken as jurors to set your notion of the law aside
5 and to accept and apply the law precisely as I now
6 state it to you.

7 Let me remind you of some of the factors that you
8 may wish to consider as you evaluate the credibility
9 of the witnesses who have testified. The matter and
10 appearance of the witnesses who testified; was he or
11 she straightforward or hesitant in answering
12 questions; was the testimony of the witness consistent
13 or inconsistent; how did the witness come to know the
14 facts that he or she was testifying to; what is that
15 witness' ability to know those facts; is there some
16 reason that a witness might want to give testimony
17 that may hurt help or hurt one side of the other, in
18 other words, was the witness biased either towards or
19 against the State or the defendant; is the testimony
20 of a witness strengthened or weakened by other
21 testimony and evidence?

22 As members of the jury, you can believe as much
23 or as little of each witness' testimony as you think
24 it is appropriate to do. You can believe the
25 testimony of one witness against all of the rest of

1 them or you can do just the opposite. You are not
2 required to accept testimony as true even if it is
3 uncontradicted.

4 Let me tell you the difference between direct
5 evidence and circumstantial evidence. Direct
6 evidence means the testimony of a person who has
7 perceived facts by means of his or her own senses and,
8 therefore, has actual, personal knowledge that an
9 event has occurred or not occurred or that a fact does
10 or does not exist.

11 Circumstantial evidence, on the other hand,
12 involves testimony or evidence of a chain of facts or
13 circumstances from which one may infer that an event
14 has occurred or that a fact has been established.
15 The law makes no distinction between the weight or
16 value to be given to either direct or circumstantial
17 evidence. Nor is a greater degree of certainty
18 required of circumstantial evidence than that of
19 direct evidence.

20 You have heard the testimony of several expert
21 witnesses during this phase of the trial. As I told
22 you during the first phase, expert witnesses are those
23 witnesses who of special knowledge, skill, experience
24 training or education in a particular profession or
25 occupation. Because of those special qualifications,

1 experts are allowed to give opinions as to matters
2 within their area of expertise.

3 In determining the weight to be given opinions
4 given by experts, you should consider qualifications
5 and the credibility of the expert and the reasons
6 given for his own opinion. You are not bound by the
7 opinion of an expert. Give it the weight, if any,
8 that you believe it is entitled to receive.

9 Ladies and gentlemen, just as in the first phase
10 of this trial, I emphasize to you that the fact that
11 the defendant did not testify must not be considered
12 by you in any way during your deliberations. A
13 defendant has a constitutional right to remain silent
14 and the exercise of that right cannot and must not be
15 held against him.

16 Under the oath that you have just taken as
17 jurors, you are to draw no inference and no conclusion
18 whatsoever from the fact that the defendant did not
19 testify. Do not even discuss this in the jury room.
20 The defendant is not required to prove anything.

21 Ladies and gentlemen, your first task in the second
22 phase of this trial is to determine whether the State
23 has proven beyond a reasonable doubt the existence of
24 a statutory aggravating circumstance.

25 Now let me go over for you reasonable doubt.

1 Reasonable doubt is a doubt which makes a honest,
2 sincere, conscientious juror in search of the truth in
3 the case to hesitate to act. Proof beyond a
4 reasonable doubt must therefore be proof of such a
5 convincing character that a reasonable person would
6 not hesitate to rely on it and act on it in the most
7 important of his or her own affairs. Proof beyond a
8 reasonable doubt can also be described as proof that
9 leaves you firmly convinced. There are very few
10 things in this world that we know with absolute
11 certainty. In criminal cases, the law does not
12 require prove that overcomes every possible doubt.

13 Now, back to the statutory aggravating
14 circumstance. South Carolina Code Section 16-3-20
15 says the following as a statutory aggravating
16 circumstance. The offender by his act of murder
17 knowingly created a great risk of death to more than
18 one person in a public place by means of a weapon or a
19 device which normally would be hazardous to the lives
20 of more than one person. That is the statutory
21 aggravating circumstance that the State seeks to
22 prove.

23 Let me define for you what a public place is
24 under South Carolina Law. A public place is a place
25 to which the general public has a right to resort.

1 Not necessarily a place devoted solely to the uses of
2 the public but place which is in point of fact public
3 rather than private. A place visited by many persons
4 and usually accessible to the neighboring public. A
5 public place is a place in which the public has an
6 interest as effecting the safety, health, morals and
7 welfare of the community.

8 Now ladies and gentlemen, this is the only
9 statutory aggravating circumstance that you may
10 consider. Specifically in determining whether or not
11 the State has proven an aggravating circumstance, you
12 may not consider the defendant's prior criminal
13 record. If you unanimously find that the State has
14 failed to prove the existence of this aggravating
15 circumstance beyond a reasonable doubt, then you
16 deliberate no further. You will notify the bailiff
17 that you have reached a verdict. And we will get you
18 back out into the jury room to receive your verdict.

19 If you unanimously find that the State has proven
20 the statutory aggravating circumstance beyond a
21 reasonable doubt, then you would move on to consider
22 the sentence that should be imposed on the defendant
23 for the murder. You would not need to notify the
24 bailiff that you have reached a verdict on the
25 aggravating circumstance in that event but only after

1 you have determined what the penalty should be to
2 notify the bailiff.

3 Ladies and gentlemen, from this point forward
4 everything I tell you will relate to the determination
5 as to whether or not you would impose a life or death
6 sentence after finding that the State has proven the
7 aggravating circumstance. A life sentence means that
8 the defendant would be imprisoned until the death of
9 the defendant without the possibility of parole. The
10 death penalty means that the defendant will be put to
11 death or executed as punishment for the murder. You
12 must choose between these two possible sentencing
13 options.

14 The death penalty is never mandatory to you.
15 But you must understand that if you recommend the
16 death penalty, it is mandatory and the Court will
17 follow your recommendation. In deciding what penalty
18 to impose, you should consider all of the evidence in
19 the case including the aggravating circumstance and
20 any evidence of mitigating circumstances.

21 Aggravating circumstances are facts, incidents or
22 details of an occurrence that South Carolina Law
23 declare will aggravate or make worse the crime of
24 murder. An aggravating circumstance increases the
25 severity of the crime of murder and adds to the injury

1 resulting from the crime.

2 Mitigating circumstances are facts, incidents or
3 details of an occurrence that South Carolina Law
4 declares will reduce the severity of the crime of
5 murder. Mitigating circumstances serve to extenuate
6 or to reduce the degree of moral culpability or
7 responsibility for murder.

8 There are two mitigating circumstances that you
9 should consider that are set forth in the South
10 Carolina code. Ladies and gentlemen, you will have
11 this form with you in the jury room. I'm going to
12 show it to you on the overhead in just a minute that
13 will tell you what the aggravating circumstance that
14 is alleged by the State is. And it also tells you the
15 aggravating circumstance that are at issue -- I'm
16 sorry. The mitigating circumstances that are at issue
17 from the statute. I'm going to go over these
18 mitigating circumstances with you right now.

19 The first says the murder was committed while the
20 defendant was under the influence of mental and
21 emotional disturbance. The second is the age or
22 mentality of the defendant at the time of the crime.
23 Now ladies and gentlemen, by giving you this form, I
24 am not telling you that the aggravating or mitigating
25 circumstances do exist. That is for you to determine.

1 You must also consider whether the evidence
2 supports the existence of any non-statutory mitigating
3 circumstance. Non-statutory mitigating circumstances
4 are not written out in the statute but are
5 circumstances which you might find to serve the same
6 purpose and that is to reduce the severity of the
7 crime of murder.

8 I have instructed you that you must find the
9 existence of the aggravating circumstance beyond a
10 reasonable doubt. However, you need not find any
11 mitigating circumstance beyond a reasonable doubt.
12 You need not even be unanimous in finding a mitigating
13 circumstance. You may impose a life sentence for any
14 reason or for no reason. It is not necessarily that
15 you find a mitigating circumstance before you impose a
16 life sentence.

17 Now, can you fire that thing up for me please?
18 Are you ready?

19 Ladies and gentlemen, I have prepared verdict
20 forms to use in your rendering your verdict. First I
21 want to talk about your verdict as to whether or not
22 the State has proven beyond a reasonable doubt the
23 existence of the statutory aggravating circumstance.
24 Here is the verdict form that you will use if you find
25 the State has failed to meet that burden of proof.

1 It says we, the jury, unanimously find the State
2 has failed to prove beyond a reasonable doubt the
3 existence of the statutory aggravating circumstance.
4 And if that is the verdict of the jury, then the
5 foreperson would sign that verdict form. Return it to
6 the bailiff. And that would be the end of your
7 deliberations in this case.

8 If the jury finds that the State has proven the
9 existence of the statutory aggravating circumstance,
10 then this would be the verdict form that you would
11 use. It says we, the jury, unanimously find that the
12 State has proven beyond a reasonable doubt the
13 following statutory aggravating circumstance. And it
14 sets forth the circumstance. And it has a signature
15 line for each member of the jury to use. And if that
16 is your verdict, then each member of the jury would
17 have to sign that verdict form.

18 You would at that time not notify the bailiff
19 that you have reached the verdict but keep going. And
20 you would move then into consideration of the penalty
21 to impose. If the jury decides that the appropriate
22 penalty to impose is a life sentence, then you would
23 use this verdict form which says we, the jury,
24 unanimously recommend to the Court that the defendant
25 Marion Alexander to be sentenced to life in prison.

1 If that is your verdict, only the foreperson would
2 need to sign that verdict form.

3 If the jury determines that the appropriate
4 sentence is the death penalty, you would use this
5 verdict form. And it says we, the jury, having found
6 beyond a reasonable doubt the existence of the
7 following statutory aggravating circumstance, and it
8 cites the aggravating circumstance the State seeks to
9 prove, now recommend to the Court that the defendant
10 Marion Alexander Lindsey be sentenced to death.
11 Again, that verdict form has a signature line for each
12 member of the jury. That verdict form actually
13 carries over to the second page.

14 Now, ladies and gentlemen, when you return to
15 deliberate or consider and weigh the evidence using
16 your good judgment and your common sense, you must
17 deliberate fairly and impartially. You must make
18 your decision without bias or prejudice towards or
19 against the State or the defendant. You must honor
20 the oath that you took on Friday morning. You must
21 carefully and impartially consider all of the
22 evidence. And you must follow the law as I have given
23 it to you.

24 Your verdict on the existence of the aggravating
25 circumstance must be unanimous. Also your verdict as

1 to what the sentence should be, if you get to that
2 point, must be unanimous. In just a second, I'm going
3 to send you back into the jury room. I'm going to
4 ask you not yet to begin your deliberations because I
5 may have some matters of law that I need to take up
6 with the lawyers.

7 As I told you during the, at the end of the first
8 phase of the case, you will have all the exhibits in
9 the jury room with you. You will have the jury
10 instruction on statutory and, I'm sorry, on
11 aggravating and mitigating circumstances. You will
12 have the four verdict forms that I just went over with
13 you. And you will have all of the evidence. Let me
14 speak to you again about the weapons that are in
15 evidence.

16 The ammunition would not be back there in the
17 jury room. Those weapons have been secured. They
18 are not in a position to be fired. If anybody on the
19 jury needs to see the ammunition that is in evidence,
20 you simply let us know that. We'll make it available
21 to you under conditions that will satisfy us that it
22 is safe to do so. Also you will have with you in the
23 jury room or you have in evidence at least --

24 Is it 21?

25 **MR. GOWDY:** 21 and 21(a).

1 **THE COURT:** All right. State's Exhibit 21 and
2 21(a) which is an audio recording. If you want to
3 hear that recording, you would need to let us know and
4 we will play that for you in the courtroom because
5 only a portion of the recording is admitted into
6 evidence.

7 I would like for the three alternates to remain
8 in their seats. The twelve members of the jury can
9 go to the jury room now but do not yet begin your
10 deliberations. When we are ready for you to begin,
11 the bailiffs will bring you the evidence, the four
12 verdict forms and the jury instruction on aggravating
13 and mitigating circumstances and tell you at that time
14 to begin.

15 (WHEREUPON, the jury exits at approximately 11:27
16 a.m.)

17 **THE COURT:** Mr. Scruggs, would you take the
18 alternates into the alternate jury room.

19 Gentlemen, do not discuss the case while you are
20 back there in the Jury room, please.

21 (WHEREUPON, the alternate jurors exit at approximately
22 11:27 a.m.)

23 **THE COURT:** Any exceptions to the charge?

24 **MR. GOWDY:** No objections, no exceptions.

25 **MR. BARTOSH:** No objections to the

1 instructions, Your Honor. But as to the foreperson,
2 has one been picked? I know there was some
3 discussion about it.

4 **THE COURT:** From the discussion that I raised,
5 I decided to leave it alone --

6 **MR. BARTOSH:** Okay.

7 **THE COURT:** -- and assume that Ms. Driscoll is
8 still the foreperson.

9 **MR. BARTOSH:** Okay.

10 **THE COURT:** Do you want me to do anything
11 different than that?

12 **MR. BARTOSH:** No, sir. The only reason I
13 mention this is because she was sitting in the back
14 row.

15 **THE COURT:** The bailiffs will make sure that she
16 sits in the appropriate seat from this point forward.
17 You don't have any objection to that, did you?

18 **MR. BARTOSH:** No, sir.

19 **THE COURT:** No objections to the charge?

20 **MR. BARTOSH:** No, sir.

21 **THE COURT:** All right. I want you all to come up
22 here and go through the evidence and make sure the
23 proper set of exhibits is in evidence. And
24 particularly let's make sure that those court exhibits
25 that I looked at, the photographs of the body are not

1 in the set of evidence that goes back to the jury.

2 (WHEREUPON, the attorneys reviewed the exhibits.)

3 **THE COURT:** All right. The jury is back from
4 their smoke break and their walk outside. It's my
5 understanding that you all have agreed on what it he
6 proper set of exhibits.

7 **MR. BARTOSH:** That's correct, Your Honor.

8 **THE COURT:** You don't need the indictment to go
9 back?

10 **MR. BARTOSH:** Your Honor, I don't think it
11 would be necessary for that to go back.

12 **THE COURT:** Okay.

13 **MR. GOWDY:** I don't know that there is a
14 legal requirement. I don't know what the harm would
15 be. I never had that issue come up. I can't say
16 whether it's ever gone back before. It's never come
17 up.

18 **THE COURT:** The verdict form and the statutory
19 charge on the aggravators and mitigators are in the
20 group. And y'all have examined everything and agree
21 that it is the proper set of exhibits and verdict
22 form?

23 **MR. BARTOSH:** Yes, sir.

24 **MR. GOWDY:** Yes, sir.

25 **THE COURT:** All right. Send it back and instruct

1 them to begin their deliberations.

2 (WHEREUPON, the jury begin deliberation at
3 approximately 11:48 a.m.)

4 **MR. BARTOSH:** Your Honor, have they been
5 instructed that if the whole group is not present,
6 they are not --

7 **THE COURT:** No, sir. They are all together right
8 now. I can either do it now or I can do it the first
9 time they ask for a break.

10 **MR. BARTOSH:** Okay. When they ask for a break.

11 **THE COURT:** Does that suit you?

12 **MR. BARTOSH:** Yes, sir.

13 **THE COURT:** Okay. All right. Anything we need to
14 take up right now? One thing that we need to do to at
15 some point is to put on the record S.L.E.D.'s
16 accounting of their custody of the jury over the last
17 three days or four days. It doesn't matter when we do
18 that.

19 **MR. BARTOSH:** No, sir.

20 **THE COURT:** We'll do it in a few minutes. All
21 right.

22 (WHEREUPON, a recess was taken at approximately 11:50
23 a.m.)

24 (WHEREUPON, the Court resumed at approximately 12:39
25 p.m.)

1 **THE COURT:** I'm going to play those two witnesses
2 testimony and then I am going to play the audiotape or
3 the Solicitor is. And then I'm going to answer the
4 two questions. What's the exhibit number?

5 **MR. GOWDY:** 39.

6 **THE COURT:** And you agree with me just to tell
7 them that?

8 **MR. BARTOSH:** Yes, sir.

9 **MR. GOWDY:** They have the exhibits in the
10 back.

11 **THE COURT:** We will send the bailiffs to get it.
12 (WHEREUPON, the jury enters at approximately 12:41
13 p.m.)

14 **THE COURT:** All right. We have several questions
15 from the jury. The jury request to see the testimony
16 of the Kiera the child that was in the middle seat.
17 It's marked as Court's Exhibit 7. The jury request to
18 see the testimony of Benny Godfrey. That's Court
19 Exhibit 8. Both signed by the forelady.

20 Ladies and gentlemen, we can play that testimony
21 for you. It's not been prepared into a transcript.
22 We can play it for you. We are prepared to do that
23 now.

24 (WHEREUPON, the testimony of Kiera Potlow and Benny
25 Godfrey was played at approximately 12:43 p.m.)

1 (WHEREUPON, the play back testimony concluded at
2 approximately 1:10 p.m.)

3 **THE COURT:** Okay. Ladies and gentlemen, the
4 question, the jury request to view the live ammunition
5 that was not fired from Marion Lindsey's revolver.
6 Now, that -- the answer to that question is found in
7 State's Exhibit 39 which is a photograph I believe.

8 The jury request to hear the audiotape of the
9 incident. We're going to play that for you now.
10 Question, what is the legal matter relating to why we
11 can not hear the rest of the 911 recording. The
12 answer to that question is because it's not in
13 evidence.

14 **MR. GOWDY:** Your Honor, if the Court would
15 like me to make this available to the Court or play
16 the tape, I will do it at the Court's direction.

17 **THE COURT:** You do it.

18 **MR. GOWDY:** Yes, sir.

19 (WHEREUPON, State's Exhibit 21 was played at
20 approximately 1:12 p.m.)

21 **THE COURT:** All right. Ladies and gentlemen,
22 those of you who are on the jury, you may return to
23 the jury room.

24 The alternates, if you will be seated for a
25 second, we will take you into the other jury room.

1 (WHEREUPON, the jury exits at approximately 1:14 p.m.)

2 **THE BAILIFF:** Gentlemen, follow me please.

3 (WHEREUPON, the alternate jurors exit at approximately
4 1:15 p.m.)

5 **THE COURT:** Okay. Any objections?

6 **MR. BARTOSH:** No.

7 **THE COURT:** We will have the bailiff take that CD
8 back into the jury when he comes back.

9 Mr. Scruggs, would you take State's Exhibit 21
10 to the jury room please.

11 (WHEREUPON, the jury resume deliberation at
12 approximately 1:17 p.m.)

13 (WHEREUPON, a recess was taken at approximately 1:17
14 p.m.)

15 (WHEREUPON, the Court resume at approximately 2:55
16 p.m.)

17 **THE COURT:** All we need is the defendant. We
18 don't need Trey and Barry in here. Just get the
19 defendant.

20 (WHEREUPON, the defendant enters at approximately 2:57
21 p.m.)

22 **THE COURT:** Bring in the jury.

23 Now, stay at this door for just a second, Carl.
24 Make sure they don't come in.

25 All right. They can come in.

1 (WHEREUPON, the jury enters at approximately 2:58
2 p.m.)

3 **THE BAILIFF:** Do you need the alternates?

4 **THE COURT:** Nah, I don't need the alternates.

5 Ladies and gentlemen, I understand that some of
6 you would like to go outside and take a little break.
7 I'm going to allow you to do that of course. Before
8 you did that, I wanted to explain to you that you may
9 not discuss the case. You may not deliberate unless
10 all twelve of you are together in the same room.

11 So when all twelve of you are in the jury room as
12 you have been up until now, it was not necessary for
13 me to give you that instruction. But since you have
14 asked for a break to go outside, there may be two or
15 three of you that walk off and have one little
16 conversation. In that conversation, you may not
17 discuss the case. You can only discuss the case when
18 all twelve of you are together in the same room.

19 So have a nice break. When you are done with the
20 break, they will take you back in the jury room. You
21 can resume your deliberations then.

22 (WHEREUPON, the jury exits at approximately 3:02 p.m.)

23 **THE COURT:** Anything further at this time?

24 **MR. GOWDY:** No, sir.

25 **MR. BARTOSH:** No, sir.

1 **THE COURT:** All right.

2 (WHEREUPON, deliberation resumes at approximately 3:14
3 p.m.)

4 (WHEREUPON, a recess was taken at approximately 3:14
5 p.m.)

6 (WHEREUPON, the Court resumes at approximately 3:27
7 p.m.)

8 **THE COURT:** Let me see y'all for a second please.

9 (WHEREUPON, a bench conference was held off the
10 record.)

11 **THE COURT:** All right. Bring in the jury please.

12 The S.L.E.D. officers can stay where they are.

13 Now, Jack, keep that door closed for just one
14 second please.

15 Now, ladies and gentlemen, as I said a little
16 while earlier, I realize this is an emotional moment
17 for everybody particularly for some people. If you
18 don't think you can control your emotions when this
19 verdict is announced, I'm instructing you to leave
20 this courtroom now. If there's anybody who has any
21 kind of outburst as a result of this verdict, I
22 assure you that you will spend the night in jail at
23 the detention center tonight.

24 **THE BAILIFF:** You ready, Your Honor?

25 **THE COURT:** Yes, sir.

1 (WHEREUPON, the jury enters at approximately 3:29
2 p.m.)

3 **THE COURT:** Ms. Driscoll, has the jury reached
4 the verdict?

5 **THE FOREPERSON:** We have, Your Honor.

6 **THE COURT:** Would you pass all the verdict forms
7 to the bailiff please.

8 (WHEREUPON, the verdict forms were passed to the Court
9 and the Court reviewed the documents.)

10 **THE COURT:** All right. The verdict as to the
11 aggravating circumstances, we, the jury, unanimously
12 find the State has proven beyond a reasonable doubt
13 the following statutory aggravating circumstance, the
14 circumstances is printed. And there are twelve
15 signatures on the verdict form.

16 The verdict as to the sentence. We, the jury,
17 having found beyond a reasonable doubt the existence
18 of the following statutory aggravating circumstance,
19 and the circumstance is printed, now recommend to the
20 Court that the defendant Marion Alexander Lindsey be
21 sentenced to death. And there are twelve signatures
22 on the verdict form.

23 Now, ladies and gentlemen, I'm going to ask each
24 one of you whether or not the verdict that I just
25 announced on both the aggravating circumstance and as

1 to what the sentence should be was your verdict at the
2 time the verdict form was filled out and is still your
3 verdict now. When I call your name, if it was your
4 verdict then and if it is still your verdict now,
5 please say yes.

6 Is that satisfactory, Mr. Bartosh?

7 **MR. BARTOSH:** Yes, sir.

8 **THE COURT:** Ashley Driscoll.

9 **MS. DRISCOLL:** Yes.

10 **THE COURT:** James Gedroic.

11 **MR. GEDROIC:** Yes.

12 **THE COURT:** Martha Sallis.

13 **MRS. SALLIS:** Yes.

14 **THE COURT:** Danny Gomes.

15 **MR. GOMES:** Yes.

16 **THE COURT:** Brenda Smith.

17 **MS. SMITH:** Yes.

18 **THE COURT:** Larry Mauldin.

19 **MR. MAULDIN:** Yes.

20 **THE COURT:** Donald Ray.

21 **MR. RAY:** Yes.

22 **THE COURT:** Dean Israel.

23 **MR. ISRAEL:** Yes.

24 **THE COURT:** Jeffrey Rhineberger.

25 **MR. RHINEBERGER:** Yes.

1 **THE COURT:** Samuel Barnwell.

2 **MR. BARNWELL:** Yes.

3 **THE COURT:** Marvin Smith.

4 **MR. SMITH:** Yes.

5 **THE COURT:** Jackie Barham.

6 **MR. BARHAM:** Yes.

7 **THE COURT:** All right. Ladies and gentlemen, I
8 have a few matters of law that I need to take up. I
9 need for you all to bear with me. I would like for
10 you to go back in the jury room for just a few
11 minutes. I will be back with you as soon as I can get
12 to it.

13 (WHEREUPON, the jury exits at approximately 3:37 p.m.)

14 **THE COURT:** All right. The verdict forms appear
15 to me to be proper on both the aggravating
16 circumstance and on the recommendation of death
17 penalty. Mr. Bartosh and Mr. Gowdy, I would like
18 for you both to come up here now and examine the
19 verdict forms. Make sure they are proper.

20 And then Mr. Bartosh, I will hear your motions.

21 (WHEREUPON, the attorneys reviewed the documents.)

22 **THE COURT:** The forms appear to be proper?

23 **MR. BARTOSH:** Yes, sir.

24 **MR. GOWDY:** Yes, sir, Your Honor.

25 **THE COURT:** I am going to instruct the Clerk to

1 file these forms. I'm also filing the jury
2 instructions on aggravating and mitigating
3 circumstances and the blank forms that were not filled
4 out.

5 **MR. BARTOSH:** Your Honor, may it please the
6 Court, we would first make a motion for a new trial.
7 Taking the evidence that was presented to the jury on
8 the aggravating circumstance in the light most
9 favorable to the State, we would suggest that no
10 reasonable juror could find that the State had carried
11 its burden of proving beyond a reasonable doubt that
12 aggravating circumstance.

13 **THE COURT:** Motion is denied.

14 **MR. BARTOSH:** Your Honor, also out of abundance
15 of caution, we would renew all of our prior objections
16 on the various rulings during the trial that the Court
17 had made based on the arguments that were made at the
18 time of the objections, Your Honor.

19 **THE COURT:** All right. Those motions are denied.
20 Anything further at this point?

21 **MR. BARTOSH:** No, sir.

22 **THE COURT:** Anything regarding the form of verdict
23 or the deliberation of the jury or anything?

24 **MR. BARTOSH:** No, sir.

25 **THE COURT:** All right. We'll take a very short

1 break. Then we will have a sentencing hearing.

2 (WHEREUPON, a short recess was taken at approximately
3 3:39 p.m.)

4 (WHEREUPON, the Court resumed at approximately 3:40
5 p.m.)

6 **THE COURT:** Let me see the legal department from
7 each side up here.

8 (WHEREUPON, a bench conference was held off the
9 record.)

10 **THE COURT:** Bring in the jury and the
11 alternates.

12 (WHEREUPON, the jury enters at approximately 3:42
13 p.m.)

14 **THE COURT:** Martha, file that please.

15 Bring the defendant around, please.

16 (WHEREUPON, the defendant approaches the bench.)

17 **THE COURT:** All right. As required by statute, I
18 find that the evidence in this case warrants the
19 imposition of the death penalty and that its
20 imposition is not as a result of prejudice, passion or
21 any arbitrary factor.

22 Mr. Lindsey, is there anything you want to say?

23 **MR. LINDSEY:** No.

24 **THE COURT:** Mr. Bartosh?

25 **MR. BARTOSH:** No, sir.

1 **THE COURT:** The defendant has been found by the
2 jury to be guilty of the offense of murder. The jury
3 has recommended that the defendant should be sentenced
4 to death. It is therefore the judgment and sentence
5 of the Court that the defendant, Marion Alexander
6 Lindsey, be taken to the Spartanburg County Detention
7 Center and thence to the State Department of
8 Corrections henceforth to be kept in close and safe
9 confinement until the 26th of July, 2004 upon which
10 day between the hours of 6 o'clock p.m. and 6 o'clock
11 a.m. or upon an order of execution issued by the South
12 Carolina Supreme Court, the defendant, Marion
13 Alexander Lindsey, shall suffer death in the manner
14 provided by law. It is so ordered.

15 (WHEREUPON, the defendant exits the courtroom at
16 approximately 3:43 p.m.)

17 **THE COURT:** All right. Let me say to the lawyers
18 on both sides as I have said in private, I certainly
19 appreciate the very fine effort that both of you put
20 in this case and the way that you handled yourselves
21 during the course of the trial. It's been a pleasure
22 to try this case with you. We are adjourned.

23 Ladies and gentlemen of the jury, you are
24 excused. I will speak to you in the jury room about
25 your rights and responsibilities following this trial.

1 (WHEREUPON, the jury exits at approximately 3:45 p.m.)

2 (WHEREUPON, the Court adjourned at approximately 3:45

3 p.m.)

4 **END OF VOLUME 4**

5

6

7 **END OF PROCEEDINGS**

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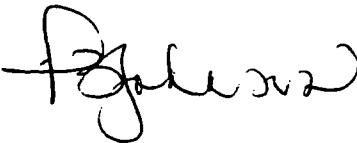
CERTIFICATE

2176

1 I, the undersigned, Teresa B. Johnson, Official Court
2 Reporter for the Thirteenth Judicial Circuit of the State
3 of South Carolina, do hereby certify that the foregoing is
4 a true, accurate and complete Transcript of Record of all
5 the proceedings had and evidence introduced in the trial of
6 the captioned case, relative to appeal, in the Court of
7 General Sessions for Spartanburg County, South Carolina, on
8 the 17th through 24th days of May, 2004.

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

11
12 February 8, 2005

13 

14
15 Teresa B. Johnson

16 Official Court Reporter
17
18
19
20
21
22
23
24
25

WITNESSES

J. Vown

Spartanburg Co. Sheriff Dept.

1. SENTENCE MADE ☒

2. REPORT ENDED ☒

3. CO PULLED ☒

4. INDEXED ☒

5. CHECKED WARRANTS ☒

6. CHECKED SIGNATURE ☒

ARREST AND FINE CARD MADE ☒
WARRANT NUMBER

H25253 TRAFFIC VIOLATIONS COPY ☒

ACTION OF GRAND JURY

True Bill
Mede. Bill
Foreperson of Grand Jury

Date: 10/3/02

VERDICT

guilty

Whley Driscoll
Foreperson of Petit Jury

Date: 5/21/04

DOCKET NO. 02-03-42-4753

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

OCT 07 2002

TERM

THE STATE

vs.

Marion Alexander Lindsey

A/K/A MARIONA ALEXANDER LINDSEY

Indictment for

MURDER

SC Code 16-03-0010, 0020

CDR Code 116

Class FEL-EXM

MARCO MITCHELL

2008 SEP 23 PM 3:49

CLERK OF COURT
Spartanburg County

2177

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

OCT 03 2002

At a Court of General Sessions, convened on _____, the
Grand Jurors of Spartanburg County present upon their oath:

MURDER

The Defendant, Marion Alexander Lindsey, did in Spartanburg County on or about September 18, 2002, feloniously, willfully, and with malice aforethought, kill one Ruby Lindsey, by shooting the victim with a gun, and the victim died as a proximate result thereof, all in violation of Section 16-3-0010, 0020, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

THE STATE,

vs.

MARION ALEXANDER LINDSEY,

Defendant.

COURT OF GENERAL SESSIONS

02-GS-42-4753

AGGRAVATING CIRCUMSTANCES
VERDICT FORM

We the jury unanimously find the State has proven beyond a reasonable doubt the following statutory aggravating circumstance:

The offender by his act of murder knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which normally would be hazardous to the lives of more than one person.

CLERK OF COURT
SPARTANBURG COUNTY

2004 MAY 24 PM 3:51

MARC KITCHENS

Ashley Briscall
Foreperson
Marion Smith
Juror
James Hedrick
Juror
Gary A. Mauldin
Juror
Samuel H. Barnard
Juror
Dean T. Isaac
Juror
Branda Smith
Juror
Jackie Borkom
Juror
Martha J. Sallie
Juror
Donald E. Ray
Juror
Danny Jones
Juror
Jeff Rieberger
Juror

Dated: 5-24-04

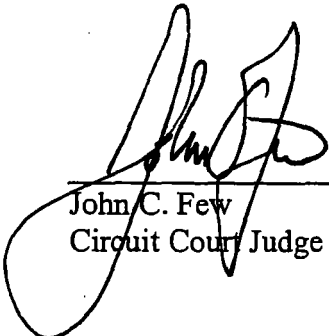
STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	
THE STATE,	)	02-GS-42-4753
	)	
vs.	)	
	)	
MARION ALEXANDER LINDSEY,	)	DEATH SENTENCE
	)	
Defendant.	)	

Defendant has been found by the jury to be guilty of the offense of murder. The jury has recommended that Defendant should be sentenced to death.

It is, therefore, the judgment and sentence of the court that Defendant, Marion Alexander Lindsey, be taken to the Spartanburg County Detention Center, and thence to the State Department of Corrections, henceforth to be kept in close and safe confinement until the 26th of July, 2004, upon which day between the hours of six o'clock p.m. and six o'clock a.m. on _____, or upon an Order of Execution issued by the South Carolina Supreme Court, Defendant, Marion Alexander Lindsey, shall suffer death in the manner provided by law.

AND IT IS SO ORDERED.

Spartanburg, South Carolina
May 24, 2004


 John C. Few
 Circuit Court Judge

MAKING KITCHENS
 2004 MAY 24 PM 3:51

A CERTIFIED COPY
Marc Kitchener
 CLERK OF COURT
 SPARTANBURG COUNTY
 BY: Paul H. H. H.
 DATED 6/4/2004

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

COURT OF GENERAL SESSIONS

THE STATE,

02-GS-42-4753

vs.

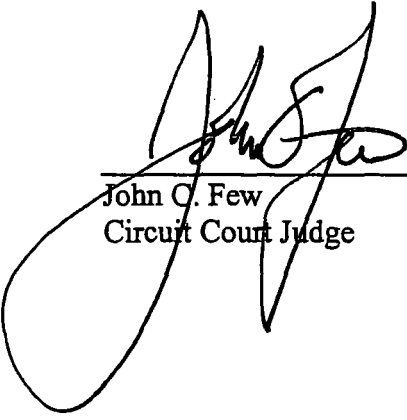
MARION ALEXANDER LINDSEY,

AFFIRMATION OF
DEATH SENTENCE

Defendant.

I find 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.

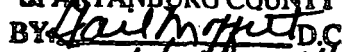
IT IS SO ORDERED.


John C. Few
Circuit Court Judge

Spartanburg, South Carolina
May 24, 2004

MARCO KITCHENS
2004 MAY 24 PM 3:51

A CERTIFIED COPY

CLERK OF COURT
SPARTANBURG COUNTY
BY: 
DATED 6/4/2004

depression, cognitive deficits, and low intellectual functioning determined by Margaret Melikian

9. Does the defendant have a record of prior convictions?

Yes ☒ [X]

No ☐ []

a. If so, either attach hereto a record manifesting such prior conviction(s) or list the offense(s), the date(s) of the offense(s) and the sentence(s) imposed:

	<u>Offense</u>	<u>Date of Offense</u>	<u>Sentence Imposed</u>
1.	See attached rap sheet		
2.			
3.			
4.			
5.			
6.			

10. Was the defendant a resident or nonresident of the county in which trial was held?

Resident ☒ [X]

Nonresident ☐ []

B. Data Concerning Pre-Trial Matters

1. The defendant was arrested on September 18, 2002

2. Was a preliminary hearing requested? Yes ☐ [] No ☐ [] unknown

3. Was a preliminary hearing conducted? Yes ☐ [] No ☐ [] unknown

4. The defendant was indicted at the October 7, 2002 Term of Court of General Sessions for Spartanburg County, South Carolina.

5. List each charge alleged in the indictment.

a. Murder

b. _____

c. _____

d. _____

e. _____

f. _____

6. The defendant was arraigned on _____, 20 .

If not arraigned, did the defendant waive arraignment?

Yes [X] No []

7. Was the defendant provided with a true copy of the whole indictment at least three days prior to his trial thereupon?

Yes [X] No []

a. If not, did the defendant waive this right to a three-day sight of the indictment?

Yes [] No []

8. Did the Solicitor notify the defendant at least thirty days before trial that the State would seek the imposition of the death penalty upon the defendant?

Yes [X] No []

9. Did the Solicitor make known to the defendant in writing prior to trial the evidence in aggravation of punishment thereafter introduced by the State during the trial or during the sentencing proceeding?

Yes [X] No []

10. Did the defendant move for a change of venue?

Yes [] No [X]

a. If so, was the venue changed?

Yes [] No []

(1) If so, designate the county _____.

C. Data Concerning the Trial

1. The defendant was brought to trial in the Court of General Sessions for Spartanburg County, South Carolina, on May 17, 2004 during the May 17, 2004 Term of that Court.

2. How did the defendant plead? Guilty [] Not Guilty [X]

3. List each offense of which the defendant was convicted and each offense of which the defendant was acquitted:

a. The offense(s) of which the defendant was convicted:

- (1) Murder
- (2) _____
- (3) _____
- (4) _____
- (5) _____

b. The offense(s) of which the defendant was acquitted:

- (1) N/A
- (2) _____
- (3) _____
- (4) _____
- (5) _____

4. On what date and at what time did the conviction(s) occur?

May 21, 2004, at 4:30 o'clock, p.m.

D. Data Relating to Sentencing Proceeding

1. Before whom was the defendant's sentencing proceeding conducted?

the trial jury ☒ the trial judge ☒
a new jury ☐ a new trial judge ☐

a. If conducted before the trial jury,

(1) On what date and at what time was the sentencing proceeding held?

May 22, 2004, at 4:30 o'clock, p.m.

(a) If such proceeding was conducted less than twenty-four hours after the defendant's conviction, did the defendant waive the twenty-four hour waiting period?

Yes ☐ No ☐

b. If conducted before the trial judge or a new trial judge,

(1) And if the defendant was convicted by a jury,

- (a) Did the defendant and the State waive having the trial jury recommend sentence?

Yes ☐ No ☒

"1" If not, was the sentencing proceeding conducted by the trial judge because the case, due to nonprejudicial error, had been remanded to the trial court for resentencing based upon the record and argument of counsel?

Yes ☐ No ☐

- (b) On what date and at what time was the sentencing proceeding held?

May 22, 2004, at 4:30 o'clock, p.m.

"1" If such proceeding was conducted less than twenty-four hours after the defendant's conviction, did the defendant waive the twenty-four hour waiting period?

Yes ☐ No ☐

- (2) And if the defendant was convicted upon a plea of guilty, on what date was the sentencing proceeding held?

N/A, 2004.

- c. If conducted before a new jury,

- (1) On what date was the sentencing proceeding held?

N/A, 2004.

- (2) Was such proceeding conducted by the same judge who presided over the defendant's trial?

Yes ☐ No ☐

2. Which of the following statutory aggravating circumstances were instructed, if the sentencing proceeding was conducted before a jury, and which of those circumstances were found, irrespective of whether or not that proceeding was conducted before a jury or a trial judge?

	<u>Instructed</u>	<u>Found</u>
a. Murder was committed while in the commission of		
(1) Rape	☐	☐
(2) Assault with intent to ravish	☐	☐
(3) Kidnapping	☐	☐
(4) Burglary	☐	☐
(5) Robbery while armed with a deadly weapon	☐	☐

	<u>Instructed</u>	<u>Found</u>
(6) Larceny with use of a deadly weapon	☐	☐
(7) Housebreaking	☐	☐
(8) Killing by poison	☐	☐
b. Murder was committed by a person with a prior record of conviction for murder.	☐	☐
c. The offender by his act of murder knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person.	☒	☒
d. The offender committed the offense of murder for himself or another for the purpose of receiving money or any other thing of monetary value.	☐	☐
e. The murder of a judicial officer, former judicial officer, solicitor, former solicitor, or other officer of the court during or because of the exercise of his official duty.	☐	☐
f. The offender caused or directed another to commit murder or committed murder as an agent or employee of another person.	☐	☐
g. The offense of murder was committed against any peace officer, corrections employee or fireman while engaged in the performance of his official duties.	☐	☐
3. Was (were) the aggravating circumstance(s) found supported by the evidence?		
	Yes ☒	No ☐
4. Was there evidence of mitigating circumstances?		
	Yes ☐	No ☐

5. If so, which of the following mitigating circumstances was in evidence?

- a. The defendant has no significant history of prior criminal activity involving the use of violence against another person. []
- b. The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance. [X]
- c. The victim was a participant in the defendant's conduct or consented to the act. []
- d. The defendant was an accomplice in a murder committed by another person and his participation was relatively minor. []
- e. The defendant acted under duress or under the domination of another person. []
- f. 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. []
- g.. The age or mentality of the defendant at the time of the crime(s). [X]
- h. The defendant was provoked by the victim into committing murder. []
- i. The defendant was below the age of eighteen at the time of the crime(s). []
- j. Other. []

Please explain if (j) is checked.

6. If tried with a jury, was the jury instructed to consider the circumstances in 5 as mitigating circumstances?

Yes [X] No []

7. Was the jury provided in writing for its deliberation the statutory instructions as to aggravating and mitigating circumstances?

Yes [X] No []

8. As trial judge, did you, prior to imposing the sentence of death upon the defendant, find as an affirmative fact that the death penalty was warranted under the evidence of the case and was not a result of prejudice, passion or any other arbitrary factor?

Yes [☒] No [☐]

E. Data Relating to Offense(s)

1. Was there evidence that the defendant, at the time the offense(s) was (were) committed, was

a. Under the influence of alcohol? Yes [☐] No [☒]

b. Under the influence of narcotics or other dangerous drugs? Yes [☐] No [☒]

2. Was (were) any weapon(s) used in the commission of the crime of murder?

Yes [☒] No [☐]

- a. If so, check each weapon used

(1) Poison	[☐]
(2) Pistol	[☒]
(3) Rifle	[☐]
(4) Shotgun	[☐]
(5) Blunt instrument	[☐]
Describe _____	
(6) Sharp instrument	[☐]
Describe _____	
(7) Motor vehicle	[☐]
(8) Other	[☐]
Describe _____	

3. Cause of death. Gunshot wounds to the head

4. County in which the body was found. Spartanburg

5. County in which the murder occurred if different from county in which the body was found. _____

F. Data Relating to Victim

1. What was the victim's age? 27
2. Was the victim related by blood or marriage to the defendant/
Yes [X] No []
 - a. If so, what was the relationship? spouse
3. Was the victim the same race as the defendant? Yes [X] No []
4. Was the victim the same sex as the defendant? Yes [] No [X]
5. Was the victim physically harmed or tortured? Yes [X] No []

If yes, state nature of harm or extent of torture:

Four gunshot wounds to the head and neck

G. Data Concerning Defense Counsel

1. Who was (were) the defendant's attorney(s) and what was (were) his (their) mailing address(es)?

a. N. Douglas Brannon, 175 Magnolia Street, Suite 101, Spartanburg, SC 29306

b. J. Michael Bartosh, 258 North Church Street, Spartanburg, SC 29306

c. Karen Quimby, 258 North Church Street, Spartanburg, SC 29306

d. _____

2. Did the defendant retain his own counsel or did the court appoint defense counsel?

Retained by defendant []
Appointed by court [X]

- a. Specify for each such counsel, the date retained or appointed, the number of years as a licensed attorney and the number of years of actual felony trial experience.

<u>Name</u>	<u>Date retained Or appointed</u>	<u>Years experience as attorney</u>	<u>Years felony trial exp.</u>
(1) <u>N. Douglas Brannon</u>	3/9/04	3 ½	3
(2) <u>J. Michael Bartosh</u>	3/9/04	17	15
(3) <u>Karen Quimby</u>	mid-March 2004	6	3+
(4) _____			

3. Identify by name each attorney who, at the time of his appointment, was employed by the Public Defender's Office.

J. Michael Bartosh

Karen Quimby

4. Did each counsel serve throughout the trial? Yes ☒ No ☐

a. If not, explain in detail. _____

H. General Considerations

1. Was race raised by the defense as an issue in the trial? Yes ☐ No ☒
2. Did race otherwise appear as an issue in the trial? Yes ☐ No ☒
3. Were members of the defendant's race represented on the petit jury? Yes ☒ No ☐
4. Were members of the defendant's race represented on the jury venire? Yes ☒ No ☐
5. Was there any evidence that members of the defendant's race were systematically excluded from the jury? Yes ☐ No ☒
6. Was the jury instructed to exclude race as an issue? Yes ☐ No ☒
7. Was there extensive publicity in the community concerning this case? Yes ☒ No ☐

8. Was the jury instructed to disregard such publicity? Yes [X] No []
9. Was the jury sequestered? Yes [X] No []
10. Was the jury instructed to avoid any influence of passion, prejudice or any other arbitrary factor when recommending sentence? Yes [X] No []
11. Your general comments concerning the appropriateness of the sentence imposed in this case.
I believe the death penalty is appropriate given the horrific nature of the crime and the defendant's prior record of similar crimes.
12. If the defendant is a female, is she currently pregnant? Yes [] No []
- a. If so, the anticipated delivery date is _____.
13. This report was submitted to the defendant's counsel for such comments as he (they) desired to make concerning the factual accuracy of the report and
- a. His (their) comments are attached []
- b. He (they) stated he (they) had no comments []
- c. He has (they have) not responded []

I. Chronology of Case

		Elapsed Days
1. Date of offense	<u>9/18/02</u>	_____
2. Date of arrest	<u>9/18/02</u>	_____
3. Date trial began	<u>5/17/04</u>	_____
4. Date sentence imposed	<u>5/24/04</u>	_____
5. Date post trial motions ruled on	<u>5/24/04</u>	_____
6. Date trial judge's report completed	<u>6/04/04</u>	_____
7. *Date received by Supreme Court	_____	_____
8. *Date sentence		

review completed

9. *Total elapsed days

* To be completed by Supreme Court

Judge, Court of General Sessions

Spartanburg County, South Carolina

Date

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.

September 8th, 2006

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
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.