

ORIGINAL

STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM YORK COUNTY  
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

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Case No.: 93-GS-46-4296  
93-GS-46-4299  
93-GS-46-4301  
93-GS-46-4303

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State of South Carolina, ..... Respondent,

v.

Mar-Reece Aldean Hughes, ..... Appellant.

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RECORD ON APPEAL

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA )  
COUNTY OF YORK ) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA )  
vs. ) TRANSCRIPT OF RECORD  
MAR-REECE ALDEAN HUGHES ) (93GS46-4296; 93GS4303;  
93GS46-4304; 93GS4305)

SEPTEMBER 11 - 22, 1995

BEFORE: THE HONORABLE JOHN C. HAYES, III and a Jury.

APPEARANCES:

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Telephone #803-366-0554

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SEPTEMBER 7-8, 1995 - YORK COUNTY

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
Roberta Tepper				
Mr. Pope	2472			
Mr. Schusterman		2474		
Harold C. Duke				
Mr. Pope	2580		2603	
Mr. Schusterman		2591		2604
Leslie R. Herring				
Mr. Pope	2605			
Mr. Schusterman		2609		
Timothy Sanders				
Mr. Pope	2613		2671	
Ms. Brice		2631		
Broadus Lee Strain				
Mr. Brackett	2673		2685	
Mr. Schusterman		2679		
Randy Clinton				
Mr. Brackett	2687			
Mr. Schusterman		2697		
James Scott Rockholt				
Mr. Brackett	2705			
Ms. Brice		2708		

1 PRETRIAL MOTIONS and INCAMERA HEARINGS  
 2 SEPTEMBER 7-8, 1995 - YORK COUNTY (CONTINUED)

3	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
4	Mary Henry Kitts				
5	Mr. Brackett	2711			
6	Mr. Schusterman		2714		
7	Larry P. Devinney				
8	Mr. Brackett	2715			
9	Ms. Brice		2725		
10	Michelle Ayers				
11	Mr. Pope	2752			
12	Mr. Schusterman		2758		
13	Crystal Ayers				
14	Mr. Pope	2760			
15	Mr. Schusterman		2769		
16	Dafferlin Barnard Dupree				
17	Ms. Brice	2777		2785	
18	Mr. Pope		2781		2785
19	Charles Cabaniss				
20	Mr. Brackett	2789			
21	Mr. Schusterman		2807		
22	Bruce Bryant				
23	Mr. Brackett	2822			
24	Mr. Schusterman		2829		
25	Dafferlin Barnard Dupree				
26	Ms. Brice	2832		2854	
27	Mr. Pope		2838		2857
28	Donald William Morgan				
29	Ms. Brice	2858		2883	
30	Mr. Pope		2870		2884
31	Renee S. Kohanski				
32	Ms. Brice	2885		2921	
33	Mr. Pope		2903		2924
34	Dafferlin Barnard Dupree				
35	Ms. Brice	2926		2943	
36	Mr. Pope		2935		2945
37	Jerry Bailey				
38	Mr. Brackett	2968		2977	
39	Ms. Brice		2974		

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 PRETRIAL MOTION AND INCAMERA HEARINGS  
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	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
4	Beth Ann Jayne				
	Mr. Pope	831		861	
5	Ms. Brice		844		
6	Sean McMillian				
	Mr. Pope	863			
7	Ms. Brice		874		

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 TRIAL - PHASE I

	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
11	Beth Ann Jayne				
	Mr. Pope	917		947	
12	Ms. Brice		937		948
13	Sean McMillan				
	Mr. Pope	954		974	
	Ms. Brice		969		
15	Crystal Ayers				
	Mr. Pope	975		998	
	Mr. Schusterman		988		1000
17	Michelle Ayers				
	Mr. Pope	1001		1007	
	Mr. Schusterman		1005		
19	Steven Gibson				
	Mr. Pope	1008		1019	
	Mr. Schusterman		1017		
21	Lisa Simmons				
	Mr. Pope	1020			
22	Sherrie Grimmit				
	Mr. Brackett	1035			
23	Mr. Schusterman		1044		
24	Mary Grant				
	Mr. Pope	1047		1072	
25	Mr. Schusterman		1062		1073

1 TRIAL - PHASE I (CONTINUED)

2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Cathy Ann Pittman				
	Mr. Pope	1074			
4	Mr. Schusterman		1084		
5	Marvin Bohon				
	Mr. Brackett	1087		1109	
6	Mr. Schusterman		1101		
7	Jerry W. Waldrop				
	Mr. Brackett	1110			
8	Mr. Schusterman		1116		
9	Timothy Sanders				
	Mr. Pope	1118		1156	
10	Ms. Brice		1135		
11	Dan Ketchel				
	Mr. Pope	1158		1164	
12	Mr. Schusterman		1161		1164
13	Gregory Scott Maggart				
	Mr. Pope	1165			
14	Mr. Schusterman			1168	
15	James David Holcomb				
	Mr. Pope	1171			
16	Craig Alexander				
	Mr. Pope	1174		1195	
17	Mr. Schusterman		1184		1196
18	Randy Clinton				
	Mr. Brackett	1196		1223	
19	Mr. Schusterman		1215		
20	Larry R. Devinney				
	Mr. Bracektt	1224			
21	Mr. Schusterman			1236	
22	Gary Norman Streett				
	Mr. Brackett	1246			
23	Mr. Schusterman		1249		
24	James Scott Rockholt				
	Mr. Brackett	1250			
25	Mr. Schusterman		1252		

TRIAL - PHASE I (CONTINUED)

	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
1	Charles T. Cabaniss				
2	Mr. Brackett	1253		1294	
3	Mr. Schusterman		1275		1298
4	Leroy Perry				
5	Mr. Brackett	1304			
6	Ms. Brice		1312		
7	Kent Pruett				
8	Mr. Pope	1318		1328	
9	Mr. Schusterman		1324		1329
10	Michael Williams				
11	Mr. Pope	1330		1359	
12	Mr. Schusterman		1348		
13	Lawrence Eugene Gainey, Jr.				
14	Mr. Pope	1362			
15	Mr. Schusterman		1387		
16	David Black				
17	Mr. Pope	1398		1428	
18	Mr. Schusterman		1421		
19	Joseph D. Powell				
20	Mr. Pope	1431		1452	
21	Mr. Schusterman		1443		
22	David J. Collins				
23	Mr. Pope	1453		1473	
24	Mr. Schusterman		1469		1474
25	Chris Watts				
26	Mr. Brackett	1474;1485			
27	Mr. Schusterman		1480;1486		
28	Harry Jennings				
29	Mr. Brackett	1487;1492		1517	
30	Mr. Schusterman		1496;1512		1517
31	Broadus Strain				
32	Mr. Brackett	1518		1524	
33	Mr. Schusterman		1521		
34	Everett Earl Jenkins				
35	Mr. Pope	1526			
36	Mr. Schusterman		1535		

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TRIAL - PHASE I (CONTINUED)

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Felix Wimborn				
Ms. Brice	1557		1567	
Mr. Pope		1560		1569
Donald William Morgan				
Ms. Brice	1571		1594	
Mr. Pope		1579		1595
Mar-Reece Aldean Hughes				
Mr. Schusterman	1642			
Mr. Pope		1663		
Bob Ormseth (In camera)				
Mr. Pope	1713			
James Elbert Mann				
Mr. Brackett	1722			
Mr. Schusterman		1724		
Bob Ormseth				
Mr. Pope	1725			

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4 Ms. Brice

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5 WITNESS

DIRECT

CROSS

REDIRECT

RECROSS

6 Donald Diamont

7 Mr. Pope

1870

1875

8 Ms. Brice

1873

9 Randy Weavil

10 Mr. Pope

1875

11 Ms. Brice

1881

12 Robert Reese

13 Mr. Brackett

1887

14 Ms. Brice

1901

15 Broadus Strain

16 Mr. Brackett

1903

1911

17 Ms. Brice

1908

1912

18 Richard Douglas Waldrop

19 Mr. Brackett

1914

20 Mr. Schusterman

1940

21 Christopher Gorth

22 Mr. Brackett

1963

23 Ms. Brice

1970

24 Stella Lingerfeldt

25 Mr. Brackett

1975

David Black

Mr. Brackett

1980

Everett Earl Jenkins

Mr. Pope

1998

Craig Alexander

Mr. Pope

2000

Kelly Carroll

Mr. Pope

2004

William Douglas Taylor

Mr. Pope

2007

	TRIAL - PHASE II (CONTINUED)				
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2	Percy Jones				
3	Mr. Brackett	2015		2029	
4	Mr. Schusterman		2025		
5	Sheila Mazyck				
6	Mr. Brackett	2030			
7	Mr. Schusterman		2032		
8	Otis Speight				
9	Mr. Pope	2035			
10	Myra McCants				
11	Mr. Pope	2043			
12	Caroline Burry				
13	Ms. Brice	2057;2062		2089	
14	Mr. Pope		2061;2082		
15	Alice Norwood				
16	Ms. Brice	2091		2113	
17	Mr. Pope		2103		
18	Willie Cornelius Hughes				
19	Ms. Brice	2117			
20	Mr. Pope		2137		
21	Melinda Hughes Gentry				
22	Ms. Brice	2142			
23	Mr. Pope		2151		
24	Peter Skidmore (In camera)				
25	Ms. Brice	2158			
26	Mr. Pope		2161		
27	Renee Kohanski (In camera)				
28	Ms. Brice	2164			
29	Mr. Pope		2167		
30	Mary Hughes Wilson				
31	Ms. Brice	2174		2186	
32	Mr. Brackett		2183		
33	Renee S. Kohanski				
34	Ms. Brice	2188;2191		2248	
35	Mr. Pope		2190;2217		2248
36	Donald William Morgan				
37	Ms. Brice	2263		2291	
38	Mr. Pope		2278		2294

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TRIAL - PHASE II (CONTINUED)

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
Dafferlin Barnard-Dupree				
Ms. Brice	2296		2331	
Mr. Pope		2314		2334

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TRIAL - PHASE II

CLOSING ARGUMENTS

Mr. Pope Page 2403  
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MOTIONS and INCAMERA HEARINGS

(September 7-8, 1995)

(September 14, 1995)

STATE'S EXHIBITS:

<u>NO.</u>		<u>ID</u>	<u>EVD</u>
1	Certified Copy/Indictments		2475
2	Order		2476
3	Affidavit		2476
4	Copy/Order and Transcript		2487
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6	Photograph		2581
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12	Photo lineup (small)		2607
13	Line-up/gray scale		2607
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16	Diagram/Galleria		
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20	Photograph		2627
21	Photograph		2627
22	SWAT/Reciprocal Agreement		2790
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28	Report		2847
29	Report		2847
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34	Photograph		833
35	Photograph		833

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1 TRIAL EXHIBITS

2 STATE'S EXHIBITS:

3	NO.	DESCRIPTION	ID	EVD
4	1	Photograph		920
	2	Photograph		920
5	3	Photograph		920
	4	Photo line-up (color)		931
6	5	Photo line-up		931
	6	Sketch		966
7	7	Photo line-up		966
	8	Photo line-up		986
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12	17	Photograph		1060
	18	Photograph		1060
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22	37	Photo		1133
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23	39	Photo		1133
	40	Radio Inventory		1173
24	41	Photo		1179
	42	Clothes/Forney		1179
25	43	Weapon and bullets		1180
	44	Photo		1182
	45	Photo		1182
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2	47	Coat/Hughes		1208
	48	Photo		1318
3	49	Photo		1318
	50	Photo		1213
4	51	Photo		1213
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	54	Photo		1236
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8	59	Measurements		1340
	60	Measurements		1340
9	61	Measurements		1340
	62	Measurements		1340
10	63	Photo/Clip		1347
	64	Photo/Clip		1347
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	66	Gear shift knob		1382
12	67	Gunshot Residue Kit		1385
	68	Bullets (2)		1386
13	69	Cigarette butts		1404
	70	Photo		1410
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17	77	Evaluation 12/14/94		
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21	85	Knife		1990
	86	Final Summary/Maynard	1996	
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42	34	Note to Jury	

1 week or so, all of a sudden Mr. Hughes comes around and  
2 they open the door and let him in there and I'm thinking  
3 to myself, Oh, lord, I thought I had got away from him.  
4 Well, he come in there, which me wanting to get away from  
5 him it wasn't that he was mean to me or nothing because me  
6 and him we, you know, I guess pretty good friends the way  
7 I took it because I didn't have much money come in or what  
8 have you and he did. He would share a canteen with me, we  
9 played cards, me and him was always spade partners or what  
10 have you, but me and him, you know, seemed to be pretty  
11 good friends in there, which he didn't talk to the others  
12 as much as he did me, but once he come into the C-1 --

13 Q At any time prior to that when you were on the back  
14 side of C with him did you have any thoughts that he was  
15 unusual or acting bizarre or strange?

16 A No, certainly not. As I said the only reason I really  
17 wanted to get away from him is he had told how he brutally  
18 killed the officer and he explained to me he had the knife  
19 and I'm a pretty small fellow myself and compared to him  
20 and I just didn't care to have to tangle with somebody  
21 like him for no reason and I just mainly wanted to get  
22 away from him.

23 Q So you got away and then they brought him back into  
24 the next cell where they took you?

25 A Yes, sir.

1 Q Who else was in that cell with you?

2 A Chris and at the time there was another fellow that  
3 was in there. A few days later the other fellow left and  
4 Jim Williamson, whatever his last name was, he moved in  
5 the cell block with us. Well, Jim and Chris, you know,  
6 they were spade partners, card partners, ---

7 Q Spade partners?

8 A It's a game you play.

9 Q Cards?

10 A Oh, yes.

11 Q The card game of spades?

12 A Right he just learned it and stuff while he was locked  
13 away, but they had become card partners and me and  
14 Mar-Reece was partners. Mar-Reece and Chris they used to  
15 work out about every day and Mar-Reece would always try to  
16 get me to work out with them and the way I was taking him  
17 he was wanting to see how weak I was, you know,  
18 strength-wise and everything and I don't like to let  
19 nobody know, you know, if I'm strong or weak or what have  
20 you because, you know, they might want to try me.

21 Q Did you work out with him and Chris?

22 A No, sir, no. Chris and Mar-Reece worked out, but as  
23 far as I was, no, I wouldn't work out.

24 Q Go ahead if you would to the evening hours of April  
25 12th, if you would, the early morning hours of April 12th.

1 A Well, I'd like to bring another subject up. While  
2 Mar-Reece was with me on the back side and whenever he was  
3 on the front side with me he'd leave certain times of the  
4 week and be gone for several hours. Well, I asked him, you  
5 know, where he was going and stuff because it was peculiar  
6 to me, but he explained to me that he was seeing a  
7 psychiatrist and he told me one time he said he had the  
8 system down pat that he knew he could beat the charge. I  
9 asked him what he was talking about. He said, well, he's  
10 got the psychiatrist thinking he's crazy. He showed me a  
11 little pill, which was very small, and he said they had  
12 got him on this, an anti-depressant, makes him calm down  
13 and stuff and he told me he said he got to where he would  
14 give them to me and stuff because, you know, the time I  
15 could sleep away was better time and he was giving them  
16 away; he wouldn't hardly ever take them, every once in a  
17 while he would, but very seldom.

18 Q What did the pills do to you?

19 A I could break one in half and just take part of the  
20 half and it would knock me out completely, but he got to  
21 where he was giving me and Chris pills and I was still  
22 weary of the man, but the way I would take the pills I  
23 would take them first thing in the morning after I'd eat  
24 breakfast and I'd sleep just about all day long while all  
25 three of them was up. Then at night time I'd lay in my

1 bunk like I was asleep, I had a curtain over it to where  
2 they didn't know, and, you know, I would be lying there  
3 half way asleep, half way awake, but I'd still be alert.  
4 Me doing this to my best recollection that's the only  
5 reason I'm alive right now.

6 Q Before we go into any details, can you describe the  
7 cell that you were in with Mar-Reece?

8 A Yes, sir, you have got a top and bottom bunk on this  
9 side and top and bottom here.

10 Q How big across is the cell from one side to the other?  
11 If this is the bunks and this is the bunks, how wide is it  
12 from wall to wall?

13 A As wide as the bunk is you probably have enough room  
14 between the two bunks, you probably have enough room for  
15 maybe a bunk wide. It's not very wide at all. All they  
16 have is a commode and sink together and then just like I  
17 say probably five or six feet walkway up to the bars and  
18 it's very small.

19 Q Is the distance from wall to wall how would you  
20 compare it from the jury rail to this?

21 A It's not near that big.

22 Q Maybe this?

23 A Probably something like that.

24 Q Somewhere in here?

25 A Right.

1 Q And then there are bunks on the other side?

2 A Bunks on both sides.

3 Q And what's in the middle here?

4 A At the wall there's a commode and sink.

5 Q Okay, commode and sink and this is the wall.

6 A Right.

7 Q There's a commode and sink in the middle here?

8 A Right, it's made together, the sink is not what you  
9 call a real sink, it's just something they have, I guess,  
10 for inmates, but it's like they are made on top of each  
11 other.

12 Q The commode kind of --

13 A The commode down here and the sink is on the back  
14 side.

15 Q Built up on the shelf here?

16 A Right.

17 Q Okay and then to here, what's over on this wall?

18 A Just faced -- the third side of the cell was bars.

19 Q Okay, is that where the door is?

20 A Yes, sir.

21 Q All right, now if this is the cell and the bars are  
22 behind us where were you? Which bunk were you in?

23 A The way you're standing I would be to your right over  
24 there on the bottom.

25 Q All right, who was above you?

- 1 A Jim.
- 2 Q And who was in the top bunk on this side?
- 3 A Mar-Reece.
- 4 Q Who was in the bottom bunk here?
- 5 A Chris.
- 6 Q Now how were the bunks constructed? Could you see out  
7 of your bunk and look up on Mar-Reece's?
- 8 A If you didn't have a curtain, which all the curtains  
9 was consisted was an extra blanket strung across on the  
10 top bunks ---
- 11 Q Uh-huh.
- 12 A --- the bottom of it you could put a blanket and that  
13 way you could hide the light plus nobody could see you.
- 14 Q What did the blanket hang off of?
- 15 A We cut the sheets up and what have you, tear them  
16 apart, and run a long string so we could have a blanket  
17 hanging off of it.
- 18 Q Did you have one on your bunk?
- 19 A Yes, sir.
- 20 Q And did Chris have one on his bunk?
- 21 A Yes, sir.
- 22 Q Was it possible to have one on the top bunk?
- 23 A No, sir.
- 24 Q Now you were in your bunk?
- 25 A Yes, sir.

1 Q Can you tell us what happened the early morning hours  
2 of April 12th?

3 A Well, as I said earlier, I had slept most of the day  
4 while they all was up and during the night time I was  
5 laying on my bed and how I had the blanket pulled, you  
6 couldn't see my head or nothing, but the blanket wasn't  
7 long enough to cover where my feet would be showing. So I  
8 was laying there and everything and it had done got pretty  
9 late. They all layed down, the tv was off, and it seems  
10 like maybe an hour or what have you, you have no way of  
11 telling time in there, but it seemed like about an hour or  
12 so after the tv was off Mar-Reece and the next cell you  
13 couldn't see the people in the cell side by side, but  
14 Mar-Reece and the people another man or what have you was  
15 over there talking back and forth and they was talking  
16 about Mar-Reece had told him, he said, well, I feel like I  
17 am going to go to hell and I'm going to take a few people  
18 with me and that guy was talking to him and everything and  
19 they kept on talking and they got on the subject of  
20 killing killing me, Chris and Jim and I was getting very  
21 weary at the time and as they kept talking about it, but

22 ---

23 Q Do you know why that subject came up? Do you know what  
24 brought that on?

25 A Not really, I mean --

1 Q Were the other fellows in the other cell were they  
2 serious or were they joking or --

3 MR. SCHUSTERMAN: Objection---

4 THE COURT: I sustain the objection.

5 Q Well, without going into what the other people in the  
6 other cells said, just tell us what Mar-Reece was talking  
7 about and what he was saying.

8 A Well, prior to this night Mar-Reece had talked to me  
9 and Chris about what if he was to take one of the officers  
10 hostage or something and get our way out of there, would  
11 we go with him and I told him, no, you know, we would be a  
12 whole lot more deeper water than what we are already in  
13 because, you know, he had done made himself pretty known,  
14 you know, that he wasn't the type of person I definitely  
15 wouldn't hang with on the street, but that night they was  
16 talking and everything and Mar-Reece was talking about  
17 asked that fellow did he think if he stabbed us in the  
18 throats would we wake up and that dude told him, no, don't  
19 ---

20 MR. SCHUSTERMAN: Objection.

21 THE COURT: Sustained. You can't tell us what the  
22 other person said.

23 A All right, he had asked if he thought we'd wake up and  
24 they kept talking and what have you and --

25 Q How long did they talk?

1 A This carried on for quite a while it seemed to me, but  
2 all of a sudden I had done gotten so nervous and weary I  
3 taken and rolled over in my bunk so I could watch my  
4 curtain because I'm done getting pretty nervous.

5 Q Your curtain that being the blanket?

6 A Yes, sir. And Mar-Reece seen my feet move, seen me  
7 roll, well, he starts hollering my name, starts asking me,  
8 you know, asking questions and I never would say nothing,  
9 so he evidently thought I was still asleep I was just  
10 turning in my sleep ---

11 MR. SCHUSTERMAN: Objection.

12 THE COURT: I sustain the objection. Don't go into  
13 what somebody else thought.

14 Q You can't say what he thought, but he called your name  
15 out?

16 A He called my name out.

17 Q Did he stop after a while?

18 A Yeah, he stopped saying my name after I wouldn't say  
19 nothing. He was still talking about stabbing us, stabbing  
20 us in the throat and he had brought up to the other fellow  
21 that he was going to stab all three of us in the throat  
22 and get back up on his bed and take one of his pills and  
23 knock out. He said then whenever I wake up in the morning  
24 the officers would come through, they'd wake me up and ask  
25 me what happened and I'd just tell them I don't know, I

1 was out all night. You know, I'm getting real nervous at  
2 this time. Well, all of a sudden -- they carried on a  
3 little longer and then all of a sudden they shut up and no  
4 sooner than they shut up and these cells when nobody is  
5 talking or what have you you can about hear a pin drop,  
6 it's real quite. Well, all of a sudden everything was  
7 quiet and all of a sudden I hear a set of feet hit the  
8 floor.

9 Q How could you hear that?

10 A Whenever you are on the top bunk you have to jump off  
11 the top bunk onto the floor.

12 Q What is the floor made out of?

13 A Concrete and you can hear your feet slapping, you  
14 know, on concrete.

15 Q Was that a sound that you were very familiar with?

16 A Yes, sir, I'd been on the top many times myself. But I  
17 heard a set of feet hit the floor. No sooner than I heard  
18 a set of feet hit the floor it was a matter of seconds,  
19 maybe a minute I heard something that sounded like a slap.  
20 Well, this it brought my attention very badly I was  
21 already scared then I heard that.

22 Q What did you do?

23 A I took and pulled open my curtain. As I said, I was  
24 laying on my side and pulled open the curtain and as soon  
25 as I pulled open my curtain I see Mar-Reece standing there

1 with a knife in his hand, blood dripping off of it. All of  
2 a sudden he looks down at me and he sees me looking at him  
3 and he starts to swing at me. As he starts to swing I spin  
4 around on my bed and I start kicking with all anything I  
5 could do I was trying to get him away and I ended up  
6 knocking him into the commode, it knocked the knife out of  
7 his hand, it fell to the floor. Well, as he was staggering  
8 I jump up and get to the bars. My back is to the bars,  
9 but, you know, I'm trying my best to get away from him,  
10 but I'm confined.

11 Q Were you saying anything at this time?

12 A Yes, sir, I was hollering to the top of my lungs  
13 hollering for help.

14 Q When did you start hollering?

15 A Just as soon as I started kicking I was hollering and  
16 no sooner like I say as he fell off balance and dropped  
17 the knife I jumped over to the bars and as I'm at the bars  
18 I'm hollering and everything I'm sitting there watching  
19 him, well, he fumbles around and grabs his knife and all  
20 of a sudden Jim he wakes up and it was as if he had  
21 something in his mouth gargling, you know how somebody  
22 gargles with mouthwash or something he starts hollering  
23 and cussing this that and the other and all of a sudden he  
24 leaps off of his bed I guess just a stunned reaction,  
25 jumps off of his bed and he lands and hits his head on

1 Chris and Mar-Reece's bunk beds and as he did I reached  
2 over and grabbed him and pulled him over to me. I'm  
3 sitting and me and him is up against the bars.

4 Q What was Mar-Reece doing at this time, do you recall?

5 A By this time he had done had his knife in his hand,  
6 well, he throws his knife in the commode, stands up, puts  
7 his feet on the commode and he sits on the sink, sitting  
8 there looking at us and I'm not sure what he's going to do  
9 or what have you, but I'm not going to turn my eyes away  
10 from him. I'm sitting there hollering and Jim kind of  
11 hollered, but, you know, it's not much and the officers  
12 come running back there, I'm not sure how many, but I know  
13 one come to the door and one come to the door and said,  
14 "What's going on?" When they said that, me and Jim turns  
15 around and as we turned around blood is gushing out of  
16 Jim's throat so bad that -- the officers they just take  
17 off a running and I'm like, oh, lord, you know, you are  
18 leaving me in here. All of a sudden we turned back around  
19 and about this time Mar-Reece takes and grabs his knife  
20 and as he did Chris starts waking up from all the yelling  
21 I'm doing, as Chris starts pulling open his curtain and  
22 starts hollering "What's going on," he cussed, "MF what's  
23 going on" and as he did Mar-Reece had took his knife and  
24 started swinging at him and as he swunged at him and he's  
25 sitting there it looked as if he was cutting him up ---

1 MR. SCHUSTERMAN: Objection.

2 THE COURT: I overrule the objection.

3 Q Go ahead.

4 A I couldn't tell how bad he was cutting him, but, you  
5 know, I'm sitting here scared as I could be. All of a  
6 sudden the officers come running back to the door. About  
7 the time they come running back, Mar-Reece throws the  
8 knife in the commode and sits back on the commode and the  
9 officers opened the door and pulled the door where it's  
10 blocking them. As soon as they got the door opened, I take  
11 off to running. As I did I noticed Jim starts falling to  
12 the floor and I run back up there and grabbed him. We take  
13 off to running and as we're running through the hallways  
14 every officer we pass they just jump out of our way and we  
15 get to the main desk. I laid Jim's head on the desk, the  
16 counter where the officer is, and the officer picks up the  
17 phone and starts calling 911 telling them he needs an  
18 ambulance. Evidently they told him it would be a while  
19 because he told them if it was going to take them that GD  
20 long, just send the hearse because the man was dying.  
21 About this time ---

22 Q What was Jim's condition then?

23 A He still had his head down on the counter and blood it  
24 was just dripping off the counter. Here I'm covered in the  
25 man's blood and he is and the counter is now pouring blood

1 off from it. Well, about this time he takes -- they've  
2 got a trustee, the trustee is another inmate that helps  
3 officers bring trays and stuff and one of the trustees  
4 come running up and he grabs ahold of Jim and tells me, he  
5 said, "Richard, get away, you've had enough." Well, I  
6 step back and I got probably ten or fifteen feet away, but  
7 I'm still concerned about Jim. And he lays Jim on the  
8 floor and he laid there and died. A little bit later the  
9 officers, you know, come.

10 Q Could you tell us what happened to Chris?

11 A As I took off to running, as I said I turned back and  
12 grabbed Jim, because I was holding him, but as we left I  
13 didn't know nothing about what, you know, the last I had  
14 seen Chris was buckled up inside of his bed up against the  
15 corner hiding, you know, balled up in a ball trying to  
16 keep him from hurting him. Whenever we left I didn't see  
17 Chris again until probably five -- somewhere around five  
18 minutes, he comes around there and as he comes through  
19 he's cut up pretty good and he's got blood on him and  
20 everything. And I tried to speak to him, but I'm all  
21 hysterical because this was the second person I done had  
22 to die in my arms in a few years and my nerves just wasn't  
23 too good and the nurse takes me back there and starts  
24 cleaning me up and to get all the blood off to see if I'm  
25 cut up, which I didn't know if I was or not because, you

1 know, I was hysterical. I believe I had talked to Chris  
2 maybe one other time after they got me cleaned up, but I'm  
3 --

4 Q Okay, Richard, do you have any doubt about who the man  
5 in the cell with the knife was that night?

6 A No, sir.

7 Q Do you see him in the courtroom today?

8 A As far as I see I don't see him.

9 Q Do you know who he is?

10 A Yes, sir.

11 Q Who was he?

12 A Mar-Reece Hughes. I've seen him in the jail down here  
13 this jail.

14 Q Any question in your mind who had the knife when you  
15 saw him attack Christopher Gorth?

16 A (Nodded.)

17 THE COURT: I didn't hear an answer to that.

18 Q Any question who had the knife that night?

19 A No, sir, I know exactly who that is, it was Mar-Reece.

20 Q Mar-Reece Hughes?

21 A Yes, sir.

22 Q How long were you in there with Mar-Reece Hughes?

23 A All together?

24 Q Yes, sir.

25 A Probably a month, several months. That's been a couple

1 of years and I've done my best to forget what I could of  
2 it. It's hard to forget, but I try not to - you know, I  
3 don't think of it every day if I can.

4 Q Mr. Waldrop, could you tell us where the injury to Jim  
5 was?

6 A To his throat. The main thing I seen was which I  
7 wasn't looking Jim over or nothing and;, as I said,  
8 whenever he hit the bed, I just grabbed him and pulled him  
9 to me and there was blood gushing and I'm holding onto him  
10 and, you know, I'm not looking him over, but the main  
11 thing I'm concerned with is that Mar-Reece not come after  
12 us again.

13 MR. BRACKETT: The court's indulgence for a moment?

14 Q Mr. Waldrop, when was the first time you met me?

15 A Yesterday.

16 Q Had you ever met me before then?

17 A No, sir.

18 Q Have you ever spoken to me before then?

19 A No, sir.

20 Q Have I ever corresponded with you before then?

21 A No, sir.

22 Q Have you ever received any correspondence from the  
23 Sixteenth Circuit Solicitor's Office before?

24 A No, sir.

25 Q Had you ever spoken with anybody from the Solicitor's

1 Office before then?

2 A No, sir.

3 Q Are you under any promises or has anybody promised you  
4 anything ---

5 A No, sir.

6 Q --- or made any assurances to you regarding your  
7 pending charges?

8 A No, sir.

9 Q And why are you testifying today?

10 A Well, as I said earlier I had my oldest brother to get  
11 killed, he died in my arms, ---

12 MR. SCHUSTERMAN: I object at this time.

13 THE COURT: I sustain the objection. Let's don't go  
14 into that.

15 MR. BRACKETT: Okay.

16 THE COURT: Disregard that, that has nothing to do  
17 with this matter.

18 Q Don't answer that question, Mr. Waldrop. Mr. Waldrop,  
19 did you have an occasion to write a letter to our office  
20 back in March of this year?

21 A Yes, sir, I believe I did.

22 Q And what was the substance of that letter?

23 A In prison when you have detainers, I mean, a detainer  
24 is a pending charge, when you have detainers you can't do  
25 nothing.

1 Q What is a detainer again?

2 A It's a pending charge against you.

3 Q Okay.

4 A And I had done come up for honor grade, that's just  
5 another level in prison, and I was turned down in honor  
6 grade and I asked my programmer why I was turned down and  
7 he told me "You have pending charges in South Carolina"  
8 and, as I said earlier, I done my best to forget what I  
9 could, but once I started thinking about it I thought,  
10 yes, I still do because I just got out on bond and I  
11 didn't get my stuff taken care of and I asked for the case  
12 numbers and he give me the case numbers. Mr. Thomas Pope  
13 was the Solicitor what they call in South Carolina and it  
14 said on the paper that he had wrote me Sixteenth Judicial  
15 Circuit or something like that and they told me I needed  
16 to contact him because with detainers on me I couldn't,  
17 you know, I was going to stay in prison until I done all  
18 of my time and so I'm concerned about getting out I got a  
19 wife and three kids out there who are suffering and I  
20 wrote Mr. Pope and asked him, you know, why are my charges  
21 still one me, you know, I was going to do anything I can  
22 to get these things off of me, it's been almost three  
23 years. I wrote him and I had told him we had a deal, this  
24 that and another, which we didn't, what it was I'm just  
25 trying anyway possible I can to get these charges, you

1 know, I'm wanting to go home with my kids.

2 Q When you said you told him you had a deal, what kind  
3 of deal did you mean?

4 A I know people, I've dealt with officers and they deal  
5 with so many people that they don't really know what they  
6 say to you, they don't know exactly what's going on half  
7 the time. So I felt like I could write this man and tell  
8 him, well, you were supposed to drop something, you know.  
9 What I had told him was I was supposed to have my charges  
10 dismissed if, you know, I didn't sue South Carolina or  
11 what have you, which in my opinion I didn't think I could  
12 sue them, I still don't feel like I can because I didn't  
13 get hurt, but I was trying anything, you know, to keep  
14 these charges off of me.

15 Q The deal you mentioned in that letter did it exist?  
16 Was there any such deal?

17 A No, sir, as I said he deals with so many people I was  
18 just hoping by some freak incident he might say yes and he  
19 would drop the charges.

20 Q Do you recognize this man here?

21 A No, sir, I've seen his face one time before today and  
22 that was in the newspaper clippings of another trial, the  
23 Smith trial.

24 Q Have you ever spoken with him or corresponded with him  
25 in any way?

1 A I've never even heard his voice.

2 Q Richard, to this day have any promises ever been made  
3 to you regarding your testimony here?

4 A No, sir.

5 Q Thank you. Please answer any questions counsel for the  
6 defense may have.

7 CROSS EXAMINATION

8 BY MR. SCHUSTERMAN

9 Q You are currently serving you say a twenty-four year  
10 sentence?

11 A Yes, sir.

12 Q Is that in the State of North Carolina or South  
13 Carolina?

14 A North Carolina.

15 Q What are those charges for?

16 A Breaking and entering, larceny.

17 Q I'm sorry, sir.

18 A B & E and larceny, breaking and entering and larceny.

19 Q Breaking and entering and larceny in the State of  
20 North Carolina?

21 A Yes, sir.

22 Q How many counts did you plead to?

23 A I didn't really have no plea; I was in a bad state of  
24 mind and I was strung out on drugs and I didn't want to go  
25 to prison and I made the DA, he had to take me to jury

1 trial on mine. I've heard, you know, if you go to jury  
2 trial ---

3 Q So he took you to -- I'm sorry, continue.

4 A I've heard, well, I've seen papers and stuff where you  
5 can beat stuff if you try to make the system pay for a lot  
6 a money, they don't want to go through all of that, but  
7 they did, he ended up taking me to my best of recollection  
8 it was eight jury trials.

9 Q Eight jury trials?

10 A Yes, sir.

11 Q Eight separate trials?

12 MR. BRACKETT: Objection, Your Honor, none of this is  
13 relevant.

14 THE COURT: I overrule the objection.

15 MR. SCHUSTERMAN: Thank you, Your Honor.

16 Q You are saying you went through eight separate jury  
17 trials?

18 A Yes, sir.

19 Q After you were done with the eight trials, but then  
20 you pled guilty to other charges, did you not?

21 A I pled guilty to one other charge, which what it was I  
22 filed a speedy trial and when I did, the DA brought me  
23 back and forth as much as possible and every judge he had  
24 was just giving me time running with what had I was  
25 already doing, so it wasn't phasing me, so when the DA run

1 out of time, so he finally gets a judge in there that's  
2 going to give me box car sentences.

3 Q Am I correct that all total between the jury trial and  
4 the plea that you have been convicted of twenty offenses,  
5 twenty counts of breaking and entering and of burglary?

6 A Probably so.

7 Q Probably so. Now you indicate now that you do not  
8 have a deal with the Solicitor's Office.

9 A No, sir.

10 Q Do you remember writing Mr. Pope a letter on March 4  
11 of 1995?

12 A Yes, sir.

13 Q What are the charges that you told Mr. Pope you had a  
14 deal to be dismissed?

15 A The only charges I've ever been charged in South  
16 Carolina which is two first degree burglaries and two  
17 common law robberies.

18 Q You asked for four charges to be dismissed? Let me  
19 show you the letter.

20 A There's two first degree ---

21 Q Oh, there's two first degree.

22 A That's what I said two first degree and two common  
23 law.

24 Q And two common law. And you asked for those to be  
25 dismissed.

1 A Yes, sir.

2 Q And you are saying that Mr. Pope never dismissed them.

3 A No, sir, as a matter of fact he never even wrote me  
4 back. I never heard nothing.

5 Q Do you remember this letter? Do you remember saying  
6 in the letter - let me first show you. Is this the letter  
7 you sent to Mr. Pope?

8 A A copy of it.

9 Q A copy of it. And that's your signature on the  
10 bottom?

11 A Yes, sir.

12 Q Okay. You indicate in the letter that "It was my  
13 understanding that in an agreement that myself and one of  
14 the head detectives of SLED made, those pending charges  
15 would be dismissed in order for me not to sue the Rock  
16 Hill Detention Center and the State of South Carolina and  
17 I would also testify against Mar-Reece Hughes for the  
18 killing of the police officer he gunned down and the man  
19 he stabbed to death in the jail cell."

20 A I wrote that, yes, sir.

21 Q But you are saying that's a total lie, you never had a  
22 conversation with a detective with SLED?

23 A Well, what I was kind of hoping on, as I said,  
24 officers in their duty probably talk to so many people,  
25 it's hard to remember what you say. I was trying to run a

1 bluff on anybody I could. I want out of prison, so I'm  
2 sitting there and I was lying out my tail to anybody and  
3 everybody.

4 Q Now let me go back and ask you. Did you have a  
5 conversation with one of the head detectives of SLED?

6 A The morning of the incident he asked me what went on  
7 in the jail cell and I give him a statement, which he  
8 wrote it down and typed it what had happened.

9 Q At this time reading from your letter, "At this time,  
10 me and the head detective sit down and wrote out  
11 statements. He promised me that these charges would be" I  
12 assume that you mean either disposed of or dismissed, oh,  
13 "dropped." I'm trying to read from the Xerox. "Would be  
14 dropped. He told me that I needed to go and have  
15 psychiatric help. He told me that if I would go to a  
16 psychiatrist that the State of South Carolina would pay  
17 for it, but at that time I didn't think I needed help." Is  
18 any of that true?

19 A No, sir.

20 Q None of this is true?

21 A Well, I give him a statement.

22 Q Okay and no one ever promised you anything for giving  
23 that statement?

24 A No.

25 Q "Sir, would you please see why these charges haven't

1       been dismissed, question mark, and see what you could do  
2       for me about them. As I have said, me and the detective  
3       over SLED made this agreement and I have lived up my end  
4       of the deal."

5       A     I wrote, like I said ---

6       Q     Do you remember writing this?

7       A     Yes, sir, I wrote it, but I'd be lying if I said all  
8       of that was true, because it isn't.

9       Q     None of this is true?

10      A     No, sir.

11      Q     "If you have any questions about this situation or the  
12      deal the detective and I made, Captain Sealy, the nurse  
13      and the lady over the" I don't know, the word seems to  
14      have been xeroxed out, "but the lady over the" oh, "about  
15      the arrangement, they also know the detective's name and  
16      that is on the statement." Total fabrication, total lie?

17      A     Right, well, as I said earlier, I'm sitting here in  
18      prison, this is my first time in prison, these detainers  
19      is holding me back; I feel as if I can bluff somebody out  
20      of, you know, getting rid of my charges or where I can  
21      work my way out of prison I'm going to, so I wrote and  
22      hoping for a response.

23      Q     How long did you know Mar-Reece? How long were you in  
24      the Detention Center together?

25      A     We was in the first cell block, which was on the back

1 side, several weeks, maybe longer, before I could get to  
2 another cell block away from him.

3 Q You said that the two of you were friends. You said  
4 that you had no problems between the two of you.

5 A And as far as friends you could be in a cell with me,  
6 if you are confined with somebody twenty-four hours a day,  
7 seven days a week, you don't want to be enemies with them  
8 because you have got to sleep around them, you know. If  
9 you sit there and like all day long you sit there and run  
10 your mouth to me, come night time, you know, I'm going to  
11 get you, so, you know, me and him as far as friends  
12 friends, no, I wasn't friends with him. As far as friends  
13 being in the cell block, yes, that type of thing.

14 Q To make sure that I don't misunderstand. Did you not  
15 say to Deputy Solicitor Brackett a couple of moments ago  
16 on direct examination that you and Mar-Reece were friends,  
17 that you got along fine. I think he said -- I think you  
18 even said that you shared money or that he gave you money  
19 for the canteen.

20 A No, he --

21 Q That's not correct?

22 A We was like, as I said, friends. If I was to see him  
23 on the street, no, he's not the type of person I would  
24 want to be hanging around with, but as far as the money,  
25 they have a thing that comes around and you buy so much a

1 week off of canteen, well, he would share his canteen with  
2 me. Which me and him played cards, you know, me and him  
3 was partners, so, you know, as I said --

4 Q So that makes you partners, but not necessarily  
5 friends?

6 A As far as friends in jail?

7 Q Yes.

8 A Okay, there's another for instance. I am in prison  
9 now. There are several people there I hang around with  
10 which it's hard being in prison, I consider them friends  
11 and when I get out of prison, I don't care to be around  
12 those people like that.

13 Q When did Mar-Reece begin acting strange?

14 A Acting strange what?

15 Q Just acting peculiar?

16 A He never really acted peculiar, just after the first  
17 time he told me about killing the officer and then he  
18 would bring it up and told me on several occasions that he  
19 had the knife and I -- the peculiar way I would feel is  
20 I'm just wary of this man because he had cold blooded  
21 killed and murdered and killed an officer, you know, who's  
22 to say he wouldn't kill me in there. So, you know, the  
23 type of peculiar I'm saying is I was wary of him and I'm  
24 not going to trust him, you know, I'll trust, as with you,  
25 I'll trust you as far as I can see you, but I'm not going

1 to turn my back on you, if you have a gun, you know, and  
2 say I'll trust you and what have you. I trust somebody  
3 how far as I can see them, but you know.

4 Q Are you saying that - this is a fairly small cell you  
5 indicated, it's about three bunks -- the width of it is  
6 about three bunks, right?

7 A Yes, sir.

8 Q And you are telling me that you have no recollection  
9 of Mar-Reece in that cell having conversations about  
10 little green men?

11 A None.

12 Q No recollection about that?

13 A No.

14 Q How often did Mr. Hughes bathe?

15 A Pretty regular. We all would.

16 Q He'd bathe pretty regularly, ---

17 A Yes.

18 Q --- that's your recollection?

19 A Yes. That's like on the prison camp where I'm at and  
20 you have somebody you have to be around day in and day  
21 out, if they don't take a bath, you know, you get on to  
22 them and tell them you ain't got nothing else in here, why  
23 not keep yourself clean. No, we didn't never really have a  
24 problem out of him. He'd always take one as I did. I'd  
25 take one a day, you know. They would come to certain cells

1 every day. Sometimes they'd get all the cells, what have  
2 you, then the next day. Every time they would let us take  
3 showers he would take one.

4 Q Is it your testimony that prior to this day in April,  
5 I believe it was April 12th of 1993, that Mr. Hughes never  
6 did anything, his behavior was never unusual or bizarre in  
7 any way?

8 A No, not really.

9 Q And just to finish up to your knowledge has this  
10 detainer on these four charges been removed?

11 A Have they now?

12 Q Has the detainer been lifted off of you?

13 A No, sir, huh-uh.

14 Q You still have a detainer on you?

15 A Yes, sir.

16 Q You are aware that it's Mr. Pope's office that is  
17 still to prosecute you for these cases?

18 A Yes, sir. Can I tell you one thing?

19 Q Say anything you would like.

20 A The officer, I don't know his name - with the glasses  
21 on, ---

22 Q Deputy Solicitor Brackett.

23 A Mr. Brackett asked me a while ago did I see Mar-Reece.  
24 I looked a while ago and I didn't see him. Now I see him.  
25 I don't know if it's just I wasn't looking around or what

1 have you, but I'm sitting watching you move over yonder  
2 and he caught my eye. That's him right there in the white  
3 shirt.

4 Q Does he look the same now as he looked three years  
5 ago?

6 A Pretty much. It looks like he has gained weight.

7 Q Now you are saying that you don't expect anything from  
8 Mr. Pope's office.

9 A No, sir, as a matter of fact, as I said earlier, which  
10 y'all stopped me on it, I'd like to see justice done,  
11 which I know I've done wrong and I'm serving my time for  
12 it. If a cold-blooded murderer killed me, I'd appreciate  
13 it if somebody stood up, you know, and tried to make sure  
14 he didn't never get somebody else like that. I have a wife  
15 and three kids out there and I'm more than happy to see  
16 people like that put away so I don't have to worry that  
17 much about my people, my family.

18 Q And this has no impact that two of the pending charges  
19 on you carry in South Carolina you could get life  
20 sentences for them?

21 A No, sir.

22 Q That has no bearing on this.

23 A No, sir.

24 Q Thank you, sir.

25 MR. BRACKETT: Your Honor, I have no further

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1 questions. I ask that this witness be excused.

2 THE COURT: You may step down.

3 We could probably have a short witness.

4 MR. BRACKETT: Not my next one, Your Honor.

5 THE COURT: All right, we will break for lunch at this  
6 time. Ms. Kitchings, we will check on your situation. We  
7 will take about at least an hour or an hour and fifteen  
8 minutes. That would be one-thirty. If you take, you know,  
9 you are all together, if you take a little later than  
10 that, there will be no problem, but we will break at least  
11 until one-thirty for lunch.

12 (Jury exits courtroom.)

13 Anything from The State? Why don't we go ahead and  
14 take a look at where we are with these SLED records. What  
15 does the receipt show having been received by the defense?

16 MR. POPE: Your Honor, this is a receipt that was in  
17 evidence that we also put as an addition to the evidence  
18 of aggravation. Your Honor, it's listed as the discovery  
19 material. I don't know the item that was put in evidence,  
20 the number of that exhibit. One was a SLED file on the  
21 jail murder given to Allyson Schusterman on March 8th of  
22 '95. It's my understanding it was given to Ms.  
23 Schusterman, it also was given to Ms. Brice. Your Honor, I  
24 have also reviewing the testimony through the State's  
25 witnesses this may have been in the previous hearing I

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1 believe it was one or more of the doctors that referred  
2 directly to some of the statements of Mr. Gaithers and  
3 perhaps Mr. Jennings or Mr. Wimborn, some of these about  
4 the little green man. One of the doctors had referenced  
5 some statement that I presume they are talking about the  
6 little green man that would have been covered with that.  
7 Your Honor, our records indicate we have given the SLED  
8 file at least twice. Now in looking at the file as it was  
9 handed to Ms. Brice and handed up to the court I also  
10 notice that the section she was referencing was the  
11 officer's summary and, so, I know it has been our standard  
12 procedure in the past to not necessarily give the summary.  
13 Our intention has been always to give the entire file, but  
14 in the light of fairness to the defense it cuts off at  
15 that summary and there may be an argument that that part  
16 of the summary - our position has always been that was,  
17 obviously, a work product prepared for us. The other SLED  
18 file cases that may or may not have been provided. Again,  
19 it has been our intention to provide it all in this  
20 particular case and our records indicate that we have,  
21 but, again, Ms. Brice has represented to the court she  
22 didn't have it, based on the testimony of their witnesses  
23 I would say they would have to have knowledge of it, but,  
24 again, Your Honor, I am not disputing the specifics of  
25 what Ms. Brice says.

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1 THE COURT: Ms. Brice, anything else?

2 MS. BRICE: Just again, Your Honor, I did not receive  
3 the first seventeen pages of that report. The reference  
4 that was made to the little green man was evidenced in a  
5 statement made by John Patton. No other statements were  
6 provided to defense counsel as to the I think it was Mr.  
7 Stroud, Mr. Jennings, Mr. Gaithers. We never had access to  
8 that ---

9 THE COURT: I don't see anything about Mr. Stroud. It  
10 looks like my review is that Mr. Gaithers and then Patton  
11 indicated he made a statement in the presence of Mr.  
12 Anthony, Jennings and Wimborn. I believe Jennings and  
13 Wimborn both have testified in this case, have they not?

14 MS. BRICE: To date, yes, Your Honor, they have.

15 THE COURT: All right, okay, and I -- but go ahead, I  
16 didn't see anything about Mr. Stroud and the little green  
17 man. What page is that on?

18 MS. BRICE: Your Honor, I believe it was on page I'm  
19 not sure it was on page I believe 7 or so. I don't even  
20 have a copy of that today.

21 THE COURT: I am going to give it to you to go over at  
22 lunch, but I am going to make sure you get that. I just  
23 don't see a Mr. Stroud. I see a Sloan.

24 MS. BRICE: That's it, Your Honor, I'm sorry. I was  
25 trying to recall from what I saw for five minutes this

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1 morning. But, Your Honor, I would like discuss the fact  
2 that ---

3 THE COURT: But I don't see anything about Mr. Sloan  
4 saying anything about a little green man; that's what's  
5 throwing me off.

6 MS. BRICE: Okay. I'm sorry, Your Honor, I'm doing  
7 this by memory. It was a Mr. Sloan or Stroud is one of the  
8 persons that we have not talked to that we were referenced  
9 that he had spoken to somebody. I believe it was a John  
10 Walker who stated that he had several conversations with  
11 Mar-Reece and that he believed that his mind would come  
12 and go. These are all records that I would say are vital  
13 to our position in regards to that second murder. I don't  
14 know how much more stress I could put on the fact that,  
15 you know, this one through seven pages would have been  
16 extremely important for us to adequately prepare the  
17 defense; these documents were not provided to us  
18 previously. It is my understanding that they have not even  
19 been presented to the State's own physician psychiatrist  
20 who evaluated that case.

21 MR. POPE: May it please the court, Your Honor?

22 THE COURT: Yes, sir.

23 MR. POPE: To begin with the defense has constantly  
24 characterized the doctors at the State Hospital with the  
25 exclusion of Doctor Dupree as The State's own physicians

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1 where each time they have been the ones that have called  
2 them. Your Honor, I further note that as to State's  
3 Exhibit D-2 from the prior hearings, which was a report  
4 put in by the defense, that Doctor Dupree was a party to  
5 on both dates of the evaluation, it was with Doctor Morgan  
6 and Doctor Kohansky, and I'll hand it up to the court,  
7 referring to - it doesn't have a page number, but it says,  
8 "In reviewing the documents and investigating the charge  
9 of April 12, '93 there is an abundance of evidence for the  
10 psychiatric deterioration of Mr. Hughes." It goes on then  
11 to talk about the different inmates including Mr.  
12 Gaithers, Mr. Jennings, ---

13 THE COURT: Let me see that.

14 MR. POPE: --- Mr. Stroud, and talks about the little  
15 green man. And that is a defense exhibit that was  
16 previously put in, Your Honor.

17 THE COURT: This directly states "John F. Walker  
18 states that 'during several conversations with Mar-Reece  
19 his mind would come and go.'" This is from Doctor Morgan  
20 with Doctor Kohansky -- it's dated April 4, 1995. Did you  
21 receive a copy of this?

22 MS. BRICE: Your Honor, I have received that report,  
23 but, again, Your Honor, The State provided any and all  
24 records to the physician. I was not privy to those records  
25 and my own investigation trying to gather testimony

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1 regarding that second incident in the jail I think they  
2 would have been extremely helpful if they had provided me  
3 with these documents. The State provided the physician. I  
4 don't understand why they could not have provided them to  
5 me, which they did not do.

6 THE COURT: Did Doctor Dupree have -- was she given a  
7 copy of this report?

8 DOCTOR DUPREE: Yes, I received a copy of that report,  
9 but I didn't review the records. Doctor Morgan got that.

10 THE COURT: And counsel for the defense didn't get a  
11 copy?

12 MS. BRICE: Sir?

13 THE COURT: Did you get a copy of the psychiatric  
14 report of Doctor Donald Morgan dated April 4, 1995 and the  
15 attached report signed by Renee Kohansky and dated -- it's  
16 kind of hard for me to tell which was the date -- it says  
17 ---

18 MS. BRICE: Yes, Your Honor, I did receive a copy of  
19 that report.

20 THE COURT: All right, well, that goes into extensive  
21 talk about just what we are talking about now, what  
22 Wimborn said, what Johnny Walker said, Harry Jennings, it  
23 talks about the little green man. Wouldn't this put the  
24 defense on notice about these witnesses these individuals  
25 having made these statements?

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1 MS. BRICE: Your Honor, it is my position that The  
2 State has the burden to provide those documents to me. I  
3 don't know if it is incumbent upon the doctors to have to  
4 provide that information to me. Is The State not supposed  
5 to provide me with the documents that they are going to  
6 present?

7 THE COURT: Well, what you are saying is that you are  
8 concerned about documents they are not presenting --  
9 witnesses they are not presenting. We are concerned about  
10 having, as I understand it, your position is that you  
11 would have liked to have had a chance to interview and  
12 have the opportunity to call as witnesses John Walker,  
13 Harry Jennings, James Gaithers, talked about M. H. Stroud,  
14 I still can't find Stroud, but I haven't looked that  
15 thoroughly. What I am saying is would this not regardless  
16 of where it came from did this not put the defense on  
17 notice that these individuals had reported to somebody  
18 this information?

19 MS. BRICE: Your Honor, as far as the contents as to  
20 what they reported to other people - from what they were  
21 talking about on the report I gathered it was in a  
22 statement from Mr. Patton.

23 THE COURT: Well, I am going to let you look at it over  
24 lunch and we'll talk about it a little after lunch because  
25 it does not convey to me it starts in reviewing the

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1 documents and investigating the charges and then it goes  
2 over to what Randy Whitworth states, Felix Wimborn  
3 reports, Richard Waldrop reports, John S. Walker states,  
4 John Patton states, references to the green man from  
5 inmate Harry Jennings, Jr. and James Gaithers. How much  
6 more notice can you have that these two individuals said  
7 something about Mr. Hughes talking about a little green  
8 man?

9 MS. BRICE: Your Honor, it's still my position that it  
10 was incumbent upon The State to provide me with the  
11 statements whether or not they were actually taken by  
12 these people if they were written statements, if they were  
13 oral statements taken from these persons, these witnesses,  
14 and they were not provided to me and they knew that they  
15 had it and they were not provided to me, Your Honor.

16 THE COURT: All right. Well, I understand that, but  
17 the second part of that is if you have your information  
18 from another source and they didn't give it to you, that  
19 perhaps was improper, but what prejudice is there to the  
20 defendant?

21 MS. BRICE: Your Honor, that report does not contain  
22 addresses, does not contain exactly what was stated to  
23 them ---

24 THE COURT: A lot of ---

25 MS. BRICE: It makes reference ---

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1 THE COURT: It's in quotation marks.

2 MS. BRICE: But I don't know whether or not it was  
3 written statements, oral statements that was given,  
4 whether or not they have possession of it until I started  
5 speaking with these people individually and they tell me  
6 they gave statements, they gave written statements to  
7 people. When I first came into court this morning, that  
8 was my major concern was the fact that I was of the  
9 opinion that these persons had given statements to SLED,  
10 that led the Solicitor bringing out the first seventeen  
11 pages of the report and providing it to me this morning. I  
12 would like just the first seventeen pages to be made part  
13 of the record.

14 THE COURT: Certainly, we will do that. But I'm still  
15 going back to the same thing is if there is something  
16 broken, what would fix it; I don't know if you have got --  
17 the situation is healed, if something is broken and it's  
18 fixed and it's not fixed in the way it should have been  
19 fixed, it's still nonetheless fixed.

20 MR. POPE: Your Honor, could I go on the record saying  
21 that our records indicate that the SLED file was provided.

22 THE COURT: I don't think there's any question;  
23 everybody agrees that the SLED file was, I'm certain; it's  
24 just a question of whether those seventeen page were as  
25 part of the SLED file.

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1 MR. POPE: Yes, sir.

2 THE COURT: Anything further?

3 MS. BRICE: Not right now, Your Honor.

4 THE COURT: All right, we will discuss this before we  
5 get the jury back in. I am now going to ask The State to  
6 go ahead and make copies of that seventeen pages at this  
7 time, two copies, put one in the record as a Court's  
8 exhibit and give one to counsel for defense. We will  
9 break. It is already 12:30 now, so take a look at that  
10 through lunch and we won't start before 1:00 -- I mean  
11 before 2:00, two o'clock.

12 You all make sure the courtroom is secure during  
13 lunch.

14 BAILIFF: Yes, sir.

15 THE COURT: Thank you.

16 (Court's Exhibit 13 marked and filed.)

17 (Recess)

18 Is The State ready to proceed?

19 MR. POPE: Yes, sir, Your Honor. In regards to  
20 previous information concerning pictures of Mr. McCants in  
21 regards to the wounds inflicted on his body it may be  
22 appropriate since one of the witnesses this afternoon,  
23 Doctor Jenkins, would be taken and it may be proper to  
24 address it now.

25 THE COURT: All right, you want to go ahead and make

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1 the Motion and then I will thumb through the photographs  
2 while somebody is testifying and in that way I will be in  
3 better position to address it. But an earlier Motion I  
4 believe, a written motion, was to object to the  
5 introduction of any pictures or photographs of the  
6 decedent, Mr. McCants, is that correct, Ms. Brice?

7 MS. BRICE: Yes, sir.

8 THE COURT: All right, does that motion still pertain?

9 MS. BRICE: Yes, sir, as well as photographs of the  
10 decedent, Mr. Williamson as well, Your Honor.

11 THE COURT: I hadn't heard him say anything about ---

12 MR. POPE: Your Honor, we don't have any intention of  
13 putting any pictures of Mr. Williamson in.

14 THE COURT: Okay. What I will do I will reserve my  
15 ruling.

16 MR. POPE: Your Honor, I'll hand these up.

17 THE COURT: Talking about reserving my ruling - wasn't  
18 there a Motion at one point for a mistrial and I took it  
19 under advisement?

20 MS. BRICE: Yes, sir.

21 THE COURT: I have not ruled on it, I wanted to make  
22 sure.

23 MR. POPE: Your Honor, you want me to have these  
24 marked or just hand them up at this time?

25 THE COURT: Why don't you just hand them up.

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1 MR. POPE: Okay. Your Honor, I would note for the  
2 record too and it can be heard at the appropriate time  
3 that since we last addressed this issue in the previous  
4 case State v Franklin has been handed down that spoke  
5 specifically to autopsies and pre-mortem wounds and it  
6 deemed that it was admissible as showing the evidence of  
7 the damage inflicted by the defendant.

8 THE COURT: All right. Do you have a copy of that with  
9 the cite - if you have the cite, Mr. White can go get it  
10 for me.

11 MR. POPE: Your Honor, the one I had was an Opinion  
12 number, but I'll have my assistant pull the cite up. I'll  
13 let your clerk to have my copy of it if he wants to make a  
14 copy of it.

15 THE COURT: All right.

16 Bring in the jury.

17 MR. POPE: Your Honor, as to pre-mortem pictures of  
18 the damage, Ms. Brice, I believe, have seen those. We also  
19 have other pictures that are just pictures of Mr. McCants  
20 in life and I don't know if that was covered by that  
21 motion, but I can -- I'm not sure which ones we will use  
22 yet, but I can give the court the whole stack of them.

23 MS. BRICE: I'm sorry - pictures of Mr. McCants in  
24 what? I didn't understand.

25 MR. POPE: In life.

CHRISTOPHER GORTH DIRECT

1 MS. BRICE: Oh, in life, I'm sorry.

2 MR. POPE: Prior to his death.

3 (Jury returns to courtroom.)

4 THE COURT: Call your next witness.

5 MR. BRACKETT: The State would call Christopher Gorth.

6 CHRISTOPHER GORTH, being duly sworn,

7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BRACKETT

10 Q Mr. Gorth, would you state your full name and spell  
11 your last name for the court reporter?

12 A Christopher Michael Gorth G-o-r-t-h.

13 Q And, Mr. Gorth, where do you currently reside?

14 A I currently reside at Blue Ridge Youth Center in  
15 Newland, North Carolina.

16 Q Is that a correctional facility?

17 A Yes, it is.

18 Q What are you at the Blue Ridge Correctional Center  
19 for?

20 A For breaking and entering and larceny.

21 Q And you have been in some trouble before, is that  
22 correct?

23 A Yes, in York County.

24 Q And you have been in some trouble in South Carolina  
25 too, haven't you?

1 A Yes.

2 Q You have a number of convictions in North Carolina for  
3 breaking and entering, isn't that right?

4 A Yes, that's right.

5 Q Pled to a number of them all at the same time?

6 A Yes.

7 Q Approximately how many counts of breaking and entering  
8 would you say?

9 A About a hundred and twenty.

10 Q All right. Mr. Gorth, you also pled guilty to some  
11 charges in South Carolina, isn't that right?

12 A Yes.

13 Q And I believe that was a burglary second degree?

14 A Yes.

15 Q And possession of burglary tools?

16 A Yes.

17 Q And there was some malicious damage to property as  
18 well, is that right?

19 A Yes.

20 Q Are those the only charges you've ever had in South  
21 Carolina?

22 A Yes, that's correct.

23 Q When approximately were those charges made on you?

24 A February 22, 1993.

25 Q And did you spend any time at the York County

1 Detention Center here in York?

2 A Yes, I did.

3 Q About how long were you in there for?

4 A I was in for approximately a month or two months.

5 Q Somewhere in that area?

6 A Yes.

7 Q Is that a guesstimation?

8 A Yes.

9 Q While you were in the York County Detention Center did  
10 you get to know an individual named Mar-Reece Hughes?

11 A Yes, I did.

12 Q And how did you know him?

13 A He was in the cell that I first was put in I believe  
14 it was about four days and he was in there.

15 Q And did you get to know him -- how long all together  
16 did you spend with Mar-Reece Hughes while you were in the  
17 Detention Center?

18 A About three weeks.

19 Q How long was he your cell mate?

20 A Excuse me?

21 Q How long was he your cell mate, in the same cell with  
22 you all together?

23 A It was about three weeks.

24 Q Do you recall an incident that occurred on April 12,  
25 1993?

1 A Yes, I do.

2 Q What, if anything, can you relate to us about the  
3 incident involving Mr. Hughes in the early morning hours  
4 of April 12, 1993?

5 A There was a stabbing the morning of April 12, 1993.

6 Q What do you remember about that? Where were you at  
7 when that occurred?

8 A I was on the bottom left hand side bunk below Mr.  
9 Hughes and I was awoken by several shouts and keys and  
10 then a sharp pain to the right side of my chest.

11 Q All right and what did you see when you woke up?

12 A I saw someone behind the sheet that was hanging on the  
13 bunk swinging an object or arm through the curtain at me.

14 Q And did you see who that was?

15 A No, not at that time.

16 Q How many times were you cut, Mr. Gorth?

17 A Four times.

18 Q Where were you cut?

19 A My right chest, my right forearm, my left leg and my  
20 right knee.

21 Q Which was the most serious of the wounds?

22 A My left leg.

23 Q All right, sir. Mr. Gorth, if you would, I would ask  
24 you to step down from the witness stand for just a moment.

25 A (Witness complied.)

1 Q Can you show the jury where you were cut on your left  
2 leg?

3 A (Witness complies.)

4 Q Thank you very much. Please take your seat.  
5 Do you know who did that to you, Mr. Gorth?

6 A Mar-Reece Hughes.

7 Q Do you see him in the courtroom today?

8 A Yes, I do.

9 Q Can you put him out for us, identify him?

10 A The one in the white shirt right there.

11 MR. BRACKETT: Let the record reflect the witness has  
12 identified the defendant Mar-Reece Hughes.

13 Q You say you were in the cell with him for about three  
14 weeks, Mr. Gorth?

15 A Yes.

16 Q Did you get to know him during that time period?

17 A Somewhat. I played cards with him. We did pushups  
18 together and we had a couple of conversations, but that  
19 was about the extent of it.

20 Q Were you friendly with him?

21 A Yes.

22 Q Did you have any kind of altercation with him that  
23 would provoke such an attack?

24 A No.

25 Q Had you had any harsh words with him earlier that day?

1 A No.

2 Q At any time during your stay in the cell?

3 A No.

4 Q Did he exhibit any unusual behavior while you were  
5 there, bizarre or crazy behavior, or anything of that  
6 nature while you were there?

7 A Not while I was there, not until that incident.

8 Q Specially around that incident - was he in the cell  
9 with you after that incident?

10 A Yes.

11 Q After the stabbing?

12 A No, I was left in there and they came back and got me.

13 Q Why don't you go through the sequence of events and  
14 tell us exactly what happened.

15 A Of the stabbing?

16 Q Of the stabbing, yes, sir.

17 A I woke to a sharp pain in my chest and my immediate  
18 reaction was to block wherever it came from and I was cut  
19 on my arm and then I went back against the wall and  
20 started kicking. The sheet dropped and I saw this swinging  
21 motion going through and I heard keys and they opened the  
22 door, the officers opened the door. He had stopped  
23 swinging and was next to the toilet.

24 Q Who was that?

25 A Mar-Reece. Mr. Williamson and Mr. Waldrop ran out the

1 door.

2 Q They ran out the door, the cell door?

3 A Yes.

4 Q It had been opened?

5 A It had been opened by --

6 Q Who opened it?

7 A I did not see that.

8 Q You were still in your bunk?

9 A Yes, I was in the far left hand corner. As I was about  
10 to get up I was kind of shocked and I couldn't really  
11 move. They shut the door and left. Mar-Reece turned to me  
12 then and asked if I was okay and I thought I was dreaming  
13 or whatever. I didn't know what was going on. I said, "I  
14 think I need to go to the hospital" and he said, "They'll  
15 be back in a few minutes" and jumped up on his bunk and  
16 they came back about twenty seconds later and let me out.

17 Q Where did you go when you got out of the cell?

18 A To the front office.

19 Q Did you see anybody up there? Did you see Mr.  
20 Waldrop?

21 A Yes, I did.

22 Q Did you see Jim Williamson?

23 A Yes.

24 Q What was his condition?

25 A He was sprawled out on the floor, someone was holding

1            a sheet to his neck, and there was just a puddle of blood  
2 all around him. That's about the best I can describe it.

3            Q    Did you have any contact with Mr. Hughes after that?

4            A    No, I did not.

5            Q    Were you given opportunities to shower while you were  
6 in the Detention Center?

7            A    Yes, maybe three or four times a week.

8            Q    Did you take advantage of those opportunities?

9            A    Yes.

10           Q    Did Mr. Hughes shower when he was in the Detention  
11 Center?

12           A    Yes.

13           MR. BRACKETT: I beg the court's indulgence for one  
14 moment.

15           Q    Thank you very much. Answer any questions Ms. Brice  
16 may have for you.

17           CROSS EXAMINATION

18           BY MS. BRICE

19           Q    Hey, Mr. Gorth.

20           A    Hello.

21           Q    Mr. Gorth, you were stabbed in your chest, in your  
22 arm, in your knee and in your leg, is that correct?

23           A    Yes.

24           Q    Okay and could you show me the scar on your arm?

25           A    (Witness complied.)

1            Q    Could you step down and show the jury the scar on your  
2            arm, please?

3            A    (Witness complied.)

4            Q    That was a defensive wound right here?

5            A    Yes.

6            Q    Thank you, sir. Mr. Gorth, why is it that your leg  
7            looks so much worse than your arm?

8            A    The reason is that it got infected and I had to have a  
9            skin graft about two days after the incident.

10           Q    And, in fact, you were in the hospital for about a  
11           month after this incident, is that correct?

12           A    Yes, that's right.

13           Q    If I understand it correctly and you tell me if I am  
14           wrong, but the incident occurred, you went to the hospital  
15           for an hour or so that evening, they transported you back  
16           to the Detention Center, the infection set in, you went  
17           back to the hospital and stayed in the hospital for about  
18           thirty days, is that about right?

19           A    Yes, that's right.

20           Q    And explain to me again if you would after the  
21           incident occurred tell me - you stated you were in the  
22           left hand upper corner of the bunk, is that correct?

23           A    The lower corner.

24           Q    And could you describe what your body position was  
25           like?

1 A After the stabbing?

2 Q Isn't it true that you were just balled up, you were  
3 basically in a defensive position to ward off an attack?

4 A Yes, that was after they had gotten the other two out.

5 Q And isn't it also true that after they took the other  
6 two inmates out Mar-Reece said to you, "Are you all  
7 right?"

8 A Yes, that's correct.

9 Q And is it not true he stated that to you as though he  
10 did not even know what had just taken ---

11 MR. BRACKETT: Objection, Your Honor. This is an  
12 improper question.

13 THE COURT: Rephrase your question.

14 MS. BRICE: Okay, thank you, sir.

15 Q When he said to you, "Are you all right," tell me how  
16 he said that, if you would?

17 A It was as if I had fallen off my bed and hurt my foot  
18 or something like nothing happened.

19 Q It was as though he did not register what had just  
20 occurred?

21 MR. BRACKETT: Objection.

22 THE COURT: I sustain the objection.

23 Q Did he based on your observation and what he was  
24 saying to you, how did that make you feel?

25 A It made me feel like I was in a dream I guess, it was

1 shocking.

2 Q And isn't it true that you gave Mr. Hughes some  
3 deodorant?

4 A Yes, that's right.

5 Q How come?

6 A We would take showers every maybe two or three days  
7 and I guess he had to wash up if he started to smell, you  
8 know, after a day taking a shower, he just didn't put on  
9 deodorant on those days he washed up.

10 Q Is it not true, sir, that there were times that he  
11 would not bathe?

12 A No, if he was given the opportunity, then he would.

13 Q Do you recall any other statements that Mr. Hughes  
14 made following that incident?

15 A No.

16 Q Do you recall him asking for breakfast?

17 A No.

18 MS. BRICE: I beg the court's indulgence.

19 Q Mr. Gorth, do you recall yesterday me and you  
20 discussing this incident?

21 A Yes.

22 Q And do you remember telling me yesterday that Mr.  
23 Hughes stunk?

24 A Yes.

25 Q So do you want to change your testimony now? Is it

1 not true that Mr. Hughes stunk and that's why you gave him  
2 the deodorant?

3 A No, it was on occasion after he had taken a shower a  
4 day after that he started to smell.

5 Q And did you not also tell me, sir, yesterday that  
6 after he was finished he looked at you as though he did  
7 not know what had happened?

8 A Yes, I did.

9 Q And did you not also tell me yesterday that after he  
10 finished he was looking for breakfast?

11 A I told you I heard that; I did not actually hear him  
12 say it.

13 Q Okay, thank you.

14 THE COURT: Redirect?

15 MR. BRACKETT: Nothing further, Your Honor.

16 THE COURT: You can step down, thank you.

17 MR. BRACKETT: The State would call Stella  
18 Lingerfeldt.

19 MS. BRICE: Your Honor, may we approach the bench for  
20 just one moment?

21 (Bench conference off the record.)

22 THE COURT: Please come around and be sworn, please,  
23 ma'am.

24 STELLA LINGERFELDT, being duly sworn,  
25 testified as follows:

STELLA LINGERFELDT DIRECT

1 DIRECT EXAMINATION

2 BY MR. BRACKETT

3 Q Ma'am, would you please state your full name and spell  
4 your last for the court reporter?

5 A Stella Lingerfeldt L-i-n-g-e-r-f-e-l-d-t.

6 Q And, ma'am, where are you employed now?

7 A I am unemployed at the time.

8 Q Okay and where were you employed back in April of  
9 1993?

10 A The York County Detention Center, Rock Hill.

11 Q And what did you use to do over at the York County  
12 Detention Center?

13 A I was a Detention Officer.

14 Q What were some of your responsibilities as a Detention  
15 Officer?

16 A Maintain security and safety of inmates.

17 Q Were you working the early morning hours of April 12,  
18 1993?

19 A Yes, sir.

20 Q As part of your responsibilities in the evening hours  
21 when you are working the late shift like that, what did  
22 you have to do? What was some of the things that you had  
23 to do?

24 A Do safety checks throughout the facility.

25 Q What do you do when you do a safety check?

- 1 A Go through each of the housing blocks to check the  
2 inmates to make sure they were there and all were safe.
- 3 Q Like a head count?
- 4 A Like a head count.
- 5 Q All right, did you do that that evening and the early  
6 morning hours around 4:45?
- 7 A Yes, sir.
- 8 Q And did you notice anything amiss in the C Block?
- 9 A No.
- 10 Q Where did you go after you finished making your  
11 rounds?
- 12 A I went back up to the booking area.
- 13 Q What happened next?
- 14 A It was about fifteen minutes later that we heard a  
15 commotion in the back.
- 16 Q What do you mean by commotion?
- 17 A We heard inmates screaming and yelling.
- 18 Q Okay, what did you do in response to that?
- 19 A I ran to the back and first I didn't know where it was  
20 coming from and then I realized it was coming from the  
21 front side of C Block and when I opened the door into the  
22 block I observed that there was an inmate with blood on  
23 his arms sticking out of the first cell of C Block.
- 24 Q What did you do when you saw that?
- 25 A Well, it kind of startled me and at the time I kind of

STELLA LINGERFELDT            DIRECT

1        let out a scream and Sgt. Kimbrell was on duty as my  
2        supervisor.

3        Q     Did he come to you?

4        A     Yes, he responded very immediately before I could even  
5        get it out.

6        Q     Okay. Without telling us, you can't tell us what Sgt.  
7        Kimbrell said, but what did you do after he arrived there?

8        A     I opened the cell door.

9        Q     Which one?

10       A     C 1 and at that time Williamson and I believe it was  
11       Waldrop they come running out of the cell past me and Sgt.  
12       Kimbrell up through the booking area.

13       Q     All right, what condition was Mr. Williamson in?

14       A     At the time I wasn't sure, but all I know is that he  
15       was bleeding pretty bad.

16       Q     What did you do then?

17       A     I went up front.

18       Q     Did you close the cell door or leave it open?

19       A     I closed the cell door and locked it. He instructed me  
20       to do that.

21       Q     Where did you go?

22       A     I went up to the front, the booking area.

23       Q     What did you see up in the booking area? Who was up  
24       there in the front in the booking area?

25       A     It was just me and Sgt. Kimbrell that was there and,

STELLA LINGERFELDT          DIRECT

1        of course, Williamson and Waldrop and there's a state  
2        inmate, Morgan, that was there with us.

3        Q     Where was Williamson?

4        A     Williamson he had placed him on the floor in front of  
5        the holding area, the holding cell area and had elevated  
6        his legs. This is what my sergeant at the time instructed  
7        for him to do.

8        Q     What was his condition? Could you tell that?

9        A     Yes, at this time we could tell that he had been cut  
10       on the throat and Sgt. Kimbrell instructed me to get  
11       towels and to apply pressure. At that time State Inmate  
12       Morgan put the towels on his neck and I helped a few  
13       minutes and then I was instructed to pretty much stay out  
14       of the way.

15       Q     Did you have an occasion to go back to C Block that  
16       night?

17       A     After?

18       Q     After Williams and Waldrop run out?

19       A     No, I did not.

20       Q     Did you have to go back ---

21       A     Oh, I'm sorry, yes, I did.

22       Q     And when was that?

23       A     It wasn't too long afterwards, it was probably a  
24       minute because Waldrop was sitting over in the corner  
25       hollering Chris was still in the back, Chris is still in

1 the back and then I realized immediately what was going on  
2 and we needed to get him out of there. So me and Deputy  
3 Blair I had him assist me go back because I didn't want to  
4 go back alone and get him out of there as quick as  
5 possible.

6 Q And did you go back there?

7 A Yes, sir.

8 Q Did you get Mr. Gorth out of the cell?

9 A Yes, sir.

10 Q Who was left in the cell with him?

11 A Mar-Reece Hughes.

12 Q Did you have any contact with Mr. Hughes from that  
13 point on?

14 A No, I did not.

15 Q Had you said anything to him during the entire time  
16 you had been running back and forth?

17 A No, sir.

18 Q Had you had any dealings with Mar-Reece Hughes prior  
19 to that, any interaction with him or contact?

20 A The only interaction I had was at 11:00 PM that night  
21 and that was to dispense medication to him.

22 Q Did you give it to him?

23 A Yes, I did.

24 Q Did he take his medicine?

25 A Yes, he did.

DAVID BLACK

DIRECT

1 Q What condition was Mr. Gorth in when you got back to  
2 the cell?

3 A He had lacerations on -- his shirt was cut and he had  
4 a cut on his leg. He was very unstable. To me it seemed he  
5 didn't really know at the time what had happened to him.

6 Q Did you have any other involvement in the  
7 investigation after that? Did you participate in the  
8 investigation in any way after that?

9 A No, sir.

10 Q Thank you very much. Please answer any questions that  
11 the defense counsel may have.

12 MS. BRICE: I have no questions of this witness.

13 THE COURT: You may step down, thank you.

14 MR. BRACKETT: I ask that this witness be excused.

15 THE COURT: You may be excused.

16 MR. BRACKETT: The State would call David Black.

17 DAVID BLACK, being duly sworn, testified  
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. BRACKETT

21 Q Sir, I believe the jury is acquainted with you, but  
22 for the record, state your name and tell us where you  
23 work.

24 A Good afternoon, my name is Agent David Black.

25 Q And you work where, sir?

1 A I am with the South Carolina Law Enforcement Division  
2 better known as SLED.

3 Q Were you called into York County in April of 1993 to  
4 investigate an incident at the York County Detention  
5 Center?

6 A Yes, sir, I was.

7 Q Where were you when you got that call?

8 A I was at my residence, I was awoken at approximately  
9 5:35 in the morning through our OD Quarters, which is the  
10 Officer of the Day Quarters at SLED. This is our  
11 Communications Command Facility. A request had come in  
12 from the York County Sheriff's Office for the Detention  
13 Center to respond to that location for an assault. When I  
14 arrived on the scene I was informed that a death had  
15 occurred.

16 Q What were your responsibilities that day?

17 A That day I was to process the crime scene. What the  
18 process entails is documenting the crime scene through  
19 photographs and also possibly through sketch and diagram  
20 and to collect any evidence that may be pertinent and then  
21 take that evidence back to SLED and have the appropriate  
22 department process the evidence for any information that  
23 may come from that evidence.

24 Q Can you tell us something about your background in  
25 crime scene analysis and what sort of experience you have

DAVID BLACK

DIRECT

1 in that area?

2 A Yes, sir. I am a graduate of the South Carolina  
3 Criminal Justice Academy basic law enforcement. I was  
4 employed with the Richland County Sheriff's Office for  
5 approximately seven years. Four of those years was as a  
6 line deputy and the other three years were in the Forensic  
7 Science Division which also incorporates the duties I have  
8 at SLED at this time. I have attended the South Carolina  
9 Criminal Justice Academy and in courses such as basic  
10 fingerprinting examiner, law enforcement photography,  
11 detective level I. I have also attended numerous death  
12 investigation classes and seminars through the United  
13 States Investigative Service, various coroner  
14 organizations and also through the International  
15 Association for Identification. I have also attended the  
16 Federal Bureau of Investigation at Quantico, Virginia the  
17 foot wear and tire tread program. I have also attended  
18 training conferences with the International Association  
19 for Identification that deals with not all the processing  
20 of crime scenes for documentation, but also how to process  
21 evidence for latent prints or any other evidence that may  
22 be there.

23 Q Agent Black, how long have you been in law enforcement  
24 all together, sir?

25 A In law enforcement for approximately eleven years. In

DAVID BLACK

DIRECT

1 the area of latent print examination and crime scenes  
2 approximately seven years.

3 MR. BRACKETT: Your Honor, I tender Agent Black as an  
4 expert in the area of crime scene analysis.

5 MS. BRICE: Without objection, Your Honor.

6 THE COURT: I find that he is qualified as an expert  
7 in crime scene analysis.

8 Q Sir, when you arrived at the York County Detention  
9 Center, what was -- where did you go, what is the first  
10 thing that you did?

11 A I and Special Agent David McClure, who is with the  
12 Serology Unit with SLED, arrived at the York County  
13 Detention facility and this is the old facility, not the  
14 new facility they have today, my contact person was  
15 Captain Sealy who is with the York County Detention  
16 Center. At a brief meeting he informed me the information  
17 that an assault had occurred, that two inmates had been  
18 stabbed, one was dead on arrival at the Piedmont Medical  
19 Center and that the suspect was being detained in another  
20 location in that facility. That they had secured the cell  
21 and allowed no one into that cell, at which point he  
22 escorted myself and Special Agent McClure to the C Cell  
23 Block and in particular Cell C-1. In fact, the cell was  
24 locked. I photographed the cell and the immediate hall  
25 outside of the cell that leads to the cell to

1 document it as we saw it. At that point I had him unlock  
2 the cell door and I then photographed the complete inside  
3 of the cell.

4 Q Sir, was anyone in the cell when you arrived?

5 A No, sir, the cell door was locked and no one was  
6 present.

7 MS. BRICE: Subject to earlier objections, Your Honor.

8 THE COURT: Well, I haven't seen them. I didn't know  
9 there was any earlier -- this is the first time I have  
10 seen this. Approach the bench, please, ma'am.

11 (Bench conference off the record out of the hearing by  
12 the jury.)

13 Let him identify it.

14 MR. BRACKETT: Yes, sir.

15 Q Can you identify what's depicted in that photograph  
16 there?

17 A Yes, sir, this is a photograph that depicts the jail  
18 cell C-1 as it was when I arrived on the scene after the  
19 cell door had been unlocked and opened.

20 Q Does that refresh your memory as to how the cell was  
21 laid out?

22 A Yes, sir, it does.

23 MR. BRACKETT: I ask that this be marked as a State's  
24 Exhibit for identification.

25 (State's Exhibit 84 marked for identification purposes

1 only.)

2 Q Can you describe the cell to us, sir? What did it  
3 look like?

4 A If you are standing in the open doorway of the cell,  
5 you have a total of four bunks, two bunks to the right,  
6 two bunks to the left. There are two bunks that are  
7 approximately 14 inches off the floor and these are the  
8 lower bunks and approximately 2-1/2 feet from the lower  
9 bunk above is another, so there were two bunks on the  
10 lower half, two bunks on the top half. Directly to the  
11 back of the cell there is a combination toilet and sink.  
12 On the top of the toilet and sink were some toilet  
13 articles like tooth paste, wash cloth, there was also an  
14 orange like a water cooler. Also on the floor of the bunk  
15 there were two mattresses. There was a blood spatter  
16 present on the wall to the top bunk, on the right, and  
17 there was blood, which ran down from the spatter towards  
18 the lower bunk also on the right hand side.

19 Q Is that the right hand side as you are facing the  
20 cell?

21 A If you are facing the cell, it would be on the right  
22 hand side. On the left hand side there on the bunk the  
23 mattress sheet itself on the lower left bunk there was a  
24 great deal of blood on the mattress cover and it had  
25 soaked through to the mattress because when I examined the

1 mattress cover, you could actually see the material of the  
2 mattress coming through. There was also some blood  
3 spatter present on the wall directly above the toilet and  
4 the wash basin. There was a poster of a hamburger and you  
5 could actually see some of the blood that was near it, the  
6 blood spatter. When you removed the mattresses from the  
7 floor, there was a great deal of blood letting that was on  
8 the floor under the mattresses. The mattresses got placed  
9 on the floor after the blood letting occurred.

10 Q Agent Black, did you process the scene?

11 A Yes, sir, again, the scene was photographed with  
12 general and close-up photographs of the blood spatter.  
13 Also any evidence that was collected Special Agent McClure  
14 with the Serology Unit did collect some swabs of blood  
15 from the location. Due to the fact that we had two victims  
16 to determine whose blood was whose; also, on top of the  
17 toilet facility near the wash basin there was a white wash  
18 cloth and wrapped inside that white wash cloth was a  
19 knife, which was documented and I collected it.

20 Q What did you do when you say you collected the knife?  
21 What did you do?

22 A I was wearing latex gloves and to the touch the cloth  
23 was wet. There appeared to be blood on that cloth. It was  
24 photographed. When I opened the cloth up, you could see  
25 the knife. The knife was - you could still see a little

1 bit of water, traces of water on the knife, the cloth and  
2 the knife were separated. I allowed the knife by spinning  
3 it to air dry. This would assist later in trying to  
4 recover any blood off the knife and also to process for  
5 latent prints. That evidence was collected and it was  
6 secured in my SLED vehicle.

7 Q And where did you take it?

8 A I transported it from the York County Detention Center  
9 to the SLED Headquarters in Columbia on Broad River Road  
10 to the Forensic Laboratory.

11 Q Did you attempt to test the knife for any  
12 fingerprints?

13 A That was done after the knife was swabbed for blood.

14 Q And what was the results of the swabbing for blood?

15 A As far as the results of swabbing for blood, I'm not  
16 certain. That information was not provided to me by the  
17 Serologist, however, they do a field test, which is a  
18 presumptive test, and from that it was positive for blood.  
19 Now whose blood it is and whether it was human blood or  
20 not I can't answer that.

21 Q Did you attempt to find fingerprints on the knife?

22 A Yes, sir, I did. I went through several processes  
23 including using the laser and a florescent substance known  
24 as MBD. No identifiable ridge detail was developed;  
25 however, water spots, like water streaking was developed

1 on the knife, which indicated to me the knife had either  
2 been wiped down or had been exposed to a great deal of  
3 water washing away anything that was present.

4 Q Do you have that knife with you here?

5 A Yes, sir, I do.

6 MS. BRICE: Your Honor, we have a matter that needs to  
7 be taken up outside the presence of the jury.

8 THE COURT: All right, go to the jury room for just a  
9 few minutes.

10 (Jury retires to jury room.)

11 MS. BRICE: Your Honor, I would object to this knife  
12 being wielded in front of the jury. Your Honor, the  
13 testimony is---

14 THE COURT: I have that impression that he was trying  
15 to keep it away from the jury's sight until it had been  
16 identified and put into evidence; I mean, I can't  
17 particularly see --

18 MS. BRACKETT: Yes, sir.

19 MS. BRICE: Yes, sir, I was just concerned; I wanted  
20 to go ahead and raise this issue prior to perhaps it  
21 getting any further than identification. Your Honor, to  
22 show the jury this knife would turn the attention away  
23 from the murder of Brent McCants and is focusing attention  
24 on charges that are pending against my client. I think if  
25 the ruling of the court was it was to show character

DAVID BLACK

DIRECT

1 evidence I don't know how showing the jury the knife that  
2 was used tends to show his character. I think the  
3 testimony was clear that he stabbed these people. I think  
4 at this point to show the knife is clearly prejudicial to  
5 my client and is taking away from the fact that my client  
6 is the defendant for the death of Mr. McCants as opposed  
7 to the incident that occurred in April of 1993.

8 THE COURT: What say The State?

9 MR. BRACKETT: Your Honor, I believe the sentencing  
10 authority is entitled to hear everything about Mr. Hughes'  
11 character. His guilt on the issue of the death of Officer  
12 McCants has already been determined. We are now in the  
13 sentencing phase and the jury sits as a sentencing body  
14 and I think this is very relevant, the whole issue is very  
15 relevant to his character, it goes into future  
16 dangerousness, it goes to the entire issue the jury should  
17 be allowed to hear in order to make a determination in  
18 this case as to what the appropriate sentence should be.

19 THE COURT: Had anyone testified that that was the  
20 knife that they saw in his hand?

21 MR. BRACKETT: No, sir, however, this was the only  
22 knife that was recovered in the cell and I believe that  
23 testimony would make it clear and it has blood on it. I  
24 think there's --

25 THE COURT: He hasn't testified it was on it.

DAVID BLACK

DIRECT

1 MR. BRACKETT: No, sir, I haven't elicited, I haven't  
2 gotten that far yet.

3 THE COURT: But if the proper foundation is laid, I am  
4 going to overrule the objection.

5 Bring the jury back in, please.

6 MR. POPE: Your Honor, may we approach?

7 (Bench conference off the record.)

8 Bring the jury.

9 (Jury returns to courtroom.)

10 Q Agent Black, in processing the cell do you search  
11 through the cell, is that part of the processing?

12 A Yes, sir, that is correct. After we get everything  
13 photographed and documented we do a thorough search of the  
14 cell. If we find anything at that time we go from the  
15 general photographs to the close-up photographs.

16 Q Did you locate any other knives in that cell?

17 A No, sir, that was the only knife that was located.

18 MR. BRACKETT: I ask that this be marked and moved  
19 into evidence, Your Honor.

20 THE COURT: Over objection it be received.

21 (State's Exhibit 85 marked and filed.)

22 Q I am showing you State's Exhibit 85, sir, is that the  
23 knife you have been referencing?

24 A Yes, sir, it is. On one end of the knife if you will  
25 look it bears the SLED lab number, the SLED item number,

DAVID BLACK

DIRECT

1 and my initials DWB.

2 Q Thank you very much, sir. And where again was that  
3 knife found?

4 A This knife was found on top of the toilet tank wash  
5 basin near the cooler. There was a white paper towel, a  
6 damp paper towel that had blood stains present on it. This  
7 knife was wrapped inside of that paper towel.

8 Q Did you have an occasion at any point that evening to

9 --

10 MR. BRACKETT: I beg the court's indulgence. I  
11 withdraw the question.

12 Your Honor, at this time I ask the court's permission  
13 to publish the exhibit to the jury.

14 (Exhibit published.)

15 I do not have any further questions.

16 Q Agent Black, please answer any questions that counsel  
17 may have for you.

18 MS. BRICE: I have no questions. Thank you, Your  
19 Honor.

20 THE COURT: Agent Black, you can step down and be  
21 excused.

22 MR. BLACK: Thank you, Your Honor.

23 MR. POPE: May it please the court, Your Honor? At  
24 this time it is The State's intent to hopefully move  
25 forward and finish today and try to move some witnesses

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1 around so we may accomplish that. It may be that it would  
2 put us a little bit later, but we have called some of the  
3 out-of-two witnesses to go ahead after lunch and be in  
4 route, so it would be our intention to try to hopefully  
5 finish our aspect of the case today, Your Honor, but we  
6 may need some time.

7 THE COURT: Once the exhibit has been circulated, then  
8 we will take a short break to give you a chance to talk to  
9 your witnesses.

10 Go to the jury room for a short break.

11 (Jury retires to jury room.)

12 Mr. Pope, just let me know when you are ready.

13 (Recess.)

14 Is The State ready?

15 MR. POPE: Yes, sir.

16 THE COURT: The defense?

17 MS. BRICE: Yes, sir.

18 THE COURT: And Mr. Hughes is present. Okay, bring in  
19 the jury.

20 MR. POPE: Your Honor, Doctor Jenkins' testimony will  
21 be next.

22 THE COURT: Okay.

23 MR. POPE: That will be in reference to the photos.

24 THE COURT: Well, do you want to take those -- wait a  
25 minute -- do you want to take up the matter of the photos

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1 at this point then? I mean, we might as well do it --

2 MR. POPE: Yes, sir.

3 THE COURT: All right, he's had a chance to review  
4 them?

5 MS. BRICE: If I could review them again, Your Honor.

6 MR. POPE: She has seen them all ---

7 MS. BRICE: Right.

8 MR. POPE: --- but she may not have seen the ones that  
9 I pulled out specifically.

10 (Photographs reviewed by defense counsel.)

11 MR. SCHUSTERMAN: Your Honor, we have reviewed the  
12 pictures that The State intends to show. First, let me  
13 state that in Franklin that the court in State v Franklin  
14 says specifically that "The body and the specific wounds  
15 were clean and the slides were simply not the sort which  
16 this court held inadmissible in State v Patrick." If we go  
17 to State v Patrick, in that case, they held it  
18 inadmissible that there was a gory aspect to it, that it  
19 incited the passion of the jury. Your Honor, I submit  
20 that at this time that these pictures do nothing but  
21 inflame the passion of the jury. We have never questioned  
22 that there were, in fact, six bullets fired into Mr.  
23 McCants' body, there was never an issue of material fact.  
24 We understand that now to introduce this does nothing,  
25 there is truly no probative value since the defense has

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1     conceded the fact that Mr. McCants was fatally wounded in  
2     this manner. The issue that we have always contested was  
3     our client didn't do the shooting, but not that Mr.  
4     McCants was not killed by a particular weapon using  
5     particular bullets. These are autopsy pictures as they  
6     have rulers and his name by it to indicate where the  
7     wounds were and I just to be quite honest, Your Honor,  
8     they don't serve any purpose other than to inflame the  
9     jury.

10        THE COURT: All right, let me hear from you?

11        MR. POPE: May it please the court, Your Honor? I  
12     think in particular they show they enlighten Doctor  
13     Jenkins' testimony from the standpoint -- as the court  
14     recalls, there was testimony that three of the wounds were  
15     stopped by the vest and upon that speaking and upon that  
16     language it appears that there were three wounds that were  
17     of not consequence. As the court has been able to observe,  
18     the wounds that were stopped by the vest still did  
19     substantial damage. The defense has brought the issue of  
20     the speed of the bullets and the pressure of the bullets  
21     and all of that and the nature of that, this will show the  
22     nature of the crime, the character of the defendant using  
23     truly a high powered weapon that did specific damage even  
24     independent of the officer having a protective vest on,  
25     Your Honor. For that reason I would submit they are

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1 admissible distinguishable from another publication  
2 including Patrick and as Mr. Schusterman conceded in  
3 Patrick there was blood and, in essence, gore that was  
4 shown and this is not that. In Middleton where they talked  
5 about all types of photos the difference was that it was  
6 autopsy, the scalp was pulled back. This is Mr. McCants'  
7 condition in a cleaned state. This is honestly the only  
8 opportunity The State would have had to have such  
9 photographs given that the attempts were made from the  
10 scene forward to try to save Mr. McCants' life and,  
11 obviously, would not have stopped then to take pictures  
12 while trying to save his life. Now we do, in fact, have  
13 pictures in the emergency room and we have not tried to  
14 admit those that would have various life saving procedures  
15 that the photos would indicate.

16 THE COURT: What are they relevant to as far as an  
17 aggravating circumstance?

18 MR. POPE: Your Honor, I don't think they go to an  
19 aggravating circumstance as proof of an aggravating  
20 circumstance because if you look at that instance, only  
21 three aggravating circumstances you are looking at would  
22 be the murder of an officer and the armed robbery or the  
23 larceny with a deadly weapon. What this goes to as it  
24 said in Kornahrens, Your Honor, it goes to quoting from  
25 State v Kornahrens it says "While not pleasant to look at,

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1 the photographs show what the defendant himself did to the  
2 body and nothing more." It says, "While these photographs  
3 would have been inadmissible in the guilt phase, under the  
4 circumstances in this case, they are relevant in the  
5 sentencing phase to show the circumstances of the crime  
6 and the character of the defendant." And, again, in  
7 Kornahrens it wasn't so much showing a specific  
8 aggravating circumstance as it was the circumstances of  
9 the crime overall and the character of the defendant. For  
10 that reason, we would submit they would be admissible.

11 THE COURT: I am going to sustain the objection and  
12 not allow the pictures in. Make it a court's exhibit.

13 MR. SCHUSTERMAN: Thank you, Your Honor.

14 (Court's Exhibit 14, eight photographs, marked and  
15 filed.)

16 THE COURT: Are you ready for the jury?

17 MR. POPE: Your Honor, we have Doctor Jenkins as to  
18 one other matter and that would be as to the cause of  
19 death of Mr. Williamson.

20 THE COURT: All right.

21 MR. POPE: As to Mr. Williamson's cause of death it  
22 may be possible, the defense has a copy of the autopsy,  
23 they may be willing to stipulate to that, otherwise, I am  
24 can put him up. I'm not going to go through the autopsy,  
25 it won't take --

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1 MS. BRICE: Your Honor, I will stipulate to the  
2 autopsy report, the fact that Williamson died from a stab  
3 wound, is that correct?

4 THE COURT: Why don't you all write one down so I can  
5 read it to the jury and we will know before.

6 (Discussion between Mr. Pope and Ms. Brice off the  
7 record concerning stipulation.)

8 MR. POPE: I am going to put Doctor Jenkins up and  
9 qualify him and ask him, all I am saying is, I am not  
10 going to go through the whole autopsy. This was going to  
11 be the last thing I was going to finish after doing the  
12 pictures.

13 THE COURT: All right, let's go ahead so we can get  
14 through tonight.

15 MR. POPE: All right.

16 THE COURT: Bring in the jury.

17 MR. POPE: I'll be allowed to ask Doctor Jenkins about  
18 the damage that was caused by the wounds that did not  
19 penetrate the vest, in essence, to ask him about the  
20 pictures without putting the pictures in?

21 THE COURT: I thought we covered all of that about the  
22 bruises and all. Do you object to that?

23 MR. SCHUSTERMAN: Yes, sir, Your Honor.

24 THE COURT: I sustain the objection.

25 MR. SCHUSTERMAN: Thank you.

EVERETT EARL JENKINS DIRECT

1 (Jury returns to courtroom.)

2 THE COURT: Solicitor Pope?

3 MR. POPE: May it please the court, Your Honor? The  
4 State would call Doctor Earl Jenkins to the stand.

5 THE COURT: Doctor Jenkins, you are still under oath  
6 and we have already agreed on his qualifications and he  
7 was found qualified as ---

8 MR. POPE: A forensic pathologist.

9 THE COURT: --- a forensic pathologist.

10 EVERETT EARL JENKINS, having previously  
11 been sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. POPE

14 Q Doctor Jenkins, you previously explained to the jury  
15 that part of your job is to perform the autopsies here in  
16 the county, is that correct?

17 A Yes, it is.

18 Q And do you do them in conjunction with another doctor?

19 A Yes, I do.

20 Q And that is Doctor Jim Maynard?

21 A That is correct.

22 Q And did you have the opportunity to review his work on  
23 the autopsy of Mr. Williamson that was killed in the jail?

24 A Yes, I did.

25 Q And could you relate to the jury the final results of

EVERETT EARL JENKINS DIRECT

1 that autopsy what the final finding was?

2 A Yes, the final findings that the cause of death was  
3 exsanguination or blood loss due to a laceration, a knife  
4 wound, to the left side of the neck that severed the  
5 external and internal jugular veins.

6 Q And how many wounds were there actually on the side of  
7 the neck?

8 A There were two wounds to the neck, one that was  
9 superficial and involved only the muscle of the neck and  
10 one that was deep and involved the muscle, internal and  
11 external jugular veins, and the upper part of the throat  
12 and went into the airway.

13 Q State's 86 for identification is this an accurate  
14 reflection of the final summary that you indicated to the  
15 jury?

16 A Yes, it is; this is Doctor Maynard's final summary  
17 that describes what I just said.

18 (State's Exhibit 86 marked for identification purposes  
19 only.)

20 MS. BRICE: Your Honor, I would object to this being  
21 entered into evidence as it is cumulative to what he has  
22 already testified to.

23 THE COURT: Let me see it.

24 (State's Exhibit 86 for identification handed to  
25 court.)

CRAIG ALEXANDER

DIRECT

1 I sustain the objection.

2 Q Were there any defense wounds noted?

3 A No, there were none.

4 Q And could you explain to the jury what defense wounds  
5 are?

6 A Defense wounds are wounds that an individual might  
7 suffer in a struggle to protect himself during an assault.  
8 They would be on parts of the body that might be exposed  
9 to an assault such as this part of the arm, the little  
10 finger side of the arm.

11 Q And there was no indication --

12 A There were no wounds that might indicate defensive  
13 measures taken.

14 Q Thank you. Answer any questions defense counsel may  
15 have.

16 MS. BRICE: I have none. Thank you.

17 THE COURT: You may step down. You may be excused.

18 MR. POPE: The State would call Craig Alexander to  
19 the stand.

20 CRAIG ALEXANDER, having previously been  
21 sworn, testified as follows:

22 THE COURT: You are still under oath.

23 DIRECT EXAMINATION

24 BY MR. POPE

25 Q Mr. Alexander, you previously testified; I believe you

1 were an officer of the Rock Hill City, is that correct?

2 A Yes, sir.

3 Q Mr. Alexander, I believe you were the officer that  
4 apprehended Mr. Forney, is that correct?

5 A Yes, sir, it is.

6 Q Officer Alexander, if you could, tell the jury how  
7 long you have been with the Rock Hill City?

8 A I have been there approximately four and a half years.

9 Q And did you know Brent McCants when he worked there  
10 with the City?

11 A Yes, I did.

12 Q Can you tell the jury how you became to know him and  
13 how long you worked with him?

14 A He was working a couple of months, approximately six  
15 months by the time I had gotten there, he was still at the  
16 Academy and I had met him when he came back from the  
17 Academy.

18 Q Tell the jury just basically a little bit about Brent  
19 from your dealings with him, his personality and how you  
20 came to know him.

21 A Brent had a unique personality, very outgoing. When I  
22 came on the shift police officers are a tight group, I  
23 mean he made me feel like I belonged, like I was wanted  
24 there, we hit it off pretty good from the git go.

25 Q Did you have the opportunity to start doing things

1 with him outside of work?

2 A Yes, sir, I did.

3 Q Could you relate that to the jury, please?

4 A We started just doing things outside of work. Any time  
5 that we were off we would get together and go out to the  
6 pool, just things that we did together.

7 Q How long had you known Brent? Did you know him from  
8 coming there to the City? Did you know him previously?

9 A No, sir, when I got to the City.

10 Q Did there come a time when Brent left the City Police  
11 Department?

12 A Approximately a year or a year and a half after I  
13 arrived Brent left and went onto the Sheriff's Department  
14 here in York County.

15 Q And did you remain in contact with Brent? How was  
16 your relationship with Brent at that time?

17 A Shift rotation was basically the same at that time, he  
18 worked a ten hour shift, I was still working eight; we  
19 basically worked the same shift, the rotation, we still  
20 did things outside of work together when he was off and I  
21 was off and we got together as much as we could.

22 Q So, of course, Rock Hill is in York County, is that  
23 correct?

24 A Yes, sir.

25 Q Sir, did you and he have the same jurisdiction to a

1 certain extent? I mean did the county come and help in the  
2 city?

3 A The county would come and help us, sometimes we have  
4 large fights and anytime we needed backup and we couldn't  
5 get any backup officers tied up late at night when we had  
6 multiple calls, Brent was there many times when I needed  
7 backup and I couldn't get any.

8 Q Finally, Officer Alexander, was there some plans  
9 through your friendship that you had made with Mr. McCants  
10 before he died?

11 A We had discussed moving in together, we had made some  
12 arrangements, furniture was moved, we just didn't have  
13 time to go through with it. He lived at Eagles Landing  
14 inside of Rock Hill City limits and that's where we  
15 planned on moving together.

16 Q Officer Alexander, I would ask you if you could tell  
17 the jury what impact the events of September 25th had on  
18 you as far as Brent's friend and as far as the law  
19 enforcement community there at the City?

20 A I lost the first friend that I ever had there, a good  
21 police officer, and it impacted our Department pretty  
22 heavily.

23 Q When you say "pretty heavily," in what regards?

24 A It just made you aware that things like this go on  
25 inside this community, it's not just a big city crime, it

KELLY CARROLL

DIRECT

1 does go on down here also.

2 Q Officer Alexander, answer any questions Ms. Brice may  
3 have.

4 MS. BRICE: Thank you, Mr. Alexander, I have no  
5 questions.

6 THE COURT: All right, you may step down. Thank you.  
7 You may be excused.

8 MR. POPE: The State calls Kelly Carroll.

9 KELLY CARROLL, being duly sworn, testified  
10 as follows:

11 DIRECT EXAMINATION

12 BY MR. POPE

13 Q Ms. Carroll, state your name and spell your last name  
14 for the court reporter, please.

15 A Kelly Carroll C-a-r-r-o-l-l.

16 Q Ms. Carroll, where are you employed?

17 A With the York County Sheriff's Department.

18 Q How long have you been employed there?

19 A For a little over three years.

20 Q Okay, do you have any relatives that are employed  
21 there too?

22 A Yes, sir, my mother is employed.

23 Q Is she an officer also?

24 A Yes, sir, she's a detective sergeant.

25 Q Could you tell the jury when you came on with the

1 Sheriff's Department?

2 A I started July 1st of 1992.

3 Q Okay and could you tell the jury -- are you broken  
4 down into shifts? How does that work, if you could tell  
5 that to the jury?

6 A Yes, we work like rotating shifts. We have four  
7 different shifts, they are alphabetized A Shift is Adam  
8 shift, B shift is Baker shift, C shift is Charlie shift,  
9 which I work on, and D shift is David shift and we work  
10 rotating shifts.

11 Q Who was your supervisor back in 1992?

12 A Doug Taylor. He was my lieutenant.

13 Q And was Brent McCants on your shift?

14 A Yes, he was.

15 Q Back on September 25th, 1992, were you working that  
16 night?

17 A Yes, sir, I was.

18 Q And so your shift was on duty?

19 A Yes, sir, we were on second shift at the time.

20 Q And so Brent was on duty as a sheriff's deputy at the  
21 time he was killed?

22 A Yes, sir, he was.

23 Q And at that time were you alone in your car or did you  
24 have somebody you were in training with? How does that  
25 work?

1 A No, sir, when I first started, I was assigned to a  
2 field training officer and that officer was Rod Benfield  
3 at the time. We were riding together that night.

4 Q Okay. You were on duty and could you hear the radio  
5 that night of Brent's transmission?

6 A Yes, sir, I could.

7 Q And I would like to take you now away from that night,  
8 but if you could, in general, tell people in the shift how  
9 the camaraderie in the shift, how do you work together,  
10 how does that work?

11 A Well, your shift and the folks that you work with are  
12 the only people you have to count on. They are your back  
13 up, they are the folks that you ask questions with, you  
14 are off at the same time so, you know, you get together  
15 and have outings. You all become friends because that's  
16 the folks you count on.

17 Q And did you have the opportunity to become friends  
18 with Brent?

19 A Yes, sir, I did.

20 Q Tell the jury about Brent's personality, what made  
21 Brent unique.

22 A It was his love of life, he loved people, he made  
23 everyone laugh. He just lit up the room when he walked in.  
24 He was always happy. He would, you know, act like  
25 different people, he just was always carrying on having

1 fun, he made things fun.

2 Q Could you tell the jury what impact the events of  
3 September 25th had on you and other officers there at the  
4 Sheriff's Department as far as your job?

5 A Yes, sir, the immediate impact that night was it made  
6 everybody realize no matter how much training we had,  
7 whether we wore our vest or not, you know, how much time  
8 you had on the road, your experience, that if somebody was  
9 really out to get you, you know, that you could be killed.  
10 It devastated us.

11 Q Ms. Kelly, if you would, answer any questions the  
12 defense may have.

13 MS. BRICE: Thank you, Ms. Kelly. I have no questions.

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

15 MR. POPE: The State would call Doug Taylor.

16 WILLIAM DOUGLAS TAYLOR, being duly sworn,  
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. POPE

20 Q Officer Taylor, if you would, state your name and  
21 occupation for the jury, please.

22 A William Douglas Taylor, Captain of the York County  
23 Sheriff's Department.

24 Q Captain Taylor, how long have you been with the  
25 Sheriff's Department?

- 1 A A little over twenty-one years.
- 2 Q And how long have you been Captain now?
- 3 A May 22nd is when I was promoted to Captain last year.
- 4 Q Prior to that what were your duties?
- 5 A I was lieutenant on the shift.
- 6 Q As part of your duties - lieutenant is that the shift  
7 supervisor?
- 8 A Yes, it is.
- 9 Q And back on September 25th, 1992, were you a shift  
10 supervisor then?
- 11 A I was on C Shift.
- 12 Q Was that the shift that Kelly Carroll and Rod Benfield  
13 and Brent McCants were on then?
- 14 A It was.
- 15 Q Tell the jury so far as the shift supervisor what your  
16 job is and what you do as far as your job?
- 17 A Okay, you are in charge of the shift and you give out  
18 assignments, make sure that the officer has supplies and  
19 equipment and then you go out on the road and patrol with  
20 the officers and assist them in any way you can.
- 21 Q Did you have a professional relationship and somewhat  
22 of a personal relationship with them both at and away from  
23 work?
- 24 A I do; we work together, it's like a family. Like I  
25 say, we spend a lot of time together.

1 Q Captain, I am going to ask you if you could to tell  
2 the jury a little bit about how Brent came on board, when  
3 you first met Brent as far as being assigned to your  
4 shift, what could you tell the jury about Brent McCants?

5 A Deputy McCants he was an officer with the Rock Hill  
6 City Police Department and he had came over to the  
7 Sheriff's Department I think it was maybe three or four  
8 months he was assigned to my shift. Deputy McCants I saw  
9 right off that he was a very, very mature young man for  
10 his age. He loved to help people. He always had a smile  
11 on his face and he would cheer you up. He had energy and  
12 enthusiasm. I stood back and admired him. I wished I had  
13 the energy and the enthusiasm that he had. He wore the  
14 badge for the people and not for himself and the uniform  
15 and that's what the badge and the uniform is, it's for  
16 people, and he wore it for them.

17 Q There was a time when you had the opportunity after  
18 Brent's death to retrieve his badge and other materials?

19 A I did at a later date.

20 Q I should you State's Exhibit 87 and I'd ask you to  
21 take a look in this.

22 A This is a deputy sheriff's badge for the York County  
23 Sheriff's Department.

24 Q In addition to the badge, what are the other various  
25 things?

1 A Okay, this is a collar insignia that you wear on your  
2 collar over the badge, YCSD York County Sheriff's  
3 Department, that's what it stands for. And on the right  
4 collar is Deputy. It stands for deputy. That's what you  
5 wear when you first start out.

6 Q Is that the first rank?

7 A Yes, that's the first rank is deputy there. And this  
8 is a FOP pin, it's a member of the Fraternal Order of  
9 Police, which is a brotherhood for police officers. It's  
10 worn over the name tag. And this is Deputy McCants' name  
11 tag serving since 1990. This is worn under the FOP on the  
12 right side.

13 Q Captain Taylor, these would have been affixed, as you  
14 stated, to Brent's uniform the night he was killed, is  
15 that correct?

16 A They were.

17 Q Okay and the night he was killed was he, in fact, on  
18 duty for the Sheriff's Department as part of his job?

19 A He was. He was a patrolling the I call it the  
20 southeastern side of Rock Hill and me and him was just on  
21 a service call just before that, I had went and assisted  
22 him on a call down in the Leslie area and we finished up  
23 with that call and we talked a few minutes. Like I say, I  
24 loved to talk to him, he would cheer you up. He said he  
25 was going down in the Leslie area and I told him I would

1 go back up in kind of the northern area. The dispatch had  
2 gave him a radio call to come into the office to talk to  
3 someone about making a report about an incident that  
4 happened. That happens a lot, people come to the office  
5 and just meets the deputy there to see what they can do  
6 for them. And on the shift we always worked this way the  
7 one that was closest to the call always spoke up and took  
8 it and I was closer at that time and I told Deputy McCants  
9 that I would go in and talk to the complainants and take  
10 care of the report and I proceeded on to the County  
11 Building, which was in Rock Hill, South Cherry Road, at  
12 this time. And I talked to the complainant and did what I  
13 could for them and I had just gotten back in the car and  
14 was down on 901 right off of South Cherry Road when I  
15 heard the lady on the radio hollering mayday, mayday. And  
16 I knew that Deputy McCants had stopped a vehicle and  
17 everybody else was accounted for. Then I heard the lady  
18 holler help, help, someone's been shot. I think that was  
19 the words. I think someone's been shot. So we proceed out  
20 there. Like I say, at that time I was kind of on the  
21 western side of Rock Hill and when I arrived, there were  
22 several medical personnel working with Deputy McCants. As  
23 I was going up to him, I knew he was in trouble and at the  
24 time they said they needed some help on the perimeter and  
25 as I say the medical personnel was working with Brent

1 McCants and we were getting up in the area where they  
2 needed us and I got a call to go to the hospital. I  
3 arrived over there and Deputy McCants had died the  
4 information I had gotten.

5 Q The ambulance had already taken him and you were  
6 called to go to the hospital?

7 A Yes, I was. At that time George Eaton, Sheriff Eaton,  
8 he was the Sheriff at the time. He arrived there just  
9 about the same time that I did and we talked with several  
10 people there and Sheriff Eaton told me to go and tell  
11 Deputy McCants' mother. I had never met Mrs. McCants. I  
12 had talked with Brent in the past and I knew that he had  
13 lost his father at an early age and had a brother that was  
14 an invalid, had been in an accident at an early age, and I  
15 always tried to find out a little something about the  
16 deputies on the shift in case they ever need anything, so  
17 I had known this prior, but I had never met Mrs. McCants.  
18 And I knew that Deputy McCants would go when he was off  
19 and help his mother with Billy Dale, his brother, and also  
20 help her with some household things. Like I say, Sheriff  
21 Eaton told me to go tell Mrs. McCants, Brent's mother, so  
22 we summoned the Department Chaplain, Pastor Ken Walters, I  
23 knew I was going to need all the help I could get that  
24 night, so he sent him with me. I guess it's probably, I  
25 don't know the exact miles it is from Rock Hill to Mrs.

1 McCants, but I was thinking all the way down, it was a  
2 good ways, but it seemed like we got there in just a few  
3 minutes. I was trying to think how I was going to do it,  
4 what I was going to say, how was I going to tell her she  
5 had lost her son he had been killed, his future and his  
6 dreams were gone and her future and her dreams had been  
7 taken away from her. We arrived it was the wee hours of  
8 the morning and knocked on Mrs. McCants' door. She came to  
9 the door and she invited us in and we went in and we  
10 didn't know at the time that Mrs. McCants' mother was  
11 there, Brent's grandmother, and Billy Dale he was awake.  
12 When we knocked, I guess we woke him up. And we told them  
13 and it was no easy task. I've lost family members to  
14 sickness where you had time to talk to them before they  
15 left, but that's the hardest thing I've ever done in my  
16 life. I had been in law enforcement all of that time and  
17 dealt and saw many a victim of a crime I always I thought  
18 I knew how the a victim felt of a crime, but I didn't know  
19 until that night because we were a victim. I didn't know  
20 what to do that was going to help us and I was just lost.  
21 I think we all were.

22 Q Lieutenant, did you have the opportunity to meet with  
23 the Sheriff the next night and discuss what had transpired  
24 and to try to work with your people on your shift?

25 A We did. We were very proud of the deputies that came

1 back out the next day and filled their shift duties and  
2 they performed professionally. I couldn't ask for any  
3 better. And we talked and a few days later we all had  
4 counseling sessions, which we all attended and helped us  
5 get through this, the Department get through it; it'll  
6 always be with us, you never forget it.

7 Q Captain Taylor, are you aware that at some later point  
8 Brent's badge was actually given to Myra McCants?

9 A It was.

10 Q Okay.

11 MR. POPE: Your Honor, at this time I move State's  
12 Exhibit 87 for identification into evidence. I would  
13 request that at the appropriate time I would be able to  
14 substitute another badge for the badge and we will return  
15 this to Mrs. McCants.

16 MS. BRICE: I have no objection, Your Honor.

17 THE COURT: Without objection it will be received.

18 (State's Exhibit 87 marked and filed.)

19 Q Lt. Taylor, I am going to ask if you could step down  
20 and if you could show the jury the items in State's  
21 Exhibit 87.

22 A Okay, this is a badge, basically, the same as mine,  
23 but mine's got a cap on it.

24 THE COURT: Mr. Pope, the witness is looking at you, I  
25 don't --

PERCY JONES

DIRECT

1 A Pass them around?

2 Q Yes, just show them each item, Brent's badge and the  
3 material.

4 A This is a name tag that the officers are issued and  
5 they have on there the service. This is an insignia that's  
6 worn over the badge on this side of the collar, YCSD, York  
7 County Sheriff's Department. This is the rank that's worn  
8 on the right collar and this is the Fraternal Order of  
9 Police pin which is worn over the name tag, which is a  
10 brotherhood of police officers.

11 Q Captain, if you would, answer any questions the  
12 defense may have.

13 MS. BRICE: Thank you, Captain. I have no questions.

14 THE COURT: You may step down and be excused. Thank  
15 you for your time.

16 MR. BRACKETT: The State would call Sgt. Percy Jones.

17 PERCY JONES, being duly sworn, testified  
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. BRACKETT

21 Q Sir, would you please state your full name for us and  
22 tell us where you work?

23 A Percy Jones, Department of Corrections, Broad River  
24 R & E Unit.

25 Q What specifically is the R & E Unit?

1 A That's where we intake of inmates and we house our  
2 death row inmates, new inmates coming off the street and  
3 our disciplinary inmates.

4 Q All right, and do you also keep safekeepers there?

5 A Yes, sir.

6 Q What is a safekeeper? Can you tell the jury?

7 A We have two types of safekeepers, we have a county  
8 death row safekeeping that's sentenced to be executed and  
9 we have a regular county safekeeper what we call an  
10 un-tried safekeeper where they haven't been sentenced yet,  
11 they are waiting to go to trial.

12 Q Do you know Mar-Reece Hughes?

13 A Yes, I do.

14 Q Do you see him in the courtroom here today?

15 A Yes, I do.

16 Q Could you point him out to us, please?

17 A Sitting on the bench back there.

18 Q How do you know Mar-Reece Hughes?

19 A I was Mar-Reece's supervisor while he was one of the  
20 county safekeepers, untried county safekeeper.

21 Q He was an untried county safekeeper?

22 A Yes.

23 Q And how long has he been up there as an untried county  
24 safekeeper?

25 A If I can remember, I think it was around April of '93

1 up until last month, about two years, a year and a half,  
2 something like that.

3 Q During that time period did you have opportunities to  
4 interact with Mar-Reece and did you have dealings in the  
5 course of doing your job did you have dealings with  
6 Mar-Reece?

7 A Yes, I did.

8 Q Did Mar-Reece cause any problems while he was awaiting  
9 trial?

10 A On his first arrival there we had problems with him  
11 and one other altercations I had with him on several  
12 occasions.

13 Q Sgt. Jones, I am going to show you a series of  
14 documents and I'd ask you to take a look at them and see  
15 if you recognize what they are. Do you know what that is,  
16 sir?

17 A Yes, this is an incident report we have when a  
18 sprinkler head was pulled in Mar-Reece's room flooding  
19 out.

20 Q Do you recall that incident?

21 A Yes.

22 Q Could you tell the jury about that?

23 A Inside of the cells we have sprinkler heads so that in  
24 the event of a fire once it is heat activated the  
25 sprinkler heads will come on and put the fire out. On this

PERCY JONES

DIRECT

1 occasion, Mar-Reece had pulled the pin inside of his cell  
2 causing water to come out at a fast speed, faster than  
3 normal, because the pin is not in there to protect it and  
4 it gave an excess of water into the unit flooding the top  
5 tier and the bottom tiers of the unit.

6 Q Okay, sir. I show you two documents dated 9-27 of '93  
7 and ask if you could take a look at that and refresh your  
8 memory. Do you recall that incident, Sergeant?

9 A Yes, sir.

10 Q Can you detail that incident for the jury?

11 A What happened here, we've had problems with people  
12 making home made keys and keys being lost and brought in  
13 and it was brought to our attention that Mar-Reece might  
14 have had a key at this particular time and prior to taking  
15 him outside to shake him down and he was fumbling and went  
16 to his mouth and went inside his mouth and one fell to the  
17 floor. It was part of a handcuff key. After doing that,  
18 it was reported to the Captain and then we went through  
19 normal procedures not allowing him to go back to that  
20 particular room and placing him somewhere else.

21 Q Are prisoners allowed to have that kind of item?

22 A No, sir.

23 Q How were those defined in the Department of  
24 Corrections?

25 A Contraband.

1 Q I show you another report of September 27th of 1993  
2 and ask if you can remember that incident.

3 A Yes.

4 Q What was that about?

5 A Here again we did a random shake down of cells.

6 Q What is a shake down?

7 A A shake down is going inside an inmate's room checking  
8 for contraband, making sure that the things that are there  
9 that's supposed to be stationary are stationary and in  
10 this case here one of the officers, Officer Vela, noticed  
11 a screw hanging out of the mirror. He shook the mirror  
12 and decided to take the entire mirror down because it was  
13 being held up by only two screw compared to I think it was  
14 either four to six screws and when he took the screws out  
15 and took the mirror down, there was a shank.

16 Q What is a shank?

17 A A shank is a home made knife with a sharp point that  
18 was hid behind the mirror.

19 Q That was found in Mar-Reece's room?

20 A Yes, sir.

21 Q Can you describe the knife, what the shank looked like  
22 that he had?

23 A It was approximately fourteen inches long it states in  
24 the report with a point end like with a sharp pointed edge  
25 on it.

PERCY JONES

DIRECT

1 Q Do you recall an incident on March 23rd of 1994  
2 involving an individual named Gerald Reeves?

3 A Yes.

4 Q Who came to give canteen?

5 A Right.

6 Q Can you tell us about that incident?

7 A Here again inmates are allowed to have canteen  
8 privileges, buying things from the State canteen, foods,  
9 potato chips and sodas and some occasions the food is hot  
10 items like hot dogs and pizza and things like that. So  
11 when we got over upstairs in the county safekeepers side  
12 we went down the low numbers around the corner and then  
13 the high numbers sides and we got there, I don't know what  
14 Mar-Reece was upset about, but when we got there, he had a  
15 cup of feces in his hand and he slung it out the door  
16 hitting the canteen operator and then with all of the  
17 feces going onto the canteen products, which the canteen  
18 could not sell to those inmates that's up there on lock up  
19 and also we had death row inmates up there on lock up.

20 Q Have you ever been involved in a personal altercation  
21 with Mr. Hughes yourself?

22 A Yes, sir.

23 Q Do you recall this incident from April 13th of 1994?

24 A Uh-huh.

25 Q Can you tell us what happened on that date?

1 A Mar-Reece had just finished visiting his attorneys and  
2 as I was taking him from the cell, we have an attorney  
3 room so we wouldn't have to put -- you have to understand  
4 that these inmates on safekeeping cannot be mixed with a  
5 death row inmate, and so his attorneys when they come  
6 visit have a special room that they visit upon a tier that  
7 he's located on. While I was taking him out of cell 236 to  
8 his room I think it was 237 or 239 -- 239, I was taking  
9 him to his room and he noticed a death row inmate was  
10 talking to one of his attorneys and it kind of upset him  
11 "Why is this inmate talking to my attorney" and I said,  
12 "Okay, Mar-Reece, you need to step inside your room." He  
13 stepped towards his room and he stopped. He was still  
14 upset because the attorney had taken time to just speaking  
15 to the guys as they was leaving out. And at that time I  
16 asked him to step back and he used profanity toward me,  
17 which was very unusual with Mar-Reece at that particular  
18 time because I became to understand him, you know, try to  
19 understand Mar-Reece and we had a real close contact,  
20 understanding, and he cursed me and told me, you know, M  
21 word back up and ---

22 Q He said what?

23 A Cursing, profanity, you know, using all kind of  
24 language - I try not to use that here - and so I told  
25 Mar-Reece, "Well, you are going to step to your room." He

PERCY JONES

DIRECT

1 said, "I'm going to go up side your head" and I stepped  
2 toward him because that was abnormal for Mar-Reece to talk  
3 like that." I said, "Mar-Reece, go on up in your room"  
4 and then he said, "I'm going to knock you up side your  
5 head" and he took his hands together like that, I had him  
6 in cuffs, and he stepped toward me as I stepped toward  
7 him, when he stepped toward me he reared back and just  
8 with his handcuffs and hands like a sledge hammer hit me  
9 up side the left or right - left side I think it was - I  
10 was looking this way and knocked me back into the fence.  
11 We had that area fenced off and it knocked me into the  
12 fence and I bounced off the fence and at that time one of  
13 my officers came and took control of him; I grabbed him by  
14 his cuffs, put him in his room, the officer then took him  
15 down to the floor. I left the room and called for  
16 assistance for the Captain who stays up front to come down  
17 and give me some assistance when I was just assaulted.

18 Q After that did you ever have any other physical  
19 altercations with him or attempts from him to physically  
20 assault you?

21 A The only other one I can think of when we was trying  
22 to put cuffs on him and here again he became irate for  
23 some reason and it wasn't where I got hurt or any of my  
24 officers got hurt, we just took control of his hands, but  
25 he still had them in cuffs; he had on one belly chain; we

1 were trying to take him from handcuffs to belly chains to  
2 visit his attorneys and he lunged toward me and when he  
3 lunged toward me, of course, with handcuffs on he couldn't  
4 do me no harm. I just stepped to the side, when I stepped  
5 to the side, he rammed his head into the wall and we had  
6 to get him some treatment prior to his attorneys seeing  
7 him.

8 Q Okay, was that detailed in that July 19th incident  
9 report? July 19, 1994?

10 A Yes, sir.

11 Q And then four days later on July 23, 1994, did you  
12 have an occasion to take more contraband materials from  
13 him? Can you detail that incident?

14 A Okay, that's nail clips, which we do sell in State  
15 canteen, but the canteen operator knows that county  
16 safekeepers can't have -- untried county safekeepers can't  
17 have fingernail clips and canned goods up on the tier. If  
18 they purchase canned goods, it's purchased and it's placed  
19 in a cup. Fingernail clips are just out, I mean, we just  
20 banned that because we have found with fingernail clips  
21 what some inmates try to do is scratching at the walls,  
22 writing on the walls and trying to dig out the little  
23 bricks and things like that, so we didn't allow them to  
24 have fingernail clips.

25 Q Did he do anything with his bedding?

PERCY JONES

DIRECT

1 A Oh, that's an incident when the bed was torn out of  
2 the floor? Okay, that's when we had to move him from that  
3 particular cell because he had taken the -- removed the  
4 bed from the floor. How it was done we could never figure  
5 it out.

6 Q How are the inmates housed there, in single cells,  
7 double cells, four man cells, five man cells?

8 A No, single cells in Edisto.

9 Q And was that the case when you found the shank in his  
10 cell? Was he in a single cell by himself?

11 A Single cell.

12 Q Are you familiar with the South Carolina Department of  
13 Corrections and the security, the different type security  
14 prisons that they have?

15 A As far as custody levels?

16 Q Yes.

17 A Right.

18 Q Where does the Edisto Unit rank?

19 A Rank?

20 Q Yes, what level of security?

21 A I think that's considered a five institution, maximum  
22 security, one of the max institutions. That's our most --  
23 well, you can consider the most dangerous inmates.

24 Q Highest security inmates?

25 A Highest security inmates.

PERCY JONES

CROSS

1 Q Thank you very much, sir. Please answer any questions  
2 counsel for the defense may have for you.

3 CROSS EXAMINATION

4 BY MR. SCHUSTERMAN

5 Q Sgt. Jones, you and I have had a number of  
6 conversations through my representation of Mar-Reece,  
7 haven't we?

8 A Yes, sir.

9 Q Let's divide the time up that you and I have spent  
10 with Mar-Reece before he went to Gilliam October of '94  
11 and then after he got back in like November of '94. Do you  
12 recall the conversations that we had prior to October of  
13 '94 regarding the concern we had for Mar-Reece's mental  
14 state that we were concerned that something was wrong with  
15 him?

16 A Right.

17 Q Do you recall that one of the items that were of great  
18 concern to both you and I was the fact that ---

19 MR. BRACKETT: Your Honor, I am going to object to Mr.  
20 Schusterman's concerns ---

21 THE COURT: Let's don't go into your concerns.

22 MR. SCHUSTERMAN: I'm sorry.

23 THE COURT: I sustain the objection.

24 MR. SCHUSTERMAN: Thank you, Your Honor, I'll rephrase  
25 it.

1 Q Was a concern of yours prior to October of '94 the  
2 fact that Mar-Reece was not bathing on a consistent basis,  
3 it took physical force to make him bathe?

4 A Well, not, you know, we don't get into the physical  
5 force. I more or less talked with him, you know, as far  
6 as, "Mar-Reece, you need to go take a shower." If he  
7 didn't want to take one, then wait a couple of days as I  
8 told you and then I would just go to Mar-Reece and say,  
9 well, you know, "Mar-Reece, as a man, you know, this is  
10 what you need to do" and he would comply and go take his  
11 shower.

12 Q Would I be correct in stating that prior to him going  
13 to Gilliam that hygiene was a problem with Mar-Reece?

14 A It was.

15 Q How about his eating habits prior to him going to  
16 Gilliam?

17 A Prior to him going to Gilliam, at first he would eat,  
18 then I start noticing, you know, when you put the tray  
19 there, he would eat a biscuit, wouldn't touch the meat and  
20 rice and things like that on occasion, like bird eating.  
21 He would eat off the canteen, but as far as the food we'd  
22 give him, he started losing weight and I said, "Mar-Reece,  
23 you need to start eating," you know, and he just said, "I  
24 just don't want to eat." Every now and then he fell in  
25 love with noodle soup and I mean if you went down and put

1 it in the microwave three or four noodle soups, he'd sit  
2 there and eat it. That's when he had canteen, if he had  
3 money. If money didn't come in, then he didn't have  
4 anything.

5 Q Did he have a dramatic weight loss prior to him going  
6 to Gilliam?

7 A In my opinion he did.

8 Q Would you describe his behavior prior to Gilliam as  
9 being erratic?

10 A Yes, of and on. It wasn't a constant, you know, it was  
11 off and on.

12 Q Would he show episodes of rage for no apparent reason?

13 A I would say yes and like I said, most of the time when  
14 you'd get there or when his attorneys get there, he'd get  
15 to that point; I don't know why, he just goes off.

16 Q Prior to there being a court order in October of '94  
17 when he was moved to Gilliam, was he receiving any  
18 psychiatric help?

19 A No, I mean, no, because all our psychiatric help is in  
20 Gilliam Center. On one occasion we have a psychologist and  
21 I took Mar-Reece down to talk to her and then I know that  
22 he was having a problem and most probably the problem was  
23 that he did not have access to talk to anybody at home and  
24 that was one of his main problems not getting to talk to  
25 his parents.

1 Q Now am I correct that all of those incidents that Mr.  
2 Brackett went over with you including the one where you  
3 got into a physical altercation with him, I believe I was  
4 present there, I think I was the attorney you were talking  
5 about, all those occurred prior to him being sent for his  
6 medical treatment at Gilliam or William S. Hall?

7 A Sure.

8 Q I want you now to relate to the jury the Mar-Reece  
9 Hughes that came back after November of 1994 and the  
10 difference that you saw in him and the different behavior  
11 that he had.

12 A Well, his behavior changed, of course, whatever  
13 medication they put him on he was laid back, slept a lot,  
14 he didn't give us problems like under the normal  
15 circumstances. Every now and then we'd joke with him  
16 about, you know, you need to cut back on eating, you're  
17 getting fat, you're eating too much and he his comment was  
18 "You got me this medication and I just want to eat." So he  
19 started putting on weight and we didn't have any more  
20 problems out of him then outside of the fact still his  
21 hygiene he would not keep himself up.

22 Q In terms of writing him up, since has returned from I  
23 believe it was Gilliam or William S. Hall, probably  
24 Gilliam, have you had to write him up since he got back?

25 A I don't think so.

PERCY JONES

REDIRECT

1 Q All and all between pre-medication, pre-treatment and  
2 post-treatment, would you say that Mar-Reece Hughes is  
3 almost two different people? Let me make it easier, an  
4 easier question. Is there a dramatic difference between  
5 the Mar-Reece Hughes prior to going to Gilliam and the  
6 Mar-Reece Hughes that came back afterwards?

7 A Yes.

8 Q Thank you, Sgt. Jones. I appreciate your being here.

9 REDIRECT EXAMINATION

10 BY MR. BRACKETT

11 Q Sergeant, do you have behavioral problems with a lot  
12 of people up there?

13 MR. SCHUSTERMAN: Your Honor, I object to that  
14 question.

15 THE COURT: I sustain the objection.

16 MR. SCHUSTERMAN: Thank you.

17 Q Are you aware when he went to Gilliam? Do you know  
18 when that was?

19 A I can't give you accurate dates and times because I  
20 was a sergeant on the unit, then new supervision came in  
21 and then when my supervisor was pulled out of the unit, I  
22 went to follow my supervisor, so I went with my supervisor  
23 to the lock-up unit. On occasions I would come back on  
24 weekends and if I'm the only sergeant on duty, then I  
25 worked death row or Edisto.

SHEILA MAZYCK

DIRECT

1 Q Okay, so you don't know when he went or how many times  
2 he went?

3 A No.

4 Q Thank you very much.

5 MR. SCHUSTERMAN: No recross. Thank you, Sergeant.

6 THE COURT: You may step down. Thank you, you can be  
7 excused.

8 MR. BRACKETT: The State would call Lt. Mazyck.

9 SHEILA MAZYCK, being duly sworn, testified  
10 as follows:

11 DIRECT EXAMINATION

12 BY MR. BRACKETT

13 Q Lieutenant, could you tell us your full name and spell  
14 your last for the court reporter?

15 A My name is Sheila Mazyck and that M-a-z-y-c-k.

16 Q Where are you employed?

17 A I am employed with Broad River Correctional  
18 Institution at R & E Reception and Evaluation Center.

19 Q And what are your duties at the R & E Center?

20 A I'm a first shift supervisor, we maintain the custody  
21 and control and welfare of inmates such as death row  
22 inmates, administrative segregation and inmates that are  
23 on the floor waiting to be transferred to another  
24 institution.

25 Q Do you have the records with you pertaining to

1 Mar-Reece Aldean Hughes, safekeeper?

2 A Yes.

3 Q Do you reference those documents in a normal course of  
4 your duty?

5 A Yes.

6 Q And you are the custodian for those records as well?

7 A Yes, I am one of the custodians.

8 Q Ma'am, I am going to show you three separate  
9 documents, the first one dated July 3, 1993, and I would  
10 ask you what kind of document is that?

11 A This was the incident report that was written on  
12 July 3, 1993, where we found two razor blades, one was in  
13 the window and one was underneath the bed. This is the  
14 little cubby hole where you pack your belongings such as  
15 your clothing.

16 Q Where were those found?

17 A The razors?

18 Q Yes, what cell were those found in?

19 A They were found in 237.

20 Q And whose cell was that?

21 A Mar-Reece's.

22 Q I'll show you a document dated February 18, 1994, is  
23 that also an incident report?

24 A Yes, this is the incident report that was written on  
25 February 18, 1994, where we observed smoke coming from

1        underneath the cell at 239 where Mar-Reece was occupying  
2        at the time. There again he set fire, you know, the fire  
3        was burning and smoke was coming underneath the door from  
4        the blanket and stuff.

5        Q    He set fire to a blanket?

6        A    Yes.

7        Q    And, lastly, ma'am, another report dated August 24,  
8        1994, and ask if you can detail the specifics of that  
9        report for us.

10       A    Yes, this is another incident that took place on  
11       August 24, 1994, where he set another fire. It was coming  
12       out of the room at 144.

13       Q    And whose room was that?

14       A    Mar-Reece Hughes.

15       Q    Thank you very much. Please answer any questions that  
16       counsel for the defense may have for you.

17       CROSS EXAMINATION

18       BY MR. SCHUSTERMAN

19       Q    Those three incidents, the last one occurred on  
20       August 24th, I believe, 1994. Were you privy to them or  
21       are you just holding the records?

22       A    Well, there's an incident that I have to deal with and  
23       also in the records. I am aware of those plus other  
24       incidences.

25       Q    But you are just the holder of these records as I

1 understand it?

2 A Yes, some of those --

3 Q Some of those records you weren't there, you're just  
4 holding the paper.

5 A Right.

6 Q Is there a record of any incident reports after  
7 Mar-Reece came back from Gilliam in November of '94?

8 A There's not an incident report, no.

9 Q And an incident report, as I understand it, is an  
10 indication of some infraction, not living by the rules, so  
11 to speak?

12 A Right.

13 Q Is that correct?

14 A Right.

15 Q So since November of '94 he has not had any  
16 infractions, is that correct?

17 A No, not since he's been on medication.

18 Q Not since he's on -- so you are aware he was put on  
19 medication?

20 A Yes, I am aware of that.

21 Q You are aware that he went to Gilliam for a period of  
22 time?

23 A Right.

24 Q Did you know Mar-Reece prior to him going to Gilliam?

25 A Right.

1 Q Can you please relate to the jury the difference  
2 between the Mar-Reece Hughes prior to going to Gilliam and  
3 the Mar-Reece Hughes who returned after November of '94?

4 A The Mar-Reece Hughes prior to going to Gilliam Center  
5 was very mean, uncooperative, you know, always had  
6 something to say and had to be strictly enforced by the  
7 rules such as belly chains and leg irons. The Mar-Reece  
8 after the Gilliam Center had become whereas he sleeps a  
9 lot, he don't stand up in the cell and pace the cell, he  
10 still not in compliance with following the rules such as  
11 cleaning his room or straightening his room up or whatever  
12 is necessary for him to do, you know, for him to get that  
13 type of recreation. So, again, even on medication he was  
14 aware of some of the rules that still had to be followed  
15 even though he was on medication.

16 Q Would you say that after the medication, ---

17 A After the medication he was more or less calm.

18 Q And more cooperative?

19 A A little more cooperative.

20 Q Thank you. I appreciate your being here.

21 MR. BRACKETT: No further questions. I ask that this  
22 witness be excused.

23 THE COURT: You may step down, thank you.

24 MR. POPE: The State would call Doctor Otis Speight.

25

OTIS SPEIGHT

DIRECT

1 THE COURT: Members of the Jury Panel, we will take a  
2 break after this witness.

3 OTIS SPEIGHT, being duly sworn, testified  
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. POPE

7 Q Doctor Speight, if you could, state your name and  
8 spell your name for the court reporter, please, sir.

9 A Otis B. Speight S-p as in Paul, e-i-g-h-t.

10 Q And, Doctor Speight, where are you employed?

11 A At Piedmont Medical Center in Rock Hill, South  
12 Carolina.

13 Q What is your job?

14 A I am the emergency room physician at Piedmont Medical.

15 Q And were you so employed back on September 25th of  
16 1992?

17 A Yes, sir.

18 Q Okay, just before we begin, did you know Brent  
19 McCants?

20 A Yes, I knew of him.

21 Q Would you tell the jury how you became to know him?

22 A Well, I'm the emergency room physician at Piedmont  
23 Medical and often times the police department calls to  
24 investigate when there are any accidents, when there are  
25 any traumas, or any type of altercations; also, several of

OTIS SPEIGHT

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1 the nursing staff are either married to or closely related  
2 to police personnel and they often will come by to  
3 converse or if they are not busy they will come by and  
4 bring their wives' lunch or whatever. There was always a  
5 lot of communication between the police department and  
6 ourselves. Also, whenever there is any patient that is  
7 incarcerated that requires any type of medical  
8 intervention they are usually accompanied by someone from  
9 the police or sheriff's department, so we get to know them  
10 all on a fairly close basis.

11 Q So you had seen or knew Brent prior to the night of  
12 the 25th?

13 A Yes, Brent was a close friend of one of the nursing  
14 staff that worked in the Piedmont Emergency Room, so we  
15 talked, I didn't know him personally, but I knew him to  
16 recognize him when he would come in.

17 Q Now that evening you received a call from EMS at  
18 22:43, is that military time?

19 A Yes, that's correct.

20 Q What is 22:43, what does that mean?

21 A That's right at 10:47.

22 Q Okay, now I believe they arrived at 23:14?

23 A That's 11:14.

24 Q And you got a call from EMS, what was that in regards  
25 to?

1 A Anytime the EMS calls they have something in the  
2 field, they usually call us in advance to let us know what  
3 they are going to bring in and that gives us an  
4 opportunity to prepare for whatever they need to bring  
5 into us. If they need, a particular case may go to  
6 surgery, it gives us an opportunity to mobilize anesthesia  
7 or any other person that we may need for a given  
8 situation.

9 Q Okay and did you receive such a call that night?

10 A Yes, we did.

11 Q And what was that in reference to?

12 A We got a call to tell us that there was what we call a  
13 trauma code, that means it's usually a serious accident  
14 that requires some serious intervention. We were told that  
15 the trauma code was multiple gunshot wounds and at that  
16 time they would probably coming in fairly quickly code 3,  
17 meaning lights and sirens, so we knew it was fairly  
18 seriously.

19 Q What did you do in preparation when a trauma code  
20 comes in, what did you do?

21 A I was working at the same time with Doctor Charles  
22 McIntosh, one of my colleagues, and at the time I was  
23 aware that there was a trauma code coming in multiple  
24 gunshot wounds. I went to room 10, which is our trauma  
25 room, to make preparations for whatever should happen to

1       come into the front door.

2       Q    Okay, and Brent McCants was brought in?

3       A    Yes, he was brought in by EMS.

4       Q    Can you tell the jury what condition you received him  
5       and what you did?

6       A    Yes, when he first arrived at our facility there was  
7       no evidence of any cardiac or respiratory activity at all  
8       and part of our standard protocol is always the A, B, C,  
9       airways, breathing and circulation and the first thing you  
10      do is what we call the primary survey. We look over him  
11      for any obvious major injuries to explain what he's not  
12      breathing or doesn't have a blood pressure or pulse and  
13      later on when things are stabilized we go to our secondary  
14      survey. In Brent's case the EMS had already attempted to  
15      intebate, i.e, either put a tube into the airways to  
16      breathe for him because there was no evidence of  
17      respiratory activity that he was able to do on his own. I  
18      checked, first of all, to make sure the tube was in proper  
19      alignment, and you put the stethoscope on the chest and  
20      listen for breath sounds and there were no breath sounds  
21      on one side and, therefore, we instituted putting in chest  
22      tubes. When we hear no breath sounds, we know that there  
23      is something that is preventing the lungs from expanding,  
24      either there's some air in that cavity or some fluid in  
25      that cavity and at that time we placed a chest tube and we

1 received about 1500 cc's of bright blood, so we knew he  
2 had lost a significant amount of blood. We also placed  
3 several IVs to give him fluids and, hopefully, we could  
4 get his blood pressure and pulse back up. Unfortunately,  
5 all we were able to do it was to no avail and he expired,  
6 I think, around 23:47.

7 Q Doctor, in the attempts you made were there any  
8 attempts you made as far as the various wounds Mr. McCants  
9 had, the wound to his head, and the wound to his --

10 A Yes, one of the most obvious because I usually start  
11 at the head and work my way down, I usually sit at the  
12 head whoever is in charge and in this particular case I  
13 was in charge of that trauma code and looking at the head  
14 there was an obvious injury, there were multiple gunshot  
15 wounds, the one that was obviously probably the most  
16 notable was the one to the face because we were working  
17 around the face initially. And there was one wound that  
18 came in behind the ear and obviously we felt a palpable  
19 small mass right about the right eyebrow.

20 Q What does palpable mean?

21 A It means that you can feel it with your fingertips. We  
22 knew that there was something there that was not normal.  
23 It felt like a big large bump that was right over the  
24 right eyebrow and it was later confirmed by the chest  
25 x-rays to be a bullet wound. So we think that the entrance

1 wound was on the left side of the ear and crossed the  
2 midline and the bullet attempted to exit right above the  
3 right eyebrow.

4 Q Were there other body wounds? Were you able to do  
5 anything as far as those or attempt to do anything?

6 A Yes, there were several wounds, one I can remember was  
7 the left flank and you would have to refer to the  
8 pathologist's report for the specific, the exact specific  
9 locations, but there was one, probably the one that was  
10 responsible for puncturing through the lungs into the  
11 intra-abdominal cavity was responsible for the large blood  
12 volume loss, but there were several bullet wounds that we  
13 knew was responsible for a significant amount of blood  
14 loss. At that time we realized there was blood loss and we  
15 put in several IVs to attempt to give large volumes of  
16 fluid in a drastic attempt to create blood pressure. We  
17 also gave medications through IV to try to stimulate the  
18 heart to beat again and despite all our heroics, there was  
19 never at any given time in our facility where we were ever  
20 able to get either a blood pressure, heart rate, or any  
21 evidence of any cardiac or respiratory activity despite  
22 all we could do.

23 Q And that was from the time EMS brought him in until  
24 you finally were able to do no more?

25 A We were unable to do no more. We did all that medical

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1 care had to offer in terms of current standard of care  
2 according to the trauma ACLS and advanced cardiac life  
3 support skills and advanced trauma life support skills and  
4 there was nothing that we were able to do to restore any  
5 cardiac or respiratory activity while in our facility.

6 Q Thank you, Doctor Speight. Answer any questions the  
7 defense may have.

8 MS. BRICE: I have no questions. Thank you, Doctor.

9 THE COURT: You may step down. Appreciate your time,  
10 you are free to leave.

11 All right, we will take a fairly medium sized break,  
12 how about that, not real long, but just a refresher break.  
13 So follow the bailiff to the jury room.

14 (Jury retires to jury room.)

15 Solicitor, what else is on the agenda?

16 MR. POPE: I believe we will put up one more witness  
17 and that should be it.

18 THE COURT: All right. And I guess we had better deal  
19 with the photographs before the next witness?

20 MR. POPE: Yes, sir.

21 THE COURT: Has the defense had an opportunity to  
22 review the photographs? All right, why don't you take a  
23 look at them over the short break and then let me have  
24 your positions on them.

25 (Recess.)

OTIS SPEIGHT

DIRECT

1 Do you want to hand the photographs back up? Which  
2 ones do you intend to --

3 MR. POPE: I have had her mark them. I think Ms. Brice  
4 has had an opportunity to review them. I have pulled out  
5 the duplicates, Your Honor.

6 THE COURT: What is the position of the defense?

7 MS. BRICE: Your Honor, I don't think I have any  
8 grounds to object to those photographs coming into  
9 evidence.

10 THE COURT: Okay, you don't object to them?

11 MS. BRICE: No, sir.

12 THE COURT: Anything further before the jury comes in?

13 MR. POPE: I will get them marked.

14 (State's Exhibits 88 - 95, photographs marked and  
15 filed.)

16 THE COURT: We will have some time tomorrow to work on  
17 the charge requests.

18 MR. POPE: Yes, sir.

19 THE COURT: Is The State ready?

20 MR. POPE: The State is ready, Your Honor.

21 THE COURT: The defense?

22 MS. BRICE: The defense is ready, Your Honor.

23 THE COURT: The defendant is present.

24 Bring in the jury.

25 (Jury returns to courtroom.)

1           Members of the jury panel, we will have one more  
2 witness today and that will finish us up for today and  
3 then when we get through with that witness, I'll go ahead  
4 and tell you, we will start back at 9:30 in the morning.  
5 Call your witness.

6           MR. POPE: May it please the court, Your Honor?

7           THE COURT: Yes, sir.

8           MR. POPE: The State will call Myra McCants to the  
9 stand.

10                       MYRA MCCANTS, being duly sworn, testified  
11 as follows:

12 DIRECT EXAMINATION

13 BY MR. POPE

14 Q   Mrs. McCants, if you would, state your name and then  
15 spell it for the court reporter, please, ma'am.

16 A   Myra McCants, M-y-r-a M-c-C-a-n-t-s.

17 Q   And, Myra, what relationship are you to Brent?

18 A   I'm his mother.

19 Q   Myra, what I want to do is take this time to talk a  
20 little bit about Brent, about his background and his life.  
21 Would you tell the jury where you all were living when he  
22 was born?

23 A   We have always lived in Lancaster, South Carolina.

24 Q   And when was Brent born?

25 A   He was born May 2, 1969. He was twenty-three years

1 old.

2 Q Who was Brent's father?

3 A Preston Dale McCants. He was killed at Bowater in  
4 1978.

5 Q And could you describe to the jury what occurred as  
6 far as your family, as far as Brent? How old was Brent  
7 when his father was killed?

8 A Brent was nine years old, Billy Dale, my youngest son,  
9 was seven.

10 Q Did you just have the two boys?

11 A Two boys. The night my husband was killed my mother  
12 and father came over and my father had a heart attack and  
13 died. I buried one Saturday and one Sunday.

14 Q Who raised Brent and Billy Dale after that?

15 A I raised my sons to the best of my knowledge.

16 Q Was there a time in '85 when Brent was sixteen that he  
17 had a chance to go to Portugal?

18 A He went with Teen Missions to help build a church the  
19 whole summer. He had one day off before he went to school  
20 and he just liked to help other people.

21 Q He spent that summer working?

22 A He spent the whole summer in Portugal.

23 Q And then what happened in 1988? What did Brent do as  
24 far as going in the military?

25 A He went into the Air Force and we were all so proud of

1 him and brought him here to Rock Hill.

2 Q When Brent was in the Air Force, I think, Myra, you  
3 have brought a picture of Brent when he was in the Air  
4 Force?

5 A Yes.

6 Q Myra, if you could tell us what this represents, what  
7 this is.

8 A This is a picture of my beautiful son. He was not  
9 always beautiful outside, he was inside, and he helped me  
10 mentally, physically, financially. My other son was in a  
11 bad wreck and he is paralyzed and Brent helped build a  
12 room so I could bring him home after two years in the  
13 hospital. He became his only friend. The others soon  
14 forget you and Brent never did. Every time he was off, a  
15 day off, he would get Billy and get his dog and push Billy  
16 down the road and wrestle with him in the yard.

17 Q Would you tell the jury this is a picture of Brent  
18 when he was in the Air Force?

19 A In the Air Force.

20 Q Tell the jury what is this medal?

21 A The medal of honor. We went to Washington in '93 and  
22 we were presented the medal of honor.

23 Q And this was ---

24 A For the National Police Week of officers that have  
25 lost their lives in the line of duty.

1 Q And so the medal that you have with the picture that  
2 was the one that you received after ---

3 A He was deceased.

4 Q Okay, Myra, a while ago you were talking about you had  
5 two sons and while Brent was in the Air Force, right after  
6 Brent went into the Air Force, Billy Dale had his wreck?

7 A Brent went into the Air Force in September and Billy  
8 Dale wrecked in November the 12th and was in intensive  
9 care. They told us he would not live. He had severe brain  
10 injury. He wrecked his car two miles from home. He was  
11 doing probably 85, he just turned 17 and thought he was  
12 immortal, that nothing could happen to him.

13 Q Did Billy Dale, in fact, get out of the hospital?

14 A After two years, yes; I have him at home.

15 Q Did Brent then get out of the Air Force?

16 A Brent got out of the Air Force and come home and  
17 helped me with Billy and helped Billy and different  
18 churches in Lancaster took up money and then different  
19 builders added on a room so he wouldn't be put in the  
20 nursing home because he is totally disabled, he can't  
21 walk, he can't feed himself.

22 Q Myra, after Brent came out in '88 -- I'm sorry in '90  
23 was there a chance that he got to do something that he  
24 really wanted to do?

25 A He went to the Academy in Columbia and took the

1 policeman course and he was so proud and we were so proud  
2 of him.

3 Q After that, Myra, did he have the opportunity to go to  
4 work for the City of Rock Hill?

5 A The City of Rock Hill. He loved that. He was Baker 4  
6 and he would cut up with Billy Dale and act like Robo Cop  
7 or all the girls thought he looked like Elvis he was dark  
8 skinned and black headed, he was proud of his heritage; he  
9 had Indian and Scot Irish and I called them both my little  
10 Indians and he loved to cut up and make Billy laugh.

11 Q Who took care of Billy when you weren't around?

12 A Brent would come. He always told me if anything ever  
13 happened to me, he said, "Mama, you won't have to worry"  
14 and he'd say, "Son, I'm going to take care of you" and  
15 Billy would say, "You are not my - you are my brother."  
16 And he would say, "Son, I am going to be there and always  
17 be there for you if something happens to Mama."

18 Q Myra, did you have a chance to pick out some pictures  
19 that you wanted to show the jury of Brent and Billy?

20 A I want you to know my son who he was; he had dreams;  
21 he loved people; he loved everybody. He loved his job. He  
22 wanted to help this world somehow and I was so proud of  
23 him. You raise a child and you worry about them, you try  
24 to protect them and then they become teenagers and  
25 everybody goes through a phase and you worry how are they

MYRA MCCANTS

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1 going to come out, how are they going to do, and then one  
2 day he's standing there in a uniform and you are so proud  
3 of him and then some day some man comes along and kills  
4 him and murders him. You can be killed falling down  
5 stairs - they murder him.

6 Q Myra, would you like a drink of water? I'll get you  
7 some.

8 Are there some pictures you picked out?

9 A Yes, sir.

10 Q I'll ask you if you could I'll hand you the different  
11 numbers and you tell the jury what each one of them is,  
12 okay?

13 A Okay.

14 Q First, I show you number 91, State's Exhibit 91, and  
15 tell me what that is?

16 A This is Billy Dale and Brent and you can see where  
17 they are putting the room beside the house building it for  
18 his brother to be able to stay home. We had to put him,  
19 keep him in the garage part and have it sealed off so a  
20 room could be made for him and this is Brent when was  
21 Baker 4 with Rock Hill City.

22 Q I'll show you 92 and 93, and ask if you could tell me  
23 what those are.

24 A This is a picture of Billy coming home for a couple of  
25 hours on the weekend before they would let him come home

1 and Brent hugging him and tears would run down his eyes  
2 and he didn't want Billy to see it and he'd say, "You're  
3 such a bigger man than me; I don't think I could take it  
4 if something like that happened to me and I was  
5 paralyzed." He loved him. And then he stood Billy up at  
6 the pier the last time I know we'll ever go the beach - I  
7 found out wheelchairs don't roll through sand and he stood  
8 him up at a pier and you would think looking there was  
9 nothing wrong with my son and you stand here and look at  
10 the ocean how beautiful things are and Billy stood there  
11 and he can't stand up, he's gotten worse, any more, and  
12 Brent put him over his shoulders and put him in the ocean.

13 Q Myra, you also brought some other pictures, is that  
14 correct?

15 A I would ask you just to look. Are these the other  
16 pictures that you brought?

17 A Yes, this is before he went into the Air Force at my  
18 mother's house and she has alzheimer's. I tried to tend to  
19 her and she has a feeding tube and Brent would tell me,  
20 "Mama, be careful with Grandmama, Grandmama has  
21 alzheimer's or something; I'm afraid she is going to get  
22 in a car and probably end up in tim buck two and not know  
23 who she is or anything." I mean, he looked after us. He  
24 became the man of the house at nine and Billy Dale was  
25 seven when all the men in their lives were taken out from

1 them.

2 This is my mother behind Brent and Billy when Billy  
3 was in the hospital recuperating and this is a picture of  
4 Brent when they would do I guess you call it maneuvers and  
5 would play soldier. And this is when he graduated from the  
6 Police Academy in Columbia and we rode down there, he was  
7 so happy and he pushed Billy around, and it was fun, he  
8 took us into the room and he said, "Mother, this room with  
9 all these plaques are the men and women who have given  
10 their lives in law enforcement."

11 Q That was when you were down at the Academy?

12 A The Academy and the next time I went my son's name was  
13 in that room.

14 And this is a picture of me and Brent at my mother's  
15 house before she moved in with me and Brent helped take  
16 care of all of us.

17 MR. POPE: Your Honor, at this time I ask permission  
18 to publish to the jury the photographs.

19 THE COURT: That's fine.

20 Q Mrs. McCants, State's Exhibit 88 is just the picture,  
21 the frame, the picture that you carried with you.

22 A (Indicating in the affirmative.)

23 MR. POPE: If it please the court, while the jury is  
24 looking, we will hold off for just a second.

25 We are going to let the jury see the pictures before

1 we go forward.

2 Q Myra, tell the jury the last time you talked to Brent.

3 A I talked to Brent an hour before he went into work and  
4 I told him I didn't feel good and he talked like Donald  
5 Duck and he said, "You're gonna be all right." And I  
6 said, "Brent, you be careful." He had come Wednesday and  
7 he had a dream that he was going to be killed and he would  
8 be trying to yell 10-33 and he couldn't get to his gun and  
9 that they took his walkie-talkie and two days later that  
10 dream happened and I said, "Please, be careful" and that  
11 Wednesday when he came, he helped our neighbors move a  
12 tree out of their yard.

13 Q Myra, finally, however you want to tell it, tell the  
14 jury what impact September 25th has had on your life and  
15 your family's life.

16 A Someone took half my heart. I'll never get my child  
17 back. Billy will never have his brother anymore and he's  
18 become paranoid schizophrenic and I know a lot about that.  
19 I will never see him laughing and any of the dreams that  
20 he had planned. I'll never be a grandmother and hold his  
21 child and I'll never see him laugh and push Billy down the  
22 road while Billy has the chain to his dog and runs and  
23 I'll never have someone to talk to and if I'd get upset,  
24 he would say, "Mama, be strong, it'll be all right" and  
25 when Billy wrecked, if Brent hadn't have been there, I

1 don't know what - I couldn't handle it, I thought at one  
2 time - and he said, "Now, Mama, you have got to be strong  
3 for Billy and you have got to be strong now." And he  
4 helped me be strong and I'm trying to be strong for my son  
5 now.

6 Q Thank you, Myra. Answer any questions the defense may  
7 have.

8 THE COURT: Ms. Brice? No questions?

9 MS. BRICE: (Indicated no questions.)

10 THE COURT: You may step down.

11 Members of the jury panel, this finishes the  
12 testimony for today and you may return to the jury room,  
13 you will be leaving shortly and we will see you at 9:30 in  
14 the morning.

15 (Jury retires to jury room.)

16 In the morning I am going to ask counsel to be back  
17 around 9:00. I will be here about 8:30 and if there is  
18 anything we ought to do at 9:00, we will do it, otherwise  
19 we will start back at 9:30 in the morning. Have a good  
20 evening.

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22 THE COURT: Any further witnesses?

23 MR. POPE: No, sir, Your Honor, The State would rest.

24 THE COURT: Is the defense ready to go forward?

25 MS. BRICE: Yes, sir.

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1 MR. POPE: Your Honor, if I understand ---

2 THE COURT: We need to come to order now. You all have  
3 said you are ready to start and we will start.

4 MR. POPE: --- you still have under advisement the  
5 Motion ---

6 THE COURT: The Motion for Mistrial. Yes and I was  
7 thinking about that. I am going to wait and see. I am not  
8 going to rule on that at this time. I have not forgotten  
9 about it, but I thank you for reminding me.

10 Is the defense ready to proceed?

11 MS. BRICE: Yes, Your Honor.

12 THE COURT: The defense has made a Motion for a  
13 Mistrial based on the failure of The State to provide the  
14 SLED report. I have taken that under advisement. Does the  
15 defense want me to rule on it at this time prior to going  
16 forward or do you object to my continuing to keep it under  
17 advisement at this time? You can talk to Mr. Schusterman.

18 MR. POPE: Your Honor, while they are talking, just  
19 for the record I want to make clear I think a copy of the  
20 summary as distinguished from the report as a while, the  
21 summary, was put in as a Court's exhibit and just to make  
22 it clear the report itself ---

23 THE COURT: Oh, yes, that's clear in my mind.

24 MS. BRICE: Your Honor, the defense would prefer that  
25 it remain under advisement at this time.

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1 THE COURT: Thank you. Now, Mr. Hughes?

2 MR. HUGHES: Yes, sir.

3 THE COURT: Can you hear me?

4 MR. HUGHES: Yes, sir.

5 THE COURT: All right, now we are in this phase, the  
6 sentencing phase, where you have a right to, if you  
7 choose, to present what is called mitigating or  
8 extenuating circumstances. Did your attorney talk to you  
9 about that?

10 MR. HUGHES: Yes, sir.

11 THE COURT: All right, and you don't have to, just  
12 like in the guilt phase, you don't have to present any  
13 evidence. Nothing requires you to do that, but you have  
14 every right to present such evidence as you deem  
15 appropriate, do you understand that?

16 MR. HUGHES: Yes, sir.

17 THE COURT: I also want to tell you again that even  
18 though you testified in the guilt phase, you don't have to  
19 testify in this the second phase, the sentencing phase,  
20 but if you choose to, you certainly have the right to. If  
21 you do not testify, I would tell the jury that they cannot  
22 not take that into consideration as a factor in evaluating  
23 and determining what sentence to impose. I would tell them  
24 that they could not use that to any prejudice, that you  
25 have a right to remain silent not only in this court's

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1 opinion as to the guilt or innocence, but also as to  
2 punishment phase, the sentencing phase, also. Do you  
3 understand that?

4 MR. HUGHES: Yes, sir.

5 THE COURT: So you can testify and if you do, of  
6 course, they have already called to the attention of the  
7 jury your past criminal record for impeachment purposes  
8 and if you testify, I will again tell the jury -- well, I  
9 don't think you would be entitled to me to tell them at  
10 this stage that they can use that for only impeachment  
11 purposes because in this stage your prior record can be  
12 examined in regard to the sentencing as to your character.  
13 Do you understand that?

14 MR. HUGHES: Yes, sir.

15 THE COURT: Do you agree with all of that, Mr.  
16 Schusterman?

17 MR. SCHUSTERMAN: Yes, sir, I do.

18 THE COURT: Now, but if you don't testify, I will tell  
19 them that you are simply exercising your right and that  
20 they cannot take that against you and use that against you  
21 or discuss the fact that you did not testify in any way  
22 whatsoever during their deliberations nor sentencing. Do  
23 you understand that?

24 MR. HUGHES: Yes, sir.

25 THE COURT: Finally, you will have a right whether you

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1 testify or not to make a personal argument or plea or  
2 whatever you wish to call it to the jury prior to the jury  
3 deliberating. This does not, just like in the guilt phase,  
4 this does not preempt or not prevent your attorney from  
5 also arguing. You and your attorney have a right to go  
6 before the jury and make the final argument to the jury as  
7 to what penalty they should impose on you. Do you  
8 understand that?

9 MR. HUGHES: Yes, sir.

10 THE COURT: All right, well, I will chat with you  
11 about that again before you reach that stage in the trial,  
12 but I want you to be aware of all of that, okay?

13 MR. HUGHES: Yes, sir.

14 THE COURT: All right, Ms. Brice, have you and Mr.  
15 Schusterman discussed all of this with Mr. Hughes?

16 MS. BRICE: Yes, sir.

17 THE COURT: And do you believe he understands all of  
18 it?

19 MS. BRICE: Yes, sir, I do.

20 THE COURT: Anything else you wish me to cover with  
21 your client at this time before we go into the sentencing  
22 phase?

23 MS. BRICE: No, sir.

24 THE COURT: Anything The State wishes me to cover with  
25 Mr. Hughes?

1 MR. POPE: No, sir.

2 THE COURT: All right, bring in the jury.

3 (Jury enters courtroom.)

4 Good morning, we are starting a little later than 9:30  
5 but the reason is that The State informed me that they had  
6 presented their case in this the second phase, which put  
7 us in a procedural situation that I had to take up  
8 procedural matters before bringing you in. So while you  
9 were there a little bit longer than we had planned, it was  
10 because The State had decided that it was not going to or  
11 it had presented to you the evidence they wished to  
12 present in this the sentencing phase. That means that it  
13 is now the right of the defendant, if he wishes, to  
14 present any mitigating evidence or extenuating evidence or  
15 anything that he wants you to be aware of regarding him as  
16 mitigating circumstances or in mitigation so that you will  
17 have that, if he wishes to present that testimony, when  
18 you deliberate and determine the penalty to impose in this  
19 case.

20 So at this time I will turn the matter over to counsel  
21 for defendant.

22 MS. BRICE: Thank you, sir. I call as my first witness  
23 Caroline Burry.

24 CAROLINE BURRY, being first duly sworn,  
25 testified as follows:

DIRECT EXAMINATION

1 BY MS. BRICE

2 Q Caroline, would you, please, state your name for the  
3 record and spell your first and last name?

4 A Yes., Caroline Long Burry and my first name is  
5 C-a-r-o-l-i-n-e and my last name is Burry B-u-r-r-y.

6 Q Thank you. And where do you live?

7 A I live in Columbia.

8 Q And are you married?

9 A Yes, I am.

10 Q Do you have any children?

11 A I have three children.

12 Q And what is your educational background?

13 A I have a Bachelors Degree in Sociology from Furman  
14 University from 1978; from 1980 I have a Masters Degree in  
15 Social Work from the University of Georgia; and I am  
16 currently in the last stages, a month away, from receiving  
17 my Phd. in Social Work from the University of South  
18 Carolina.

19 Q And are you employed?

20 A Yes, I am.

21 Q And what is your employment?

22 A I am employed by the College of Social Work at the  
23 University of South Carolina.

24 Q And you are a social worker?  
25

1 A Yes, I am.

2 Q And how many years have you been a social worker?

3 A I have been a social worker for fifteen years and have  
4 been a professor of social work for eight of those years.

5 Q So you are an instructor as well?

6 A Yes, I am.

7 Q At the University?

8 A Yes.

9 Q And do you hold any licenses?

10 A Yes, I do. I am a licensed - there are three levels of  
11 licensed social workers in South Carolina. There's a  
12 Bachelor's level and a beginning master's level and then  
13 an independent practitioner or the highest level and I am  
14 licensed at that level an LISW level.

15 Q And how long have you been so licensed?

16 A I was licensed the first year that social workers  
17 became licensed in South Carolina, which was 1989.

18 Q And have you testified in court previously as to  
19 social work?

20 A Yes.

21 Q How many times have you testified as an expert?

22 A As an expert approximately fourteen times.

23 Q And have you testified previously and completed a  
24 social assessment, a social history?

25 A As an expert?

1 Q Yes, ma'am.

2 A In all of those cases I presented a social history as  
3 an expert.

4 Q Have you also testified in death penalty cases?

5 A Yes, I have.

6 Q And on those occasions were you qualified as an  
7 expert?

8 A Yes.

9 Q And can you explain the various roles that social  
10 workers have?

11 A Well, basically what social workers do is look at  
12 individuals and their internal functioning and look at  
13 their environment, the way they were raised, their family  
14 life, their family history, their work history, social  
15 history, things that have happened, and look at the  
16 interaction of those two parts of a person's life, their  
17 inner functioning and their life experiences.

18 Q And are you prepared today to testify as to the social  
19 history of the Hughes' family?

20 A Yes, I am.

21 MS. BRICE: Your Honor, at this time I would like to  
22 qualify Mrs. Burry as an expert in the area or field of  
23 social work?

24 THE COURT: All right, any questions or any voir dire?

25 MR. POPE: May it please the court, Your Honor?

1 EXAMINATION BY MR. POPE:

2 Q Ms. Burry, you said you had testified previously as an  
3 expert in court fourteen times, is that correct?

4 A Yes, I testified many more times than that, but only  
5 in adversarial cases was I asked to be qualified as an  
6 expert.

7 Q Okay, of those fourteen - and you say adversarial,  
8 does that include Family Court or custody cases?

9 A Yes.

10 Q Of those fourteen times how many were criminal cases?

11 A Two. They were death penalty cases.

12 Q You testified in two death penalty cases?

13 A Yes.

14 Q And that was as to social history?

15 A Yes.

16 MR. POPE: Nothing further.

17 THE COURT: Do you have any comment on her expertise  
18 at this time?

19 MR. POPE: Your Honor, in the light that she has  
20 previously been qualified as an expert in two other cases  
21 of this type, I have no objection.

22 THE COURT: Without objection and I so find that the  
23 witness, Mrs. Burry, is qualified as an expert in the  
24 field of social work.

25 MS. BRICE: Thank you, sir.

1 DIRECT EXAMINATION

2 BY MS. BRICE (RESUMED)

3 Q Caroline, again, if you would explain for the jury  
4 what the purpose of a social history is.

5 A A social history is one of the main -- preparing a  
6 social history is one of the main tasks that social  
7 workers carry out. As I said, we are interested and social  
8 workers are interested in looking at social functioning,  
9 how people do in the world, interact with others and  
10 social history involves the collection of a great deal of  
11 information about a person's life, relatives, background,  
12 family history, so that we can look at the current state  
13 usually to make some kind of recommendation that's the  
14 most typical thing a social history would be used for. For  
15 example, if someone has applied to be a foster parent, you  
16 would do a social history to perhaps to say here's what  
17 their own family's, the foster mom, foster dad, life was  
18 like so you would be able to talk about how they would do  
19 as foster parents, whether they would be appropriate  
20 people to be foster parents and other times you might use  
21 a social history or to understand a current level - they  
22 are always done to understand current level functioning  
23 and that's what you actually do here.

24 Q In preparing your social work or history in order to  
25 present to the jury what information did you gather or use

1 to complete that?

2 A Well, it was a very complex family situation and there  
3 was a tremendous amount of information that I went through  
4 in order to prepare the history and I brought notes  
5 because it was such a long list and I can give you that  
6 list.

7 Q If you could, please.

8 A I read prison records from Mr. Mar-Reece Hughes,  
9 school records for Mr. Mar-Reece Hughes, psychiatric  
10 records from Mr. Mar-Reece Hughes, York County and Rock  
11 Hill criminal records and jail records, South Carolina  
12 Department of Corrections records, and court documents  
13 related to Mr. Hughes, birth certificates, marriage  
14 certificates, the family Bible records of the Hughes'  
15 family, and those were the written materials I reviewed  
16 and then I also interviewed a number of people in the  
17 family because I was getting a family history. So I  
18 interviewed Mr. Hughes, his sister, Melvenia, his  
19 brother-in-law, Frank, his sister, Melinda Hughes Gentry,  
20 his brother Mylon M. Hughes, his sister-in-law, Joan  
21 Hughes, his sister, Mary Hughes Wilson, his sister,  
22 Rosetta Hughes Ferris, his brother Willie Hughes, his  
23 brother Amos Hughes, his father Milton Hughes, and his  
24 sister Alice.

25 Q And after gathering the information did you come up

1 with some themes as far as the social history of this  
2 family?

3 A I did and that is when I mentioned or described how we  
4 would look at a person's individual functioning and family  
5 functioning, that's what we are doing, are there themes,  
6 are there threads that run through a family and I did  
7 identify themes that I would like to describe on the chart  
8 that I prepared.

9 Q Okay. As well as preparing themes did you also  
10 prepare any other tools to assist you in explaining the  
11 family?

12 A Yes, I did. I prepared something that we in social  
13 work call a Genogram. Before I was in social work, I  
14 called it a family tree. In social work school they teach  
15 you to call it a Genogram and it's called a Genogram  
16 because Geno comes from generation and gram is picture, so  
17 it's a generation picture or, in fact, a family tree. It's  
18 one of the main tools that we use to describe or give a  
19 picture of a family.

20 Q Can you identify this for me, please?

21 A Yes, this is the Genogram that I prepared on the  
22 Hughes family.

23 Q And this right here is a part of the Genogram that I  
24 have listed separately so it will be easier to read.

25 MS. BRICE: I would like to mark this.

1 MR. POPE: I have no objection.

2 THE COURT: Received into evidence or ---

3 MS. BRICE: At this time for identification.

4 THE COURT: All right.

5 (Defendant's Exhibit 2 marked for identification  
6 purposes only).

7 You may mark it for demonstrative purposes.

8 MS. BRICE: Yes, sir.

9 THE COURT: Without objection.

10 Q If you would, step down, please.

11 A (Witness complied.)

12 Q If you would, Caroline, could you describe for the  
13 jury the themes that you have discovered throughout the  
14 Hughes family?

15 A Yes, as I mentioned, this is a very complex family and  
16 as you will see when we talk about it more in a minute,  
17 it's a very large family as well and throughout this  
18 family there were three things that came back again and  
19 again that I believe describes what it was like to grow up  
20 in this family and I think it will help us to understand  
21 what it was like to grow up in this family and they are:  
22 the theme of mental illness, the theme of abuse and family  
23 violence, and the theme of superstition, family beliefs  
24 around superstition, what family members call roots.

25 Q Can you explain each of those things for me, if you

1 would?

2 A Yes and I would like to do that by talking through the  
3 family and telling you about the family members and their  
4 connection to this and how I developed that.

5 Q First of all, if you could tell the jurors if you  
6 would how many people were in the Hughes family.

7 A Okay. Well, as I said, this is a family tree and we  
8 always do three generations of the family and we go from  
9 top to bottom in terms of a history or over time. So  
10 probably we all have done a family tree and this one is  
11 just a great deal different than most. This is the  
12 grandparents' generation across the top, so these are  
13 Mar-Reece's grandparents. Squares indicate men and circles  
14 indicate women and an X through the box indicates someone  
15 who is deceased, so all four of the grandparents are  
16 deceased.

17 Then in the middle generation here these are - there  
18 is Mar-Reece - his father and his mother, who is deceased,  
19 and this is his father's brothers and sisters, his  
20 mother's brothers and sisters.

21 There were 26 children born to this family. At this  
22 time there were 15 living children. Several children in  
23 the family this diamond shape indicates that this was a  
24 child who was born stillborn. You can see born 1958, died  
25 1958 because this was a child that did not live and the

1 gender whether this child was a boy or girl is not  
2 recorded in the Family Bible and the brothers and sisters  
3 don't remember. So in order to be completely accurate, if  
4 I did not whether it was a boy or girl, I know there was a  
5 child, but if I didn't know whether it was a boy or a  
6 girl, then I used this diamond symbol to indicate that. So  
7 there are 26 children and this is Mar-Reece.

8 Q Okay. And, if you would, if you could walk us through  
9 the themes and how they connect with the family members.

10 A Certainly. Well, the first theme that I mentioned is  
11 the theme of mental illness and I am going to use the red  
12 mark to help get a visual picture of the family and these  
13 things that are significant in the family.

14 There is a great deal of mental illness in this family  
15 and as we know there are some kinds of mental illness that  
16 do run in families. In this family we have Uncle Jacob,  
17 Mar-Reece's Uncle Jacob, who has children who have  
18 schizophrenia. So these would be first cousins to  
19 Mar-Reece. Mar-Reece himself, the defendant, is diagnosed  
20 with schizophrenia and then he has a brother Milas who is  
21 diagnosed with schizophrenia, a brother Manda who is  
22 diagnosed with schizophrenia, and a deceased Uncle Aldean  
23 and, actually, Mar-Reece is named after this uncle because  
24 Mar-Reece's full name is Mar-Reece Aldean Hughes. So we  
25 have first cousins, an uncle, a brother, Mar-Reece himself

1 and Manda. So what I would consider without question a  
2 very extensive history of mental illness in this family.

3 Q Can you describe, if you would, the abuse that you  
4 discovered in this family?

5 A I mentioned the number of family members with whom I  
6 talked and again and again one of the things that they  
7 talked about of what it was like to grow up in this family  
8 was a picture of chaos, a picture of a tremendous amount  
9 of violence. Most of that violence or a great deal of that  
10 violence was on the behalf of the father, with the father  
11 as the person who was violent to the mother, who died in  
12 1981, the children witnessed extreme examples of violence  
13 and gave me examples such as seeing their father hold  
14 their mother's hand on the stove until it burned severely,  
15 chasing her around the house beating her, witnessing  
16 hearing her scream, witnessing bruises. Some violence  
17 toward the children, but I think the critical thing for  
18 this family was the sense of fear that they didn't know at  
19 any moment the children were tremendously fearful of their  
20 father and the sense in the family seemed to be a great  
21 fear that at any moment there could be and there was  
22 violence in the family, that the children would flee, the  
23 children would hide, the mother would hide. It was a  
24 frightening place to live.

25 Q Did you discover any incidences of violence between

1 children and children?

2 A Yes, there was a great deal of violence between the  
3 children. Some of the older children particularly two who  
4 were mentioned to me were the two oldest children who are  
5 now deceased, the two oldest brothers. This brother died  
6 as a suicide and there were many incidences from this  
7 brother Melvin and this brother Milton ---

8 THE COURT: Can all the jurors see? I know you having  
9 to strain -- okay, they say they can.

10 A Sometimes I do this when I'm teaching; I stand in  
11 front of what I'm writing on the chalk board and that's  
12 not very helpful. I can come around.

13 THE COURT: They say they are all right. Just be  
14 aware.

15 A Milton was killed during an armed robbery attempt, but  
16 when he was in the family, Milton and a number of the  
17 older children were named as being violent towards younger  
18 children, so they were witnessing - one of the things  
19 that we know that when children witness violence in the  
20 family, that there may well be violence towards each  
21 other. There really, I can go down the line, none of the  
22 children that I talked to -- well, I'll say it this way --  
23 all of the children that I talked to talked about  
24 witnessing and have on occasions themselves been victims  
25 of violence in the family. There were incidences related

1 to me such as during the violence in the family, free for  
2 all fights, when one of younger children would be thrown  
3 into the fireplace where fire is burning and being burned  
4 and having to be pulled out and treated from that  
5 incident, so there were numerous incidents of violence  
6 throughout the family.

7 Q Were there any other abuse that you detected in the  
8 household?

9 A Yes and particularly there were girls in the family  
10 who were the victims of sexual abuse in the family and  
11 what I have learned was that the perpetrator or  
12 perpetrators of the sexual abuse, of the incest, were  
13 family members. I did not learn who the perpetrators were,  
14 but one of my areas of expertise in doing social histories  
15 is working with child sexual abuse and they were very  
16 credible in telling me three of the sisters of Mar-Reece  
17 talked to me about having been victimized sexually in the  
18 family.

19 Q Were there any incidence of neglect in the family?

20 A Well, there was. Part of the neglect was due to the  
21 fact there were a lot of children and there wasn't enough  
22 money. Mr. Hughes worked as a self-employed sign painter  
23 and had a business in the basement of the family and I  
24 think was very talented artistically and did make a living  
25 at this, but there were at any one point in time as many

1 as 14 or 15 children living in the home, so while the  
2 children were extremely industrious picking berries,  
3 picking up cans, everything they could to raise money,  
4 there were times when there was not enough food, where if  
5 you weren't there when they were having a meal, you didn't  
6 eat, and there was also, and this is going to begin to  
7 touch a little bit on the third theme, the father withheld  
8 food from the children. He kept his own supply of food in  
9 the basement in locked cabinets and a locked refrigerator.  
10 In fact, he prepared his own food in the basement and the  
11 children were not allowed to eat from that.

12 Q Touching upon your third theme, could you describe a  
13 little bit about what you found about superstitions in the  
14 family? Could you describe that?

15 A Yes, throughout the family, each of the family members  
16 related to me and it's a number of examples of a strong  
17 family belief in this family something that they refer to,  
18 that I refer to as superstition and roots, by that I mean  
19 they described a number of incidents in which primarily  
20 their father, I guess I should do green, their father, but  
21 also their grandmother on their father's side, their  
22 father's mother, and their grandmother on their mother's  
23 side, practiced roots so that the children lived in fear  
24 of what the father would tell them he would do to them and  
25 what their mother would tell. And I guess I need to give

1 a more specific example. The adult children have told me  
2 that they saw their father put powders in their mother's  
3 food and that she would be sick afterwards. There was, as  
4 I said, a long history of family violence and battling  
5 between this father and this mother and they saw their  
6 father and he told them "These are my conjure roots; I am  
7 doing conjure; these are my conjure powders" and the  
8 mother would say particularly she was sick for about the  
9 last ten years of her life and she would beg the children,  
10 "Please don't let me eat after your father; please don't  
11 let him have access to my food." And one of the most  
12 remarkable things I would say out of my career in working  
13 with families is I talked to all of these adults, and  
14 understand these are all adult children now, they are  
15 still terrified, the grandmothers are dead so they can't  
16 be involved in it any more, but they are still terrified  
17 of the father's power over them and believe and it is very  
18 real to them, it may seem hard to understand, but it is  
19 very real to them, that their father was evil and could  
20 make things happen.

21 Q Explain to the jury, it is very difficult for them to  
22 understand, give an example of their fear of their father.

23 A Well, an example would be that he would -- that they  
24 feel so threatened by him and still do that they will not  
25 eat a dish that he has prepared still at this time and an

1 example is at a church - one of the sisters was telling me  
2 this sister told me that when they have a family covered  
3 dish dinner, that they would say to each other, what dish  
4 did you make, what dish did you make, and make sure they  
5 don't eat from the dish that their father, and this is his  
6 second wife by the way, the father and his second wife  
7 prepared because of growing up believing that he may have  
8 caused their mother to die through poisoning with these  
9 roots and that they are still fearful of that. In growing  
10 up these children did not drink out of the family's home.  
11 When I first heard that, I found it very hard to  
12 understand, and I said, "Where did you get your water?"  
13 And they would go to a park, they would leave the home and  
14 walk to a park and I have visited this home, I have been  
15 to the family home, Amos this brother lives in the family  
16 home now, but I visited the family's home and seen there  
17 were wells and sources of water right there at the home,  
18 so they have water, but the children were so fearful of  
19 the roots that their father would put the root on them  
20 that they would walk a considerable distance outdoors to a  
21 park to get water out of a public fountain rather than  
22 drink out of a spigot at the home.

23 Q Can you describe for the jury a little bit about  
24 perhaps a turning point in the family?

25 A Yes. I think there's a real dividing line in this

1 family between the point when the mother was alive and in  
2 the home and after she died. Again and again the brothers  
3 and sisters told me about what a powerful person she was.  
4 She was a strong and practicing Christian, her faith was  
5 very strong to her, having the children involved in the  
6 church was tremendously important to her and, in fact,  
7 almost all of them is very, very involved and have  
8 positions of leadership in the church. So my sense in a  
9 very compelling way was that while she was alive she held,  
10 you know, in fact, this picture really shows the way I  
11 feel, there's a gap here, if you picture this while she  
12 was alive she was able to hold the father and the  
13 influence away from the family and even her own mother was  
14 involved in the roots, but she was able to protect the  
15 family. It was almost as though I should have drawn her  
16 circle bigger because she was such a powerful influence.  
17 And once she died, after being sick for years, and once  
18 she died in 1981 at that point I think that's the real  
19 dividing line and the family really fell apart. The older  
20 children made good their escape as quickly as they could.  
21 They escaped to marriage, they escaped to college, they  
22 got out of there as they could. The younger children,  
23 there were many children who were still as young as 10  
24 when the mother died, and they were lost and that's the  
25 picture I have of Mar-Reece in particular because he was

1 certainly among the younger children, that Mar-Reece and  
2 the younger children were lost during the mother's illness  
3 and after her death that there was no one to protect them.  
4 And the older children, bless their hearts, they did what  
5 they could, they brought food, some of these older  
6 children took in some of the younger children, but at this  
7 time Melvenia had children of her own. She has children  
8 that are very close in age to Mar-Reece, in fact, so while  
9 they were trying to help their brothers and sisters I  
10 think they did the best they could, but the younger  
11 brothers and sisters, but they also had, you know, had  
12 their own families, so they were pitching in, but these  
13 children were pretty much hither and yond left to fend for  
14 themselves. There are lots of descriptions of during the  
15 mother's illness the younger children, very young, too  
16 young to be using a stove, in fact, trying to cook their  
17 own meals and take care of themselves and keeping the  
18 family going.

19 Q While the mother was sick and even after her death,  
20 what was the role of the father?

21 A The mother was the disciplinarian; the father provided  
22 an income to the family although he did leave the family a  
23 number of times. He abandoned the family a number of times  
24 and his role - his role in the family as far as a  
25 functional role in the family other than providing some

1 income to the family I think was instilling fear in the  
2 children. I'm not sure that there's any other role. I  
3 don't think he was a positive model. I don't think he was  
4 providing the things that we look for and would like to  
5 see in a family to provide. I think he mostly instilled  
6 fear in the family.

7 Q Can you describe after the mother's death what he did  
8 for the family? Did he continue to live with the family?  
9 Would you describe that for us and how it affected  
10 Mar-Reece?

11 A No, Mar-Reece was with the younger children. The  
12 father had reportedly already been involved with his  
13 present wife prior to Mrs. Hughes' death and at the time  
14 of Mrs. Hughes' death he moved out and set up housekeeping  
15 and then did marry Mrs. Littlejohn. So he was completely  
16 in terms of providing - he no longer provided an income.

17 Q And what children were left in the household after the  
18 death of Mrs. Hughes, Alice Hughes?

19 A These children here, Melinda, Mary, Ralph, Milas right  
20 above Mar-Reece were all late junior high school/high  
21 school and in the process of beginning to move out of the  
22 family and these were children teenagers and down to the  
23 ten year old.

24 Q So Mar-Reece and the younger siblings were still in  
25 the household as well?

1 A Yes.

2 Q And you say the father moved in with Mrs. Littlejohn  
3 Hughes?

4 A Yes.

5 Q Who cared for these children?

6 A Well, they were here, hither and yond. The older  
7 siblings took in the children and different combinations  
8 of the children. Sometimes they stayed in the house and  
9 other times I think they just took care of themselves.

10 Q At this time who brought in the income for the  
11 children? Who cooked for them? Who cleaned for them?

12 A I don't think there was much cleaning. I think the  
13 cooking was they did for themselves and Mar-Reece did yard  
14 work. All the children worked. This was an extremely  
15 industrious family. They had jobs at McDonalds, in fact,  
16 while the mother was alive all the children worked, in  
17 fact, they brought home their checks and gave them to -  
18 the way it was stated to me - is we brought our checks to  
19 Mama that we had earned and she gave us what she wanted us  
20 to have and used the rest of the money to help the whole  
21 family. So after the mother had died, the children  
22 continued to try and just make whatever monies that they  
23 could.

24 Q In your compilation of your Genogram in talking with  
25 relatives what effect did this have on Mar-Reece?

1 A The way the brothers and sisters described Mar-Reece  
2 he really sounded like a very lost child in this family.  
3 They don't remember very much striking about him, that he  
4 was, except the fact that he was working a lot, and  
5 remember he had maybe one birthday cake growing up, but  
6 not birthday celebrations or any special kind of activity.  
7 They remembered that he was hardworking and quiet and  
8 nobody said anything to me like, oh, his best friend was  
9 this sibling and they did everything together. He was just  
10 one of the younger kids in the family that was just kind  
11 of lost after the mother's death.

12 MS. BRICE: I beg the court's indulgence just one  
13 moment, please.

14 Q Caroline, if you will, would you please identify some  
15 of the family members that are present today in the  
16 courtroom of Mr. Hughes' family?

17 A Yes, two of his sisters are sitting - these are the  
18 only two relatives that I see - they are sitting behind  
19 him. This is his oldest sister, Melvenia, and the other  
20 one, I'm not sure - it is Rosetta, your hair is different.  
21 Yes. These are two of the older sisters, the two older  
22 sisters.

23 THE COURT: You can sit back down.

24 Q And can you describe a little bit if you would about  
25 these two sisters? Do they have any special I guess

1 occupations?

2 A Well, in talking with both of the sisters they are  
3 both very involved in the church, in fact, Rosetta is  
4 called Bishop because she is a bishop in the church and  
5 has written a book about Bible verses and the use of the  
6 Bible and that's the way that they see themselves although  
7 they have other occupations is being involved in church.

8 Q And what about the sister, Melvenia? Are you aware of  
9 any occupation that she has?

10 A Well, she works, she does have an interesting  
11 occupation. She works in mediation and is a mediator in  
12 Winston-Salem where most of the family still lives.

13 Q Caroline, you had gone through and explained about the  
14 difficult environment that the children were growing up in  
15 and relating it to a theme that you have here on the  
16 board.

17 A Yes.

18 Q Can you explain, if you would, about how each child  
19 escaped that environment?

20 A Yes; can I step back down?

21 Q Sure, I'm sorry.

22 A Melvin I mentioned died from suicide, but he had left  
23 the family and moved out of the state as had Milton who I  
24 mentioned died when he was being robbed, he was killed.  
25 And most of the rest of the children, many of the rest of

1 the children, escaped by marrying young and Mylon did,  
2 Melvenia married early. As I mentioned she had six sons  
3 and she married young enough so that her children are  
4 contemporaries of Mar-Reece. Wilbert, I believe, married  
5 early; Rosetta did; and, also, as I mentioned, was very  
6 involved in the church and I think that's been something  
7 that has been a help for her. Willie described to me that  
8 he married, he also married early and that's exactly what  
9 he was doing, he wanted to get out of the home and set up  
10 his own home environment. Marshall left Winston-Salem  
11 where most of the other brothers and sisters still live.  
12 He physically left as did the oldest two and lived in  
13 Charlotte. Amos is married and has two children and a  
14 responsible job, but left the family. This sister,  
15 Juanita, whom they call Tootsie in the family is another  
16 child or another person that the brothers and sisters  
17 believe was a victim of the roots and so she had left to  
18 an early marriage and the siblings believe that her early  
19 death, as you can see she was born in '57 and died in '84,  
20 so she was only 27 years old when she died, that she, too,  
21 was possibly poisoned through the roots because she stood  
22 up to the father taking her mother's side. Alice went to  
23 college and left the family. Martha and Melinda and Mary  
24 all married young. Mary got into an abusive marriage.  
25 She's been married twice, something that we refer to

1 descriptively as out of the frying pan, into the fire,  
2 leading this very disruptive -- and that's something that  
3 we see unfortunately, disruptive, chaotic, abusive family  
4 and that's what you know, so even when you are trying to  
5 get away, you go back toward what you were running away  
6 from and running away from an abusive, violent family --  
7 she had a boyfriend actually at the time who was abusive  
8 and she married him. He gave her an ultimatum, marry me  
9 or, you know, set up housekeeping with me or go back to  
10 your father, go home, and she married him. She is no  
11 longer married to him, but she went from an abusive family  
12 into a relationship.

13 Mar-Reece I think escaped by getting in with a group  
14 that was involved in criminal activity when he was a  
15 teenager and he was in prison, got out of the family and  
16 got in prison. He's been in prison for years as we know.

17 The other brothers, these two brothers, have had -  
18 they are currently in prison and had a tremendous amount  
19 of legal difficulties. And Magdaline also married young.  
20 Magdaline lived, as the baby in the family, she lived --  
21 she escaped as a child sometimes by living with older  
22 siblings.

23 Q Thank you. Please answer any questions that Mr. Pope  
24 would have for you.

25

1 CROSS EXAMINATION

2 BY MR. POPE

3 MR. POPE: May it please the court?

4 THE COURT: Yes, sir.

5 Q Mrs. Burry, where did you say you were employed?

6 A At the University of South Carolina.

7 Q Okay, and you were talking faster than I could write  
8 it, you said you had been in the field fifteen years, is  
9 that right?

10 A Yes.

11 Q And eight years teaching, is that what you said?

12 A Yes.

13 Q Okay. Where specifically at the University do you  
14 work? Is that in the College of Social Work?

15 A Yes, in the Graduate School at the College of Social  
16 Work.

17 Q Is there a particular division that you work in, I  
18 mean, is there just a professor of social work or --

19 A I work in the division called The Center for Child and  
20 Family Studies, which is the Division of the College of  
21 Social Work devoted to research and training on families  
22 and children and family and child issues.

23 Q Is that the same Center with Doctor Andrews?

24 A No, she is at the Institute for Families in Society  
25 that's out of the Provost Office.

1 Q Okay, so you are in the same college, but in a  
2 different place?

3 A The Institute is not part of the college where Doctor  
4 Andrews is although she is on the faculty of the college.  
5 So she has a dual employment.

6 Q Okay.

7 A And I am at the College of Social Work in the division  
8 called The Center for Child and Family Studies that is  
9 devoted to research and training on child/family issues.

10 Q Are you a member of the professional organizations  
11 involving social work?

12 A Yes, I am a member of the Council on Social Work  
13 Education. That's the professional organization of  
14 educators or college professors in Social Work and I am a  
15 member of the National Association of Social Workers,  
16 which is our overall professional organization.

17 Q I think the next one Association of Social Workers.  
18 They have a platform as part of their Bylaws or part of  
19 their rules is anti-death penalty, is that correct?

20 A The National Association of Social Workers has a  
21 platform or position that the National Organization  
22 supports on a variety of issues and one of them, in fact,  
23 is an opposition to the death penalty.

24 Q The two death penalty cases that you testified in  
25 before you said you did a similar workup, is that correct?

1 A Yes, I did.

2 Q Okay and in each of those you were retained by the  
3 defense, is that correct?

4 A Yes, sir.

5 Q And in each of those you did a background of the  
6 defendant's life, a social history, is that correct?

7 A That is correct.

8 Q So, again, in each of those you appeared basically in  
9 the same stage that we are here in those trials you  
10 appeared?

11 A Yes, in mitigation.

12 Q In the other two trials that you were involved in did  
13 you also find themes like this?

14 A Not the same themes, but in every family there are  
15 themes that run through a family, so that's the purpose of  
16 the social history, yes, sir.

17 Q So regardless of whose family you did, you did find  
18 themes, I mean, they may be positive themes and they may  
19 be negative themes, but that's what a social history does?

20 A Yes.

21 Q And you'd agree in your experience in various themes  
22 you may find this is in family some members of the family  
23 rise above it and some do not, is that correct?

24 A Yes.

25 Q Likewise, I imagine you have seen themes in families

1 that were more positive and yet still family members can  
2 have even more trouble than a family that has had a tough  
3 time, is that true? I'm not making myself clear?  
4 Sometimes you find positive themes and sometimes you find  
5 negative themes, is that correct?

6 A Yes.

7 Q And you can find positive themes in families that  
8 ultimately have children that commit crimes and have a bad  
9 outcome and likewise you can find negative themes and just  
10 as in this case some of the children never had problems  
11 with the law, is that correct?

12 A Yes and that's the reason I think social workers are  
13 asked to provide this kind of assessment of families  
14 because what we do is we look at the themes and as I  
15 mentioned in describing what social workers do we look at  
16 the individual person's own functioning, own makeup and  
17 what happened. One of the things that we know is just as  
18 you are saying the same things can happen to different  
19 family members to different children. For instance, they  
20 all experienced their mother's death, but it was much more  
21 compelling, it was devastating to all of them, a  
22 devastating loss, but some were able to handle it better  
23 than others based on their on resilience, their own  
24 internal functioning. Others handled it less well and a  
25 good example of that would be on the children who, some of

1 the children, who did tremendously poorly after her death,  
2 so even if the same event happened, there are other  
3 factors mostly based on internal functioning that helped  
4 explain why they did differently. And that's why it's  
5 important to look at both the individual person's  
6 functioning and the life events and look at the  
7 interchange, what did that event mean to each person.

8 Q As I understand what you are saying in your testimony  
9 is what you are doing you are providing the jury a  
10 background of where Mr. Hughes came from.

11 A Yes, what it was like to grow up in this family.

12 Q But you are not offering this as an explanation of his  
13 behavior, you are just showing what, in fact, occurred in  
14 his family, is that correct?

15 A Yes, what it was like to grow up in his family.

16 Q Now you talk about the various family members like  
17 Jacob and Aldean, Milas, that had some forms of mental  
18 illness?

19 A Yes.

20 Q Where did you get that information from?

21 A With the children in the youngest generation, in  
22 Mar-Reece's generation, from records, from the older  
23 generation there weren't records, so I got information  
24 from family members.

25 Q Okay. So when you had recited to Ms. Brice the things

1 that you went through, which were prison records, school  
2 records, psychological records, York County and Rock Hill  
3 Criminal and Jail records, SCDC court documents and birth,  
4 marriage and Family Bible. Were those psychological  
5 records when you were talking about, that's the one that  
6 you were referring to?

7 A Yes.

8 Q When you talked to the various family members, did you  
9 make them aware of who you were retained by?

10 A Yes.

11 Q You made them aware that you were preparing this for  
12 the exact purpose that you have them here today?

13 A I explained to them that I was a social worker and  
14 what social workers do because I think it's important when  
15 you are interviewing anybody to be clear about who you  
16 are. I explained that my role in the court would be to  
17 give a picture of what it was like to grow up in this  
18 family and so I needed to talk with them about what their  
19 experience was while growing up in the family.

20 Q And, again, in explaining that you explained that you  
21 were doing that for this trial, is that correct?

22 A Yes.

23 Q And one final question, as I understand it, I tried to  
24 write it down, but as you went through various family  
25 members, a large number of the members of this family got

1 married, have good jobs, operate in the church and as you  
2 called it escaping, gone on to have productive lives, is  
3 that correct?

4 A Actually, I did say that they had escaped from the  
5 family. I didn't go into detail about their current  
6 functioning, although I can. Many of them have not done  
7 what I would say extremely well, but they did get out of  
8 the family. They succeeded in that. Most of the women  
9 have had more than one marriage, have been married in  
10 situations that have not been - I gave one example, but  
11 there are several other examples I could give, have had --  
12 some have done menial working and I think that's a very  
13 positive thing and have jobs, but I cannot say if you are  
14 asking me is everybody doing great, no.

15 Q Well, great is a relative term too if I ask if they  
16 had substantial dealings with the law as Mar-Reece has.

17 A No, only the ones with schizophrenia have had serious  
18 problems as Mar-Reece has had.

19 Q Okay, and you indicated that some of the younger  
20 brothers were involved with the law also?

21 A Two of his brothers are currently in prison.

22 Q Okay, which two was that?

23 A Samuel and Manda.

24 Q You didn't indicate that Samuel had schizophrenia.

25 A He has not been diagnosed with schizophrenia.

1 Q To your knowledge the ones you are saying were they  
2 diagnosed with schizophrenia before or after they were  
3 involved with law enforcement?

4 A Manda -- excuse me, Milas was diagnosed at fourteen  
5 with the first symptoms and that was before and I believe  
6 that - let me check my notes - Milas was diagnosed at  
7 fourteen and Manda I believe not since - the first time he  
8 ever got help was once he was in prison and got on  
9 medication.

10 Q Ma'am, did any of the work you did for the background  
11 to enlighten the jury about the situation that we have, at  
12 any time did you talk to Myra McCants in regards to her  
13 family?

14 A No, since I was asked to do a family history on  
15 Mar-Reece and what it was like to grow up in his family,  
16 it was the family history that I was doing, so I did just  
17 stick with the Hughes family.

18 REDIRECT EXAMINATION

19 BY MS. BRICE

20 Q Carolina, when you were you gathering this  
21 information, was it easy for the family members to open up  
22 to you and explain what their lives were?

23 A No, it was hard and it's hard - they told me it was  
24 hard and I could see that it was hard. In fact, I'm often  
25 in that position as a social worker in talking to people

1 about things that are very personal, very private, that  
2 you don't usually talk about outside the family. I do a  
3 lot of adoption work, so I talk to people about  
4 infertility and about their efforts to have children. I do  
5 a lot of work with foster care and protective services and  
6 talk to people about their life experiences, some of which  
7 have been difficult. I mentioned that I, as a social  
8 worker, have done a lot of work with children who have  
9 been victims of abuse and sexual abuse. It's a very hard  
10 thing to talk about and some of the family members have  
11 talked with each other as adults about these experiences,  
12 but they had I believe and they told me never talked to  
13 any outside person outside of the family about what it was  
14 like to grow up in this family and that was an important  
15 value to this family that you keep what's in the family,  
16 in the family. A lot of families are like that. I think  
17 maybe most families are like that really what's in the  
18 family. But because I needed to gather the information in  
19 order to give a picture to the court and to the jury so  
20 that you would know what it was like to grow up in the  
21 family I did work to build a relationship with the family  
22 members so that they could share with me this very  
23 personal information.

24 Q And what knowledge did the spouses some of the spouses  
25 have of this turmoil?

ALICE NORWOOD

DIRECT

1 A I did talk with several of the brothers and sisters'  
2 spouses, so these would be Mar-Reece's brothers and  
3 sisters-in-law and even ones who had been married for  
4 years and years to, for instance, the oldest living  
5 brother, Mylon, I met with him and his wife, Joan, and  
6 Mylon told me about from his important vantage as the  
7 oldest surviving son what it was like to be in the family.  
8 Joan said "You have never even talked to me about these  
9 things." She said, "This explains a lot; now I understand  
10 why you are afraid of your father, why things were the way  
11 when your mother died." But some of them had not even  
12 talked to their husbands and wives and, certainly, had not  
13 talked to their children.

14 Q Thank you. I have no further questions.

15 MR. POPE: I beg the court's indulgence.

16 I have no further questions.

17 THE COURT: You may step down.

18 MS. BRICE: Alice Norwood.

19 THE COURT: Please come around and be sworn, please,  
20 ma'am.

21 ALICE HUGHES NORWOOD, being duly sworn,  
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MS. BRICE

25 Q Mrs. Norwood, could you please state your full name

ALICE NORWOOD

DIRECT

1 for the record?

2 A Alice Hughes Norwood.

3 Q And where do you live?

4 A Winston-Salem.

5 Q And you are Mar-Reece Hughes' sister?

6 A Yes, I am.

7 Q And do you have any education?

8 A Yes, I do.

9 Q And how far did you go in school?

10 A I went through three and half years of college.

11 Q And where did you attend college?

12 A Boise State in Maryland.

13 Q And are you married?

14 A Yes, ma'am.

15 Q Do you have any children?

16 A Yes, I do.

17 Q How many children do you have?

18 A I have two sons.

19 Q And are you employed?

20 A Yes, I am.

21 Q Where are you employed?

22 A Winston-Salem Transit Authority.

23 Q If you would, step down, Alice.

24 A (Witness complied.)

25 Q On this Genogram, if you would, please, show the jury

ALICE NORWOOD

DIRECT

1 where you are located on the Genogram.

2 A Right here.

3 Q So you are in the middle?

4 A Yes.

5 Q You may take your seat. Alice, if you would, could  
6 you please describe the type of environment that you grew  
7 up in?

8 A The environment that I lived in was it was half and  
9 half it was loving and there was hate and there was war.  
10 By being in between I was almost half way.

11 Q Can you describe if you would for the jury as to what  
12 the role of your mother was in the household?

13 A She was domineering. We looked up to her. She was  
14 highly esteemed. She could say it was going to rain  
15 tomorrow and we believed it because we believed in what  
16 she told us. She was an authority on maybe mind over  
17 matter as I think of her.

18 Q And could you describe your father's role in the  
19 household?

20 A Daddy was more of a pacifist, you know, laid back; he  
21 let her do everything pretty much. The only thing he did,  
22 you know, was work and bring the money home.

23 Q Can you describe what life was like in the household  
24 prior to your mother's death?

25 A Life was good on one hand as far as for me because I

ALICE NORWOOD

DIRECT

1 felt like I was more favored, so I saw things in a  
2 different light. It seems like things were handed out to  
3 me more than with others.

4 Q Do you know why?

5 A Yes, I was named after my mother and some of my  
6 sisters and brothers resented that for that reason.

7 Q And tell me a little bit about again what was good in  
8 the family?

9 A What was good was religion. Religion was good.  
10 Entertainment, you know, we went to places, we did travel.  
11 We went to the beaches and stuff like that. By the family  
12 being so large we always had a partner you could play with  
13 as far as R & R.

14 Q Can you describe for me things that were bad in the  
15 household or not so good?

16 A Not so good this is before the death or after the  
17 death?

18 Q Before the death of your mother.

19 A Before the death the things that weren't so good I  
20 couldn't relate to my father. I don't have a type of  
21 relationship that you would have with your father. I don't  
22 go to him, I don't talk to him about any problems because  
23 if you talked to him about problems, he would tell you  
24 another way of trying to get out of it, like maybe a  
25 violent way. You should do this. It's more things that

1 you don't want to hear.

2 Q In growing up in the household did you, as far as  
3 going back to the themes that we have up here that  
4 Caroline Burry has gone over, did you observe any  
5 incidences of family violence?

6 A Yes. Daddy and Mama used to fight, okay? I remember  
7 some times she used to run and hide in the closets. We,  
8 you know, had a lot of closet space and she would run and  
9 she would hide in a closet. He used to call her a rooster  
10 anytime -- I think -- I don't remember her having a bad --  
11 now she would fight back, you know, so it wasn't like she  
12 took it, you know, but she would fight back and maybe  
13 that's where we get a lot of our domineering influence.

14 Q Can you recall any incidences of violence with the  
15 children? I should explain that. Do you recall any  
16 incidences of violence between the children and children?

17 A Oh, yes, children always fight in every home.

18 Q What about Wilson?

19 A Okay, Wilson ---

20 Q He was the second brother?

21 A Yes. He had an uncontrollable spirit about him. Mama  
22 was the only one that could keep him in line. Wilson, if  
23 you chew chewing gum and if it was over a whisper, he  
24 would come up to you "You stop chewing chewing gum or I'll  
25 slap it out of your mouth." Mama had to use violence with

ALICE NORWOOD

DIRECT

1 Wilson because he was a self-willed is the word that they  
2 would describe him to be, he was self-willed, but then on  
3 the other hand, if he saw you broke down, he was a  
4 mechanic, if he saw you on the side of the street, he  
5 would help, so he went from Wilson to Milton.

6 Q And after your mother's death could you describe for  
7 the jury how things changed in the household?

8 A It was like a chandler that falls from the ceiling.  
9 The pieces just scatter and that's what happened to the  
10 family.

11 Q And who was left in the household after your mother's  
12 death, the children?

13 A Everyone under me.

14 Q I see, you are Alice, right?

15 A That is correct.

16 Q So there was Marshall, Milas, Melinda, Mary,  
17 Mar-Reece, Samuel, Manda and Magdaline.

18 A Yes.

19 Q There was still a sizable amount of children left in  
20 the household.

21 A That's correct.

22 Q Who cared for those children?

23 A After Mama died?

24 Q Yes, ma'am.

25 A You fended for yourself. It was every man for himself.

1 Q Where was your father during that time?

2 A Well, you know, Daddy would leave first thing in the  
3 morning and wouldn't come back until late at night. And a  
4 lot of -- see, I was in school also around this time. I  
5 was in Maryland so I was traveling back and forth.

6 Q How soon after your mother's death did your father  
7 remarry?

8 A Right afterwards.

9 Q And how did the children who were left in the  
10 household after your mother died fend for themselves?

11 A Well, different ways. Some of them took on jobs.  
12 Others that wasn't old enough to have a job, for instance,  
13 Mar-Reece, the younger fellows used to rake yards and cut  
14 grass and stuff like that, and the girls were old enough  
15 to get jobs at McDonalds and Burger King and places like  
16 that.

17 Q So they tried to do the best they could?

18 A Exactly.

19 Q And, in fact, Mar-Reece you stated would rake leaves?

20 A Yes.

21 Q Were there other things that Mar-Reece was doing at  
22 that time to get money?

23 A Cutting grass and then that's when a lot of theft, you  
24 know, started coming into play. We didn't have like  
25 allowances, you know, where you didn't have to go and do

1 things. By this time I was working myself.

2 Q And so Mar-Reece got involved in theft?

3 A Yes.

4 Q To make money?

5 A Yes.

6 Q And who was in the household to guide Mar-Reece away  
7 from I would say crimes? Was there anyone in the  
8 household?

9 A No, technically, no, because I was about nineteen and  
10 those that were up under me Mama really wasn't talking to  
11 us a lot, she would be talking to maybe Melvenia, my  
12 oldest sister.

13 Q And are you aware of mental illness in your family?

14 A Yes.

15 Q And can you describe that for me?

16 A I had a brother named, Milas, sometimes, you know,  
17 before he got locked up he would run the streets of  
18 downtown with no clothes on. Manda would do the same  
19 thing. I didn't play those games with them. I thought they  
20 were playing games at first, but found out by talking to  
21 different ones that they are not really games, that having  
22 so many children somebody had to have problems somewhere.

23 Q Are you aware of other family members with mental  
24 illness like on your father's or mother's side?

25 A Oh, yes, Aldean, who Mar-Reece was named after, we

1 found out that he took on a lot of those characteristics.  
2 See, we were named after - we believe that your name  
3 really means something, you know, you took on who your  
4 name represented and he did a lot of things his uncle who  
5 he was named after and his children had a lot of problems  
6 too.

7 Q I guess that would kind of go into the family beliefs  
8 that you all had as far as superstition and, for like of a  
9 better term, we have labeled root. Can you explain that  
10 for me, please?

11 A Sure, root is like faith and it's like good and evil.  
12 Faith you don't see faith, but we know it's there and a  
13 root to us is something that you don't see, but yet you  
14 believe it because it is conceived in the mind.

15 Q Can you explain for the jury basically - I am going to  
16 back up a second - what your religious practices in the  
17 household were as far as your mother and your father?

18 A Mama would get us up every Saturday morning and we  
19 would go we learned Bible verses, we learned scriptures  
20 and she prayed with us every morning before we would leave  
21 out, so we had a difficult background coming up, we were  
22 made to go to church until you left the house.

23 Q And can you explain the beliefs of your father?

24 A Like I say, Daddy was just passive, you know, anything  
25 was cool with Daddy, you know, if you did, you did, if you

1 didn't, you didn't.

2 Q And in regards to the superstitions the family  
3 believes from the roots, could you explain how that  
4 evolved, what beliefs you have about that?

5 A Okay, by my mother being so domineering and what she  
6 said we believed in her. She got to the point that she  
7 wouldn't eat certain foods and so we took on that too. She  
8 believed that my Daddy was putting stuff in her food. We  
9 took on that too because at one point in time she and I  
10 used to sleep in the same room even though Daddy was still  
11 in the house we slept in the same room with the door  
12 locked. I would bring her her food. She wouldn't eat from  
13 him so, you know, that made it believable to me. I refused  
14 to eat from him because she started getting sick after  
15 eating different things that he would bring her.

16 Q And would you eat from your father's table now?

17 A No.

18 Q Would you drink your father's water now?

19 A No.

20 Q Why is that?

21 A Because I don't trust him.

22 Q After your mother's death how did the children each  
23 deal with her death, for example, I think your testimony  
24 was that the younger children were in the household at  
25 that time.

ALICE NORWOOD

DIRECT

1 A Three of them got married that year, me, Melinda, and  
2 Mary we got married that year.

3 Q Did you move out of the household?

4 A Yes, I was already going to school back and forth, but  
5 I permanently moved to Maryland and I just come to the  
6 boyfriend that was talking to at that time trying to find  
7 something to latch on, so everybody went in different  
8 directions, it just depended on who you were with at that  
9 particular time, who you could attach yourself to.

10 Q And what did Mar-Reece attach himself to?

11 A Mar-Reece attached himself to crime.

12 Q And how soon after your mother's death did he begin  
13 getting into trouble with crime?

14 A Just repeatedly one right after the other, after the  
15 other.

16 Q I have some photographs. Could you identify these  
17 photographs for me? Have you provided these to me?

18 A No.

19 Q Are these photographs that have been provided by your  
20 family?

21 A Yes.

22 Q Are you familiar with these photographs?

23 A Yes. This is a picture of -- this is Father's Day. We  
24 were one of the largest families in Winston-Salem at that  
25 particular time and this is that picture.

ALICE NORWOOD

DIRECT

1 Q Can you show me Mar-Reece?

2 A Mar-Reece is the baby. He's the baby.

3 Okay, and this is Mar-Reece here.

4 This is when Mar-Reece was in incarceration here along  
5 with three of my other sisters.

6 That's Mar-Reece here and as you can see these are my  
7 sister's boys, my nephews here, and that's Mar-Reece and  
8 that's Mary there.

9 And this is my mother and her family, her mother.

10 Q And why do you say it that way?

11 A Well, we never recognized her as being a grandmother.

12 Q How so?

13 A Because she did witchcraft on her side too. We called  
14 her MamMaw; we did not call her grandmother. We called her  
15 MamMaw. There was no relationship.

16 Q The same feelings you have for your father did you  
17 experience with her mother?

18 A Yes.

19 MS. BRICE: I would like to mark these as exhibits,  
20 Your Honor.

21 MR. POPE: Without objection, Your Honor.

22 THE COURT: Without objection, they be received.

23 (Defendant's Exhibits 4, 5, 6, 7 and 8 marked and  
24 filed.)

25 Q Alice, this may be a difficult question. Could you

1 describe for me what experience you had or you have  
2 knowledge of as far as sexual abuse in the family or  
3 molestation?

4 A Well, I had that done to me. I never did talk about it  
5 until about two years ago I was talking about it with one  
6 of my sisters and found out that the same thing had  
7 happened to her. We didn't go into a lot of detail  
8 because we still don't talk about it even today. I forgave  
9 the person that did it, but there's no relationship. A lot  
10 of things were done in the basement and we look at the  
11 basement as being a gloomy place. I don't care for the  
12 basement, you know, it's something I don't want to talk  
13 about.

14 Q Thank you. Please answer any questions Mr. Pope may  
15 have for you.

16 CROSS EXAMINATION

17 BY MR. POPE

18 Q Mrs. Norwood, I have a few questions for you. The last  
19 subject that Ms. Brice was hitting on, that was something  
20 that you and your sisters later on have talked about that  
21 happened between some of the girls and some of the family  
22 members?

23 A Uh-huh.

24 Q It wasn't involving Mar-Reece?

25 A No.

1 Q I want to ask you Ms. Brice had asked you about your  
2 Mama and your Daddy. Your Mama was kind of domineering,  
3 she was the boss?

4 A Yes.

5 Q You said Mama was domineering and Daddy was kind of a  
6 pacifist, he'd make a paycheck and let Mama run the show?

7 A He did.

8 Q You said that which sister were you?

9 A I'm number thirteen.

10 Q And so, like I say, you were kind of stuck in the  
11 middle, so you feel like you got treated a little bit  
12 better because you were named after your mother?

13 A Yes, uh-huh.

14 Q As far as the home and I know they have kind of broken  
15 it down into before your mother passed away and after, it  
16 was a house full of kids, wasn't it?

17 A Yes.

18 Q Did your Mama and Daddy work to take care of you?

19 A Daddy did most of the time. Mama worked occasionally.

20 Q Okay, well, I guess when I say "work," Daddy worked  
21 making the money to bring the food home, is that right?

22 A Yes.

23 Q And, of course, I understand any of you that could  
24 work was out working and go back and give to your Mama and  
25 she would give you an allowance at that time, is that

1 right?

2 A Yes, sir, she took the check and gave you whatever she  
3 saw fit to give you.

4 Q So when you say "Mama worked occasionally," Mama  
5 worked there at the house regularly, right?

6 A Yes.

7 Q And you said that on Saturday she loaded you all up  
8 and get your Bible verses and Sunday she would take you to  
9 church, is that right?

10 A On Saturdays we had prayer. We had church in the  
11 house.

12 Q So there at your house.

13 A At the house, uh-huh.

14 Q Okay and then Sundays ---

15 A Sundays was church and Wednesday was church.

16 Q You all must have had a couple of cars to be able for  
17 all to get there?

18 A We only had a stationwagon.

19 Q Okay, and then you said as far as your Daddy, Ms.  
20 Brice had asked about your Daddy, you said he was kind of  
21 a pacifist, I think you said, "If you did, fine; if you  
22 didn't, fine" or something like that?

23 A Yes.

24 Q So as far as in telling the jury comparing the way  
25 your Mama and Daddy did, your mother got you up and got

1 you to reading Bible verses and going to church and all  
2 this, ---

3 A Yes, sir.

4 Q --- but your Daddy didn't stop you from doing it, he  
5 worked and he didn't care if you went or not, is that  
6 correct?

7 A Yes, sir, that's correct.

8 Q And so up until the time when your mother passed you  
9 said you were about nineteen then, is that right?

10 A Yes.

11 Q Okay, prior to the change with your mother passing,  
12 that situation, the ritual of Mama with the Bible verses  
13 and going to church on Sunday and all of that, that  
14 happened every Saturday pretty much?

15 A Yes, sir, that was every Saturday.

16 Q Was that all the children?

17 A The ones that were at the house.

18 Q The ones that were living there at the house?

19 A Yes.

20 Q Okay, and so at that time up until your mother passed,  
21 Mar-Reece was there he was in that environment, Mama had  
22 him dressed up going to church too, is that correct?

23 A That's right.

24 Q I think Mar-Reece would have been about fifteen when  
25 your mother passed, is that about right?

1 A Yes, between thirteen and fifteen.

2 Q Your mother passed in '81, is that right?

3 A There's certain things, yes, that's probably right.

4 Q Okay, and so up until that time, like I say, other  
5 than you being lucky because you had Mama's name, he was  
6 exposed to the same things you were?

7 A Yes.

8 Q And I think you said after that once your mother  
9 passed, of course, your father remarried, you said he  
10 would be gone during the day, he would be at work during  
11 the day?

12 A Yes.

13 Q And then he would come home at night, so before, when  
14 your Mama was living, Mama was there during the day?

15 A That's correct.

16 Q Okay, and so, for example, when your younger brothers  
17 and sisters got home from school in the afternoons, there  
18 wouldn't be anybody there where before Mama would have  
19 been there, is that right?

20 A Mama was there.

21 Q Okay, I am talking about after your Mama passed.

22 A Right, well, right there was a reason.

23 Q That's what I am saying, but the supervision, I mean,  
24 you know, people went to school, when you talk about  
25 everybody fending for themselves.

1 A Yes.

2 Q They did it to the extent that once they got home at  
3 three it used to be Mama was there.

4 A That's correct.

5 Q She kind of stayed in charge of the house. Now the  
6 kids of various ages that are just coming home to the  
7 house because Daddy worked, is that right?

8 A That's correct.

9 Q Okay. So it wasn't like Daddy abandoned you, he was  
10 just at work and he would come home at night after work,  
11 is that right?

12 A No, you couldn't say he didn't abandon because if you  
13 need a person, you need a person then, not ten or eleven  
14 o'clock at night.

15 Q I see what you are saying, yes, he was gone, there's  
16 no doubt, he was gone when you all needed him.

17 A Yes, well, I was in school then.

18 Q Okay, you say that was that same year that three of  
19 you all got married when your mother passed?

20 A Yes.

21 Q And you said something that basically everybody kind  
22 of got up with whom they were with at the time ---

23 A Uh-huh.

24 Q --- like you say the guy you were seeing you got  
25 married and some of the other sisters got married and you

1 said Mar-Reece attached himself to crime.

2 A Right.

3 Q So prior to your mother passing, was Mar-Reece getting  
4 attached, you know, as you said you get with who you are  
5 with at the time, like you were seeing a fellow at the  
6 time, was Mar-Reece seeing people that were involved with  
7 that type of thing prior to your Mama passing like at  
8 school or --

9 A It was children in the neighborhood that was just  
10 developing at that particular time, but Mar-Reece was  
11 pretty much on his own because people they would -- police  
12 was constantly coming to the house with Mar-Reece being on  
13 Holmes Street, which is the street located behind Wilkes  
14 Drive. But then these influences came in because in order  
15 to get to the park you had to come up Wilkes Drive and,  
16 therefore, different sets of people were coming through.  
17 Normally, we just had the family.

18 Q Right, so he was getting involved with the different  
19 people by virtue of is it Wilkes Drive?

20 A Yes.

21 Q And then, again, that was prior to your mother  
22 passing, so once your mother passed he just kind of fell  
23 further in with that crowd?

24 A Yes.

25 Q Okay. Now your younger brothers and sisters at that

1 same time some of them, again using an example, you say  
2 you went with, you know, who you were with at the time,  
3 some of them got married and some chose to do other things  
4 and take other jobs and, unfortunately, some fell into  
5 crime, is that correct?

6 A Yes.

7 Q So different ones made different choices?

8 A That's correct.

9 Q I think the last thing I want to touch on a little bit  
10 I know you have been asked a lot about this, the thing  
11 about the root, is root is that the same thing we know  
12 about the root doctor, is that the same thing?

13 A No, I don't think that's the same thing as a root  
14 doctor. This is to us it's reality.

15 Q Right. I mean it's a belief.

16 A Yes, it's a strong belief.

17 Q Okay, and you told the jury that root and, of course,  
18 you certainly said you had Christian upbringing with your  
19 mother, but this is part of your faith to, your belief,  
20 you said it was like good and evil?

21 A Yes.

22 Q Okay and as far as root, is that powders and stuff, is  
23 that part of the root?

24 A Okay, when you are exercising a root, if that's what  
25 you want to call it, you don't do it, you don't make it

1 plain and simple for people to see, it's done undercover,  
2 so it is secretive; it's the manner in which a person  
3 walks around you or how or she acts, how he would cook his  
4 food a certain way and then cook our another way.

5 Q It's just little subtle things.

6 A Yes.

7 Q And that came from for starters, as I understood, you  
8 kind of learned that from your mother, the same mother who  
9 took everybody to church; it was just a little variation  
10 on her belief where she believed certain things about the  
11 root like not eating certain foods that your father  
12 prepared a different way and that's where you picked it  
13 up, is that right?

14 A Yes.

15 Q Okay. I want to make sure I understand, as far as the  
16 root, I know you feel like you have been asked a hundred  
17 questions about it, but as far as that, your choices as  
18 far as the root about how somebody holds himself and, you  
19 know, things that are kind of done undercover, you said  
20 you had several years of college education, is that right?

21 A That's true.

22 Q But that's something you believe based on your faith  
23 and what you've learned from your mother, is that correct?

24 A Yes.

25 Q So anything as far as the root and how people hold

1 themselves and how they are acting and what they may do  
2 about preparing different foods comes from your choice to  
3 believe that, I mean, you choose to believe it, it's not  
4 any mental illness that makes you believe it. You believe  
5 it because that's the way you were raised and what you  
6 learned from your mother, is that right?

7 A I believe so.

8 Q And do a number of your other brothers and sisters  
9 believe similarly as far as the food and all that other?

10 A Yes, that's correct.

11 Q And, again, that was a choice you learned from your  
12 mother and observing what she did and things of that  
13 nature?

14 A Yes.

15 Q I believe that's it if you will give me one second,  
16 please. Mrs. Norwood, finally, as I understood you come  
17 from an exceptionally large family. I think that picture  
18 of you all in the paper you were the largest family in  
19 town at one time, is that right?

20 A Yes.

21 Q And your family life growing up notwithstanding the  
22 fact that there was a house full of kids, but your parents  
23 took care of you, took you to church, you said you went on  
24 trips, is that right?

25 A Yes.

1 Q And so you were taken care of and raised properly the  
2 very things that allowed you to go to college and be the  
3 woman you are today, is that correct?

4 A That's correct.

5 Q And once your mother passed it was a matter of each  
6 brother and sister making some choice to go with the  
7 boyfriend they had then or the crowd they were hanging  
8 with at that time?

9 A Yes.

10 Q Thank you, ma'am.

11 MS. BRICE: Just briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. BRICE

14 Q Alice, were there times when your father prior to your  
15 mother's death would leave the family?

16 A Yes.

17 Q Could you describe that?

18 A Well, he had a girlfriend. Daddy had a girlfriend and  
19 Daddy would move out occasionally because I remember he  
20 used to have another house, they would break up and then  
21 get back together.

22 Q And was this a different person than the one he  
23 married three months after your mother or is this the same  
24 one?

25 A I believe Mama took us to a church and introduced us

1 to the lady that was going to be their mother.

2 Q And would you tell the jury a story about the violence  
3 as far as the ax, the incident with the ax in your house,  
4 what you observed?

5 MR. POPE: Your Honor, I object. I am not sure this is  
6 a proper redirect.

7 THE COURT: I sustain your objection.

8 MS. BRICE: Your Honor, I think that they opened and  
9 asked her questions about violence in the household. I'm  
10 just asking her about a specific incident.

11 THE COURT: All right, I'll overrule the objection,  
12 but remember that and restrict it to those matters brought  
13 up.

14 MR. POPE: And for the record I don't think I ever  
15 talked about violence. I think everything I asked was in  
16 response to something Ms. Brice asked. I don't think I  
17 opened any new matter.

18 THE COURT: Well, that may be so, it's a rather broad  
19 scope of both direct and cross, so I'm going to allow it.

20 A I don't think it was me with the ax.

21 Q Okay.

22 MS. BRICE: That answers my question, Your Honor.

23 THE COURT: Anything further?

24 MR. POPE: No, sir.

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

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1 Members of the Jury Panel, we are going to take a  
2 break. This will be a smoke break. Everyone remain seated,  
3 please.

4 (Jury retires to jury room.)

5 Anything from The State before we break?

6 MR. POPE: No, sir, Your Honor.

7 THE COURT: The defendant?

8 MS. BRICE: Nothing, Your Honor.

9 THE COURT: All right, Ms. Burry, I know you are still  
10 here. I am going to ask you prior to your testifying did  
11 you ever receive or have in your possession a report from  
12 SLED regarding the incident that occurred involving Mr.  
13 Hughes in April of 1993?

14 MS. BURRY: A SLED report?

15 THE COURT: Yes, ma'am.

16 MS. BURRY: I don't believe so.

17 THE COURT: All right. Have you all provided her with  
18 one since you all received it on Tuesday?

19 MS. BRICE: No, Your Honor.

20 THE COURT: Do you think it would have been of any  
21 benefit to her?

22 MS. BRICE: I don't know if I could make that judgment  
23 for her.

24 THE COURT: Well, she involved herself I thought with  
25 the family and this has nothing to do with the family. I

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1 just want to --

2 MS. BRICE: I think that probably that's going to be  
3 more to the psychiatric testimony as opposed to the social  
4 history of the family.

5 THE COURT: That's what I would think also, but while  
6 I had her here and since she did appear as an expert, I  
7 just wanted to know -- Mrs. Burry, I can't see you.

8 MRS. BURRY: Yes, sir.

9 THE COURT: What this was it was a fourteen page  
10 report dealing with an incident that happened in the York  
11 County Detention Center in April of 1993, I believe it  
12 was. And I noted your testimony, of course, didn't touch  
13 on any of that anyway, did it?

14 MRS. BURRY: No, sir, I was merely talking about the  
15 family development.

16 THE COURT: And your assessment of that would have  
17 been prior to the incident of September 25, 1992, that is  
18 prior to Mr. Hughes' incarceration for this particular  
19 offense for which he is on trial.

20 MRS. BURRY: Yes, sir.

21 THE COURT: Thank you.

22 We will take about a fifteen minute break.

23 (Recess.)

24 Is The State ready?

25 MR. POPE: The State is ready, Your Honor.

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1 THE COURT: Is the defense ready?

2 MS. BRICE: The defense is ready, Your Honor.

3 THE COURT: Bring in the jury. Bring in Mr. Hughes.

4 (Mr. Hughes returns to courtroom; the jury returns to  
5 courtroom.)

6 Call your next witness.

7 MS. BRICE: I would call Willie Hughes, Your Honor, to  
8 the witness stand.

9 THE COURT: Please come around and be sworn, Mr.  
10 Hughes.

11 WILLIE CORNELIUS HUGHES, being duly sworn,  
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MS. BRICE

15 Q Hi, Mr. Hughes?

16 A How are you doing?

17 Q Would you give your full name for the record for me,  
18 please.

19 A My name is Willie Cornelius Hughes.

20 Q And where do you live?

21 A I live at 704 East Devonshire.

22 Q Is that in Winston-Salem?

23 A That's right.

24 Q Are you employed?

25 A Self-employed.

- 1 Q And what do you do?
- 2 A Construction work; I build houses.
- 3 Q And are you married?
- 4 A I am; I have been married for about twenty years.
- 5 Q Do you have any children?
- 6 A I have got four children.
- 7 Q And if you would, Mr. Hughes, if you would step down,  
8 if you could point on this chart as to where you fall in  
9 the Genogram.
- 10 A Here (indicating.)
- 11 Q Thank you, sir. And, Mr. Hughes, how old are you?
- 12 A Forty years old.
- 13 Q And do you know how many years older you are than  
14 Mar-Reece?
- 15 A About twelve.
- 16 Q And, Mr. Hughes, I want to talk to you a little bit  
17 about the family environment that you grew up in and how  
18 it relates to the three themes that we have already gone  
19 over, okay? Can you tell me, Mr. Hughes, a little bit  
20 about the role of your mother in the family?
- 21 A Yes, sure. My mother she was a person that was very,  
22 very young, I mean, very, very young when she first met my  
23 Daddy to my understanding and about the age of thirteen  
24 that's when she gave her heart and soul to Christ, but  
25 during this time he was around and he was dating her, my

1     Daddy was also a serviceman also, so when Daddy and Mama  
2     got together and everything the Christian background  
3     between my Mama and my Daddy the battle it just begun I  
4     guess. What I mean by "battle" is that most people would  
5     try, you know, to love a child or, you know, to try to  
6     bring a child up and everything else. Well, in our home,  
7     he was like you've been out there with a Daddy on a  
8     fishing trip and all of a sudden he just gives the paddle  
9     and tell you to paddle yourself back and he just gets out  
10    and swims to shore. Another thing is that when I see that  
11    my mother was no match for my Daddy, I'm talking as far as  
12    her ability to try to get us to withstand or try to be  
13    independent or try to do what's right or try to live right  
14    or try to do the right thing, he'd always managed somehow  
15    to strip us of our pride or dignity or self respect even  
16    totally as a person because I can remember that at one  
17    time when I was a little child that after I see him, you  
18    know, beat Mom I mean so many times that and everything  
19    else that, well, see, I'm going to tell you all the truth  
20    about it because you wouldn't know I understand if the  
21    truth didn't come out. I was a little child and everything  
22    else and I told my Dad when I get big I'm going to get him  
23    because I mean he would beat her so bad and everything  
24    else and plus another thing too a lot of times when she  
25    got sick, he would go get her mother and turn her mother

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1       against the daughter, I mean, my mother. That hurt me  
2       because, you know, when a man stoops that low and  
3       everything else, you know, to go get her mother and turn  
4       her mother against his wife, that's cold. And then while  
5       I was also there and everything else I seen whereby that  
6       the sisters would try their best to bring us up to try to  
7       help Mom out and in my opinion they still couldn't do it  
8       and the reason I said they couldn't do it and everything  
9       else is because what I did when I went to school, I used  
10      to go check out books to try to have some kind of idea  
11      what manhood was about and as I, you know, would read  
12      those books and everything else and when I came back home,  
13      I seen that as far as being a Daddy was there, you didn't  
14      see that. The only thing I seen was basically that he was  
15      there to destroy the family, I mean, that's what I seen.  
16      The reason I say destroy the family is because a lot of  
17      times I can honestly say that I tried to get close with  
18      him to try to be a son with him and everything else and  
19      the only way that he allowed us to be close to him is that  
20      if we had become evil just like he was where you want to  
21      accept it or not. What I mean by evil was you stood  
22      against Mom. If you didn't stand against Mom, you meant  
23      trouble to him, one way or the other he was going to get  
24      you. It was just a matter of time. So what I did was that  
25      as soon as Mom took a trip and I seen my way out, I went

1 and got married and that's how a lot of us escaped. When  
2 we seen people, you know, that would help us to live and  
3 survive, you know, do you get a picture like I'm saying,  
4 you see a sinking ship and you see land, you just try to  
5 swim for it and, basically, now Mom a lot of times she  
6 would come to me and everything else and tell me that  
7 actually that my Daddy -- and another thing too and you  
8 can hear us a lot of us keep saying Daddy because we want  
9 him to be a Daddy, but, you know, the word is just a word,  
10 it has no meaning whatsoever and everything else, but Mom  
11 she always tried her best to make us respect him, always  
12 tried to get us to honor him, always to be obedient to him  
13 and everything else, but as far as reaching out and  
14 everything else and making it happen, it never happened.

15 Q Willie, if you would, please go back a minute and you  
16 were describing about how you watched your father abuse  
17 your mother. Did other children in the household see that  
18 abuse?

19 A Everybody seen in. As a matter of fact, everybody was  
20 victims of it. I can remember a time and everything else  
21 that my Mama's brothers would come there and fight in the  
22 house and Daddy would stand around and watch it happen.  
23 And I'm saying like, Man, you know, do you care about  
24 anything? You know, but he looked at me like, you know,  
25 you got to stay out of things and everything else. And so

1 another thing is one of my brothers he was attacking, you  
2 know, brothers and sisters in the house and everything  
3 else and he'd be present and he wouldn't stand in to try,  
4 you know, to stop it or correct it or anything like that.

5 Q Can you describe that for us a little bit about how  
6 your brother -- which brother was that, do you recall?

7 A Well, see Melvin, you know, if I can step down a  
8 minute and show you on the chart - see, Melvin and Wilson,  
9 you know, they fought a lot, these two here. Now Wilson  
10 is Milton that you are referring to?

11 A That's right. Well, both of them they fought a lot  
12 and usually they were fighting and everything else and  
13 Daddy would be standing right around and I'm talking about  
14 with knives and everything else and I had - I'm talking  
15 about me, I'm way down here, I'm a little guy and  
16 everything else, but by me getting books and trying to  
17 find out what a man is and try to sort of know what  
18 everything is, they had knives and everything else, so I'd  
19 have to jump in and take a knife from them and everything  
20 else because I feel like if you take a knife, then neither  
21 one could do each other bodily harm.

22 Q Did Mar-Reece also observe this violence in the  
23 household?

24 A Everybody did and everything else. As a matter of  
25 fact, when I got approximately the age of about fifteen

1 years, it was so much violence and everything, I am  
2 talking about you could walk through the house and  
3 everything else to see patches where they cut the doors.  
4 What I'm saying you could walk around and see where,  
5 actually, there was, you know, gun fire. You couldn't go  
6 outside in the yard because our grandmama stayed next to  
7 us and we knew that our grandmother and our Daddy was  
8 against us and what I mean by against us is that Mama  
9 would try to teach us how to sing in the choir and  
10 everything else, when we got around, well, her name was  
11 MamMaw, when we got around MamMaw and everything else,  
12 MamMaw talked against it. I'm just telling you she talked  
13 against it, whatever kind of way to try to bring her down,  
14 my mother, that's what they done. It's sad and everything  
15 else; it's horrible and everything else, but to me I'm  
16 seeing a woman, we are talking about my mother, I'm seeing  
17 a woman that's basically a girl that's trying to do a  
18 giant job and so I said to myself the first chance I get  
19 I'm out of there.

20 Q Do you want to go ahead and sit down?

21 A Sure. So that's what I did. The minute that my Mama  
22 get away on this vacation, I jumped in that marriage. The  
23 reason why I did it is because I didn't see no kind of way  
24 in the world that Mama could defend anybody because what  
25 she was teaching, in other words, no matter what he did to

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1 you, love him. You know, that's basic. You cannot protect  
2 yourself if a guy is going to harm you not matter what you  
3 still love him. You have got to get some kind of help or  
4 some kind of support. So, another thing is that when we  
5 would be in the house and everything else, now a lot of  
6 people they really don't believe in superstitions, they  
7 really don't believe in witchcraft, but my word is  
8 wickedness. A lot of people don't believe in it, but I can  
9 honestly say that my Daddy was so wicked, I mean so  
10 wicked, you know, I don't know whether you all can relate  
11 to snakes, but you could look into his eyes and everything  
12 else and it looked like he's just as nice as a baby doll,  
13 I mean just like no problem whatsoever, like he's a good  
14 Daddy and everything else, but the minute he got you by  
15 hisself, he exposed himself and everything else. What I  
16 mean by exposed, he just turned on you. And what I mean by  
17 turning on you and everything else is that say, for  
18 instance, if I say, Dad -- you know, I'm married, and I  
19 say, "Daddy; what about leaving me about Five Dollars and  
20 everything else," knowing in the next hour I'm going to  
21 get my money, I'm self-employed and people are going to  
22 pay me and everything else, and he sees that trouble can  
23 happen to me, forget about it. He'd rather let trouble  
24 happen first than lend me Five or Ten Dollars. So now I  
25 tried my best and everything else to try to quickly

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1 mature, I mean, I tried to help them out just as best I  
2 could, but I couldn't do it because I felt like that only  
3 I could help them out is to quickly become a man, you are  
4 talking about a child trying to develop on his own to be a  
5 man. It's almost impossible.

6 Now what I learned from Mom such as trying to defend  
7 or trying her best and everything is to try keep him  
8 domination and everything over her, what I learned from  
9 her I used that. And also when I pretended to be on  
10 Daddy's side, then he allowed me to come in on his side  
11 and, you know, see the strength and what I mean by  
12 strength is like elusions such as over on his side they  
13 made like that they was church going folks, good people  
14 and things like that, but if you really asked him a  
15 question do you really believe in the Lord, he will tell  
16 you yes, but he wouldn't show it. So if you was a person  
17 that depended upon help, you wouldn't get it, it was  
18 obvious you weren't a person that believed in it because  
19 now even my children and everything else, my children is  
20 scared to go around him. My wife, I mean, you are talking  
21 about a woman that is very submissive and everything else,  
22 very nice, really nice and everything else, but yet in  
23 still, now she didn't go to church for a long time, but  
24 when she came around him, she sensed the evil that was in  
25 him. She warned our children to stay away from him. So I

1 thought that was kind of weird for a woman that did not  
2 even know a person that sensed that much evil in him to  
3 tell our children and everything else to stay away.

4 Q Mr. Hughes, can you tell the jury a little bit about  
5 after your mother's death, okay, the environment that was  
6 in the household, who was in the household, and how that  
7 affected Mar-Reece?

8 A Well, what happened was that now after Mama had died  
9 everybody, I'm talking about aunts, I'm talking about  
10 cousins, I'm talking about uncles, because Mama had got so  
11 much attention of trying to help us to grow spiritual wise  
12 and everything else, everybody became envious, I mean,  
13 like they hated us, there was no way in the world and  
14 anything else that you dare come and ask for anything. I  
15 often seen my sister and my grandmama going at it because  
16 my sister was trying to help us out. I would witness also  
17 that after Mom had died and everything is that even her  
18 brothers, I'm talking about people that she sacrificed a  
19 lot for and everything, they wouldn't even come around us.  
20 I'm talking about her sisters, they wouldn't even come  
21 around. I'm not talking about living a far distance, I'm  
22 talking about in the back yard. See now where we stayed,  
23 they stayed right I could walk from here to there in about  
24 ten minutes to one of them's house. What I'm saying is  
25 they was looking at us and they were seeing us being took

1       apart and everything and we didn't hardly have no food,  
2       believe or not, I had no food and no nothing.

3       Q     And what about Mar-Reece?

4       A     See Mar-Reece became a victim and what I mean about  
5       victim and everything is, see, Mar-Reece was left to  
6       depend upon Daddy and everybody that was left was left to  
7       depend upon Daddy because what I was telling you that I  
8       realized that Mama wasn't going to win the battle, I'm  
9       just telling you like it is, she wasn't going to win the  
10      battle because of what she was trying to tell us to do  
11      such as even though a person is out to get you, you know,  
12      stay there and let him get you no matter what and I didn't  
13      see no sense in that. But the ones that stayed there and  
14      everything else, he doesn't going to be - he's not going  
15      to take care of them and the first chance that he's get  
16      them in trouble, he was just going to do it and everything  
17      else.

18      Q     Go back for a minute, if you would, the children I  
19      believe that were left in the household was your sister  
20      Martha and Milas, Melinda, Mary, Mar-Reece, Samuel, Manda  
21      and Magdaline, is that right?

22      A     Yes.

23      Q     All those children ---

24      A     Was left.

25      Q     And who was left to care for these children?

1 A Well, my sister she tried her best and everything  
2 else. I'm talking about that lady over there and  
3 everything else, she tried her best, but she couldn't do  
4 anything because, see, a lot of times she wanted to trust  
5 my Daddy also, she felt like that maybe by now since Mama  
6 done passed away that he would probably would give us some  
7 kind of support, but she found out that he did not give  
8 her even support.

9 Q How did the children that remained in the household  
10 how did they become a victim of your mother's death?

11 A Well, a lot of times the thing is that in a case like  
12 Mar-Reece, the guy who is sitting right there, the thing  
13 is, a lot of times when Mar-Reece got up under stress, the  
14 thing is, Mar-Reece would get out and run or play ball and  
15 things of this sort to try to deal with it. The way that  
16 when I become very stressful I got out and I cut about 15  
17 or 20 trees whether you all believe it or not and that's a  
18 lot of work, I mean you just really have to really cut  
19 trees to get rid of that stress. As a matter of fact,  
20 believe it or not, when Mama was alive the thing is I had  
21 gotten so good at cutting trees that they put me up  
22 against a chain saw and I'd beat the chain saw, but that's  
23 because of the fact that's the way I handled my stress.  
24 But Mar-Reece he handled his stress by running. So that  
25 day that Mar-Reece was on the roof and everything, ---

1 Q Let's just back up just one minute. When your mother  
2 died, there was no one in the household to care for the  
3 children?

4 A Oh, no, nobody, no supervison whatsoever.

5 Q How did the children get food?

6 A The best way they could, whatever it took the thing  
7 is, you know.

8 Q And how did Mar-Reece get money for food?

9 A Well, Mar-Reece got food, I'll just tell the truth, by  
10 stealing at times, you know, and by, you know, getting  
11 with people, you know. I'll just tell you the truth about  
12 it.

13 Q And when you say "getting with people," what kind of  
14 people did he get with?

15 A Well, the same way like I did, anybody that he felt  
16 like could help him survive the thing is, but, see, the  
17 thing is, what you need to look at is that Mar-Reece is a  
18 good person, he really is a good person, but you take a  
19 good person that wants to live, the thing is, you can  
20 offer them what dirt and if they feel like they can live,  
21 they take up with dirt. So at this time Cherryville it's a  
22 development had just been built and everything else and  
23 you are talking about people that stayed in trouble with  
24 the law all the time they moved right next door, so where  
25 we had a long distance that we didn't get in trouble, but

1 since Cherryville come in there, we were all exposed to  
2 it.

3 Q And Mar-Reece was exposed to that trouble?

4 A Oh, yeah.

5 Q And where was your father during this time to guide  
6 him?

7 A Now Mar-Reece was right there and Daddy was right  
8 there right along with him, because he, like I was saying,  
9 see Daddy is a person and he's so wicked that he was out  
10 to destroy the whole family, as a matter of fact, he's  
11 still that way, I mean, there's no ifs, ands, or buts  
12 about it, you know.

13 Q Would you eat at your father's home?

14 A Not me.

15 Q Would you drink any of your father's water?

16 A Not me, not me.

17 Q Why not?

18 A Well, if you wanted to die, I guess you would, but if  
19 you wanted to stay alive, you wouldn't because he come out  
20 and told me this "I'm healthy as long as I don't eat."  
21 What I'm saying when a Daddy comes out and tells me  
22 something like that, you ain't going to get me to eat.

23 Q The superstitions and the beliefs that the family has  
24 could you describe that if you would for the jury?

25 A Okay, now the superstition belief it was so strong and

1 to the point that we would take and we felt like the best  
2 way at that time to deal with evil like when an evil  
3 person comes in you take salt and everything else and  
4 throw and sprinkle it down and as soon as they're gone you  
5 sweep the salt back out. We also felt like if you hang up  
6 peppers it would run the evil spirits away, garlic, you  
7 name it, any kind of way, putting dimes on you and things  
8 of this sort. I guess you all can see that didn't none of  
9 it work.

10 Q And what do you mean by that that none of it worked?

11 A Well, because see we still became victims because see,  
12 believe it or not, there's no such thing that a family can  
13 ride without its Daddy. You know, your Daddy is your  
14 primary care, your primary support, and after our mother  
15 left the thing is, since he turned away, I mean, that was  
16 it, I mean, you know.

17 Q You were going briefly into a story -- did you have an  
18 occasion to see Mar-Reece after he was out of prison?

19 A Yes. Well, see, after Mar-Reece had got out of  
20 prison, I'll never forget it, he was on a roof, the thing  
21 is, and Mar-Reece looked to me like a person that's  
22 distant, you know, thinking and worrying and usually when  
23 I see that in all families that means trouble, that means  
24 trouble because see when a person is thinking and on a  
25 roof, you could slip and fall off of a roof, so you need

1 to be at all times aware of where you are stepping and  
2 things of this sort.

3 Q And this was back in 1992 that we are talking about?

4 A That's right, that's right, and so then I also noticed  
5 that, you know, when you do roofing, you see the calluses  
6 on my hands, the things is, see, when you do roofing, it  
7 literally destroys your hands, I mean, you are talking  
8 about blood and everything else, I mean, so if you don't  
9 develop calluses, you know, your hands become vulnerable  
10 and so when I looked at Mar-Reece's hands, Mar-Reece has  
11 got a big old giant blood ring and he ain't paying no  
12 attention to it, so you mixed that blood ring with salt  
13 and sweat and you are talking about pain, but he's sitting  
14 there going on like it ain't happening. Now I'm a person  
15 that can bear a lot of pain, but he's making like it's not  
16 phasing him whatsoever, so now I'm really concerned now,  
17 so I'm trying to get to him and trying to get him off and  
18 trying to talk to him and saying what's up, you know,  
19 what's up, but before I got a chance, you know, to talk to  
20 him, the thing is, boom, the incident done taken place  
21 and the reason for that is because when you are doing a  
22 roof you have got to cover it up, so I have to send him  
23 down for a way while I cover it in case it rains, things  
24 of this sort, so before I had a chance to try to see what  
25 his problem is, the thing is, he's gone.

1 Q And he went to Charlotte, is that right?

2 A That's right.

3 Q And he lived with your other brother?

4 A That's right, Marshall.

5 Q And he lived with Marshall.

6 A Uh-huh.

7 Q And what were your concerns about Mar-Reece living  
8 with your brother Marshall? I think Marshall is a year  
9 younger than you?

10 A Yes.

11 Q What were your concerns about him living with your  
12 brother Marshall?

13 A Well, see, now Marshall was a person that never really  
14 truly got into understanding what manhood consists of, we  
15 are talking about parentalship, things of this sort, so I  
16 felt like that's a bad move, that's a bad move for him to  
17 go with Marshall.

18 Q So you were concerned about him going to live with  
19 Marshall?

20 A Oh, yes, as a matter of fact, when I found out, the  
21 thing is they had already gone.

22 Q Is there any other family other than Marshall that  
23 lives in Charlotte?

24 A Not that I know of, that I know of.

25 Q Immediate family, any brothers or sisters that live in

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1 Charlotte?

2 A No, not that I know of.

3 Q If you will, go ahead.

4 A Okay, see now the reason I was so concerned is, see,  
5 he's already bleeding and everything else, plus, he's not  
6 aware of where he is at and where he is going. Okay, at  
7 the same time when I looked at him the thing is most  
8 children that gets out of the joint they look for people  
9 to take them in for the night or to take them. But see he  
10 hadn't yet established even a roof over his head yet, I  
11 mean, where he basically was going to stay at was at  
12 period. Now I'm sitting there trying to get to him to try  
13 to get him some kind of help the best I know how and all  
14 of a sudden I realize now he's gone, the thing is, and so  
15 I say, ut oh, ut oh, and what I mean by ut oh is Marshall  
16 is not the kind of person that's willing to control  
17 Mar-Reece and I was mad and furious because why in the  
18 world should he go with Marshall when Marshall is not a  
19 person that's willing to sort of keep him under restraint.  
20 What I mean by restraint is like influence, just like  
21 raising children up, you know, make them be in the house,  
22 make them obey, make them do things right. So and then  
23 plus the thing is by Mar-Reece, you know, not knowing  
24 where he's at, see what I am saying, not relating to even  
25 how he's going to live or what he's going to do in life or

1 what he's going to adjust in life and that he would take  
2 up with another person that really isn't going to help  
3 show him the way, the thing is. So the only thing I did  
4 at that time, the thing is, I just prayed and asked the  
5 Lord to preserve his life.

6 Q Do you love your brother Mar-Reece?

7 A Yes.

8 Q Are you concerned about your brother Mar-Reece?

9 A Well, yes. See now also when my Daddy put so much  
10 spirit on hard and what I mean by that is that you  
11 couldn't walk in that house, I know it sounds kind of  
12 weird, but you couldn't walk in that house without finding  
13 out where he's at because you had to find out whether or  
14 not did he allow you to go and if he didn't allow you to  
15 go, he's going to take you out, so now even -- now Daddy  
16 worked downstairs, the thing is, so by being downstairs  
17 the thing is a lot of times you was afraid to even go  
18 downstairs of what he may do to you because he don't know  
19 that you're coming. So and now what I mean by that is  
20 that see, now, Daddy he wouldn't come out and say I'm  
21 going to get you, he wouldn't come out and say he was  
22 going to get you where a lot of people is around, he would  
23 do it in a sneaky and a clever way such as he'll wait  
24 until that he is most effective and the thing is like, for  
25 example, when my Mama got so sick that she could barely

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1 raise her head and the thing is that's when he went and  
2 got MamMaw, you know, my grandma, the thing is, and so now  
3 but they was arguing that day because the fact is that my  
4 mother is a person that wanted to do right and she wanted  
5 to show us the way and I was there in the midst of  
6 everything else and they was trying to deceive me and she  
7 was trying to get me to see what they were saying really  
8 wasn't right. So now she could barely stand and barely  
9 raise her head up and barely talk, I'm talking about a  
10 person that is literally sick, I mean at any time she  
11 could pass out, the thing is, so I'm sitting there  
12 listening, I'm saying like don't her mother, you know,  
13 MamMaw, don't she care about her daughter and not even go  
14 through this. I mean this is not even the time that you  
15 think about matters, the thing is, they are sitting there  
16 arguing with her as if like they don't care about her none  
17 whatsoever. By them doing it in my presence I realized  
18 then that my mother, you know, that she was in trouble and  
19 that my grandmama she really wasn't for us because see my  
20 sister will tell you they even came in and tried to take  
21 the little things that we had in the house out of the  
22 house, I'm talking about my Mama's sisters, I'm talking  
23 about like pots and pans, clothing, whatever was left,  
24 food and everrything else, I mean, whatever they felt like  
25 was valuable they come in and tried to pick it up. So

1 that's rough, but, you know, I just tell it like it is.

2 Q Thank you, very much, Mr. Hughes.

3 MR. POPE: May it please the court, Your Honor?

4 CROSS EXAMINATION

5 BY MR. POPE

6 Q Mr. Hughes, you were the brother that was born in '54,  
7 is that right?

8 A Yes, sir.

9 Q And when was it you say you moved out one time I think  
10 you were telling the jury you moved out and got married  
11 when your Mama --

12 A When my Mama went on her vacation trip.

13 Q Do you recall when that was?

14 A I don't actually know the date or anything is, but  
15 it's on record.

16 Q How old were you when your Mama passed away, do you  
17 remember?

18 A I believe I was round about 27 or something like that,  
19 maybe 28.

20 Q So you were out and married when your Mama -- you  
21 wasn't living there at the house.

22 A Yes, I was. See, this is what I did. See, Mama had  
23 starting getting sick and then I waited until she went on  
24 a vacation and after I got married me and my wife went to  
25 staying in the home for a while.

1 Q Okay, so when your Mama was sick you and your wife  
2 were staying there in the house?

3 A Yes.

4 Q And did you all move back out before your Mama passed  
5 away?

6 A Yeah, I did, yeah, I would say probably about ten  
7 years before she passed away we had gotten out.

8 Q Okay and you had your own home and your business and  
9 everything?

10 A Not quite my business, but my own home. Well, I used  
11 to live in projects.

12 Q Okay, now you own your own business in construction,  
13 is that correct?

14 A Yes.

15 Q So you were out of the house about ten years before  
16 your mother passed, is that right?

17 A Well, I'm just speculating.

18 Q Just roughly, roughly.

19 A Yes.

20 Q Where did you live? Did you live up in Winston-Salem  
21 too during that time?

22 A I did, yes.

23 Q Okay. I think you said that a lot of the problem in  
24 the family was because of your father, is that right?

25 A Most definitely.

1 Q My understanding is from hearing you testify that you  
2 don't have a relationship with your father, is that  
3 correct?

4 A Well, I've tried my best, but he won't let it happen.

5 Q Now after your Mama passed your Daddy was still there  
6 in the house, is that correct?

7 A That's right, for a while.

8 Q Who was paying the bills for the house?

9 A Mostly all of us was because see my Daddy, you know,  
10 he was a person that made like that he was a provider to  
11 the outside folks, but deep down everybody had to, you  
12 know, work for themselves.

13 Q But again now I'm talking about after your Mama  
14 passed, you had been out of the house about ---

15 A Well, see after Mama passed I don't remember my Daddy  
16 giving support at all; I really don't.

17 Q But again my question is you weren't in the house  
18 after that?

19 A I was still in the house sort of and what I mean by  
20 that about every day if I could I would go out there and  
21 sort of check on them to see if I could give some kind of  
22 support.

23 Q All right and you said the brother down in Charlotte  
24 that was Marshall, is that right?

25 A Marshall, uh-huh, that's right.

1 Q And you said Marshall I'm trying to think of how you  
2 described him as far as it wasn't good for Mar-Reece to go  
3 down there because Marshall wasn't willing to control him?  
4 What did you mean - as far as setting up rules and stuff?

5 A No, see, to my understanding is that see when -- say  
6 it's like me and you. If me and you are going fishing,  
7 like everything is, if you don't know how to catch fish,  
8 instead of you helping me, basically, you become a  
9 hindrance, so because Marshall the thing is, the personal  
10 thing is, that he wouldn't parent to a guy such as  
11 Mar-Reece is, and to me that was a bad move.

12 Q As far as him leaving Winston-Salem going down to  
13 Charlotte?

14 A Yes.

15 Q If I understood when you were talking about working on  
16 the roof, when Mar-Reece got out in '92 you had him  
17 working with you, is that what you are talking about?

18 A That's right.

19 Q With your business?

20 A Uh-huh.

21 Q So you gave him the opportunity to have a job there  
22 working with you his brother?

23 A Well, I would say not so much as a job, I would say  
24 the point of the thing is, I hadn't seen Mar-Reece in I  
25 would say many, many years, so it all boiled to the point

1 that that particular day was my only chance basically to  
2 see Mar-Reece such as to spend some time with him.

3 Q That one day when you all were working on the roof?

4 A That's right.

5 Q If I understood from what you told Ms. Brice that day  
6 you noticed - you were concerned about him being on the  
7 roof his mind didn't seem to be on what you all were  
8 doing?

9 A That's right.

10 Q Okay and then it would have been the next day then you  
11 didn't see him because he went to Marshall's?

12 A I didn't see him after that.

13 Q Basically one day you spent with him while you all  
14 were working on the roof, did you have any knowledge of  
15 Mar-Reece having a gun that day?

16 A Have a gun?

17 Q Yes, sir.

18 A No.

19 Q You didn't know anything about that?

20 A If I had knowed it, I definitely would have been on  
21 his case then.

22 Q Thank you, Mr. Hughes.

23 A Thank you.

24 MS. BRICE: No further questions. Thank you.

25 THE COURT: You may step down. Thank you. Call your

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1 next witness.

2 MS. BRICE: I call Melinda Hughes Gentry.

3 MELINDA HUGHES GENTRY, being duly sworn,  
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MS. BRICE

7 Q Melinda, would you please state your name for the  
8 record?

9 A Yes, my name is Melinda Gentry.

10 Q And are you Mr. Hughes' sister?

11 A Yes.

12 Q And where do you live?

13 A I live in Winston-Salem.

14 Q And how far did you get in school?

15 A I finished the 12th grade.

16 Q And do you have any children?

17 A Yes, I have two.

18 Q Are you employed?

19 A Yes.

20 Q Are you married?

21 A Yes, I'm married.

22 Q Are you nervous?

23 A Yes, I'm nervous.

24 Q That's okay; we are just going to engage in a little  
25 conversation, okay?

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1 A All right.

2 Q We have been doing a lot of talking this morning about  
3 your family. Would you show the jury, if you would,  
4 exactly where you are on this Genogram?

5 A Right here.

6 Q Right there?

7 A Yes.

8 Q So you are two siblings away from Mar-Reece?

9 A Yes.

10 Q If you would, Melinda, in talking a little bit about  
11 your family would you describe for the jury a little bit  
12 about - we've gone over some of the themes of your family,  
13 can you describe to the jury a little bit about what you  
14 witnessed in that household as far as abuse?

15 A There was a lot of abuse in the house. There were  
16 times I would watch my Daddy chase my mother with a bat.  
17 My mother she was a good woman, but to me we got more  
18 beatings than we should have gotten. I mean there were  
19 times that I myself was sleeping and I would get  
20 whoppedped out of the bed to wash the dishes or whoppedped  
21 because the house wasn't cleaned the way, you know, my  
22 mother and them felt like the house should have been  
23 cleaned. There was - I had got so many beatings until one  
24 time I said, well, the next time my mother beat me that I  
25 was just going to lay in the floor and just act like I was

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1 dead and so maybe that would terrify her from whopping us  
2 so much. What they were doing would take switches and they  
3 would plait like four or five switches together and if you  
4 were a girl, they would pull up your dress and they would  
5 just whop you and you would have so many whelps on you and  
6 if you were a boy, they would put their feet between their  
7 pants and hold you there and whop you and then at times  
8 when my mother didn't feel like beating us she would call  
9 one of the older children to come over there and finish  
10 whopping us with new strength, so it was a lot of abuse  
11 going on there.

12 Q Not only beatings that you received as far whipping,  
13 did you also observe violence between your father and your  
14 mother?

15 A Yes.

16 Q Can you describe that to the jury if you would?

17 A One time he took my mother and he took her arm and  
18 placed it on the stove and burnt the arm.

19 Q Were many of the children present to see this abuse in  
20 the household?

21 A Some of the times when the things happened they would  
22 go into their own rooms. They didn't want too much to be  
23 around this type of stuff.

24 Q But did you still hear it?

25 A Yes.

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1 Q And did Mar-Reece also see this abuse?

2 A Yes.

3 Q And did he also receive the whoppings that you  
4 received?

5 A I feel like Mar-Reece had got a lot o whoppings. He  
6 was abused also. It was the last five of us.

7 Q When you say the last five of us, could you explain  
8 that a little bit further to the jury to give them a  
9 better idea?

10 A Yes, when my mother passed, I guess it was a great  
11 responsibility for us to upkeep a big house because we  
12 stayed in a big house and the older sisters would come out  
13 there, you know, when my mother was living they would tell  
14 her, say, "You should make them clean up this house more."  
15 I mean we would take scrub brushes and scrub the floors.  
16 Instead of getting a vacuum or something they would make  
17 us scrub the floors. They would make us get rags and wash  
18 the walls. They would make us go to a drive-in and pick up  
19 paper, you know, just all kind of things just to have  
20 money income in the house, but it was taking children and  
21 making adults out of them, making us work for what we were  
22 really eating.

23 Q How old were you when your mother died?

24 A I was about 17 or 18.

25 Q And what was your father's role in the family after

1 your mother's death?

2 A He just stopped caring for these last five. He didn't  
3 care if we even ate food and then when he decided he would  
4 bring something home sometimes he would leave it on the  
5 counter, sometimes he would prepare it, but we were so  
6 afraid to eat it until it just set there until it got mold  
7 on it. We were scared to even touch the food.

8 Q Would you describe that a little bit that fear to the  
9 jury that you all had?

10 A Yes. Sometimes when my Daddy would cook food he would  
11 go down into the basement, it's like he would cook the  
12 food and run down into the basement and get something and  
13 he would come back up the steps and he was sprinkling  
14 stuff all over the food until we wouldn't even eat it.  
15 Then at times he would take and cook in two pots separate  
16 things. He would cook one pot for himself and one for us  
17 to eat out of. We wouldn't touch it because we were so  
18 terrified that it would make us sick. We was scared to  
19 drink the water because we thought we would get worms. I,  
20 myself, even as a 17 year old would go to the park even at  
21 night when I wanted a drink of water and I would fill a  
22 jug up and I would drink water or go to a restaurant just  
23 to get water. You know, they were building a McDonald's in  
24 the community. Sometimes we would go down there and get  
25 water.

MELINDA HUGHES GENTRY DIRECT

1 Q This fear that you had is this fear that was shared by  
2 other members of your family?

3 A Yes.

4 Q And so as I understand after your mother's death when  
5 your father would bring food to the home, you all would  
6 not eat it.

7 A No.

8 Q And how long was your father in the household after  
9 your mother's death?

10 A Really he wasn't even there. Sometimes he would come  
11 at night. Sometimes he wouldn't. And when he would come  
12 home at night, he would take and cut the lights off in the  
13 whole entire house and then he would take the fuses out of  
14 the box and if we had to get up and get anything, we were  
15 feeling around in the dark to see, you know. If we wanted  
16 to go to the door to just get out of the house and to go  
17 and get the water, we couldn't even see where we were  
18 going.

19 Q How soon after your mother died did you make your  
20 escape from the home?

21 A It was real soon because at that time I had begin to  
22 start dating and I met my husband right after that time  
23 and he helped me through a lot because when my mother  
24 passed, the older people in the house they were not there  
25 for us. When my mother passed -- well, before my mother

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1 passed, they would come out and visit every day some of  
2 the older children. But when my mother passed, none of  
3 them were there for me nor the remainder of my sisters.  
4 They didn't care whether we lived or died. When my mother  
5 passed I, myself, was at school and my other sister. We  
6 didn't even know she was dead until about nine or ten  
7 o'clock that night. We came home to an empty house.

8 THE COURT: Do you want to take a break?

9 MS. BRICE: Yes, sir.

10 THE COURT: Go to the jury room for just a few minutes  
11 and we'll take a break.

12 (Recess.)

13 Is The State ready?

14 MR. BRACKETT: The State is ready, Your Honor.

15 THE COURT: The defense?

16 MS. BRICE: Yes, sir.

17 THE COURT: Is the witness composed?

18 MS. BRICE: Yes, sir.

19 THE COURT: All right, Mr. Hughes is present. Bring in  
20 the jury.

21 (Jury returns to courtroom.)

22 Q Melinda, I realize it is very difficult for you to  
23 share your memories with the jury and I only have a few  
24 more questions with you, okay? There has been some  
25 testimony previously in regards to sexual molestation in

MELINDA HUGHES GENTRY DIRECT

1 the family. Are you aware of that?

2 A No.

3 Q When -- are you aware of mental illness in the family?

4 A Yes.

5 Q Can you describe that for me?

6 A A lot of the children they talk in numbers, riddles. I  
7 have some brothers that seek, you know, they get  
8 psychiatric help.

9 Q Do you have knowledge of one of your brothers - did  
10 one of your brothers come live with you?

11 A Yes.

12 Q And who was that?

13 A Manda Hughes.

14 Q Manda?

15 A Yes.

16 Q And can you describe some of his actions in the past  
17 years for the jury?

18 A Yes, Manda would jump out of windows and run through  
19 the street naked with thirty degrees or below  
20 temperatures, snow on the ground. Manda would walk around  
21 with red eyes. He was just -- they gave him medication to  
22 take and he was afraid to take the medication at times,  
23 but he would bug out. And I had a brother named Milas  
24 Hughes. He would stand on the corners; he would just be  
25 yelling up at the sky talking to the cars that would come

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1 by. He would take off his clothes also.

2 Q Melinda, you were not in the household too long after  
3 your mother's death, is that correct?

4 A Right.

5 Q And I believe it was your testimony that marriage was  
6 your means to escape out of that family.

7 A Yes.

8 Q Looking back do you have any regrets in regards  
9 perhaps a caretaker role for Mar-Reece?

10 A Yes.

11 Q Could you describe that for the jury if you would?

12 A I wish I had been there for him a little more, but at  
13 that time I wasn't old enough to really know what to do. I  
14 did the best I could, but I just wasn't able to do as  
15 much. I would ask my boyfriend to bring food out to the  
16 house for us to eat and I would go to various people's  
17 houses to eat and I would bring food back home to them to  
18 eat and I just wish I had been there or him a little more,  
19 but at that time my mother had passed, I, myself, wasn't  
20 together, you know. If it wasn't for my husband giving me  
21 therapy and telling me I could make it, I could have been  
22 a mental case.

23 Q What about -- are you familiar with the name Albert  
24 Cole?

25 A Yes.

1 Q Who is that?

2 A That's one of Mar-Reece's friends that he would hang  
3 around with to find comfort.

4 Q And when he would hang around with Mr. Cole, what  
5 would they do?

6 A Be out all times of the night. He would, you know,  
7 steal for food. They were just hanging out just like  
8 little teenagers.

9 Q That's all the questions I have. Thank you, Melinda.

10 CROSS EXAMINATION

11 BY MR. POPE

12 Q Mrs. Gentry, I'm sorry, what was your first name,  
13 Melinda?

14 A Melinda.

15 Q So you were born in '63, is that you?

16 A Yes, sir.

17 Q You said you were about two or two and a half years  
18 older than Mar-Reece, is that correct?

19 A Yes.

20 Q And you said that you were seventeen when your mother  
21 had passed?

22 A About seventeen or eighteen.

23 Q And you were seventeen or eighteen when Mar-Reece was  
24 fifteen or sixteen somewhere in there?

25 A Yes.

1 Q You talked about the situation about the water. Did  
2 you all have -- was it a well at the house or did you all  
3 have tap water? What was the deal about the worms in the  
4 water?

5 A It was a local well, but it was turned into City water  
6 later on, but we had so much fear that my Daddy had put  
7 something into the water until we were just afraid to  
8 drink this water. We thought it was going to turn into  
9 worms.

10 Q I've got you. You mean ---

11 A Yeah, give us worms all in our body.

12 Q And so was that while your Mama was still living?

13 A Yes.

14 Q Okay, your Mama wouldn't --

15 A She wouldn't drink the water at times too.

16 Q Okay, and the whippings you were talking about that  
17 you and a lot of the other kids and I think Mar-Reece got  
18 too was that your Mama doing the whipping or your Daddy  
19 doing the whipping?

20 A Well, I've been whopped one time by my Daddy, but my  
21 mother did most of the correcting.

22 Q She was the disciplinarian?

23 A Yes, and then when she got tired of whopping, she  
24 would let another child whop us or finish the beating.

25 Q At a particular time, in other words, if she was going

1 to whip you for not cleaning up the house or you named  
2 like --

3 A She would whop us for five or six minutes and then  
4 when she get tired, she would give the switch to someone  
5 else and let them finish.

6 Q Okay. And you were talking about, you said pretty  
7 close after your mother passed you got married and moved  
8 out, is that correct?

9 A Yes.

10 Q When did you get married, do you recall?

11 A In '80 or '82 something like that.

12 Q It would have been the year that your mother ---

13 A Yes.

14 Q Okay. And you were talking about Mar-Reece hanging  
15 out with Albert Cole, is that right?

16 A Yes.

17 Q Was he hanging around with Albert when your mother was  
18 living or after she passed or both?

19 A After she passed. We all went to school together  
20 because we all were in the community together.

21 Q Right. So some of these people like Albert were  
22 Mar-Reece's friends both before and after your mother  
23 passed, is that right?

24 A Yes, because his sisters was my friend. Albert's  
25 sisters was my friend.

1 Q Okay. And you were talking about you had named some  
2 of your brothers that had some situations about jumping  
3 out the window naked and standing on the corners of the  
4 streets. What brothers were they?

5 A They were Manda Hughes, he jumped out the window.

6 Q Manda?

7 A Manda.

8 Q Okay.

9 A Milas Hughes he takes off his clothes, he talks in  
10 numbers.

11 Q Okay, you said there were other brothers and sisters  
12 that talked in numbers. What do you mean talk in numbers?

13 A Okay, they just start blabbing off with numbers. You  
14 can just be talking to them and they just start quoting  
15 numbers and stuff and you be wondering where they are  
16 coming from, but you really can't understand what they are  
17 saying because they are talking like in riddles.

18 Q Uh-huh.

19 A Mylon and Milton both and Wilbert will talk at times  
20 in numbers.

21 Q Okay, and again you don't know what the basis if there  
22 was a riddle or if there was a code or they are just doing  
23 it, you don't know?

24 A I think it was more mental.

25 Q Okay. Now as far as the big actions you talked about

1 like the jumping out the window and the naked on the  
2 street and that kind of stuff that was Milas and Manda  
3 that do that type of stuff?

4 A Yes.

5 Q Did any of the other brothers do anything like that  
6 like nudity on the streets or anything of that nature?

7 A No.

8 Q So Mar-Reece didn't do any of that kind of stuff?

9 A No, he wasn't taking off his clothes, but he was more  
10 so mental without getting love and getting what he should  
11 have gotten from a parent.

12 Q So not mental like ---

13 A Like crazy.

14 Q -- not crazy? He wasn't crazy, but his mental ---

15 A Mentally, he was from love and neglect.

16 Q He just wanted more love?

17 A Yes.

18 Q And that, of course, was true for a lot of the  
19 brothers and sisters, especially the last five you said,  
20 needing more love, is that correct?

21 A They were needing more love, but some of them had the  
22 other mental part too like Manda.

23 Q I see what you are ---

24 A Uh-huh.

25 Q He was one of the last five.

1 A Yes. It's just that some have been treated and some  
2 have never been to a doctor to even get treated like  
3 Sammie.

4 Q I got you. That's Samuel?

5 A Uh-huh, yes.

6 Q And then those would have been the ones - is it really  
7 from you down that were there when your mother passed that  
8 were there at the house?

9 A Yes.

10 Q And many of you left shortly thereafter?

11 A Yes, sir.

12 Q You talked about Mar-Reece stealing for food, stealing  
13 for different things. When was that taking place? How old  
14 was he when he was stealing?

15 A About fifteen, sixteen.

16 Q About the same time your Mama passed away?

17 A Yes, because when I was on a date and at times that I  
18 didn't bring food, then he didn't have any food to eat, so  
19 it was like everybody was for their self then.

20 Q All right, the little jobs that I think your brother  
21 talked about or what your sister maybe talked about about  
22 the raking and the cutting grass and the different things  
23 that he was doing, what was he doing with that money?

24 A Okay, that's just seasonal work. You know, you can  
25 rake a yard for a couple of months and then it's snow and

1 it's time for winter.

2 Q Right.

3 A And so that little bit of money, hey, being a little  
4 boy, a boy can eat up some food, you know, especially when  
5 you are not getting enough food to eat. He probably ate  
6 that up as fast as he made that and then at times he would  
7 buy himself clothes with that money.

8 Q You are saying he would buy ---

9 A Yes, uh-huh.

10 Q Okay, thank you, ma'am.

11 A Tennesises.

12 Q I'm sorry, what?

13 A Tennesises - tennis shoes.

14 Q I got you. All right, thank you, ma'am.

15 MS. BRICE: No further questions.

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

17 Members of the Jury Panel, it is one, so we are  
18 going to break for lunch until 2:30, so you will have your  
19 lunch and we will see you back at 2:30.

20 (Jury leaves courtroom.)

21 Anything before lunch?

22 MR. POPE: No, sir, Your Honor.

23 MS. BRICE: Nothing, Your Honor.

24 THE COURT: I'll see you at 2:30.

25 (Recess.)

PETER GORDON SKIDMORE DIRECT

1 MS. BRICE: Your Honor, I believe there is a matter  
2 that I would like to put on the record prior to your  
3 bringing them back in the courtroom.

4 THE COURT: All right.

5 MS. BRICE: This pertains to the Motion that was filed  
6 yesterday in regards to the SLED report that was provided  
7 that we gained knowledge or access to yesterday and at  
8 this time I would like to call two witnesses in support of  
9 that Motion, one being Pete Skidmore and the second being  
10 Doctor Kohanski.

11 THE COURT: You want to do that now?

12 MS. BRICE: If I could, Your Honor.

13 THE COURT: All right, come around and be sworn.

14 PETER GORDON SKIDMORE, being duly sworn,  
15 testified as follows (In Camera):

16 DIRECT EXAMINATION

17 BY MS. BRICE

18 Q Pete, would you please state your full name for the  
19 record?

20 A Peter Gordon Skidmore.

21 Q And with whom are you employed?

22 A Fewell, Skidmore and Dickson.

23 Q And are you associated on this case, on the Mar-Reece  
24 Hughes case?

25 A Yes, I am.

PETER GORDON SKIDMORE DIRECT

1 Q And who are you hired by?

2 A Steve Schusterman and Chris Brice.

3 Q And have we made a request for you to locate certain  
4 individuals?

5 A Yes, you have.

6 Q And could you tell the court who those individuals  
7 are?

8 A A Mr. James Gaither, I believe, which resides at or  
9 which I was told resides at 1527 Neely Creek Road.

10 Q And did you have any success in locating Mr. Gaithers?

11 A No, I did not.

12 Q Can you describe what you did to attempt to locate  
13 him?

14 A Yes, yesterday, late afternoon, I went out to the  
15 residence. No one was home and then I went back this  
16 afternoon and found out this twenty-five year old male  
17 does not live there. There is an elderly gentleman by that  
18 same name that lives there, but it is not the gentleman  
19 that we were looking for.

20 Q And did the gentleman that we are looking for live in  
21 that residence?

22 A No.

23 Q And do you know where that gentleman lives?

24 A No, no one knew. I asked several neighbors as well.

25 Q And was there any other witnesses that we requested or

PETER GORDON SKIDMORE DIRECT

1 persons that we requested for you to locate?

2 A Yes, a Mr. Walker that lives on Failes Street or that  
3 was the address that I was given in Rock Hill, South  
4 Carolina and there is not a street by that name in Rock  
5 Hill.

6 Q So you were unable to locate Mr. Walker either?

7 A That's correct.

8 Q Based on no address?

9 A No address and also we have a data bank that we use  
10 and we ran both individuals in that data bank and nothing  
11 came back.

12 Q Did we request that you try to attempt to locate other  
13 individuals?

14 A Yes, the second person that took the stand the other  
15 day, I'm sorry I ---

16 Q Mr. Jennings?

17 A Yes, Mr. Jennings. I tried to locate him yesterday,  
18 talked to Officer Melton and Officer Melton from the  
19 Detention Center told me that he did not want to talk to  
20 me and I requested that I still see him just so that he  
21 could tell me that and he said the Department of  
22 Corrections had taken him away at that time.

23 Q That's all the questions I have. Thank you.

24 CROSS EXAMINATION

25 BY MR. POPE

PETER GORDON SKIDMORE CROSS

1 Q Mr. Skidmore, the three individuals that you had  
2 indicated one of them was Mr. Jennings, is that correct?

3 A That's correct.

4 Q That's the same Mr. Jennings you stated had testified  
5 previously?

6 A That's correct.

7 Q And I believe you had asked us in the hall about did  
8 we have any opposition to you talking to him?

9 A That's correct and you said, "No."

10 Q Okay, my understanding is that when you tried to talk  
11 to Mr. Jennings you were informed that he wouldn't talk to  
12 you, but he never directly told you that?

13 A That's correct.

14 Q Okay. As to the other individuals, I believe a Mr.  
15 Walker and Mr. -- what's the other, Gaithers, I believe,  
16 is that correct?

17 A Yes.

18 Q As to Mr. Walker or Mr. Gaithers have you been able to  
19 determine -- these were inmates at the time of the jail  
20 killing, is that correct?

21 A Right.

22 Q Were you able to determine if either one of these was  
23 currently incarcerated?

24 A I asked Officer Melton that yesterday from the  
25 Detention Center and he said to his knowledge neither one

1 were.

2 Q At the Detention Center.

3 A At the Detention Center.

4 Q Have you made any attempt to determine whether they  
5 are in the Department of Corrections?

6 A No, I have not because I don't have that information  
7 -- I can't get that information.

8 Q Have you made any request of my office to assist you  
9 in locating those two individuals in the Department of  
10 Corrections?

11 A No, I have not.

12 Q Are you also familiar with the discovery material, the  
13 various items that you all received from our office?

14 A I am familiar with some of it.

15 Q To your knowledge is James Gaithers, Jr. that is  
16 indicated in State's Exhibit -- I mean Defense Exhibit  
17 D-2, which is a Mental Report from the State Hospital,  
18 James Gaithers, Jr. and John S. Walker, who are both in  
19 this report, is that the two individuals that you  
20 discussed?

21 A Mr. Pope, I hadn't seen that report, so I can't answer  
22 that.

23 Q Okay. You just hadn't seen this report.

24 A That's correct.

25 Q Okay.

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1 MR. POPE: Your Honor, that would be all the questions  
2 we would have. Also, while I realize now from the defense  
3 that no requests or no attempts have been made to locate  
4 these individuals within the Department of Corrections, I  
5 don't mind making my office available to do that and even  
6 to assist to get them here. I could do that today.

7 THE COURT: I was going to make that request. I ask  
8 that you make that determination if they are, in fact,  
9 incarcerated. As to Mr. Jennings I have not received any  
10 request to have him transported here and to my knowledge  
11 he is not under subpoena, but if the defense wants him  
12 here, we will certainly do everything we can. I'll sign  
13 such Order of Transportation and we very likely could have  
14 him here by in the morning.

15 MR. POPE: Yes, sir, my understanding as far as the  
16 Department of Corrections procedures that if they do have  
17 some they need, then I can try to do it immediately, so  
18 they can get them on - whatever they need to get them here  
19 in morning.

20 THE COURT: Do you all want Mr. Jennings here in the  
21 morning?

22 You can step down, Mr. Skidmore.

23 MR. SKIDMORE: Thank you.

24 THE COURT: All right, we'll get Mr. Skidmore (sic)  
25 here and we'll check to see if Mr. Gaithers and Mr. Walker

RENEE S. KOHANSKI

DIRECT

1 are incarcerated and if they are, do you want them here?

2 MS. BRICE: Yes, sir.

3 THE COURT: All right.

4 MR. POPE: Your Honor, my understanding and maybe we  
5 could look now, but based on the Mental Report, the  
6 Defense Exhibit that I referenced, that that would be the  
7 only two that they had that they feel may have come to  
8 light additionally by the SLED Summary. If there is  
9 somebody else, again, I don't want to do this again, nor  
10 does the court, later, if there is anybody else.

11 THE COURT: The burden is on them to indicate who and  
12 at this stage that's all that has been indicated.

13 MR. POPE: Yes, sir, okay, we will certainly have Ms.  
14 Potts assist.

15 THE COURT: All right. Doctor Kohanski?

16 DOCTOR KOHANSKI: Yes, sir.

17 RENEE S. KOHANSKI, being duly sworn,  
18 testified as follows (In Camera):

19 DIRECT EXAMINATION

20 BY MS. BRICE

21 Q Doctor Kohanski, would you please state your full name  
22 for the record?

23 A Renee S. Kohanski.

24 Q And with whom are you employed?

25 A I'm currently employed by The State of Georgia.

1 Q And were you at one time employed by William S. Hall  
2 Institute?

3 A That's correct.

4 Q And did you have occasion to prepare a report  
5 concerning a mental condition of Mr. Hughes?

6 A Yes, I did.

7 Q And do you have that report with you?

8 A Yes, I do.

9 Q And gathering information in regards to that report,  
10 what I am specifically asking you about is a SLED report,  
11 you have access to material as far as a SLED report from  
12 the Solicitor's Office?

13 A Yes, Mr. Pope provided us with those documents.

14 Q And do you recall a period of time where Doctor Dupree  
15 requested some materials that you had been provided by  
16 SLED?

17 A Yes, I do.

18 Q And can you tell me whether or not she was given those  
19 materials?

20 A I was instructed not to release those materials to  
21 Doctor Dupree.

22 Q And why was that?

23 A I don't know. I just asked my boss could I release  
24 that information and he said not to.

25 Q And were subsequent requests made to release the

1 reports that you had possession of by the defense?

2 A Yes, on March 7, 1995, we sat down I believe it was  
3 with you for the first time to do our staffing on Mr.  
4 Hughes. At that time you noted the documents I had in my  
5 possession and you asked if you could make a copy of those  
6 documents and we said that you needed to obtain those  
7 documents from the Solicitor's Office.

8 Q So even when I requested those documents from you you  
9 could not provide those documents to me.

10 A I was instructed not to do that.

11 Q That's all the questions I have. Thank you.

12 MS. BRICE: I'm sorry. I beg the court's indulgence.

13 Q Renee, if you would, please, look at the Court's  
14 Exhibit Number 13.

15 A (Witness complied.)

16 Q Is that one of the SLED materials that you had access  
17 to?

18 A Would you just give me a moment to compare?

19 Q Yes.

20 A Do you want me to compare? It looks to me like it's  
21 the same document that I have here, the first eight pages  
22 are the same.

23 Q Okay, so essentially that report was attached to or  
24 you have seen this report before?

25 A Yes, that's correct.

1 Q And this is part of the materials that was provided to  
2 you by the Solicitor's Office?

3 A That's correct.

4 Q Thank you.

5 CROSS EXAMINATION

6 BY MR. POPE

7 Q Doctor, you said you had twice been instructed not to  
8 give that to the defense, is that correct?

9 A That's correct.

10 Q And who instructed you not to?

11 A My employer, Doctor Morgan.

12 Q Doctor Morgan, okay. That wasn't an instruction that  
13 came from my office?

14 A No, I'm merely saying it was Doctor Morgan; that came  
15 from Doctor Morgan.

16 Q And you said to Ms. Brice when you all had met, did  
17 you say that was on the 7th or the 15th?

18 A We met twice. We met for the first time on March 7th  
19 and then again on March 15th.

20 Q And each time you said that Ms. Brice was aware of  
21 those documents and had asked about those documents, is  
22 that correct?

23 A On March 7th she asked about those documents and then  
24 we rescheduled to March 15th.

25 Q Okay and the documents requested you just reviewed

1      concern your report -- I mean or parts are partially  
2      contained in your report, Defense Exhibit D-2, is that  
3      correct? The pages aren't numbered, but I think it's the  
4      fourth page.

5      A    Uh-huh. The question is?

6      Q    The items from the SLED report are referenced in that  
7      document, is that correct?

8      A    That's correct.

9      Q    And, particularly, you took the quotations from I  
10     believe it was Mr. Walker which states that "During  
11     several conversation with Mar-Reece" --

12     A    Are you reading from my report or from your documents?

13     Q    I am reading from your report.

14     A    Which page are you on?

15     Q    Fourth page. Mid-paragraph -- second paragraph. No,  
16     ma'am, one back, please, that says, "In reviewing."

17     A    Uh-huh.

18     Q    You discussed a statement from John S. Walker. It  
19     states that "During several conversations with Mar-Reece  
20     his mind would come and go." You had that in quotes.

21     A    Uh-huh.

22     Q    That quote was referenced?

23     A    That's correct.

24     Q    Okay and likewise, I think, going to the next  
25     paragraph "The reference to the green man from inmates

1 Harry Jennings and James Gaithers. Inmate Gaithers states  
2 that Mar-Reece said," and again, this is in quotes "he  
3 can't rest when the little green man gets on him. He said  
4 the same thing --"

5 A All of this information comes from the documents that  
6 your office gave us whether it's in those first seventeen  
7 pages I couldn't tell you, but it's all from the docuemnts  
8 that we received from you.

9 Q Okay, and what is known as the SLED Report?

10 A Uh-huh.

11 Q Okay.

12 A You all keep referring to it, is this the SLED Report?

13 Q Yes, ma'am.

14 Q And then this was contained in your report that was  
15 issued to the court, to The State, and to the Defense,  
16 your report, that's the exhibit that you hold, is that  
17 correct?

18 A I don't understand your question.

19 Q What do you do with that Report when you complete it?

20 A After I completed the report, a copy is sent to you, a  
21 copy is sent to the Defense and a copy, I think, is also  
22 sent to the Judge.

23 Q Okay, and that April 4th date that would have been  
24 when that report was completed and sent out, is that  
25 correct?

1 A I couldn't tell you, I assume so, once I complete the  
2 report the title page is done by a secretary. I can tell  
3 you when I finished the report.

4 Q Okay.

5 A No, it doesn't have my date of finishing the report.  
6 Normally we have it at the end. We have a dictation, so I  
7 don't know when the report was completed.

8 Q Certainly it's finished before it was sent out.

9 A It was probably -- I usually complete reports within a  
10 week of doing the evaluation. I would say it was completed  
11 within a week of that.

12 THE COURT: What year?

13 DOCTOR KOHANSKI: 1995.

14 Q '95. And that would have been prior to that, is that  
15 correct?

16 A That's correct.

17 Q Thank you, ma'am.

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

19 Anything further?

20 MS. BRICE: Not at this time, Your Honor.

21 THE COURT: Are you ready for the jury?

22 MS. BRICE: Yes, sir.

23 THE COURT: Bring in the jury.

24 Doctor Kohanski, we will swear you in again.

25 DOCTOR KOHANSKI: Okay.

THE STATE VS HUGHES

1 THE COURT: Doctor Kohanski, that doesn't mean we  
2 think you need it twice, but we just need to do it in  
3 front of the jury.

4 MR. POPE: She's going to be a witness? Your Honor, I  
5 probably would have an issue on that. My understanding is  
6 Doctor Kohanski has been here all day.

7 MR. POPE: Your Honor, the sequestration Order from my  
8 understanding is reciprocal.

9 May it please the court, Your Honor?

10 THE COURT: Let's get on the record. You are going to  
11 proffer -- not proffer, but you are calling as your next  
12 witness Doctor Kohanski as a witness at some point?

13 MS. BRICE: Yes, sir.

14 THE COURT: What time did she arrive?

15 DOCTOR KOHANSKI: About 12:20.

16 THE COURT: And when she arrived, Ms. Brice, did she  
17 remain seated here in the courtroom?

18 DOCTOR KOHANSKI: Yes, I did.

19 THE COURT: And we stopped for lunch at 1:04.

20 MR. POPE: Your Honor, again, I didn't time it I knew  
21 she was present. I had seen her earlier and did not make  
22 the connection she was here to testify today. She has been  
23 in the courtroom through several of the defense witnesses.  
24 The whole ---

25 MS. BRICE: I think just one, Your Honor.

THE STATE VS HUGHES

1 THE COURT: Just a minute, let him finish.

2 MR. POPE: The whole issue is the purposes of  
3 sequestration is that it would be reciprocal and both  
4 sides would be bound by it. My understanding an exception  
5 was made for Doctor Dupree for the reasons that the court  
6 has just previously indicated. I guess again my concern,  
7 Your Honor, is that both sides comply and follow this same  
8 rule.

9 THE COURT: What do you have to say about that, Ms.  
10 Brice?

11 MS. BRICE: I beg the court's indulgence one moment.

12 For the reasons, Your Honor, first of all, I was  
13 questioning a witness and I did not observe Ms. Kohanski  
14 come into the courtroom, number one. Number two, she was  
15 only present in the courtroom from my understanding for  
16 thirty minutes. Number three, she is going to be  
17 testifying to medical records and to her findings and I  
18 don't believe that anything that a witness testified to is  
19 going to alter the report that has already been submitted  
20 to the court, it's already a part of the record. The  
21 testimony that she heard is in no way going to prejudice  
22 Mr. Pope. Her testimony is going to be solely based upon  
23 her experience and contact with Mr. Hughes as well as the  
24 psychiatry or her psychiatric testimony as far as the care  
25 she has rendered to him and in no way is the testimony

THE STATE VS HUGHES

1 that she overheard by the sister going to suddenly change  
2 what she has already testified to anyway as far as her  
3 professional qualifications or her report of finding.

4 THE COURT: As to reason one, I don't find that that  
5 suffices because the sequestration order is in effect and  
6 it is the duty of each side to keep up with who is in and  
7 who is out. As to reasons two and three I find those are  
8 valid and I will allow her to testify. I think you are  
9 directly in line with my thinking on the matter, that is,  
10 she is here as an expert, she is here to testify as to  
11 matters unconnected to those that were covered this  
12 morning particularly by that one witness or even if it was  
13 all morning, although I noticed that she did come in at a  
14 certain point later than when we started. I will restrict  
15 her from testifying as to any information or any opinion  
16 based on any evidence she received while she was present  
17 in the courtroom on this date.

18 MS. BRICE: Thank you, Your Honor.

19 THE COURT: Doctor Kohanski, do you understand that?

20 DOCTOR KOHANSKI: Yes, I do. Your Honor, would you  
21 like for me to leave the courtroom now?

22 THE COURT: You are not my witness.

23 DOCTOR KOHANSKI: Thank you, Your Honor.

24 (Doctor Kohanski exits courtroom.)

25 (Jury returns to courtroom.)

MARY HUGHES WILSON . DIRECT

1 MS. BRICE: Your Honor, I would call Mary Hughes.

2 THE COURT: Come around and be sworn, please, ma'am.  
3 Stop right in front of this lady here.

4 MARY HUGHES WILSON, being duly sworn,  
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MS. BRICE

8 Q Mary, would you please state your full name for the  
9 record?

10 A Mary Hughes Wilson.

11 Q And where do you live?

12 A 1339 Woodlawn Street, Winston-Salem.

13 Q Are you married?

14 A Yes, I am.

15 Q And do you have any children?

16 A Yes, I do.

17 Q How many children do you have?

18 A I have three.

19 Q Are you employed?

20 A I am self-employed cosmetology.

21 Q Mary, today we have been talking a little bit -- this  
22 morning we are talking a little bit about your family. If  
23 you would, if you would please step down, and show the  
24 jurors where you fall.

25 A (Witness indicates on Genogram.)

1 Q Thank you, Mary. So you are the sister that's closest  
2 to Mar-Reece in age?

3 A Yes.

4 Q What kind of difference is there?

5 A It's a little bit over a year.

6 Q Mary, we have gone through several themes today with  
7 other family members and I would like to hit on just a few  
8 with you if that's okay. If you would, can you tell the  
9 jury what life was like before your mother died in your  
10 family?

11 A At that time we had pretty much a normal, I guess you  
12 would say, a normal upbringing in the household, as close  
13 to normal as I know. It was about thirteen or fourteen  
14 children in the home at this time. The older ones as they  
15 would get older they would leave get married or just leave  
16 out or go to college something like that. We would have  
17 good times and bad times. We looked to Mama as being the  
18 strength in the family. She was a very smart person.  
19 Personally, I depended on her.

20 Q Can you describe that? How did you depend on her?

21 A I depended on her spiritual help as well as financial  
22 help. You know, she made sure that we got to school, I was  
23 still in High School, made sure we had clothes to wear,  
24 food, shelter, when we needed somebody to talk to.

25 Q Who was the person in the family that kept the family

1 together?

2 A My mom.

3 Q And how did things change after her death?

4 A Drastic.

5 Q Could you describe the changes?

6 A Well, really, for a long time I blamed her because of  
7 some of the changes that have went along in my life, some  
8 of the things that -- when Mom died, I went down, it was  
9 down spiral, a downfall anyway.

10 Q Can you tell the jurors how you had that downfall?

11 A At that time when Mom died it was in October and I was  
12 in my last year of school and I was sort of numb when I  
13 found out that she had died not going to accept what had  
14 happened. I felt betrayed. I felt like she shouldn't have  
15 left me like that. I felt that way because I had wanted to  
16 go to school. I blamed her for a lot of reasons some of  
17 the things I went through with my ex-husband. I was in a  
18 bad situation.

19 Q Can you describe that for the jury? Well, let me back  
20 up a minute, if you would, Mary. How did you -- how did  
21 things change in the family? Who was the person that took  
22 care of the five children that were left in the household  
23 after your mother's death?

24 A We took care of ourselves. Before Mom died, the older  
25 children were there in the house and at times on weekends

1 we would spend nights over at my sister's house, you know,  
2 like alternate weekends and stay at my older sister's  
3 house and once Mom died they stopped coming out to the  
4 house. Dad disappeared, you know. He would come home  
5 sometimes and sometimes he wouldn't. We would have to  
6 defend for ourselves pretty much. I was working at  
7 McDonald's right before Mom so I was still working there  
8 after she died. I would walk to work, come home, and the  
9 house that we stayed in I guess you can call it a haunted  
10 house from my point of view because there was a lot of  
11 mess that went on in the house.

12 Q Can you describe some of that?

13 A A lot of abuse, physically and mentally.

14 Q Was there sexual abuse in the household?

15 A Yes, I was sexually abused.

16 Q What kind of physical abuse was in that household?

17 A Beatings, getting whopped up out of the bed if the  
18 house wasn't clean, getting slapped, beat with belts,  
19 pinched, you know, you get blisters, and there were so  
20 many different beatings that I promised myself when I got  
21 older I wouldn't beat my kids because of the beatings that  
22 I had gotten naked, I mean, and then my brothers would be  
23 outside the door holding the door knob while Mom would be  
24 in there beating us, we'd try to run. I remember trying to  
25 run away from home one time in the snow barefooted because

1 I got tired of the beatings and when I did come home, Mom  
2 said, "Next time you go, you can pack your bag and I'll  
3 help you go." Now understand my Mama is a good person,  
4 she's a very good woman and I don't take anything from her  
5 because it's hard when you are trying to raise a bunch of  
6 children, but at times I did feel neglected. I wanted to  
7 college and she died and I wasn't able to go. After ten  
8 years since her death I finally went to college and I did  
9 graduate, but it took a whole lot of fighting, it took a  
10 whole lot of struggling to get to where I am today.

11 Q How were you -- after your Mother's death, how were  
12 you or what was your escape? How did you escape the  
13 house?

14 A The first guy that came along I married.

15 Q And how did that marriage turn out for you?

16 A Seven years of abuse. Seven years of being strangled,  
17 pulled out of the house by your hair out there in the  
18 middle of the street, kicked around with his feet on my  
19 face. I used to try to -- I went through so much at one  
20 time it seemed like he just didn't care I would walk in  
21 the middle of the night hoping I would catch pneumonia and  
22 die because of the situation. I couldn't go to my Daddy  
23 about it because he wasn't there, no kind of support  
24 whatsoever. I remember asking him for Two Dollars when he  
25 had remarried and his wife told him, she say, "I am so

1 glad that my children are old enough that they don't ever  
2 have to come and ask me for anything." My Daddy stood  
3 there and he said nothing and I did need Two Dollars and I  
4 just left the house. When my brother needed a place to  
5 stay, my brother Manda, my Daddy he allowed my brother  
6 Manda to stay in like a little basement, it was about  
7 maybe a 5 x 5 basement under his house, would not let him  
8 come in the house and use the bathroom. My baby sister  
9 Magdaline has been tossed and turned. We at the house had  
10 to feed our own selves.

11 Q What about Mar-Reece? How did Mar-Reece fend for  
12 himself?

13 A At first he would go and rake yards and we would go  
14 blackberry picking and strawberry picking and would sell  
15 some of those items to Triple A Radio Station for money.  
16 It got to the point that he begin to steal because we  
17 didn't have anybody. The house was pitch dark, rats in  
18 the house, big rats in the house, roaches. At night when  
19 my Dad was there he would take the fuses out of the box  
20 and like if you have a night light in your room he would  
21 just make sure it wasn't no kind of electricity on in the  
22 house. We would not eat from the house even if he did  
23 bring some food there. You would lock your doors at night  
24 and somehow the room I was staying in at one time my  
25 brother Manda was staying and Mar-Reece and I was in two

1 bunk beds, two sets of bunk beds, and we stayed in there.  
2 The room we stayed in was one room had a front door and a  
3 side door to it. The side door would always be open. You  
4 know, we'd shut it, but the next morning it would be open.  
5 We would have all sorts of strange smells around the  
6 house.

7 Q Can you describe ---

8 A Bad odors, bad stinking odors.

9 Q From what?

10 A Coming from downstairs. At times Dad did not allow us  
11 down there. At times he would go down there and cook his  
12 food on a hot plate, bring the rest of it upstairs, you  
13 know, for us to eat then and we wouldn't eat it. We  
14 didn't use the water. We would go to the park, me and my  
15 sister would go up there and drink the water up there.

16 Q Why would you not eat the food or drink the water?

17 A Because I'm from a family that - our family was a  
18 religious family and I believe in principalities and  
19 things like this, okay, there's spiritual things also, but  
20 on the other hand, also, you have to be careful, our Bible  
21 speaks of you have to be careful who you eat from, if  
22 somebody can give cake or if somebody is dropping pennies  
23 around or somebody is sprinkling oil.

24 Q What is pennies, I don't understand?

25 A Pennies, like dropping pennies, like if my Daddy would

1       come to my house today, I love him, yes, I love him, but I  
2       would not let him in my house. I would not let him in my  
3       house and, yes, I do love him.

4       Q     What does that mean to drop a penny?

5       A     It's a form of what they call witchcraft, it's a root.  
6       To have people under control or to hurt someone. He has a  
7       tendency that he doesn't want to see you do good, you  
8       know, it's like -- at one time he told me that he wished  
9       he didn't have so many children. He did not want to help  
10      the smaller children at all, he didn't at all. He didn't  
11      want us to come around his house once he remarried. He  
12      wanted to cut that part of his life off. And so we had to  
13      grow up fast. We had to sort of get on with our life and  
14      one of the reasons why I married my ex-husband was because  
15      he told me, he said, "Look," we had moved in together,  
16      right after I married him, he said, "Either we get married  
17      or you can move back home with your Daddy." I did not  
18      want to so we went ahead and got married. Since that time  
19      I have had two children with him, but it's been -- we have  
20      been separated and I have remarried and doing a whole lot  
21      better, but it took a lot of struggling and it took a lot  
22      of praying because at times I didn't feel like I could  
23      handle it. I didn't feel like I was capable of making  
24      decisions on my own. You know, when you have been tossed  
25      and turned and you don't know where to go, you know, it's

1 a hard situation to deal with.

2 Q What did that mean if your father walked around you,  
3 walked a circle around you?

4 A Well, if he was to walk a circle around me today, then  
5 I would definitely be wary, I would have to start praying  
6 that the Lord don't let anything happen to me. I would say  
7 Lord, don't let anything happen to me because he doesn't  
8 mean the good to you, it's like he's planting seeds, he  
9 planting seeds, he planting evilness inside, darkness all  
10 around, he represents darkness, no kind of light  
11 whatsoever, and even if you go out to dinner, you wouldn't  
12 go out with him, but if you decide to go out to dinner and  
13 you leave your glass of water on the table, you don't come  
14 back and drink it, you don't do that. You don't let your  
15 children go around him. You don't have any kind of hair  
16 sheddage, you know, how you have some hair on your shirt  
17 or something? You don't want to do that. You don't want  
18 him to get any kind of your hair. If he's in there, -- we  
19 used to burn my Mom's hair, you know, if you are combing  
20 your hair and some of it comes out we would burn it. We  
21 wouldn't have it sitting around or anything like that. Mom  
22 told me, she said, "Mary," she said, "You be careful of  
23 your Daddy." She said, "You be careful of him," you know,  
24 and she warned us, you know, to always look after him, you  
25 know, because he wasn't -- he didn't mean anything and he

1            still doesn't.

2            Q    Thank you very much, Mary. I appreciate it.

3            CROSS EXAMINATION

4            BY MR. BRACKETT

5            Q    Good afternoon, I am Kevin Brackett, the Deputy  
6            Solicitor, and I just have a couple of questions for you,  
7            ma'am.

8                       Do you know what a Genogram is?

9            A    Isn't that what she just --

10          Q    This right here.

11          A    Uh-huh.

12          Q    How do you know what that is?

13          A    We saw the chart yesterday.

14          Q    Okay and who was there when you say "we"?

15          A    Chris, Janis and Tony and what's the name of that man,  
16          Dean, I'm not sure of his last name, but that one.

17          Q    With the curly brown hair, Dean Dickson?

18          A    Uh-huh, if that's his last name.

19          Q    Where do you live right now, ma'am?

20          A    I live in Winston-Salem.

21          Q    In Winston-Salem?

22          A    Uh-huh.

23          Q    Most of your siblings, brothers and sisters, live in  
24          Winston-Salem, is that right?

25          A    Uh-huh.

1        Q    When you met with them you discussed the Geno gram and  
2        what was going to happen here today?

3        A    Uh-huh.

4        Q    At the beginning you said that your life up until the  
5        time that your mother died was pretty much normal.

6        A    I would say if you call normal being getting beat up  
7        out of the bed, you know, at three o'clock in the morning,  
8        if that's normal, or we lived in a household with a bunch  
9        of rats, if that's normal.

10       Q    Well, I didn't say normal.

11       A    I'm say, you know, okay, if that's - it was a  
12       different household from the way that my household I would  
13       want it to be from my marriage now. I wouldn't want any  
14       child to grow up in the situation that we grew up in. You  
15       always want better for your children, at least I do.

16       Q    I'm sure everybody does, but at the beginning you said  
17       that it was pretty much normal up until the time your  
18       mother died, that was your words, I'm not putting words in  
19       your mouth. I'm just trying to clarify what your testimony  
20       was. Isn't that what you said?

21       A    If that's what you want to call normal; but the thing  
22       of it is that's all the normal that I know growing up,  
23       that's the closest I knew of normal. We grew up in the  
24       country so we wasn't around a whole lot of people. We were  
25       pretty much sheltered. We wasn't even allowed to wear

1 pants, we couldn't leave out of the yard.

2 Q Have you talked to all your brothers and sisters that  
3 have been here today?

4 A I have talked to them.

5 Q Out in the hallway and everything like that?

6 A I've talked to them.

7 Q All of you all love Mar-Reece, isn't that right?

8 A Yes.

9 Q And you all don't want anything bad to happen to him?

10 A I realize that Mar-Reece is sick. You know I don't  
11 want anything to happen to my brother. I love Mar-Reece. I  
12 realize that he's sick. I realize this. We went through -  
13 you just don't realize we went through a lot of abuse, a  
14 lot of abuse. Anytime you were in the house and you have  
15 people sexually harassing you, that's not normal, you  
16 know. I can't explain the hurt. I can't explain the hurt  
17 that he's had to go through not now -- I have said I  
18 really feel bad about the situation that has happened,  
19 Lord knows I do, because I do love people and I care about  
20 people, I do, I care about people and if there was some  
21 way that I could erase it all, I would, but it hurts. It  
22 does hurt. It hurts when you know how a person has been  
23 brought up; he was not given a chance to live a normal  
24 life, you know.

25 Q Let me ask you just a couple of more questions. Would

1 you describe your father as laid back, easy going?

2 A Yeah, I would.

3 Q Did you all ever use to take trips together?

4 A We have taken some trips together, yes.

5 Q And do you know Caroline Burry?

6 A No, not that I know of.

7 Q A social worker?

8 A Not that I know of.

9 Q The blonde haired lady?

10 A I don't unless - I don't know her by name.

11 Q She's a social worker did she ever come and talk to  
12 you about Mar-Reece?

13 A Unless I know her by face and not by name.

14 Q Thank you very much.

15 REDIRECT EXAMINATION

16 BY MS. BRICE

17 Q Do you remember the lady that came to Winston-Salem  
18 with me that time that we met out there in The Inn with  
19 the blonde hair who did the Genogram? Do you remember her?

20 A Okay, okay.

21 Q Do you remember what her name was?

22 A No, I don't remember her name. I think she had on  
23 purple --

24 Q Right, the lady that was here this morning.

25 A I don't remember her name. I'm sorry, I don't remember

1 her name.

2 Q How many times have you seen that lady?

3 A One, two - this is the second time. If I'm not  
4 mistaken, this is the second time.

5 Q And the first time was in Winston-Salem?

6 A Yes.

7 Q And when was the second time?

8 A Up here.

9 Q Was that today or yesterday?

10 A Yesterday.

11 Q Yesterday? And then you saw her again this morning?

12 A Yes.

13 Q So you do know who Deputy Solicitor Brackett is  
14 talking about now, don't you?

15 A Yes, if that's her name, yes, I do. But I'm sorry I  
16 didn't know her name.

17 Q And have you spoken to her previously?

18 A I have.

19 MS. BRICE: I have nothing further.

20 MR. BRACKETT: Nothing further.

21 THE COURT: You may step down. Thank you, appreciate  
22 your time. You may be excused if you wish.

23 Call the next witness.

24 MS. BRICE: I call Renee Kohanski.

25

RENEE S. KOHANSKI

DIRECT

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RENEE S. KOHANSKI, being duly sworn,

testified as follows:

DIRECT EXAMINATION

BY MS. BRICE

Q Doctor Kohanski, would you please state your full name for the record?

A Renee S. Kohanski.

Q And where are you employed?

A I am currently employed at the Georgia Regional Hospital in Augusta.

Q Could you describe for the jury if you will what your educational background is?

A I received my Bachelor's Degree in chemistry with a minor in mathematics at Queens College of the City University of New York. I completed my doctorate degree at New York Medical College. I received my doctorate of medicine and surgery from there in 1990, completed a year of internship and three years of residency specializing in the field of psychiatry at Georgetown University Hospital. I then went on to do specialty training in the field of forensic psychiatry at the William S. Hall Psychiatric Institute in South Carolina.

Q Were you also employed with W. S. Hall?

A Yes, that was last year during my forensic psychiatry training program.

1 Q Are you licensed?

2 A Yes, I am a board certified psychiatrist. I am  
3 licensed in the State of South Carolina, the State of  
4 Georgia, Washington, D.C. I have an inactive license in  
5 the State of Maryland.

6 Q How long have you been working in the field of  
7 psychiatric medicine?

8 A For approximately five and a half years.

9 Q And have you testified before in court?

10 A Yes, I have.

11 Q And the times that you have testified in court were  
12 you qualified as an expert?

13 A Yes, I have been.

14 Q And when you testified in court was it for criminal  
15 cases?

16 A Yes, and also Federal cases.

17 Q What percent of times would you say that you have  
18 testified in criminal cases?

19 A Probably about ninety-eight percent of the time.

20 Q And when you were called to testify in a criminal case  
21 what percentage of the time did you testify on behalf of  
22 The State?

23 A I was called as The State's witness again  
24 approximately ninety-five to ninety-eight percent of the  
25 time.

1 MS. BRICE: At this time, Your Honor, I would like to  
2 qualify Doctor Kohanski as an expert.

3 CROSS EXAMINATION

4 BY MR. POPE

5 Q Doctor, you say you have testified ninety-eight  
6 percent of the time you testified have been criminal  
7 cases?

8 A That's correct.

9 Q Approximately how many times have you testified?

10 A I have been qualified as an expert I would say between  
11 ten and fifteen times.

12 Q Okay. Of those ten to fifteen times you say you  
13 testified primarily for The State?

14 A I was called as a State's witness.

15 Q And how many of those cases have been death penalty  
16 cases?

17 A I would say probably three or four.

18 Q And of those three or four cases did you testify in  
19 the guilt phase or the penalty phase?

20 A The guilt phase.

21 Q Would that be all four of them?

22 A Uh-huh.

23 Q Is this the first time you have testified in the  
24 penalty phase?

25 A That's correct.

RENEE S. KOHANSKI

DIRECT

1 Q Is this the first time you have testified for the  
2 defense?

3 A It's not the first time I have testified for the  
4 defense. I think I said I testified approximately  
5 ninety-eight percent of the time for The State and the  
6 remainder of the time I have testified for the defense.

7 Q Two percent.

8 A Yes.

9 Q And you say you are currently in the private sector  
10 now, is that correct?

11 A No, that's not correct.

12 Q I don't mean to put words in your mouth. You are no  
13 longer in Columbia, you are in Georgia now?

14 A Yes, I currently work for The State of Georgia.

15 Q Is that doing primarily the same thing you were doing  
16 here in South Carolina?

17 A I am the Medical Director of the Forensic Unit,  
18 In-patient Unit, at Georgia Regional Hospital.

19 MR. POPE: Your Honor, I have no objection.

20 THE COURT: If find she is qualified in the field of  
21 psychiatry particularly in forensic psychiatry.

22 You may proceed.

23 MS. BRICE: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MS. BRICE (RESUMED)

1 Q Doctor Kohanski, would you explain if you would for  
2 the jury what forensic psychiatry is?

3 A Certainly. Forensic psychiatry is where psychiatry  
4 and the law meet for issues such as the one you all are  
5 looking at today. Where somebody's mental status at the  
6 time of a particular crime is in question we are called  
7 upon to offer opinion. Our training includes taking law  
8 school courses, observing other people testifying, being  
9 familiar with the land mark cases and decisions that have  
10 been made in other cases. It's where law and psychiatry  
11 meet.

12 Q And today you are testifying in regards to Mr. Hughes'  
13 psychiatric condition, is that correct?

14 A That's correct.

15 Q If you would, please describe to the jury what  
16 occurrence happened or what happened the first time that  
17 you came to meet with Mr. Hughes.

18 A I first met Mr. Hughes last August of 1994. I had just  
19 begun my post-graduate training in forensic psychiatry. My  
20 boss who was at the time Doctor Donald Morgan had been  
21 called to testify in a case regarding an individual at  
22 that time, Mar-Reece Hughes, and it was going to be  
23 contested testimony. He was going to testify at that time  
24 that he felt Mr. Hughes was competent to go to trial and  
25 why he was bringing the fellows to observe his testimony

1 that there was conflicting testimony at that time and  
2 there was going to be an expert saying something different  
3 and it was going to be an education experience for us to  
4 observe that process where there were two experts with  
5 different opinion. So we went up to this courtroom and  
6 had occasion to meet Mr. Hughes and to meet several other  
7 people who were involved in that case. And at that time  
8 there was a question initially as to his competency to go  
9 to trial. When my boss had first seen him, he had felt  
10 that he was in deed competent to go to trial and at the  
11 time the case came up for trial, a question had now  
12 arisen. When Doctor Morgan interviewed him, it appeared  
13 that when he spoke he was not making sense and let me tell  
14 you more about that day. There was a question, but there  
15 was no question before as to his competency. At that point  
16 many of us, all the people present gathered, I'll tell you  
17 who was there: Doctor Bernard Dupree, Doctor Donald  
18 Morgan, myself, Doctor Tidler, Doctor Gunter Justice,  
19 those were the other fellows, Mr. Schusterman, and Mr.  
20 Lewis, who was an attorney at that time, Doctor John  
21 DeWitt was another psychiatrist, Doctor Connie McKee, who  
22 was the first psychiatrist who had seen Mr. Hughes, the  
23 Solicitor, Mr. Tommy Pope, and an Assistant Solicitor  
24 Keith Geise, I believe his name was. We all got together  
25 in the same room to interview Mr. Hughes. It became clear

1 within few moments speaking with Mr. Hughes was that he  
2 could not make sense when he talked. If you asked him  
3 very simple questions that required only a one word answer  
4 like yes, no, or maybe three additional words, it would  
5 appear that he was making sense and following everything  
6 that we were saying. If, however, you asked him a  
7 question that was openended, a question like, tell me  
8 about how you were doing in jail, something that required  
9 him to do more than simply answer with a yes or no, he did  
10 not have the ability to do that. His thoughts, in fact, if  
11 you listened to what he was saying did not make sense.

12 Q Could you give the jury an example of that?

13 A What I can give you an example of is like when he  
14 later came to be admitted to our hospital and I will use a  
15 quote from his admission to our hospital. I asked Mr.  
16 Hughes what it meant to be on safekeeping status. He was  
17 a safekeeper and I wanted to see what his understanding of  
18 that was and he replied to me and I quote, "The  
19 requirements of isolation of self then looking to have it  
20 to process that dictative action. I've always been into  
21 silence." The words seemed to make sense and it seems to  
22 be a coherent thought, but if you think about that, it  
23 actually does not make sense. I don't understand what that  
24 means and that was evidence of his mental illness. In  
25 particular what we diagnosed Mr. Hughes as having ---

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1 Q If you would, I am going to let you back up and go  
2 back to the competency hearing.

3 A Sure.

4 Q If you could tell the jury what resulted from that  
5 process or hearing that you sat and observed.

6 A It was clear to the physicians who were in the room  
7 that something had changed in Mr. Hughes between the time  
8 that he had previously been in our hospital and the day  
9 now where he was going to court such that when he spoke he  
10 did not make sense and, in fact, met the criteria for what  
11 we call being psychotic. We came back into the courtroom  
12 and presented this information, actually Doctor Morgan  
13 did, presented the information to the judge and he was  
14 found at that time not competent to stand trial and for  
15 that reason he ultimately came to William S. Hall  
16 Psychiatric Institute for restoration of competency and  
17 treatment of his mental illness.

18 Q And who was assigned to treat Mr. Hughes?

19 A I was assigned as the treating physician.

20 Q And, if you would, please describe for the jury what  
21 tools that you used in order to diagnose and treat Mr.  
22 Hughes.

23 A One of our most powerful tools to initially start  
24 something is powers of observation, simply observe  
25 somebody, interview them, try not to have a bias when you

1 first meet them, and see what transpires. So the first  
2 thing we will do is simply observe somebody and ask them  
3 questions. Mr. Hughes was difficult in that regard  
4 because before Mr. Hughes was treated for his mental  
5 illness he did not want to be perceived as mentally ill,  
6 so he would hide it and try not to let it through. So I  
7 would ask him an open question and he would close it down  
8 and I would really have to work hard to get him to let me  
9 see how sick he was. He would not answer questions and it  
10 was only until I had been treating him for a little bit  
11 longer I think came to trust me a little bit more. So one  
12 tool, to answer your question, is observation, direct  
13 observation.

14 Another very powerful tool is observation when  
15 somebody doesn't know that they are being observed because  
16 often times people will fake mental illness and they will  
17 present themselves as being mentally ill, but it is very  
18 hard to maintain that twenty-four hours a day, very, very  
19 difficult. There are certain kinds of things that are very  
20 difficult to fake, more so than other things. Saying that  
21 you have a hallucination would be easy to do. Anybody  
22 could say I have hallucination and complain of  
23 hallucination, but consistently not making sense when you  
24 talk over and over for a period of time is very, very  
25 difficult. Observing someone when they don't realize they

1 are being observed is powerful because if someone is  
2 having hallucinations, often times they will be responding  
3 to the environment as if something is there that isn't, so  
4 they will look around and when you look at them, you will  
5 see them looking around and there's nothing there. They  
6 don't know that you are observing them so you presume they  
7 are not faking. At any given point in time, of course,  
8 someone can be faking so having somebody in the hospital  
9 is very valuable. You get to watch them over a period of  
10 time and it is not just one person who gets to observe  
11 them. The nursing staff will observe them, social work  
12 will observe them, all treatment will have an opportunity  
13 to observe them twenty-four hours a day. So those are two  
14 tools, one is direct observation and the second one is  
15 indirect observation.

16 The next thing that we use is psychological testing.  
17 This often is used to confirm or not confirm a theory or  
18 hypothesis that you have developed. With Mar-Reece, as I  
19 said, he was reluctant to let us see his mental illness  
20 and he somehow felt that if he took part in our  
21 psychological examination we would be able to detect his  
22 mental illness, which is accurate, we would. And so for a  
23 very long period of time he refused to participate in  
24 certain psychological tests which he described as being  
25 too personal. Specifically one test that he did not

1 want to take part in something called the MMPI, which is a  
2 personality inventory and asks certain questions which  
3 will reveal whether somebody is suspicious, paranoid,  
4 having voices. Tests like the IQ tests which are not  
5 threatening and do not ask personal questions Mar-Reece  
6 would cooperate with. So initially he was very  
7 uncooperative with the MMPI and other more specific tests  
8 which later he did do.

9 Other tools that we used is gathering the family's  
10 history and talking with family members. Our institution  
11 had some difficulty in getting that information, but we  
12 did get some minimal information on that.

13 Q If I might, ---

14 A Uh-huh.

15 Q --- on the IQ test that you - I believe somebody  
16 administered an IQ test to Mr. Hughes, is that correct?

17 A That is correct.

18 Q And what was significant or the significant indicator  
19 of mental illness as a result of that IQ test?

20 A One thing that is pretty devastating about mental  
21 illness is how pervasive it is and in Mr. Hughes' case it  
22 actually a very concrete measure of the profound effect it  
23 had was a drop in 20 IQ points. He had been tested  
24 earlier, I think he tested at somewhere around 100 and  
25 when we tested him he came back and scored about 70 or 80.

1 Q And what does that tend to indicate to you?

2 A Well, it's consistent with the diagnosis that we  
3 expected him of having and then later confirmed by  
4 repeated clinical examinations and that's a decline in  
5 functioning. In this case it is a significant decline of  
6 functioning, two standard deviations from the norm.

7 Q As well as looking at the observations that you  
8 undertook as well as the psychological exams and IQ tests  
9 did you also have access to other documents that assisted  
10 you in rendering treatment and diagnosis?

11 A Yes, Mr. Hughes had been at the William S. Hall  
12 Psychiatric Institute previously back in 1992 and we had  
13 him as an in-patient at that time and I had the medical  
14 records from that hospitalization and so I had the  
15 occasion to review those documents.

16 Q So you reviewed all other previous medical records of  
17 Mr. Hughes?

18 A That's correct.

19 Q And were other documents provided to you?

20 A Specifically?

21 Q Were documents also provided to you by The State?

22 A Yes, in reviewing the second report that I submitted  
23 to the court we had extensive information from the  
24 Solicitor's Office which we used to help with our second  
25 evaluation.

1 Q And did you based upon the tools that you have used  
2 arrive at a diagnosis of Mr. Hughes?

3 A Yes, we did.

4 Q And what was that diagnosis?

5 A We diagnosed Mr. Hughes as suffering from  
6 schizophrenia, paranoid type.

7 Q And what type of treatment did you render to him for  
8 that mental illness?

9 A A variety of treatments. Initially, of course, it was  
10 very, very difficult. Mr. Hughes, as I said before, did  
11 not want to be seen as having mental illness and,  
12 consequently, did not want to comply with our major way of  
13 treating his mental illness, which is medication. We have  
14 some very powerful, fortunately, today medications that  
15 can significantly improve the quality of life for  
16 individuals suffering from this illness. Unfortunately  
17 for Mr. Hughes at first he did not want to take the  
18 medication and what was required was that we involuntarily  
19 medicate him against his will, which we did, and,  
20 ultimately, it caused a significant relief in some of his  
21 symptoms so that he was actually able to gain insight into  
22 his mental illness.

23 Q And is he now accepting treatment from you?

24 A Yes, he is.

25 Q And is he also accepting medication at this time?

1 A Yes, he is.

2 Q And if you would, would you please explain to the jury  
3 what paranoid schizophrenia is?

4 A Paranoid schizophrenia is a devastating major mental  
5 illness. When I say that somebody is psychotic you can use  
6 that term all the time and nobody really knows exactly --  
7 well, usually it's not defined, but I would like to define  
8 it to you. Psychotic means that there is an inability to  
9 perceive reality the way that we perceive it. That can  
10 come in a variety of forms. For instance, if somebody  
11 hears voices, they are psychotic because the reality is  
12 that those voices are not around. If somebody believes  
13 that there are others plotting against them, trying to  
14 hurt them, trying to poison them, constantly looking after  
15 them or trying to get them, that is psychotic because  
16 those people, in fact, are not doing that. So paranoid  
17 schizophrenia is a psychotic disorder. In Mr. Hughes' case  
18 how it manifested was by beliefs that people were plotting  
19 against him, trying to hurt him, trying to poison his  
20 food. What it's like to be psychotic as best as I can  
21 determine from talking to patients and observing patients  
22 is like when you have a nightmare and you have a nightmare  
23 and in the nightmare time isn't quite the way it is in  
24 reality, yet when you are in a nightmare, it seems to make  
25 sense and things don't quite go the way they are supposed

1 to, but in the nightmare it is making sense. When you  
2 wake up and you try to describe it to someone somehow  
3 words don't quite do it justice because the reality of  
4 your dream state is different than the reality of every  
5 day life. So when I try to conceptualize it for myself to  
6 wonder what it's like for individuals to have  
7 schizophrenia, the way I conceptualize it is like being in  
8 a nightmare from which you don't wake up and from which  
9 you never get to say, oh, good, that was just a dream,  
10 because it's never just a dream. We call it  
11 hallucinations and not real, but for the person  
12 experiencing it, it is real. For us watching it it is  
13 not, but for them it is.

14 Q And you testified that he is currently medicated for  
15 this illness.

16 A That is correct.

17 Q And how long has he been under medication for this  
18 illness?

19 A I believe within two weeks of his hospitalization with  
20 us and I'll check the date. He was admitted in September  
21 of 1994. So I've been giving him medication since that  
22 time.

23 MS. BRICE: I beg the court's indulgence just one  
24 moment.

25 Q At the time that Mr. Hughes was not voluntarily

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1 accepting the medication what was his mental state? Was he  
2 psychotic at that time?

3 A Yes, he was extremely psychotic; he was extremely  
4 guarded. He didn't trust me and, in fact, later after he  
5 had been treated and I had known him for several months,  
6 he told me how scared he was when he first met me, so he  
7 was psychotic.

8 Q The diagnosis that you have come to at this time  
9 paranoid schizophrenia has that been concurred by other  
10 physicians?

11 A Yes ---

12 MR. POPE: Your Honor, I would object --

13 THE COURT: I sustain the objection. Disregard what  
14 others may have thought or said.

15 MS. BRICE: Thank you. That's fine.

16 Q Doctor Kohanski, if Mr. Hughes was not mentally ill,  
17 what kind of reaction would he have to the medication he  
18 is currently under and if you would also explain the  
19 medication that he is on.

20 A He is taking the medication that is called Haldol  
21 Deconoate. It is an anti-psychotic medication. Our theory  
22 behind schizophrenia is that there's an imbalance in the  
23 chemicals in the brain and it's this imbalance that  
24 produces this impairment in reality. What the Haldol does  
25 is it re-establishes the normal chemistry in the brain and

1 I won't go into the specifics, but it just restores that  
2 balance in the brain. It is a powerful medication. It has  
3 some profound side effects and profound risks, so you are  
4 very, very careful about whom we give it to. If you give  
5 the medications to say an individual who does not have  
6 schizophrenia and if you were to give it in a dose that  
7 Mr. Hughes receives it, they probably would have a  
8 difficult time standing up, they might drop their blood  
9 pressure, they would probably be sleeping and probably  
10 have drooling as a side effect and, basically, look pretty  
11 impaired.

12 Q Have you observed those side effects in Mr. Hughes?

13 A No, you can observe Mr. Hughes now.

14 Q And has he responded well to medication?

15 A He has done remarkably well.

16 Q And along with you has anyone assisted you in treating  
17 Mr. Hughes?

18 A Yes, Dr. Donald Morgan, who is the Associate Director  
19 of our Institute, and my boss -- my former boss, was  
20 treating Mr. Hughes with me. Dr. Daffelin Bernard Dupree  
21 was appointed by the court as a co-treating physician.

22 Q After you made the diagnosis of paranoid schizophrenia  
23 did you have an occasion to also make a finding in regards  
24 to criminal responsibility?

25 A Yes. Criminal responsibility is a legal term that this

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1 state uses a particular standard for. And the standard in  
2 this state is that someone has a mental illness, number  
3 one, and, number two, because of that mental illness they  
4 are unable to recognize the wrongfulness of their actions  
5 or unable to know right from wrong.

6 Q And were you asked to make a finding in regards to Mr.  
7 Hughes' criminal responsibility in regards to an incident  
8 that occurred in April of 1994?

9 A Yes, we were.

10 Q And what was your finding?

11 A It was our opinion with reasonable medical certainty  
12 that at the time of that alleged crime because of Mr.  
13 Hughes' mental illness of schizophrenia we felt that he  
14 was not criminally responsible.

15 Q Could you describe for the jury how you arrived at  
16 those conclusions?

17 A It is not a simple answer and it is not a one-worded  
18 answer, it's looking at an entire history and looking at  
19 an entire picture and putting it together. We had reports  
20 from SLED agents about Mr. Hughes' action on the day of  
21 the alleged crime. This is the one in April, 1994. In the  
22 documents from the Solicitor's Office ---

23 THE COURT: Is that '94 or '93?

24 MS. BRICE: April of '94, Your Honor.

25 THE COURT: April?

1 MS. BRICE: Yes, sir.

2 THE COURT: Go ahead.

3 DOCTOR KOHANSKI: Is it?

4 MS. BRICE: I'm sorry, 1993, you are correct.

5 A In the documents from the Solicitor's Office there's  
6 data supporting both the fact that he had a mental illness  
7 in reviewing statements from people who observed his  
8 behavior and there's data to support the fact that he  
9 didn't have a mental illness, so we had that one piece  
10 with all these different renditions of how the day went.  
11 And some of it is very compelling both ways. Some of it at  
12 least speaks to me classic symptoms of schizophrenia.  
13 That's not enough. That's one piece. The next piece is how  
14 Mr. Hughes has presented and how he's been and what has  
15 the course of his illness been. In looking back on Mr.  
16 Hughes, as I mentioned previously, he had been in our  
17 hospital back in 1992 and at the time looking back he had  
18 a period of about two weeks of what would be described as  
19 unusual behavior, he wasn't bathing, he wasn't speaking.  
20 That in and of itself doesn't say anything, but when you  
21 take that and then present that and then put that with a  
22 man who one year later is psychotic in the presence of  
23 eight physicians and then you take that and you put that  
24 with a man who under both direct observation and indirect  
25 observation for a period of months, it is consistently

1 mentally ill, it speaks to a strong mental illness.

2       There are powerful pieces of information in the SLED  
3 report that I felt spoke very strongly to his being  
4 mentally ill at the time. I felt he was mentally ill. The  
5 question was was he criminally responsible. Was he able  
6 to distinguish right from wrong. When somebody is  
7 psychotic to the point where like that dream state I was  
8 talking about during the nightmare, the way the mind works  
9 and the way memory works is that memory is not laid down,  
10 you have no recall for it then, so it's not that you are  
11 repressing it, and, you know, something that you are  
12 trying to forget it, it's just that the memory was never  
13 laid down. Individuals who are floridly psychotic, very,  
14 very out of touch with reality, not aware of what's going  
15 on frequently do not register memory for events that are  
16 happening and then reading through the reports there is an  
17 overwhelming amount of evidence that Mr. Hughes did not  
18 register memory for the event of what happened. There are  
19 also statements that are inconsistent. One day he is  
20 talking and making sense, one day he is not. Again, this  
21 is consistent with what we saw when we felt that he was  
22 psychotic and at the time we found him not competent to  
23 stand trial.

24 Q   And did you issue a report in regards to your findings  
25 as far as his lack of criminal responsibility?

1 A Yes, we did.

2 Q And is this a copy of your report?

3 A Yes and what I attempted to do in the report was  
4 present information from both sides, looking at it from  
5 all perspectives, one of mental illness and one of not,  
6 and then my conclusion that he was at the time not  
7 criminally responsible.

8 MR. POPE: I don't have any objection. I think that  
9 the pages may be out of order and that might have been why  
10 we were having difficulty earlier.

11 THE COURT: All right, without objection it will be  
12 received.

13 (Defendant's Exhibit 9 marked and filed.)

14 Q Doctor Kohanski, within that report would you please  
15 quote some of the findings or statements that you made in  
16 regards to, for example, inmates, the records that you  
17 relied upon?

18 A In referring to the documents from the Solicitor's  
19 Office regarding the investigation of the crime - do you  
20 just want me to excerpt some of the report?

21 Q If you could.

22 A Okay, the third page of the document, second  
23 paragraph. "Inmate Randy Whitworth states that another  
24 inmate was afraid of Mar-Reece that he, Mar-Reece, acted  
25 very strange at times." "Inmate Felix Wimborn reports that

1 Mar-Reece would talk to him one day and the next day  
2 wouldn't say a thing. He acted very strange at times. He  
3 reports that he heard Mr. Hughes speaking with another  
4 inmate saying that he was going to hell and that he wanted  
5 to take someone with him."

6 Q And the third paragraph would you also read what Mr.  
7 Gaithers and Mr. Gorth stated?

8 A "There are references to the green man from Inmate  
9 Harry Jennings, Jr. and James Gaithers, Jr. Inmate  
10 Gaithers stated that Mar-Reece said he can't rest when the  
11 little green men get him. He says that same thing, little  
12 green men, when he gets mad. Called him crazy because of  
13 the way he acted."

14 I do want to say something about the green men because  
15 normally when I hear things like little green men I kind  
16 of start getting suspicious about people and wondering,  
17 you know, that's kind of what you think about as  
18 classically somebody faking. With Mar-Reece I don't think  
19 that he actually saw little green men and I'm not sure  
20 what it was with him. My best theory is that there was  
21 some kind of delusional system and I don't know if Mr.  
22 Hughes has taken the stand, but if he has, you may have  
23 noticed that he has a way of using words sometimes that  
24 are unique to him and I think that when he was referring  
25 to this there was something unique to his own mind that he

1 was talking about. I don't think that this was a true  
2 visual hallucination of the little green men, which would  
3 actually make me think that somebody was faking. That was  
4 not my opinion in this case. I felt that what he was  
5 talking about was some kind of delusional system and some  
6 kind of -- his own way of using the language that was  
7 unique to him

8 Q Doctor Kohanski, as far as the information gathering  
9 and arriving at your decision or the recommendation that  
10 you made in regards to his criminal responsibility, what  
11 was that diagnosis or finding?

12 A It was my opinion with reasonable medical certainty  
13 that Mr. Hughes suffers from paranoid schizophrenia and  
14 that as a result of his suffering from paranoid  
15 schizophrenia he was not criminally responsible for his  
16 actions on this particular day.

17 Q And when someone is having a psychotic episode is that  
18 reflective of their character?

19 A No, it's not reflective of their character. It's  
20 reflective of a disorganized at times incoherent state. In  
21 fact, many -- I've had occasion after Mar-Reece left our  
22 hospital to continue to treat him at Edisto and I met with  
23 the guards out at Edisto who would comment to me that he  
24 was a different man, in fact, probably what he was was the  
25 man he would have been had he never had mental illness

1 unless it was treated.

2 Q And you stated that you worked with Doctor Morgan and  
3 Doctor Dupree in treatment, is that correct?

4 A That's correct.

5 Q And did they also join with you in making a finding as  
6 to criminal responsibility?

7 A That's correct.

8 Q And did all three psychiatrists determine him not to  
9 be criminally responsible that evening?

10 A Doctor Morgan did. Doctor DuPree did not sign the  
11 report and I believe that that was just a matter of not  
12 being able to get her when the report went out and we  
13 needed to get the report out.

14 Q And when you made your finding as to his lack of  
15 criminal responsibility in regards to that April incident,  
16 were you privy to all the reports from other psychiatrists  
17 and other psychologists that had seen Mar-Reece prior to  
18 your involvement?

19 A Yes, I was.

20 Q Did you see the reports from Gilliam?

21 A I don't recall that at the time that we generated this  
22 report that we had seen those reports from Gilliam. I know  
23 we saw them later. I know we saw Doctor Connie McKee's  
24 report.

25 Q So in arriving at your conclusions you did look at the

1 reports of others?

2 A That's correct.

3 Q Once Mr. Hughes was medicated, I think you initially  
4 stated that he would not follow through with psychiatric  
5 -- I get psychiatrists and psychologists mixed up - did he  
6 follow through with psychiatric testing?

7 A I think what you are referring to is the psychological  
8 testing.

9 Q All right. Could you describe that - maybe you might  
10 want to describe the difference for the jury. I, myself,  
11 even get it confused.

12 A Psychiatric testing refers to formal mental status  
13 examinations what we talked about earlier. Psychological  
14 testing is a quantitative way of measuring it's what I  
15 talked about with the IQ test, that's a psychological  
16 test, it puts a number to things, it gets it into a  
17 concrete realm. The MMPI is a personality inventory, it  
18 can probably be better described by psychologists.

19 Q Okay. Did you have an occasion to complete that  
20 testing after he was properly medicated?

21 A After he was medicated, not before.

22 Q And, finally, did Mr. Hughes bring on his mental  
23 illness?

24 A No, Mr. Hughes did not bring on his mental illness. I  
25 don't think anybody would ever want to bring this on

1 themselves.

2 Q And can you describe how you get schizophrenia?

3 A There are a number of theories. If I had the one  
4 answer I probably could publish a paper on it, but a  
5 number of theories and these are actually supported that  
6 there's a strong genetic component. When you talk about  
7 genetics, people often think of what's known as classic  
8 mendelian genetics where if one parent has something,  
9 there's a fifty percent chance that a sibling will have  
10 it. With schizophrenia it doesn't follow classic  
11 mendelian genetics. There are probabilities. For instance,  
12 if one parent has schizophrenia, the probability, I  
13 believe, is twelve percent that a sibling will have it.  
14 If two parents have it, the possibilities go up. So that  
15 there's a definite genetic modus transmission, but it's  
16 not what they call complete penetrance. There is also a  
17 theory of what they call noxia in the womb. Basically, the  
18 fetus doesn't get supplied with enough oxygen and certain  
19 parts of the brain that are responsible for how you  
20 perceive external stimuli don't develop correctly. In  
21 Mar-Reece's case because there's such a strong family  
22 milieu component we could probably say safely that it was  
23 not a one time insult to the fetus, but rather something  
24 that occurred genetically in his particular family tree.

25

1 Q When Mr. Hughes was originally treated in 1992, was  
2 the physicians who were involved in his case aware of the  
3 family history of schizophrenia?

4 A Not to the degree that we have it today. We had  
5 basically a skeleton of the family history at that time,  
6 so we did not have all this information.

7 Q How would that have been helpful in making a diagnosis  
8 of Mr. Hughes' predisposition for schizophrenia?

9 A It changes the way you approach something. It's what I  
10 was talking about earlier when we look at a whole picture  
11 rather than just a little piece by piece dissection of  
12 this and what it does is if somebody presents to you and  
13 they are having some minor symptoms, there's no family  
14 history whatsoever of any kind of mental illness, but a  
15 recent stressor of being incarcerated, you are more likely  
16 to dismiss those symptoms as being secondary to being  
17 incarcerated or having other stressors in your life. If on  
18 the other hand you have got a young man around the age of  
19 twenty - twenty-one, which is about the age of  
20 presentation of schizophrenia coming to you with some mild  
21 symptoms who now has a strong family history with maybe  
22 four or five siblings suffering from it, you are probably  
23 going to think that these symptoms rather than being just  
24 a reflection of adjustment to incarceration are perhaps  
25 early signs of a more pervasive illness.

1 Q Is schizophrenia a mental illness that can be  
2 discovered or detected by a lay person like myself?

3 A No -- it could be if somebody is floridly psychotic  
4 and they are actively hallucinating, you have seen people  
5 like that on the street, then often times you could say,  
6 yes, that person clearly is either on drugs or is mentally  
7 ill. But if somebody is trying to present themselves as  
8 not mentally ill, they don't want you to see them as being  
9 mentally ill and you ask them questions that require a yes  
10 or no answers where they don't have to elaborate, then it  
11 would certainly be possible to miss it.

12 Q And if someone had incidental contact with Mr. Hughes,  
13 would it have been -- would you have been able to detect  
14 his schizophrenia?

15 A If Mr. Hughes did not want you to detect it, then I  
16 would venture to say it would be very easy to miss it.

17 Q And in Mr. Hughes' case when you interviewed him did  
18 you believe that he was malingering, I mean, was he faking  
19 it? Was he faking mental illness?

20 A No, it was not my opinion that he was faking mental  
21 illness and, of course, the first time I saw him my  
22 perspective was that this was a man who was competent to  
23 go to trial because that was my boss' opinion, so that was  
24 my perspective going into it. It wasn't until we sat down  
25 in that room with all the doctors and we got him to answer

1 some open-ended questions that his mental illness really  
2 to me was readily apparent and to the other doctors in the  
3 room at that time.

4 Q Could you describe for the jury if you would what kind  
5 of contact you would have had with Mr. Hughes?

6 A I've had extensive contact with Mr. Hughes  
7 particularly when he was in the hospital. When somebody is  
8 very guarded and very suspicious, you don't want to have  
9 frequent, intent, long conversations with them because  
10 that will make them more upset. So what I'll do with  
11 somebody like that is have very short, brief contact  
12 initially, but many of them, and I'll observe them like I  
13 was talking about before to see how they are doing. So  
14 initially when Mr. Hughes came into the hospital I had a  
15 great deal of contact with him several times a day and  
16 then as the medication began to take effect and also as  
17 the other treatment modalities, which include what we call  
18 support therapy, which is simply reality testing, seeing  
19 what is real and what is not, as he began to respond to  
20 these other modalities I was able to meet with him for  
21 longer periods of time. So throughout his hospitalization  
22 I had extensive contact with him on numerous occasions  
23 sometimes more than once a day, sometimes for long periods  
24 of time, sometimes for brief periods of time.

25 Q How common is it for someone to be found by three

1 psychiatrists to be not criminally responsible?

2 A It's very rare in general to find people not  
3 criminally responsible. The standard is a pretty high one,  
4 it's not just that you have a mental illness. In addition  
5 to having your mental illness you have to be so impaired  
6 as to not know right from wrong. To me that is a very high  
7 level of requirement and I personally don't find that  
8 finding very often, so I would imagine for three  
9 psychiatrists that probability goes down even further. In  
10 general, it's not a common finding at all.

11 Q And when that finding is rendered, are you aware of  
12 any case where someone is found by the court to be  
13 competent?

14 MR. POPE: Objection.

15 THE COURT: I sustain the objection.

16 Don't answer that question.

17 MS. BRICE: That's all the questions I have. Thank  
18 you.

19 MR. POPE: May it please the court, Your Honor?

20 CROSS EXAMINATION

21 BY MR. POPE

22 Q Doctor, you are currently at Georgia Regional  
23 Hospital, is that correct?

24 A That is correct.

25 Q what do you do there?

1 A I am the Medical Director of the Forensic Unit.

2 Q Okay. Is that like a County hospital or State  
3 hospital?

4 A That's a State hospital for Georgia.

5 Q And so in your capacity today are you here -- do you  
6 have a private practice or are you solely with The State  
7 of Georgia?

8 A I don't have a private practice per se, but I am not  
9 here today as a result of my work with The State of  
10 Georgia.

11 Q Are you paid a fee for being here today?

12 A Well, I'm billing a fee, I don't know if I will be  
13 paid it.

14 Q And what are you billing it at?

15 A With this case I am billing it at One Hundred Fifty  
16 Dollars an hour.

17 Q Does that include just your testimony or does that for  
18 the time that you have been here?

19 A I don't bill for my testimony, I bill for my time. My  
20 testimony is not for sale.

21 Q I'm not suggesting that, ma'am, you get paid whether  
22 you are sitting out there or whether you are sitting up  
23 here, is that correct?

24 A Theoretically, yes.

25 Q Does that also include the time that you have met with

1 Doctor Dupree and the defense? Do you charge for that  
2 time also?

3 A Not all of it, some of it.

4 Q Doctor, I want to make clear if I misstate what your  
5 job title is, I'm not being adversarial by doing that,  
6 when you first came with the State Hospital or with  
7 William S. Hall and the first time you came up here for  
8 the evaluation that you told the jury about, that was in  
9 1994, is that correct?

10 A That's correct.

11 Q And where in your career were you then, you explained,  
12 and, again, I don't want to put it - it's not an intern --  
13 what were you doing at the State Hospital or William S.  
14 Hall then?

15 A I had completed my internship my general internship  
16 and then had completed an additional three years of  
17 training in the field of psychiatry and then, in addition  
18 to that, I was beginning my forensic psychiatry  
19 post-graduate training.

20 Q And based on what you testified, you have never  
21 testified for The State in a penalty phase, is that  
22 correct?

23 A That's correct, nor defense until today.

24 Q When you came up you had told the jury that you were  
25 coming because you were going to hear Doctor Morgan and

1 Doctor Dupree have conflicting testimony and it was going  
2 to be a learning experience, is that correct?

3 A That's correct.

4 Q Had you met Doctor Dupree previously?

5 A No, I had not.

6 Q Were you aware that she was affiliated with William S.  
7 Hall prior to your coming in?

8 A Yes, I was.

9 Q And you were armed with that knowledge that day when  
10 you came up here, is that correct?

11 A I don't know if I knew it that day, but I found out  
12 soon thereafter because I wanted to know who that doctor  
13 was.

14 Q That was the first day that you had seen Mar-Reece  
15 Hughes, is that correct?

16 A That's correct.

17 Q And possibly the first day you had seen Doctor Dupree?

18 A Definitely the first day I had seen Doctor Dupree.

19 Q You said that on the day and I believe in the report  
20 that you put in you had referenced these different days  
21 and the different things that occurred, is that correct?

22 A What are you referring to?

23 Q Starting with the evaluation you told us about and  
24 various interviews that were done by William S. Hall, you  
25 related those in your report, is that correct?

1 A Are you talking about my pertinent statements on page  
2 one?

3 Q Yes, ma'am.

4 A Uh-huh, that's correct.

5 Q And so the date -- Basically, in the pertinent  
6 statements you related all the different records that you  
7 reviewed and the things that you had taken into  
8 consideration, is that correct?

9 A That's correct.

10 Q And also you referred to in the pertinent statements  
11 the various days that, for example, that Mr. Hughes was  
12 initially seen on 3-7, that he was admitted 10-26-92 and  
13 so on and so forth, you referenced those dates in the  
14 report that the jury will have?

15 A That's correct.

16 Q Okay. Would you tell me -- I think you testified that  
17 you had briefly when you were aware that Doctor Morgan and  
18 I believe Doctor McKee, who is a psychologist, there's a  
19 Doctor Constance McKee that was a psychiatrist and a  
20 Doctor Geoff McKee that's a psychologist, is that correct?

21 A That's correct.

22 Q All right, on Doctor McKee and Morgan's Report  
23 referenced August 1st, the competency report, ---

24 A Doctor Geoffry McKee.

25 Q I'm sorry, did I say Constance McKee?

1 A No, I'm asking you.

2 Q Yes, ma'am, Geoffry McKee, the August 1st Report,  
3 which would have been just several days before your first  
4 seeing Mr. Hughes, is that correct?

5 A Which report are you talking about?

6 Q I'll pull a copy of it. It would be the August 1st  
7 report regarding competency.

8 A Are you talking about the report of Doctor McKee and  
9 Doctor Morgan?

10 Q Yes, ma'am, because you told Ms. Brice that you  
11 reviewed the other records in making your determination,  
12 is that correct?

13 A Correct.

14 Q And my question is are you familiar with the report,  
15 the August 1st report?

16 A I'm familiar with this report and I am wondering if  
17 this is the report that Doctor Morgan was going to be  
18 testifying to on August 4th.

19 Q Do you want a moment to look at it?

20 A Yes, just a second. Mr. Pope, I think that this is  
21 the report that Doctor Morgan was going to court on  
22 originally on August 4th, if I'm correct.

23 Q Yes, ma'am.

24 A Okay.

25 Q Thank you. And so this was a report that Doctor

1 Morgan was going to testify to, in other words, before the  
2 big meeting here at the courthouse when you had two  
3 different opinions. On August 1st Doctor Morgan, who I  
4 think you described several times formerly as your boss.

5 A That's correct.

6 Q That he was going to come and report that Mr. Hughes  
7 had a bipolar disorder?

8 A Based on that report I assume. I don't want to testify  
9 for Doctor Morgan.

10 Q Okay, but you reviewed these records, is that correct?

11 A That is correct.

12 Q And you reviewed all the records in making this  
13 determination, is that correct?

14 A All the records that I had.

15 Q Could you tell me if there were certain records that  
16 you didn't have access to?

17 A There might be, I'm waiting to listen to you.

18 Q Ma'am, if you could, if you would tell me what it is  
19 that you reviewed, then maybe I could ask you. Is it  
20 reflected in your report what you reviewed?

21 A Yes, that's correct.

22 Q Under pertinent statements?

23 A Uh-huh.

24 Q Okay, so if you could relate to the jury what you  
25 reviewed.

1 A Sure. Do you want me to read the whole paragraph or  
2 just the numbers?

3 Q Just the numbers will be fine.

4 A In-patient records from 10-26-92 through 12-22-92.

5 Q And that would have been --?

6 A That was the previous hospitalization at William S.  
7 Hall. In-patient records from 9-8-94 through 11-18-94,  
8 those were the records of when I was treating him. Doctor  
9 Bernard's evaluation of 10-94 and 7-29, '94. Documents  
10 from the Office of the Solicitor regarding investigation  
11 of this crime.

12 Q And that was the -- the crime we are talking about now  
13 that was the crime you have on the jail murder, is that  
14 correct?

15 A That's correct. Letters from the defendant to his  
16 father dates reportedly prior to the charges on 4-12-93.

17 Q And so that was something written by Mr. Hughes, is  
18 that correct?

19 A His father -- no, -- that's correct. Continued weekly  
20 evaluations of the patient at Broad River and then the  
21 ninety minute forensic psychiatry interview.

22 Q That was the one that you conducted?

23 A That was the one with Doctor Morgan and Doctor Dupree  
24 present.

25 Q And both times that you have done interviews of that

1 type Doctor Morgan and Doctor Dupree and the defense  
2 counsel were present, is that correct?

3 A That's correct.

4 Q And so before the question before you were asked to  
5 give an evaluation as to criminal responsibility on the  
6 night that Mr. Williamson was killed, the murder in the  
7 jail, you had already made a determination of some type of  
8 schizophrenia, is that correct?

9 A Before we did that evaluation?

10 Q Yes, ma'am.

11 A We felt that he was suffering from schizophrenia,  
12 paranoid type.

13 Q The first time, as I understand it, that there was any  
14 indication of any finding on William S. Hall's part as far  
15 as schizophrenia would have been the meeting in August of  
16 '94 that took place here?

17 A That's my understanding too.

18 Q Okay and that's the first time you were present.

19 A That is correct.

20 Q Prior to that and again referring to the report you  
21 saw a minute ago, August 1st, Doctor Morgan was saying  
22 bipolar disorder and he was competent, is that correct?

23 A That's correct.

24 Q Okay. So after the meeting here, was it from that day  
25 forward that -- how did schizophrenia get interjected, how

1 was the determination made that schizophrenia was suddenly  
2 a possibility?

3 A What was evident on that day was that he was suffering  
4 from a psychotic disorder. There are a number of different  
5 psychotic disorders none of them are really very good to  
6 have, some of them have better prognoses than others, for  
7 instance, bipolar disorder is a better prognosis than  
8 schizophrenia. Major depression with psychotic features is  
9 probably a better prognosis than that. A psychotic  
10 disorder due to a substance would be even better because  
11 once the substance were out of the body, the psychotic  
12 disorder would not longer be there. So at that point we  
13 felt it was a psychotic disorder, which particular  
14 psychotic disorder is a matter of clinical judgment.

15 Q When did you first decide that you thought that  
16 Mar-Reece Hughes was schizophrenic?

17 A I can't tell you the exact time that I decided that,  
18 but when somebody comes in who has psychotic symptoms like  
19 with any medical illness when somebody comes in with  
20 certain symptoms you start thinking of a differential  
21 diagnosis so that if somebody had chest pains, you might  
22 think that they are having a heart attack, you might think  
23 that they are having discomfort secondary to some kind of  
24 GI distress, you might think that they have a  
25 pericarditis, go through a list of what are the possible

1 reasons that somebody is having chest pain. So that when  
2 somebody comes in with symptoms of psychosis, you start  
3 going or I start going in my mind through what we call  
4 differential diagnosis, what's going to cause somebody to  
5 be psychotic. I knew that there was some family history  
6 of schizophrenia. so schizophrenia was on my list at that  
7 point. I couldn't tell you at the exact point I said, yes,  
8 it was schizophrenia.

9 Q Okay, so you are looking for some pigeon hole to put  
10 his symptoms into, is that correct?

11 A I'm looking for the best diagnosis to tie everything  
12 together.

13 Q Okay, you are telling the jury that among the things  
14 that you considered was Doctor Dupree's report, is that  
15 correct?

16 A That's correct.

17 Q And if I am not mistaken, Doctor Dupree's report would  
18 that have been -- do you have them here with you today?

19 A I may or may not; if I could see your copy.

20 Q I think it's attached to the back. This is her other  
21 two reports. One I think would be the end of July and one  
22 was the end of October, is that correct?

23 A Okay. I think this was the report that went back to  
24 the court when they were asking what was going on. The  
25 second report was when the court was asking is he ready to

1 go back to court yet and we felt that he wasn't, but that  
2 he would be at some point.

3 Q Okay, that second report does not bear your signature  
4 or Doctor Morgan's signature, is that correct?

5 A That's correct.

6 Q And I think, in fact, you all sent a report yourself  
7 as to competency, is that correct?

8 A On which one? Which time?

9 Q On competency.

10 A On the case here?

11 Q My understanding as to competency implies regardless  
12 of the first murder or the second murder competency is can  
13 somebody come to court right now, is that correct?

14 A Well, which competency are you referring to?

15 Q The competency for Mr. Hughes to come back to trial on  
16 this case that we are in today.

17 A Today?

18 Q Yes, ma'am.

19 A Oh, yes, we all saw Mr. Hughes and we felt that he was  
20 competent to be at trial today.

21 Q And I think you and Doctor Morgan issued a report to  
22 that effect, is that correct?

23 A I think we are talking about different times. Are you  
24 talking about Mr. Hughes being in court right now?

25 Q Yes, ma'am.

1 A We didn't issue a written report as to this, we just  
2 -- are you talking about the Blair hearing just before we  
3 went to trial on this?

4 Q Yes, ma'am, did you not issue a report as to his  
5 competence?

6 A I know we are talking about the same thing, but we are  
7 not communicating.

8 Q Okay, let me try again. Did you issue a report as to  
9 Mar-Reece Hughes' competence in this case?

10 A Yes, that's this report that we are talking about  
11 here.

12 Q Okay, ma'am, I'd ask you what the report you just told  
13 and we were talking about what does it say in reference to  
14 competency to stand trial?

15 A It says "See previous staffing note."

16 Q What is the "previous staffing note"?

17 A November 16, 1994.

18 Q Okay, and is that a report that was sent to the court?

19 A That's correct.

20 Q Okay.

21 A This is it, yes.

22 Q Okay. Going back to my initial question about Doctor  
23 Dupree's reports you did, in fact, review these reports as  
24 part of what you did, is that correct?

25 A That's correct.

1 Q And I believe on Doctor Dupree's report and earlier  
2 you had said Doctor Dupree was court appointed to treat  
3 Mr. Hughes. Actually, when she came in the case she was  
4 retained by the defense, is that correct?

5 A I believe so. I remember at some point there was an  
6 Order from Judge Hayes that she and Doctor Morgan treat  
7 him.

8 Q She and Doctor Morgan as a joint treatment?

9 A Correct.

10 Q And is that particular report on July 27th, which,  
11 again, what this would be would be the opposite of Doctor  
12 Morgan's report when you told the jury that there was  
13 going to be conflicting testimony?

14 A Right.

15 Q She from the beginning had said schizo -- I can't even  
16 pronounce it - schizophreniform disorder?

17 A Schizophreniform. That's schizophrenia of less than  
18 six months duration.

19 Q Okay and that's what she was say?

20 A No, what she was saying is psychotic disorder NOS. So  
21 she is saying that there's a psychotic disorder here. I'm  
22 not sure what it is. I'm thinking it is schizophrenia.

23 Q So, again, in answering my question the first time  
24 schizophrenia was brought into the conversation was Doctor  
25 Morgan, yourself, Doctor Dupree would have been when

1 Doctor Dupree interjected it, is that correct?

2 A Two different questions. The first time I thought  
3 about schizophrenia would have been when I first met him  
4 and first had a chance to form a diagnosis. The first time  
5 it was brought into consideration certainly would be if  
6 Doctor Dupree had an opinion about it.

7 Q An opinion of what you partially based your opinion,  
8 is that correct?

9 A I consider her opinion, but I don't necessarily base  
10 it, I'll consider it.

11 Q And the first day that you saw Mr. Hughes and, again,  
12 all of this we are talking about is in 1994, is that  
13 correct?

14 A That's correct.

15 Q And, of course, the crime of in the jail was in April  
16 of '93, is that correct?

17 A That's correct.

18 Q So, again, when you came up here that day, the  
19 evaluation of William S. Hall Institute was that he was  
20 competent, possibly a bipolar disorder, nothing to do with  
21 schizophrenia until that day, the same day you first saw  
22 Doctor Dupree, is that correct?

23 A That's correct.

24 Q In your report and I'm now talking your report that is  
25 in evidence that Ms. Brice asked you about about the

1 murder in the jail --

2 A Uh-huh.

3 Q --- you had indicated that among the other things that  
4 you went through in making your determination was the  
5 information that was provided by my office, which,  
6 basically, the investigation ---

7 A That's correct.

8 Q --- and I think in there you took parts of it and  
9 referenced it in the report that the jury will have.

10 A That's correct.

11 Q As I was asking earlier you did not anywhere in there  
12 reference the misdiagnosis by Doctor Morgan in your  
13 report, is that true?

14 A No, I did not, but I was certainly aware of it.

15 Q But you would agree that the diagnosis of Doctor  
16 Morgan initially would be contrary to what the diagnosis  
17 is now, is that correct?

18 A And I believe Doctor Morgan would concur.

19 Q I realize we don't have page numbers here, but if you  
20 turn over what I believe to be the fourth page where you  
21 begin talking about the various inmates and the various  
22 statements they made you have garnered some of the things  
23 they said that Mar-Reece Hughes said?

24 A That is correct. I have it as the third page.

25 Q Okay. And you are talking about, the second paragraph,

1 you have a statement from inmate John Patton. Could you  
2 relate to the jury what part you enclosed in John Patton's  
3 statement in your report?

4 A I'm sorry, we are on different pages.

5 Q Again, "Not to be frankly psychotic" at the top of the  
6 page.

7 A I've got it.

8 Q And the second paragraph where you relate about John  
9 Patton.

10 A "In reviewing" you are talking about the paragraph "In  
11 reviewing the documents"

12 Q Yes, ma'am.

13 A Okay.

14 Q Okay and if you could relate to the jury half the way  
15 down in the paragraph "The statement from John Patton  
16 states that Mar-Reece" and it goes through -- could you  
17 relate that, please, ma'am?

18 A Sure, do you want me to just read from that point?

19 Q Please, ma'am.

20 A "Statement from John S. Walker states that 'during  
21 several conversations from Mar-Reece, his mind would come  
22 and go.'" "Statement from inmate John Patton states that  
23 Mar-Reece wanted to know what kind of time it would carry  
24 and was talking in circles and wanted Harry to keep  
25 talking to him. He was saying things like they can't do

1 nothing to me and I hate white people. Then he started  
2 saying that the green men were starting to act with him  
3 again. After this Mar-Reece began to talk to himself in  
4 riddles. He was saying things like the little man isn't  
5 asleep. I saw his foot move down there. He's playing  
6 possum and trying to act with my head over there."

7 Q Okay and the section about the little man you include  
8 that again to show delusions or what?

9 A It kept coming up that it wasn't just one person that  
10 had said it; it came up again.

11 Q Are you aware that in regards to the little man isn't  
12 asleep, I saw his foot move down there, he's playing  
13 possum and trying to act with my head that the other  
14 inmate in the cell had a sheet over him and had moved his  
15 feet and drew Mar-Reece's attention?

16 A That would certainly make sense and that would be  
17 consistent with him not - that kind of what I figured was  
18 going on, but there was some kind of reality and he was  
19 having some kind of interpretations to reality. "He's  
20 playing possum with me, that somebody was trying to mess  
21 with him."

22 Q Playing possum as in pretending you are asleep when  
23 you are really not?

24 A Or just mess with him. I'm not sure exactly why.

25 Q Okay. Ma'am, you obviously didn't print the whole SLED

1 report in there, you just took selections that supported  
2 and illustrated some of the things you were talking about,  
3 is that correct?

4 A I tried to take selections that would illustrate both.

5 Q Both sides.

6 A Right.

7 Q I am going to ask you if you could look in your report  
8 as to the statement of John Patton that you took those  
9 excerpts from, it should be tab eleven I believe in the  
10 SLED Report.

11 A Are you talking about in your report, in your  
12 document?

13 Q Yes, ma'am, the SLED Report, yes, ma'am.

14 A I may need yours because I put these in a different  
15 order.

16 Q It would be the statement of John A. Patton.

17 A Is this it?

18 Q No, ma'am.

19 A Okay.

20 Q And that is the statement that you took the excerpts  
21 out of, is that right?

22 A Uh-huh.

23 Q Okay.

24 A Well, actually that and the summary. There was this  
25 and then there was a synopsis of it, so I either took it

1 from here or from the synopsis.

2 Q Okay, but again the synopsis --

3 A Came from here.

4 Q Exactly. Okay, I am going to ask you if you could  
5 and, again, that was part of what you relied on to make  
6 your determination, is that correct?

7 A That's correct. Mr. Pope, I will be happy to read  
8 this, but what my concern is that if we could read the  
9 whole thing into the record and I don't know what we are  
10 going to accomplish with that because you can find  
11 something in here that will speak to one piece and I can  
12 find something that will speak to another piece.

13 Q Exactly, so in other words there are things that  
14 support schizophrenia and there are things that don't  
15 support schizophrenia, is that correct?

16 A In my opinion it is schizophrenia, but ---

17 Q I understand. Ma'am, no matter how many questions I  
18 ask you it is not going to change your opinion, is it?

19 A That's correct.

20 Q Okay, so I'd ask you if you could read the statement  
21 in its entirety, please.

22 MS. BRICE: Your Honor, may we please approach the  
23 bench?

24 (Bench conference off the record.)

25 THE COURT: It is probably a good time for a break

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1       anyway, so we will take our afternoon smoke, Coke,  
2       whatever.

3               (Jury retires to jury room.)

4       MS. BRICE: I would just ask the court to indulge  
5       while I consult ---

6       THE COURT: Why don't we go ahead and take a little  
7       short break? You can step down.

8               (Recess.)

9       All right, is The State ready?

10      MR. POPE: The State is ready.

11      THE COURT: Is the defense ready?

12      MS. BRICE: Yes, Your Honor.

13      THE COURT: And Mr. Hughes is present.

14              All right, the witness is back on the stand.

15      MS. BRICE: Thank you, Your Honor.

16      THE COURT: Do you have a Motion or an objection?

17      MS. BRICE: Yes, Your Honor, I would object to Doctor  
18      Kohanski testifying and reading from the statement of Mr.  
19      Patton. Within the statement there is hearsay within  
20      hearsay. While I realize that she has relied in part upon  
21      his statement she directly quoted from that statement  
22      within her own report, I would submit that within the  
23      Patton statement there are hearsay statements.  
24      Additionally, not only am I concerned about the hearsay  
25      aspect of the statement, but I am also concerned about the

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1 fact that there are racial overtones within Mr. Patton's  
2 statement and at this point in time I feel that to  
3 interject the racial overtones of the statements that were  
4 made within the written document will only tend to inflame  
5 the jury at this point and take them off the track as to  
6 the psychiatric testimony that is being testified to in  
7 the court today. Additionally, I would say that the  
8 prejudicial effect as far as the racial statements that  
9 are within the written statements will only offer  
10 prejudicial and no probative information as far as what  
11 her diagnosis and how she attempted to reach a diagnosis.  
12 I think she should be able to testify to the fact that,  
13 yes, I read Mr. Patton's statement, he was one of the  
14 persons who I relied upon in making my diagnosis. I have  
15 already had her read the statements from her report and I  
16 would request that it be limited to the statements within  
17 her report. Thank you.

18 THE COURT: Mr. Pope?

19 MR. POPE: May it please the court, Your Honor? First,  
20 to dismiss the racial element, in her own report and,  
21 again, that's not my purpose to putting up the racial  
22 issue, Your Honor, but in her own report she stated and  
23 quoted that language that he was saying things like "They  
24 can't do nothing to me; I hate white people." She read  
25 that out of her own report, Your Honor. The issue I would

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1 be getting to is in Mr. Patton's statement there are  
2 numerous indications of Mr. Hughes making decisions, of  
3 planning, of asking questions and determining how to  
4 effect this particular murder, indications contrary to him  
5 not knowing right from wrong, that he was, in fact, asking  
6 questions in an attempt to plan this murder out.

7 MS. BRICE: Perhaps if the Solicitor would like -- if  
8 he could tell me where he was going to have her read from  
9 the statement, if we are going to stay away from the  
10 racial aspect, but I still have concern about the fact  
11 that my client is not going to be confronting a witness to  
12 whom she is going to be testifying.

13 MR. POPE: Your Honor, for that matter we fall into  
14 the same trap that she is selecting quotes from material  
15 she read and interjected specific quotes to support her  
16 position.

17 THE COURT: Yeah, I think the bottom line is that  
18 under Rule 705 an expert may in any event be required to  
19 disclose the underlying facts or data on which they  
20 relied. I think the proper question would be is there  
21 anything else in this report on which you relied in  
22 reaching your diagnosis. If the answer is yes, then you  
23 can ask her what else is in there on which she relied on.  
24 I don't think you can ask her questions concerning what  
25 she didn't rely on. That raises a different question

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1       though as to whether or not they had some - she should  
2       have relied on something else, but that would be for an  
3       expert to testify to, I mean, I think that the Rule says  
4       the expert may in any event be required to disclose the  
5       underlying facts or data on which they testified or on  
6       which they reached their opinion or inference.

7               MR. POPE: Your Honor, we certainly ought to be  
8       allowed to cross her on that data. I mean, again, if you  
9       have ---

10              THE COURT: On what she relied on, yes.

11             MR. POPE: Okay, so in other words, okay, exactly, so  
12       what she relied on in making this decision that she's  
13       giving an opinion to the jury. By the same token if she  
14       said -- I said did you take into consideration that he  
15       asked what a pen would do to somebody if you stuck it in  
16       their neck. I have to be able to ask that to show that  
17       she didn't take that type thing into consideration. In  
18       other words, ---

19             THE COURT: I follow what you are saying and I'm just  
20       looking at the Rules, I'm just trying to see how it falls  
21       because it does not seem fair, if that's the right word,  
22       to say, well, shouldn't you have relief on something else,  
23       but it could also be argued that's the backdoor way of  
24       getting in testimony. I think the proper way to reach the  
25       things on which she did not rely would not be to interject

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1 it through perhaps cross examination but through rather  
2 another witness who had reached the same or a different  
3 opinion who said that that would have been important in  
4 reaching that opinion. I mean, I'm just looking at the  
5 Rules and we have gotten new Rules and ---

6 MR. POPE: Yes, sir, and I think that ---

7 THE COURT: --- but it says, 703 says, if facts or  
8 data on which an expert bases an opinion may be those  
9 perceived or made known at or before the hearing - so we  
10 are talking about before the hearing - if of a type  
11 reasonably relied upon by experts in the particular field  
12 to form opinions or inferences upon the subject, the  
13 facts or data need not be admissible in evidence. That  
14 means she can rely on hearsay. All right, but 705 states  
15 that she or any expert may testify to those opinions  
16 without giving underlying facts or data unless the court  
17 requires otherwise, which we don't have here because she  
18 has already finished testifying. The expert may, in any  
19 event, be required to disclose the underlying facts or  
20 data on cross examination. If you look at facts and data,  
21 then that takes you back, I believe, to 703, that is, the  
22 facts and data on which they base their opinion or  
23 inference.

24 MR. POPE: And, again, Your Honor, I know we are going  
25 in circles here, but then the argument would be the Rules

1 require her to disclose it, but I'm not able then to do  
2 anything with it. I can't cross her and say, you know, ---

3 THE COURT: Yes, you can cross her and ask her on what  
4 else did you rely? Is there anything else in this report  
5 on which you relied? And if she relied on it, then she's  
6 got to testify to it, but if there are things in there  
7 that she didn't rely on, I don't think you can get it in  
8 through this witness.

9 Do we need to go further or do you understand?

10 MR. POPE: I kind of hate we did it with the witness  
11 in the courtroom, but I guess I'll see what her answer is  
12 when I ask the question, Your Honor.

13 THE COURT: Well, she's been sworn twice, you will get  
14 a correct answer from her I would think.

15 All right, anything further?

16 MR. POPE: No, sir, Your Honor.

17 THE COURT: All right, bring in the jury.

18 (Jury returns to courtroom.)

19 MR. POPE: May it please the court?

20 CROSS EXAMINATION

21 BY MR. POPE (RESUMED)

22 Q Doctor, I believe the jury left when we were  
23 discussing your report. I want to make sure again I give  
24 you the right one, State's Exhibit 9, is that it?

25 A Uh-huh, that's correct.

1 Q In particular we were discussing the issues of various  
2 statements that you had given - segments of the statements  
3 in your report and you used the SLED report that you have  
4 been referencing as a part of your evaluation, is that  
5 correct?

6 A That's correct.

7 Q And did you take into consideration the entirety of  
8 the SLED report?

9 A That's correct.

10 Q In particular did you take into consideration John  
11 Patton's statement?

12 A That's correct.

13 Q And in John Patton's statement did you also take into  
14 consideration the allegations concerning Mr. Hughes trying  
15 to find ways of killing someone?

16 A I did and I think I even addressed that in my report.

17 Q Would that have been on the last page where you  
18 discussed "It appears Mr. Hughes may have been planning  
19 this crime by securing a weapon"?

20 A That's correct.

21 Q In addition to securing a weapon did your research  
22 also indicated that he asked others about various means of  
23 killing?

24 A Yes. I found the sentence I was looking for. "It  
25 appears Mr. Hughes may have been planning this crime by

1       securing a weapon, but there is not clear reasons for the  
2       commission of the act."

3       Q    Okay and when you are telling the jury "There is no  
4       clear reasons for the commission of the act," there's no  
5       good reason to kill another individual, is that what you  
6       are saying?

7       A    There is no reason that I can make sense of short of  
8       some sort of psychotic, delusional system why this  
9       occurred.

10      Q    Mr. Hughes chose to kill everyone in his cell or one  
11      individual in his cell because he wanted to -- no reason  
12      is required, is that correct?

13      A    I don't consider a psychotic state to be choice.

14      Q    Okay, Doctor, if he is not psychotic, he still doesn't  
15      have to have a reason to kill Mr. Williamson, is that  
16      correct?

17      A    If somebody is not psychotic, they do not have to have  
18      a reason?

19      Q    Thank you.

20      A    No, I'm asking you - I am repeating, is that what you  
21      asked me?

22      Q    Yes, ma'am.

23      A    The two negatives, if somebody is not psychotic - do  
24      people kill without motives? I assume they do.

25      Q    Thank you. Doctor, you reviewed in fact I think you

1 were a party to the report of Doctor Morgan when Mr.  
2 Hughes was evaluated in 1992 as to the murder of Brent  
3 McCants for criminal responsibility, is that correct?

4 A That's correct.

5 Q And I think he was evaluated again as to that same  
6 criminal responsibility because Doctor Constance McKee has  
7 since gone out of state, is that correct?

8 A That's correct.

9 Q And you were a party to that evaluation also?

10 A That's correct.

11 Q And as to the night that Brent McCants was killed your  
12 finding is that he was criminally responsible.

13 A That's correct.

14 Q And, again, we are now talking not 1993, we are  
15 talking about 1992, September 25th, right?

16 A Correct; and all consistent with schizophrenia.

17 Q I'm sorry, ma'am?

18 A In listening to your questions the thing that's  
19 occurring to me is that and I am listening and I'm trying  
20 to hear - I don't know if this is occurring too, but what  
21 I hear in 1992 a man commits an act and there's no mental  
22 illness and then in 1993 there is ---

23 Q That's what you are saying, is that correct?

24 A Right; and I'm saying this is consistent with  
25 schizophrenia with an onset in the twenties and, in fact,

1 when we look back to his previous admission at William S.  
2 Hall, there was a period which I spoke about earlier, two  
3 weeks, that he had unusual digressive behavior, which in  
4 retrospect I think represented at least one prodromal  
5 phase to his illness.

6 Q Okay, Doctor, again talking about prodromal phase, the  
7 first time you ever saw him was the summer of '94, is that  
8 correct?

9 MS. BRICE: Your Honor, I think we need to approach  
10 the bench on this. (Bench conference off the record.)

11 Q Doctor, I seem to be going in circles here, so I am  
12 going to put all these reports down. Mar-Reece Hughes  
13 killed Brent McCants September 25, 1992. Even in your  
14 opinion he was criminally responsible, is that correct?

15 A That is correct.

16 Q And the evaluations that were done -- the only  
17 evaluation that he had in close proximity to the 1993  
18 incident would be the 1992 evaluation of Constance McKee,  
19 is that correct, and Doctor Morgan, the first evaluation,  
20 is that correct?

21 A Correct and then the subsequent evaluation that we did  
22 later.

23 Q Okay, and that would have been --

24 A That was in March of ---

25 Q '94?

1 A --- of '94.

2 Q Okay.

3 A -- March of '95.

4 Q And during the evaluation of February of 1994 --  
5 evaluations at Gilliam Psychiatric Hospital in which he  
6 was diagnosed as malingering and anti-social personality  
7 disorder that was prior to you even being involved in  
8 this, is that correct?

9 A I believe so. I need the dates of those. That's  
10 correct. I came in August, '94, these reports are dated  
11 February, 1994.

12 Q So prior to you being involved before the 1993  
13 incident he was diagnosed as adjustment disorder. After  
14 the '93 incident the next diagnosis he had was of  
15 malingering and anti-social personality disorder, is that  
16 correct?

17 A To my understanding that's correct.

18 Q Okay and, again, as to 1992, September 25th, when  
19 Mar-Reece killed Brent McCants, he was criminally  
20 responsible, is that correct?

21 A That's correct, that's been my opinion.

22 Q All right, thank you, ma'am.

23 THE COURT: Redirect?

24 MS. BRICE: I beg the court's indulgence for just one  
25 moment.

1 REDIRECT EXAMINATION

2 BY MS. BRICE

3 Q Doctor Kohanski, I have just one question for you. Did  
4 you consider in your diagnosis and treatment the fact that  
5 it appeared that there was no provocation upon attack of  
6 Mr. Gordon and Mr. Williamson? Did you consider that?

7 A Yes.

8 Q And what was -- did it change your diagnosis or what  
9 weight did you give to that?

10 A The fact that there was no provocation?

11 Q As far as how did that tie into the schizophrenia?

12 A In any murder or any kind of heinous crime, obviously,  
13 you want to look for a reason why this has happened.

14 Somebody who's been known to be floridly psychotic and  
15 then who then presents with information, in my opinion,  
16 that confirms that he was psychotic at the time of the  
17 crime puts logic to the fact that there was no  
18 provocation. If there's psychosis, you don't need a  
19 motive. The motive is disorganized, disillusioned, maybe  
20 he thought someone was after him, maybe he thought hey  
21 were plotting. The fact that there's no provocation is  
22 consistent with his diagnosis, not inconsistent.

23 Q Thank you.

24 RECROSS EXAMINATION

25 BY MR. POPE

1 Q Doctor, if he was provoked, in other words, if Mr.  
2 Williamson had had a prior altercation that day, does that  
3 change your diagnosis?

4 A No, it does not change my diagnosis.

5 Q So whether he was or wasn't provoked really doesn't  
6 have anything to do with it?

7 A Inasmuch as whether it's consistent or not consistent.

8 Q Thank you.

9 THE COURT: You may step down. Thank you. Can this  
10 witness be excused?

11 MS. BRICE: Yes, sir.

12 THE COURT: I appreciate your time. Feel free to  
13 leave.

14 All right, let me have counsel up here, please.

15 (Bench conference off the record.)

16 Members of the jury panel, the defense informs me they  
17 have two more witnesses. Each will take probably about as  
18 long as this last witness, which would take us well after  
19 six and we have some legal matters to go over either this  
20 afternoon or in the morning. So we can start later in the  
21 morning and stop earlier this afternoon. So we are going  
22 to stop with the jury presentation and do our matters that  
23 we have to take up because we have got to do it sometime  
24 and we might as well do it now. Tomorrow you will have  
25 two witnesses, which I imagine it will take about the same

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1 time as this last witness and then you will have the  
2 opportunity to hear the attorneys make their arguments and  
3 then you will have my charge, which will be much much  
4 shorter than the charge I gave you earlier. So I will  
5 anticipate that we have this case in your hands around  
6 lunch time, so we will send out for lunch tomorrow and I  
7 feel very comfortable although I am sometimes as you all  
8 have already found out proven wrong, but I feel very  
9 comfortable in telling you that we will probably have this  
10 case in your hands around lunch time tomorrow. So have a  
11 pleasant evening. It might be your last night at the  
12 hotel. I know that might be very welcomed, but that's the  
13 plan as I see it right now. Have a pleasant evening.

14 (Jury exits courtroom.)

15 THE COURT: I want to bring up and, Ms. Lowery, don't  
16 leave yet because you need to hear this. I would like the  
17 record to reflect, and it has been called to my attention,  
18 but it didn't have to be, that about 5:04 during the  
19 testimony of Doctor Kohanski, while she was being cross  
20 examined by the Solicitor, the decedent's mother arose  
21 from her seat, walked hurriedly and deliberately to the  
22 back of the courtroom, flung open the glass panel  
23 inter-door and before they had time to close, hit the  
24 latch on the outer wooden door causing it to make a very  
25 loud sound sounding like a door was being slammed. I did

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1 observe that and as soon as that happened a Motion was  
2 timely made here at the bench by counsel for the defendant  
3 for a mistrial.

4 Do you want to elaborate on that?

5 MR. SCHUSTERMAN: Your Honor, I think you articulated  
6 the facts for the record as we observed. I would add that  
7 I was not participating in either the direct or cross  
8 examination. I will tell the court that as an officer of  
9 the court that when that second loud noise was heard, the  
10 second door opening, that fourteen jurors turned their  
11 heads and what I find particularly distressing about it is  
12 I think that at some point given the relationship now that  
13 Ms. McCants has thrown herself into it as being a witness,  
14 the emotional testimony of yesterday, and now her behavior  
15 today I think rises to a level as to commenting on the  
16 facts that are coming into the court's deliberation and  
17 that would be the basis for the mistrial. It's not merely  
18 court conduct, but at some point a person can hold such a  
19 role within a trial as she had in this particular case the  
20 court will note the emotional testimony yesterday that her  
21 behavior does rise to the level of persuading fourteen  
22 jurors as her commenting on the facts. For that reason we  
23 make a motion for a mistrial.

24 THE COURT: Let me also say, I neglected to say, that  
25 another lady who I think was earlier identified as her

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1 sister, who has been sitting with her, a lady with silver  
2 gray hair, exited right behind her with about the same  
3 speed of exit and my thought was sort of yours it was very  
4 much it appeared to the court to be a non-verbal  
5 expression, which I characterized as quite a few things,  
6 in regards to the testimony of the witness, but suffice it  
7 to say, the implication was certainly negative. I will say  
8 no more than that about the various adjectives that come  
9 to my mind.

10 Solicitor, anything you wish to say about that?

11 MR. POPE: Your Honor, I am trying to gather the  
12 information.

13 THE COURT: This is one of the few times when I have  
14 to be a witness to it all because it caught my eye prior  
15 to the sound, so I observed the whole thing. I'm not  
16 supposed to be a witness in this I know, ---

17 MR. POPE: I understand that, Your Honor.

18 THE COURT: --- but I think when something of that  
19 happens in this court, it's my duty to put it on the  
20 record and then see what, if anything, needs to be done  
21 because it was not appropriate.

22 MR. POPE: Yes, sir. Your Honor, I don't if there is  
23 much the Solicitor can say. I have taken every step ---

24 THE COURT: I'm not finding fault with you, Solicitor,  
25 I assure you of that.

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1           MR. POPE: I understand. I'm just saying I don't much  
2 that I could argue, you know, if mistrial is what is  
3 appropriate, I guess we will have to face it. I'm not  
4 arguing with the court, but I have done everything I know  
5 humanly possible to allow Mrs. McCants to be present, you  
6 know, under the circumstances and I don't know, Your  
7 Honor, I just again The State is trying to put up their  
8 case and we are doing the best we can as far as  
9 controlling this.

10           MR. SCHUSTERMAN: And for the record, Your Honor, in  
11 no way do I imply Solicitor Pope had something to do with  
12 that. The Solicitor was doing nothing more than cross  
13 examining and I think this was an action that was solely  
14 on the victim's mother's part, but I think, Your Honor, it  
15 rises to the level that fourteen jurors had put their  
16 attention and concentration away from a witness and they  
17 all simultaneously -- as an officer of the court I tell  
18 you because I was watching them - turned and looked at  
19 this woman with another woman following her. I believe it  
20 was her sister, but I saw another woman scurrying after  
21 her. I believe that is a prejudicial effect that can't be  
22 overcome, Your Honor. Thank you.

23           THE COURT: I would like to go on the record that  
24 because of the emotional posture of any case like this and  
25 particularly this one I have had several discussions with

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1 the Solicitor and they have bent over backwards to try to  
2 prevent this sort of thing. I certainly want the record  
3 to reflect that. We have discussed it and the Solicitor's  
4 Office for the record, you can't see the layout of this  
5 courthouse, but it is such that it is very difficult for  
6 the -- well, I'll put it like this, the witnesses and Mrs.  
7 McCants and the jury all have to use the same hallway for  
8 the entrance and exiting the building and the Solicitor's  
9 Office has been very cooperative in trying to make sure  
10 that those twains never meet and to my knowledge they have  
11 not, so I certainly find no fault with the Solicitor.

12 I'm not going to grant the Motion for a Mistrial. I  
13 think it was a very unfortunate thing. If it were to  
14 happen again, we would have to look at it differently. If  
15 the defense wishes to prepare and you don't have to do it  
16 right now, a curative instruction of some sort, we will  
17 take a look at that before my charge and we are going to  
18 go over the charge in just a minute. I don't think that  
19 the jury could be more well aware of Mrs. McCants'  
20 emotional involvement than they were about this time  
21 yesterday when she testified, so it would appear to me  
22 even though it was uncalled for and bordered on being  
23 disruptive and it was momentarily disruptive apparently, I  
24 think that it appeared, I mean it could have been taken as  
25 frustration as much as anything, and the jury already

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1 knows how she feels about this matter, and while it was  
2 not testimonial testimony to an extent, and while it may  
3 be interpreted as it could be perhaps a negative comment  
4 on the testimony of the witness who was testifying, taking  
5 the totality of the circumstances and all the context in  
6 which we find ourselves after two weeks of trial almost,  
7 if you count the pre-trial motions, I don't find that it  
8 was prejudicial to the extent that it would warrant the  
9 granting of a mistrial.

10 Anything further, Mr. Schusterman?

11 MR. SCHUSTERMAN: No, Your Honor.

12 THE COURT: All right, now let's while we have got a  
13 little bit of time I'll ask you this. I noticed during  
14 trial, it was handed up to me and I signed Orders of  
15 Transportation for I believe it was Walker and Gaithers --  
16 no, Walker and Jennings ---

17 MR. BRACKETT: Walker and Jennings and Mr. Gaithers  
18 will be here at 8:30 in the morning, Your Honor.

19 THE COURT: All right, we will have those three  
20 witnesses available. I'm not going to ask you now whether  
21 you plan to put them up or not. I'll let you talk to them  
22 first and then we will deal with that matter tomorrow.

23 MR. BRACKETT: All three of them for your information  
24 will be here at 8:30. That should be an hour prior to  
25 court. We brought them here a little early to give the

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1 defense time to speak to them.

2 THE COURT: I'm not sure when I let the jury go if I  
3 told them 9:30, but when we have them all in one group it  
4 is not as bad as when we have to make fourteen calls, but  
5 we won't start before 9:30. Now while we have got some  
6 time, I know everybody is weary, but I know you will be  
7 less weary than at lunch time tomorrow. Are you ready to  
8 look at charges or would you rather come in early in the  
9 morning? Well, the defense needs to be talking to those  
10 witnesses. Do you want to take a look at charges this  
11 afternoon?

12 MR. POPE: We are prepared to whenever the defense is,  
13 Your Honor. I think Ms. Jefferson has been reviewing The  
14 State's Requests.

15 THE COURT: I see she just coincidentally just arrived  
16 on the scene.

17 MR. POPE: Yes, sir.

18 MS. JEFFERSON: May it please the court? Your Honor,  
19 in regards to the ---

20 THE COURT: Well, let me do it like this.

21 MS. JEFFERSON: Yes, sir, I'm sorry.

22 THE COURT: Do you have any you want to hand up first?

23 MR. POPE: I have previously have given them to the  
24 court and have given the defense a copy.

25 THE COURT: I am going to do it the way I usually do

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1 it, go through The State's first. Has the defense had a  
2 chance to look at The State's Request Number 1?

3 MS. BRICE: We are looking at it now, Your Honor.

4 THE COURT: Well, if you need some time, we can do it  
5 in the morning.

6 MS. BRICE: It would be probably more efficient.

7 THE COURT: Well, I'll run through it real quick. I  
8 have looked at Number 1. It is predicated on - just so you  
9 will know, and this is not a ruling, it's just where we  
10 are - Number 1 does appear to be appropriate. I don't  
11 think it is verbatim language, but it is an appropriate  
12 statement of the law as set forth in Longworth. Number 2 I  
13 cover in my regular charge. Number 3 I cover. I don't know  
14 if I say exactly like that, but I do cover that and I will  
15 pretty much charge that in some fashion. Number 4 on  
16 accomplice liability that also cites Longworth. It appears  
17 to be an appropriate statement, again, it does not appear  
18 to be a direct quote; and I've also looked at Tyson vs  
19 Arizona. I, fortunately, had that up here on the bench  
20 with me and it does appear -- actually, it does appear to  
21 be more out of Tyson than it does out of Longworth, which  
22 it does appear to be an appropriate charge.

23 Now as to -- That was all I had from The State. Any  
24 more?

25 MS. JEFFERSON: That's all, Your Honor.

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1 THE COURT: As to the Defense Number 1, I believe I  
2 pretty much cover that in what I have already gotten  
3 prepared. And before you leave, I'll run off what we have  
4 in my charge. It's still got a lot of hieroglyphics and  
5 stuff written in it, but I'll run off and give you what I  
6 have at this time. I don't know where my Number 2 got to,  
7 we'll come back to that. Number 3, that we are going to  
8 have to look at because that is a trigger man type or  
9 close to it and we do have the stuff that I've just gone  
10 over in Longworth, so we will need to look at that in  
11 connection with the Longworth. Number 4, mitigating  
12 factors, I pretty well cover. Number 6, I had previously  
13 stated a different way in my charge, but I am going to use  
14 the defense as they have questioned that and there is a  
15 sentence in here about -- it's not the way we might use  
16 that word in every day speech and so I am going to use the  
17 one handed up by the defense. Number 6, we need to look  
18 at. That's one we might want to have to talk about. Number  
19 7, I'll have to hear The State on that. That has to do  
20 with the no parole, which, of course, is the current law  
21 as to whether or not that is chargeable or not, the old  
22 charge about life being -- the usual understanding or  
23 whatever, understanding the ordinary meaning. It may not  
24 be the rule anymore. And Number 8 ties in, it's the same  
25 type Request and I have to admit I've lost Number 2.

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1 MS. BRICE: Your Honor, I don't think I had a Number 2.  
2 It had to be retyped.

3 THE COURT: Oh, I didn't lose it. Okay, well, I  
4 didn't lose it. All right.

5 Anything else we can do today?

6 MR. POPE: No, sir, Your Honor.

7 THE COURT: Could you -- do you mind, Solicitor,  
8 running this off. We can do it on our fax machine, but it  
9 will take until about 8:00 tonight to do ten pages or  
10 whatever, so if you will just run off two copies.

11 MS. BRICE: Your Honor, this morning I think it was  
12 stipulated that the Genogram that was prepared would also  
13 be admitted into evidence.

14 THE COURT: All right.

15 MR. POPE: Yes, sir, that was without objection.

16 (Defendant's Exhibit Number 3 marked and filed.)

17 THE COURT: All right, so we will have at least two  
18 witnesses, maybe those three, the people being brought.  
19 How long do each side think they will need for argument?

20 MR. POPE: Your Honor, I would say probably thirty or  
21 forty-five minutes. I don't think we'll split it this  
22 time. I'll take care of it. Mr. Brackett makes all my good  
23 points if I let him go first.

24 THE COURT: He takes all your time.

25 MS. BRICE: I will say probably no more than an hour

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1 for all three of us perhaps.

2 THE COURT: I certainly agree and I'll talk - you say  
3 three and I'll talk again with Mr. Hughes. He does not  
4 have to let me know his decision at this point, but, of  
5 course, I will need to advise him again. I don't find  
6 anything wrong with that time frame. And the charge is  
7 much shorter and it shouldn't take but fifteen or twenty  
8 minutes.

9 MR. POPE: Your Honor, the one thing that we haven't  
10 really addressed, but you just kind of touched on, is that  
11 if we get into a situation that Mr. Hughes wanted to  
12 address the jury that we clearly define the perimeters  
13 such that he can comment, but that he can't interject new  
14 facts that aren't subject to ---

15 THE COURT: I will - if I do not tell him that, that's  
16 my plan, but remind me and I'll also remind counsel for  
17 the defense they need to discuss with him the fact he has  
18 already testified, he has opted not to testify in this  
19 stage and apparently is not, so his testimony -- I mean,  
20 he still has time, but he can do that, but at this point  
21 based on the count I've been given, by that, that's a math  
22 decision, but make sure he does understand that he cannot  
23 testify, but rather argue from the facts as to the  
24 sentence. Is that correct, Ms. Brice?

25 MS. BRICE: Yes, sir.

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1 THE COURT: All right, we will be at ease until -- we  
2 will be back at 9:00 in case we need to go on the record  
3 with anything and go over these charges real quick and  
4 start back with the testimony at 9:30.

5 SEPTEMBER 22, 1995

6 THE COURT: Take your seats.

7 Is The State ready to proceed?

8 MR. POPE: The State is ready, Your Honor.

9 THE COURT: The defense?

10 MS. BRICE: I'm getting my papers together. Yes, I'm  
11 ready, Your Honor.

12 THE COURT: And the defendant is present.

13 All right, first let me ask, has counsel for the  
14 defense had an opportunity to talk with the three inmates,  
15 I believe it was Jennings, Walker and Gaithers?

16 MS. BRICE: Yes, sir.

17 THE COURT: You have had that chance to talk with  
18 them?

19 MS. BRICE: Yes, sir, I spoke with Mr. Gaithers. He  
20 informed me that he could not recall the incidents of that  
21 evening. Mr. Jennings informed me that he would prefer  
22 not to talk with me about the events that occurred that  
23 evening. And Mr. Walker informed me that he did not recall  
24 making any statements of the type - I showed him a copy of  
25 the Report, but he did not recall making that statement.

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1 THE COURT: Would you like to have Mr. Jennings brought  
2 here and put under oath and require him to answer  
3 questions?

4 MS. BRICE: I don't know if he's going to be able to  
5 offer anything other than ---

6 THE COURT: Well, I don't either, but I'm just going  
7 to give you that --

8 MS. BRICE: Right. No, sir, I don't think that it  
9 would be of any value.

10 THE COURT: All right. Now, we are running a little  
11 late and I don't know if you want to start directly into  
12 testimony and during our break go over the charges or do  
13 you want to go ahead and do the charges now?

14 MS. BRICE: If you could, Your Honor, yes.

15 THE COURT: All right, now we went through ---

16 MR. POPE: Your Honor, it is my understanding Ms.  
17 Brice is saying she wants to do the testimony first.

18 THE COURT: Is that -- okay, that's fine.

19 MS. BRICE: If that will be okay with you.

20 THE COURT: Oh, yes, I didn't give you the option, let  
21 you choose one and say, no, that's not the right one. I  
22 wouldn't be giving you the option. All right, so we are  
23 ready to proceed with testimony?

24 MS. BRICE: Yes, sir.

25 MR. POPE: Yes, sir.

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1 THE COURT: All right, bring in the jury.

2 Good morning.

3 Call your next witness.

4 MS. BRICE: Your Honor, I call Doctor Donald Morgan.

5 THE COURT: Come around and be sworn, please, sir.

6 DONALD WILLIAM MORGAN, being duly sworn,

7 testified as follows:

8 DIRECT EXAMINATION

9 BY MS. BRICE

10 Q Doctor Morgan, would you please state your full name  
11 for the record?

12 A Donald William Morgan.

13 Q And where do you live?

14 A Route 1, Box 194 M, Blackstock, South Carolina

15 Q Where are you employed?

16 A University of South Carolina, School of Medicine.

17 Q In what capacity?

18 A I am Professor of Psychiatry and Director of The Hall  
19 Institute.

20 Q Where is The Hall Institute?

21 A It's the Research and Training Division of The South  
22 Carolina Department of Mental Health.

23 Q If you would, Doctor Morgan, would you please tell the  
24 jury a little bit about your educational background?

25 MR. POPE: Your Honor, I am going to stipulate. I

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1 think he was previously qualified and I will be glad to  
2 stipulate to save that time.

3 THE COURT: Psychiatry and forensic psychiatry?

4 MR. POPE: Yes, sir.

5 MS. BRICE: Yes, sir.

6 THE COURT: I find that he is qualified as an expert  
7 in those fields.

8 Q Doctor Morgan, how long have you been practicing  
9 forensic medicine?

10 A I've never ---

11 Q Excuse me -- forensic psychiatry?

12 A I've never exclusively practiced forensic psychiatry.  
13 I have always had a forensic psychiatry portion of my  
14 practice over the thirty-five years that I have been in  
15 practice. Over the last eight years the vast majority of  
16 the time has been forensic psychiatry.

17 Q You have thirty-five years experience in what type of  
18 medicine?

19 A In psychiatry, doing evaluations for a variety of  
20 courts and supervising other psychiatrists in such  
21 evaluations.

22 Q And would you describe for the jury a little bit about  
23 the function of William S. Hall Institute?

24 A William S. Hall Institute is the research and training  
25 arm of the South Carolina Department of Mental Health.

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1 It's a two hundred bed hospital which has primarily  
2 children, a forensic service and adult service and then  
3 many out-patient services, plus it has a large research  
4 component looking into problems of children and currently  
5 the problem of dually diagnosed individuals. Those are  
6 people who have substance abuse problems as well as major  
7 mental illnesses.

8 Q And could you also describe for the jury if you would  
9 why type of function William S. Hall has as far as its  
10 association with people accused of a crime?

11 A William S. Hall Institute has a pre-trial forensic  
12 section, it is a fifty bed in-patient facility, and does  
13 about six hundred out-patient evaluations a year. The  
14 clients are referred there either by the defense, by the  
15 prosecution, and sometimes by the court itself. The  
16 questions that we are asked are to assist the court in the  
17 role of possible mental illness in proceedings before the  
18 court.

19 Q Have you had occasion to speak with and meet with Mr.  
20 Hughes?

21 A Yes.

22 Q And have you met with him on more than one occasion?

23 A Yes.

24 Q What was the purpose behind your original contact with  
25 Mr. Hughes?

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1 A Originally I was supervising Doctor Constance McKee  
2 who was taking care of Mr. Hughes on an in-patient basis  
3 in the Fall, I believe, of '93.

4 Q Fall of 1992?

5 A '92.

6 Q And at that time did you with Doctor McKee, I think it  
7 was the testimony, you treated Mr. Hughes?

8 A Doctor McKee was the principal person treating Mr.  
9 Hughes. She felt he had an adjustment disorder with  
10 depressed mood. I agreed with that. We did the evaluation  
11 for the court and he was returned to the Detention Center  
12 on a low dose of an anti-depressant medication.

13 Q Did you have an occasion to have a subsequent  
14 involvement with Mr. Hughes?

15 A Yes.

16 Q Can you describe that for the jury?

17 A Okay, in August of 1994 we were asked by the court to  
18 re-evaluate Mr. Hughes for his competency to stand trial.  
19 I did that along with Doctor Geoff McKee. It was our  
20 opinion at that time that he was competent, but we knew  
21 that the defense psychiatrist felt he was not competent  
22 and we recommended to the court that there be a joint  
23 evaluation of Mr. Hughes where both defense and we could  
24 evaluate Mr. Hughes together.

25 Q And at that time the testimony -- let me rephrase

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1 that. When you testified in court in regards to a criminal  
2 case are you usually called by The State or by the  
3 defense?

4 A Generally, I am called by The State, but it's not  
5 unusual to be called by both The State and the defense.

6 Q In this circumstance you are called by the defense, is  
7 that correct?

8 A Right here today?

9 Q Yes, sir.

10 A Here today I am called by the defense. The evaluation  
11 that you were speaking about a moment ago I was called by  
12 The State.

13 Q And if I recall correctly the August, 1994,  
14 essentially you and Doctor McKee were in disagreement with  
15 the diagnosis of Doctor Dupree, is that correct?

16 A Not only Doctor Dupree, but Doctor DeWitt, who was  
17 caring for Mr. Hughes as a safekeeper at Broad River  
18 Correctional Institution. Doctor DeWitt also felt that  
19 way.

20 Q Doctor DeWitt felt what way?

21 A Felt that he was not competent - Doctor John DeWitt  
22 felt that he was not competent.

23 Q So Doctor DeWitt and Doctor Dupree felt that Mr.  
24 Hughes was not competent in August of 1994 to stand trial  
25 and you and Doctor McKee were questioning their assessment

1 of that?

2 A Yes.

3 Q And based upon your interview with Mr. Hughes on that  
4 August, 1994, date what essentially developed, what  
5 happened?

6 A During the joint interview?

7 Q Yes, sir.

8 A During the joint interview with Doctor McKee, Connie  
9 McKee, and others examined Mr. Hughes in the presence of  
10 his attorney and the solicitor. It was clear at that time  
11 to us, to me, that Mr. Hughes was not competent, that his  
12 thoughts were not progressing in a logical manner, that  
13 one could not make any rational sense of the answers to  
14 open-ended questions and clearly our evaluation of five  
15 days before was wrong. We recommended to the court that he  
16 be returned to the hospital for treatment.

17 Q When you evaluated Mr. Hughes five days prior to this  
18 August of 1994 - I think it was the August 4th meeting, I  
19 believe that you had with Doctor McKee - what were your  
20 findings on that occasion?

21 A We thought that he was competent to stand trial.

22 Q And can you describe if you would to the jury how you  
23 arrived at this incorrect decision?

24 A I think that what the error that we committed, both  
25 Doctor Geoff McKee and myself. I think our error was that

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1 we asked him specific questions about the court and the  
2 court proceedings, who the solicitor was, about what he  
3 was charged with, what the potential penalties could be,  
4 and those are very specific questions which you could  
5 answer briefly and when he began to stray, we asked him  
6 another question which, of course, he could answer  
7 correctly and briefly again. So the error was, my error  
8 was, not giving him an opportunity to talk at an  
9 open-ended question like tell us what you think about your  
10 lawyer. We never did that. I never did that. That was my  
11 error.

12 Q And subsequent to your I guess August 4th analysis of  
13 him was there a point in time where I believe you made a  
14 diagnosis of bipolar disorder?

15 A That's a mistake. That's simply a mistake. That was a  
16 typographical mistake that I should have caught.

17 Q So Mr. Hughes has never been diagnosed with bipolar  
18 disorder?

19 A Not that I know of.

20 Q And after the competency hearing with Doctor DeWitt,  
21 Doctor Dupree, yourself, and Doctor McKee and several  
22 fellows, along with a couple of attorneys, what was the  
23 outcome? What happened subsequent to that meeting?

24 A Mr. Hughes was returned to Broad River and within a  
25 month of so he was admitted to William S. Hall Psychiatric

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1 Institute for further evaluation and treatment. The judge  
2 had ordered treatment since Mr. Hughes felt at that time  
3 that he did not have a mental illness and that he did not  
4 want any medication of any kind.

5 Q And I believe just to stress the findings of the joint  
6 group at that time was that Mr. Hughes was not competent  
7 to stand trial, is that correct?

8 A That's correct.

9 Q And then Mr. Hughes began treatment at the William S.  
10 Hall Institute?

11 A Yes.

12 Q And who was his treating physician at that time?

13 A Doctor Renee Kohanski.

14 Q And were you supervising her?

15 A Yes.

16 Q And did you have occasion to have subsequent contact  
17 with Mr. Hughes?

18 A Yes, I had a lot of contact with Mr. Hughes. On his  
19 second hospitalization I had a lot of contact with Mr.  
20 Hughes. I participated in evaluations of Mr. Hughes on  
21 repeated occasions and I sat in anytime that his lawyers  
22 came to see him. I also had to participate in having him  
23 forcefully given medication over his objections.

24 Q Did he voluntarily go to William S. Hall?

25 A No.

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1 Q Was that a court order?

2 A Yes.

3 Q And you just touched basically briefly upon the fact  
4 that initially that he was not voluntarily accepting  
5 medication, is that correct?

6 A That's correct.

7 Q And what was his mental state at that time?

8 A I thought that he was very psychotic. He became  
9 agitated relatively easy. He clearly was delusional with a  
10 magical system, which explained his behavior, everyone  
11 else's behavior on the ward, including the nurses and the  
12 medical students, and Doctor Kohanski, so that he really  
13 did need anti-psychotic medication.

14 Q Would it be accurate for me to state that at the time  
15 he was refusing the treatment and the medication he was in  
16 a psychotic state?

17 A Yes, that's correct.

18 Q And at this time is he accepting medication?

19 A He is now.

20 Q And how did his condition from your observations  
21 improve with the medication?

22 A After several weeks of medication he became far more  
23 cooperative. He participated in psychological testing,  
24 which he had refused previously. When he talked with us  
25 and when he talked with his lawyers, he was far more

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1 rational, far clearer in giving information about the  
2 incident, which his lawyers needed, without any agitation  
3 and a sense of humor returned and he changed dramatically  
4 in his presentation and his interaction with the people on  
5 the ward.

6 Q And based upon your observation and treatment of him  
7 did you arrive at a diagnosis?

8 A Yes.

9 Q And what was that diagnosis?

10 A Mr. Hughes has schizophrenia, paranoid type.

11 Q And do you concur with the diagnosis of Doctor  
12 Kohanski, basically the same diagnosis?

13 A Yes.

14 Q And I believe also Doctor Dupree has made that  
15 diagnosis. Do you concur with her?

16 A Yes.

17 Q If you gave someone the medication - if you would, if  
18 you would tell the jury what type of medication Mr. Hughes  
19 is on.

20 A He's on prolixin deconoate 200 milligrams every four  
21 weeks.

22 Q If you gave a person who did not have paranoid  
23 schizophrenia or schizophrenia, if you gave someone who  
24 did not have that type of illness, what would the side  
25 effects be?

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1 A If one did not have? The side effects would probably  
2 be that you'd go to sleep for a while for several days. We  
3 did a small research study with this drug with medical  
4 students and residents and very, very low doses and the  
5 vast majority of them had problems with their muscles and  
6 many of them became drowsy and none of them would continue  
7 to take that medication, so it is a medication that has  
8 serious side effects and cannot be tolerated by most  
9 people who do not have a psychotic illness.

10 Q And based upon your testimony Mr. Hughes has responded  
11 well to that medication?

12 A Yes, he has gained weight, he is pleasant, cooperative,  
13 can relate facts in a logical manner, can answer  
14 open-ended questions without talking about a magical  
15 system. And Mr. Hughes now is in agreement with the  
16 doctors that he suffers from a mental illness.

17 Q Was there a period of time where he denied having a  
18 mental illness?

19 A There was a long period of time when he denied having  
20 a mental illness.

21 Q Could you describe that for the jury?

22 A He was a safekeeper at Broad River and he set his room  
23 on fire and when I evaluated him incorrectly, came to the  
24 wrong conclusions, he explained that away. He said, well,  
25 he was just heating a cup of coffee. When we asked him

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1 about not eating, about his large weight loss, he didn't  
2 tell us that that was because he thought his food was  
3 being poisoned, which he told us afterwards that that was  
4 being poisoned by specific officers and other inmates who  
5 had access to poison his food. He didn't tell us that  
6 when he looked out his small window that he got messages  
7 from the birds and the animals on the side. So all of that  
8 he hid from us and it wasn't until he had been in the  
9 hospital for a period of time that he was able to tell us  
10 about that. He hid his mental illness.

11 Q How difficult is it or a lay person such as myself to  
12 perhaps see that someone is schizophrenic?

13 A It depends on the symptoms. It depends on the symptoms  
14 that the person is having at the time. If the person is  
15 taking his clothes off and preaching in church because God  
16 has told him to do that, I think most people in the church  
17 would think that something is wrong, but on the other  
18 hand, if they are controlled by medication, ten to fifteen  
19 percent can be gainfully and competitively employed, so it  
20 depends on how active the symptoms are and what treatment  
21 they are receiving.

22 Q In Mr. Hughes' case how easy was it to detect his  
23 schizophrenia?

24 A Well, clearly I didn't -- clearly I made the mistake  
25 twice, so if I made the mistake, it would be easy for

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1 other people to make a mistake.

2 Q And subsequent to having more contact with Mr. Hughes  
3 you realized that, in fact, he had schizophrenia?

4 A That's right.

5 Q Subsequent to your diagnosis of the schizophrenia,  
6 were you called to make a recommendation as to Mr. Hughes'  
7 criminal responsibility in regards to the incident that  
8 occurred in April of 1993?

9 A Yes, we had a court order to evaluate that.

10 Q And what were your findings in regards to his criminal  
11 responsibility as far as that incident was concerned?

12 A It's my opinion that at the time that that incident  
13 occurred Mr. Hughes was so psychotic as to not be able to  
14 appreciate the wrongfulness of his behavior.

15 Q And if you would could you explain, I think you just  
16 touched on it, but if you could explain a little bit  
17 further what criminal responsibility is.

18 A That's the ability to distinguish right from wrong and  
19 to appreciate the wrongfulness of your behavior.

20 Q And did you find that Mr. Hughes could appreciate  
21 right from wrong on that incident that occurred in 1993 -  
22 in April of 1993?

23 A If you ask Mr. Hughes whether murder is wrong, he will  
24 always tell you that murdering somebody or assaulting  
25 somebody is wrong, so from that point of view even

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1 when he was most sick he always would know that murder was  
2 wrong. That's not part of the test that we're saying.  
3 We're saying that he was so sick at that time that he  
4 didn't appreciate that what he was doing would lead to a  
5 person's death or appreciate that that was wrong.

6 Q In order to arrive at your findings that he was not  
7 criminally responsible upon what information did you rely?

8 A I relied on a large amount of information provided us  
9 by the Solicitor's office.

10 Q Did that include statements of inmates?

11 A Yes, it included inmates' statements and it included  
12 incident reports and a number of statements from inmates  
13 that were in the adjacent cells. It also included  
14 information from the Mental Health Center. It included  
15 diagrams and I think it even included a history of when he  
16 was moved from one part of the detention center to  
17 another, so there was a lot of excellent information.

18 Q And when someone is acting out and delusional or in a  
19 psychotic state is that a good indication or an indication  
20 as to his character?

21 A No.

22 Q Could you explain why?

23 A We all have character or personality and when we have  
24 an illness superimposed on that whether it is a physical  
25 illness, like a serious heart attack, diabetes or a

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1 psychiatric illness, we are trying to cope with that  
2 illness so when you are treating someone immediately after  
3 a serious heart attack, you might see a very passive,  
4 irritable individual, but as soon as he recovers from that  
5 and goes back to his normal life, he may be an  
6 overbearing, domineering boss. So during any acute stress  
7 it is not a time to talk about the person's overall  
8 character whether it is an acute stress of a loss or an  
9 acute stress of a physical injury or an acute stress of a  
10 psychiatric injury.

11 Q Would the incident that occurred on April of 1993 be a  
12 good indicator as to Mr. Hughes' character? Would that  
13 tend to indicate what Mr. Hughes' character is?

14 A Well, that incident was in my opinion directed by his  
15 mental illness, so I don't think that one could judge his  
16 character based on that. If you want to judge his  
17 character, you have to look at his developmental history,  
18 his work history, his adjustment, overall, not just that  
19 one point in time.

20 Q How common is it to render a diagnosis or opinion of  
21 lack of criminal responsibility?

22 A In South Carolina it is very infrequent.

23 MS. BRICE: I beg the court's indulgence. I have no  
24 further questions.

25 Q Thank you, Doctor Morgan.

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1 CROSS EXAMINATION

2 BY MR. POPE

3 Q Doctor Morgan, how many death penalty cases have you  
4 testified in?

5 A Well, actually I do know that. I have testified in  
6 fourteen death penalty cases.

7 Q And how many penalty phases have you testified in?

8 A Well, I don't know that for sure, but probably most of  
9 them.

10 Q And on most of those you were testifying for The State  
11 or the defense in the penalty phase?

12 A In the penalty phase?

13 Q Yes.

14 A I think with only two exceptions I have been called by  
15 the defense.

16 Q Doctor, you were talking about character and as I  
17 understood you were saying that mental illness, in other  
18 words, and I think we have been through this the first  
19 time you testified, it wouldn't give a true picture of  
20 character, is that right?

21 A When you are acutely psychotic and your mental illness  
22 is in an active phase.

23 Q As you diagnosed Mar-Reece Hughes being on the morning  
24 of the jail murder.

25 A Right.

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1 Q By the same token you diagnosed him as being not  
2 mentally ill, not having a major mental illness the night  
3 he killed Brent McCants, is that correct?

4 A That's correct.

5 Q Doctor Morgan, we have gone through a number of dates.  
6 I understand there were a number of evaluations you have  
7 told the court about. I am going to ask you to go through  
8 them and I want to clear them up for the jury so we can  
9 keep our years - I think at one point Ms. Brice had asked  
10 you '93 instead of '94 and I just want to try to keep that  
11 straight. You did not see Mr. Hughes prior to the death of  
12 Brent McCants, is that correct?

13 A That's correct.

14 Q And so that would have been Brent McCants was killed  
15 September 25th of 1992. You said the first evaluation by  
16 your department would have been ---

17 A Shortly thereafter in November- December of '92.

18 Q In November-December of 1992 and that was Doctor  
19 Constance McKee and your evaluation ---

20 A Yes, sir.

21 Q --- where you found there was no major mental illness  
22 at that time.

23 A That's correct

24 Q Doctor, I believe then the next time he would have  
25 been seen, according to the records that you reviewed,

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1 would have been at Gilliam in February of 1994, is that  
2 correct?

3 A He had a Gilliam admission I can't remember which one  
4 it was. I didn't see him then.

5 Q Yes, sir, but you reviewed those records.

6 A I reviewed those records.

7 Q Okay, I apologize. I have the records if that will  
8 help you. The Gilliam incident was in February?

9 A I looked at that file of his, setting a fire in his  
10 cell.

11 Q Going back in April of 1993 it would be the jail  
12 murder, is that correct?

13 A Yes, sir.

14 Q Okay and as I say, after the jail murder, the next  
15 evaluation, again not done by you, but the next evaluation  
16 you would have reviewed would have been Gilliam Hospital  
17 when he was diagnosed as malingering, is that correct?

18 A Actually, I think Doctor DeWitt had seen him along  
19 there.

20 Q Okay.

21 A But I'm not sure that we have all of the records, but  
22 I think Doctor DeWitt, who was serving that population at  
23 that time, had seen him. Now I am not sure who the  
24 petitioner was that moved him to Gilliam.

25 Q On the February incident.

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1 A On the February incident.

2 Q You do have some information as far as Doctor DeWitt  
3 you said when he came up when you all met.

4 A Right.

5 Q So as far as a report or any, I guess, diagnosis would  
6 be the proper word, the diagnosis we had in February was  
7 malingering and anti-social personality.

8 A That's correct.

9 Q And, again, malingering, for a lack of a better term  
10 is faking or feigning some ---

11 A Feigning.

12 Q Doctor, I think then the next evaluation, I realize  
13 these are general dates because you may see him at the end  
14 of July and write your report at the end of August, was on  
15 roughly August 1st I think was the one you were talking  
16 about and that was when you said he was competent?

17 A Yes, sir.

18 Q Okay, and along that same time at the beginning of  
19 August that's when Doctor Dupree had become involved and  
20 had a different opinion as you stated to the jury, is that  
21 correct?

22 A I think she had been involved before that and I think  
23 she had been involved with him prior to our office  
24 evaluation.

25 Q And you have also reviewed her various reports too, is

1 that correct?

2 A Yes.

3 Q I will show you the first report and ask if you could  
4 relate to the jury the date that she evaluated him?

5 A July 22, 1994.

6 Q So ---

7 A That's shortly before this evaluation.

8 Q So she had evaluated in July and that's when she had  
9 seen with psychosis or psychotic disorder, is that  
10 correct?

11 A Yes, she didn't specify what psychotic disorder, only  
12 that he was psychotic.

13 Q Okay and psychotic disorder NOS means not otherwise  
14 specified?

15 A Right.

16 Q And RO schizophreniform - I can't pronounce it.

17 A Yes, schizophreniform, that's right. Rule out that  
18 means ---

19 Q Rule out - we don't know what it is, but we need to  
20 look ---

21 A We need to think about schizophrenia.

22 Q Okay and that was in July, then in August you had the  
23 meeting with all the doctors here.

24 A Yes.

25 Q And during that time period from August when you had

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1 that meeting onward that you started looking closer at  
2 schizophrenia, is that correct?

3 A That's right.

4 Q So the first one, you have explained to the jury as  
5 far as you felt you made a mistake on the other  
6 evaluation.

7 A I'm not sure we made any mistakes on that evaluation,  
8 the first hospitalization. I think in retrospect you could  
9 see perhaps prodromal schizophrenia, but I clearly made a  
10 mistake on the August 1st of '94 evaluation.

11 Q And that was that you told the jury in the form of the  
12 questions?

13 A That's right.

14 Q Okay. So from August 1st forward or roughly that time  
15 once you had the meeting here at the courthouse and I  
16 believe that was several days prior to the trial beginning  
17 at that time, is that correct?

18 A Right, a Blair hearing.

19 Q And a Blair hearing is a competency hearing?

20 A A competency hearing, yes.

21 Q Okay, from then forward is when schizophrenia first  
22 came into the picture as a diagnosis, is that correct?

23 A Yes.

24 Q And then at that time there are various other reports  
25 to the court concerning competency to be tried now?

1 A Yes.

2 Q Okay, and also, again, you reviewed the initial report  
3 that was done with Constance McKee and, again, what you  
4 told the jury several times now your opinions as far as  
5 Mar-Reece Hughes knowing right from wrong or exercising  
6 will power on the night that he killed Brent McCants has  
7 not changed.

8 A It has not changed.

9 Q And he knew right from wrong then?

10 A Yes.

11 Q And then I think you told us that you were asked to  
12 evaluate as to the April crime. I think, if you need the  
13 records, you were asked to evaluate in April of 1995, is  
14 that correct?

15 A That's correct.

16 Q And in April of '95 and that is the one Ms. Brice  
17 asked you about, that's when you said that he has  
18 schizophrenia that would have kept him from knowing right  
19 from wrong.

20 A That is correct.

21 Q So, Doctor, you would agree with me that the closest  
22 evaluation to the jail murder was done by your Department  
23 the November-December, 1992, evaluation, is that correct,  
24 the closest in time?

25 A The closest in time, yes.

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1 Q Likewise he was evaluated by Gilliam in February of  
2 '94, which is some time -- well, certainly the closest to  
3 the time when he committed the jail murder would have been  
4 your evaluation in November-December, is that correct?

5 A Well, actually he was seen in the Mental Health Center  
6 where they described his paranoia, but continued our  
7 diagnosis.

8 Q Okay, and ---

9 A That was in January-February. He was only seen a  
10 couple of times. After he left our hospital, because he  
11 was on Elavil, we made an appointment in the Mental Health  
12 Center here ---

13 Q You are talking about Catawba Mental Health?

14 A Catawba Mental Health Center and they while they  
15 continued the diagnosis of adjustment disorder described  
16 paranoid thinking.

17 Q Okay and he had seen Catawba Mental Health here after  
18 your November-December as a follow-up because you had  
19 given him some medication as to depression, is that  
20 correct?

21 A That's right.

22 Q Doctor, do you have the notes that you referred to  
23 from Catawba Mental Health?

24 A I'll have to look for them, I'll try.

25 Q If you would, I would appreciate it.

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1           Okay, if you could indicate to me that would have been  
2 by a Social Worker Bellamy and a Doctor Johnson, is that  
3 who did those evaluations?

4           A    Bellamy is right; I can't read -- I'm not sure who the  
5 doctor was. Doctor Johnson was there, so it may well have  
6 been Doctor Johnson.

7           Q    You said in those notes there was some indication of  
8 him being psychotic?

9           A    No, of his being paranoid.

10          Q    Oh, being paranoid?

11          A    Right.

12          Q    Could you define that, please?

13          A    Mildly paranoid - I can show you here; you might not  
14 have this - See current mental health problems: mildly  
15 paranoid, chronic depressed, decreased appetite, I've  
16 always been depressed, saw a psychiatrist while in prison.

17          Q    This is information that he is relating to them, is  
18 that correct?

19          A    Yes.

20          Q    Okay, so he was relating that he was depressed and  
21 paranoid at that time?

22          A    Well, he may not -- then on the next page ---

23          Q    Yes, sir.

24          A    --- flat affect, mildly depressed, vague as to hearing  
25 voices - he didn't admit hearing voices, like whoever this

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1 person is, ---

2 Q Right.

3 A --- had the suspicion he was hearing voices.

4 Q That's what you read into "vague as to hearing voices"  
5 means this person has the suspicion?

6 A Right. Poor ability to abstract, which again goes to -  
7 they carried forward the diagnosis that we had.

8 Q Okay, again, that was relying on initially the  
9 diagnosis that you had in 1992?

10 A Yes.

11 Q Doctor, you had told Ms. Brice about this particular  
12 medication. Did you say Prolixin?

13 A That should be Haldol. If I said Prolixin, that's a  
14 mistake. He's on Haldol deconoate.

15 Q Okay. And what was the dosage -- he's been on that for  
16 how long now?

17 A He's been on it ever since I don't know exactly when  
18 we actually forced it the first time, but it was in that  
19 1994 ---

20 Q It's been a period of time.

21 A Right, late '94.

22 Q And is there a tolerance that builds for that drug?

23 A No, there are side effects. People become adapted to  
24 the side effects, but in terms of tolerance, no.

25 Q The first dosage you give him is it the same dosage

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1 you give him now?

2 A No, we started with a smaller dosage and built it up.

3 Q I guess that's my question. Like now you said it's  
4 like 200 milligrams every four weeks?

5 A Yes.

6 Q The first day you don't give him 200 milligrams?

7 A No.

8 Q And so when you use the example, and I think it has  
9 been used that if it was given to me it would knock me  
10 out, 200 milligrams might, but you could certainly work me  
11 up on the dosage also, is that correct?

12 A No, I don't think so. I've never actually tried that,  
13 but I don't think so.

14 Q You did say you gave it to students ---

15 A To students, medical students in residence, but that  
16 was a very, very small dose. that was a one time dose of 2  
17 milligrams.

18 Q And it made them sleep?

19 A We gave it to them in the morning. We were trying to  
20 see if we could measure it in their blood stream. We were  
21 trying to look for tests which would allow us to make an  
22 accurate estimate of how much people were taking on an  
23 out-patient basis and so we gave them a small dose to see  
24 whether or not our chemical tests would detect it and  
25 would detect it in some reasonable fashion. It didn't. I'm

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1 only relating to you the effect on normal people.

2 Q Okay. So the test you were doing was to see if you  
3 could detect it in the blood stream?

4 A We were trying to make a test, make a chemical test so  
5 that when people came in as an out-patient we could see  
6 whether they were actually taking the medicine.

7 Q You said one of the effects would be that it would  
8 tend to make you sleep more or you said knock you out or  
9 two or three days?

10 A A large dose would clearly put you to sleep.

11 Q Doctor, I guess the question I am trying to get at,  
12 Ms. Brice had asked if you give it to somebody that is not  
13 psychotic, then it would just knock them out, but if they  
14 are, it doesn't. Is that -- the question I am asking do  
15 you use Haldol as a diagnostic tool? Do you use it to  
16 determine -- everybody that comes in that you think has  
17 schizophrenia do you give them Haldol?

18 A No.

19 Q So is ---

20 A You are correct, Mr. Pope, it is not a diagnostic  
21 tool.

22 Q So you just don't just give people Haldol, I mean, Ms.  
23 Brice had asked where he's taking Haldol and he's not  
24 going to sleep, so he must be psychotic, that's not  
25 correct, is it?

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1 A That's not a correct way to look at that.

2 Q Doctor, as to, and I think we have made the dates  
3 clear now, as to 1992, Brent McCants' death, we are not  
4 talking about schizophrenia at all, what we are talking  
5 about is from the jail murder forward.

6 A That's right.

7 Q And so then the jail murder there were indications  
8 from the SLED file that you read, you talked about  
9 receiving documents from my office, that was the SLED  
10 investigation, is that correct?

11 A Well, it's a whole set of reports and it has a SLED  
12 summary on it.

13 Q And in those particular files there were indications  
14 that I think are reflected in Doctor Kohanski's report of  
15 times when Mr. Hughes referred to, in essence, planning  
16 this act too. There was two sides to it?

17 A Yes, there are two sides to it, that's correct. Some  
18 of the inmates talked about things that he said that would  
19 look like he planned it and other inmates talked about  
20 things about how sick he was, right.

21 Q And you received and reviewed those materials in April  
22 of 1995 or thereabouts, is that correct?

23 A Yes.

24 Q Okay, so at the time you received and were looking and  
25 reading those SLED materials that had both sides to it,

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1 you and other doctors had already made the determination  
2 of schizophrenia, is that correct?

3 A That's right.

4 Q So now as looking at that you then try to project  
5 backwards how far the schizophrenia has gone, is that  
6 correct?

7 A That's right, that's exactly right.

8 Q And you determined from that you then took the  
9 schizophrenia back two years, is that correct?

10 A Probably, it was beginning there in the Mental Health  
11 Center reports. In retrospect it might have been beginning  
12 when he was in the hospital on his first evaluation.

13 Q Which, again, even if it was in the first evaluation,  
14 that was after Brent McCants was killed.

15 A Right. It had nothing to do with Brent McCants.

16 Q Thank you, Doctor.

17 REDIRECT EXAMINATION

18 BY MS. BRICE

19 Q I think you were just looking over for Mr. Pope the  
20 Mental Health records from Catawba Mental Health. These  
21 are a portion of them and, basically, what I am looking at  
22 is the date that the service began and the date the  
23 service ended to Mr. Hughes. Would you please tell the  
24 jury when he began his treatment with Catawba Mental  
25 Health?

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1 A December 30, 1992.

2 Q And when did it stop?

3 A April 9, 1993.

4 Q Okay. Thank you. And I believe you also testified to  
5 the fact that Mr. Hughes went to Gilliam back in 1993, is  
6 that correct?

7 A Yes.

8 Q Okay, and did he have occasion also in 1993 to see a  
9 Doctor John DeWitt?

10 A Yes, John DeWitt was treating the people in Broad  
11 River at that time.

12 Q And did Doctor DeWitt make any reference to paranoia  
13 or what you later diagnosed as schizophrenia?

14 A Well, you have just given me new information here. I  
15 don't think I have seen this before.

16 Q You have not seen this?

17 A I don't think so.

18 Q What did you testify to as to Doctor DeWitt?

19 A When John came up here for that evaluation we talked  
20 about I guess. That was in August.

21 Q So you never have seen a report where he made findings  
22 as to Mr. Hughes' psychological state in 1993?

23 A No, I didn't see that.

24 Q Okay, that's fine. But in making your decision you  
25 did look at several documents that had been provided to

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1 you, is that correct?

2 A Yes.

3 Q If you would, Doctor Morgan, look over what I have  
4 placed up here.

5 A This is a Department of Corrections Physicians  
6 Transfer Note.

7 MR. POPE: May it please the court, Your Honor, I  
8 think I am going to have to object. If I understood  
9 correctly, this witness did not review this particular  
10 piece of evidence. It falls right in the same situation we  
11 talked about where they try to introduce evidence that is  
12 hearsay through another witness.

13 MS. BRICE: And I'm not going to ask him - I'm going  
14 to ask him not what it says, Your Honor. I am not going to  
15 have him testify as to what it says. I am going to ask him  
16 if he ever saw this document before.

17 THE COURT: I thought he had already answered that.

18 Q And were the documents that you were provided provided  
19 to you by the Solicitor's office?

20 A Well, we got some directly - we had a lot of  
21 documents, not just from the Solicitor's Office, no. We  
22 got documents from the Department of Corrections, the  
23 Gilliam Center. That just didn't happen to be in there.

24 Q And, finally, sir, is there anything by the way that  
25 Mr. Hughes conducts himself now while he's on medication

1 of Haldol that supports your conclusion as to his  
2 diagnosis?

3 A In terms ---

4 Q Do you understand?

5 A No.

6 Q Okay, is there any way that he conducts himself today  
7 while he is on Haldol that supports your conclusions for  
8 his diagnosis?

9 A Well, the amount that he is receiving a dose of Haldol  
10 he certainly behaves totally differently than what we  
11 observed in his last hospital session.

12 Q Thank you.

13 THE COURT: Mr. Pope?

14 RECROSS EXAMINATION

15 BY MR. POPE

16 Q Doctor Morgan, you had stated -- just explain to the  
17 jury if you are at Gilliam Psychiatric, what is Gilliam?  
18 When you talk about Gilliam.

19 A Gilliam Psychiatric Center is an eighty bed maximum  
20 security hospital within the Kirkland facility at Broad  
21 River in Columbia.

22 Q Okay and are you aware that after the August  
23 evaluation that took place with you and the other doctors  
24 here that prior, I believe, to coming to your care that  
25 Mr. Hughes again went to Gilliam for a period of time

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1 before he came to you, is that correct?

2 A I don't know.

3 Q You said you had reviewed the records from Gilliam.  
4 Did you review any records concerning his mental state  
5 from 8-19 forward from Gilliam?

6 A Mr. Pope, I have not seen this. I'm sorry. We don't  
7 have that.

8 Q And so you did not take these records into  
9 consideration ---

10 A No, I did not.

11 Q --- you did not have them.

12 A No, I've not seen them.

13 Q Doctor Morgan, the effects of Haldol that you have  
14 described, again, I know we have been over this twenty  
15 times now, the effects of Haldol have nothing to do with  
16 his actions on the night Brent McCants was killed, is that  
17 correct?

18 A No.

19 Q Thank you.

20 THE COURT: You may step down. Can this witness be  
21 excused?

22 MS. BRICE: Yes, sir.

23 MR. POPE: No objection.

24 THE COURT: Appreciate your time. You feel free to  
25 leave.

1 Call your next witness.

2 DAFFERLIN BARNARD DUPREE, being duly  
3 sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. BRICE

6 THE COURT: She has previously been qualified as an  
7 expert in the field of psychiatry.

8 MR. POPE: No objection.

9 Q Doctor Dupree, if you will please state your full name  
10 for the record.

11 A Dafferlin Barnard Dupree.

12 Q And you have had occasion to meet with Mr. Hughes, is  
13 that correct?

14 A That's correct.

15 Q And we will probably go over testimony that you have  
16 already gone over before, but what was the first occasion  
17 you had to see Mr. Hughes?

18 A In July, 1994, I was contacted by Mr. Schusterman. He  
19 was having an extremely difficult time trying to relate  
20 with Mr. Hughes and was very concerned about some  
21 behaviors that he had observed during his visits. He  
22 requested that I evaluate him to determine whether there  
23 was any evidence of a mental illness, but he was  
24 specifically asking me about his competency whether he was  
25 able to go forward with his trial.

1 Q And did you have occasion following your conversation  
2 with Mr. Schusterman to observe Mr. Hughes?

3 A Yes, I did. I went out to the Broad River Road  
4 facility where he was housed at the time on three  
5 occasions, a total of probably about three and a half  
6 hours altogether to see Mr. Hughes. I wanted to see him on  
7 three different times so I would have some basis for  
8 comparison.

9 Q And did you render any type of preliminary diagnosis  
10 at that time?

11 A Yes, I did.

12 Q And what was that?

13 A My preliminary diagnosis, because I didn't have all  
14 the information I wanted to have to make a diagnosis, was  
15 what's called psychotic disorder not otherwise specified.  
16 It's kind of a basket term where you know that there's  
17 evidence of psychosis, but you don't have all the  
18 information you need to make one other diagnosis  
19 specifically or not. I was real clear that the symptoms  
20 he had were consistent with schizophrenia, but I wanted  
21 more data to make that diagnosis.

22 Q And I believe prior testimony has indicated that there  
23 was a competency hearing, is that correct?

24 A There was a competency hearing held here at the Moss  
25 Center and at that competency hearing there were seven

1 psychiatrists present and the reason there were was  
2 because Doctor Morgan and myself three other resident  
3 psychiatrists who were being trained, Doctor DeWitt was  
4 the Department of Corrections psychiatrist, who had seen  
5 Mr. Hughes in July of '93 was present and Doctor Connie  
6 McKee who had originally seen Mr. Hughes in October of '92  
7 was present. At that time we spent two hours with Mr.  
8 Hughes in the presence of his attorneys and the  
9 Solicitor's Office in an effort to evaluate as a group to  
10 come to some kind of concensus as a group whether there  
11 was any evidence of mental illness and that came about  
12 because Doctor Morgan had seen Mr. Hughes after I had seen  
13 him and rendered a report stating that he that felt he was  
14 competent. So it was an effort to try and find out why  
15 there was such a discrepancy in the reports.

16 Q And what was the result of that conflict you had?

17 A As a result of that hearing it was agreed by the  
18 physicians present that Mr. Hughes was not able to go  
19 forth at that time, he was not competent. At that point  
20 Judge Hayes issued an Order that Doctor Morgan and myself,  
21 acting as co-treating doctors, would render care to Mr.  
22 Hughes and he was originally sent to Gilliam Hospital,  
23 which is a treating hospital for all of the Department of  
24 Corrections. Later Judge Hayes changed that Order to the  
25 William S. Hall Psychiatric Hospital, so he was

1 transferred from Gilliam over to the Hall Institute where  
2 he received his care for the next approximately six to  
3 eight weeks.

4 Q And what tools did you use to finally arrive at your  
5 diagnosis?

6 A Well, when I saw him initially, as I said, I didn't  
7 have, you know, the full data that came in in bits and  
8 pieces. One of the things that I did have that was very  
9 important, if I could read a direct statement from Doctor  
10 DeWitt. As I said, Doctor DeWitt is a forensic  
11 psychiatrist. He's a contract doctor for the prison and  
12 his job is to see any inmate that has any kind of mental  
13 illness or if the staff has any concerns about someone,  
14 they ask Doctor DeWitt to do an evaluation. And at the  
15 point that I saw him, this was July 7 of 1993 now, so this  
16 is a year prior to my seeing him in 1994. Doctor DeWitt  
17 was the first psychiatrist to see Mr. Hughes after the  
18 April of '93 incident. So the second incident was April  
19 of '93, then Doctor DeWitt saw him, the first psychiatrist  
20 to see him after that time. Doctor DeWitt's report -- Ms.  
21 Brice, do you want to see this?

22 Q Did you rely on that?

23 A Yes, I did. Doctor DeWitt states: "Twenty-seven year  
24 old black male with recent history of severe agitation and  
25 destructive behavior. Mental status exam - alert and

1 oriented times four." That means he knew the day, the  
2 date, the month and year - oriented times four. "Affect"  
3 and that's what I explained to you the other day what you  
4 see when you look at him how he interacts with you, that  
5 is called affect. "Shallow, bizarre, thought content was  
6 paranoid. Patient had poverty of thought." And you  
7 remember what I went over the other day about not having  
8 enough thoughts to make a proper speech. "Irritable.  
9 Patient has no insight into the inappropriateness of his  
10 thought and behavior. Probable psychosis." And then under  
11 his "Recommendation," it says, "A&P," which is assessment  
12 and plan. "Patient needs thorough in-patient psychiatric  
13 evaluation at Gilliam Psychiatric Hospital. Continue  
14 Elavil." At that time Mr. Hughes was on an  
15 anti-depressant called Elavil that had been prescribed by  
16 Doctor McKee from the first time she saw him at the Hall  
17 Institute. The other record I relied on, a further  
18 evaluation, Doctor DeWitt was encouraging to admit him to  
19 Gilliam and kept saying I met this gentleman, he needs an  
20 evaluation. The records that I have indicated that the  
21 Administrative Staff there stated that they did not want  
22 to admit him for a psychiatric evaluation because he was a  
23 safekeeper and he is not going to trial and they did not  
24 want to be involved in that process, so he was not  
25 admitted in any hospital from July of '93 up until the

1 time when he was finally admitted in 1994. So when I did  
2 my initial assessment, I relied on other medical records  
3 as well, records from the Department of Corrections, and  
4 previous records from the Hall Institute that I had  
5 available to me at that time, in addition to my three  
6 interviews with Mr. Hughes.

7 Q And what was your diagnosis of Mr. Hughes?

8 A At the initial time, as I said, it was psychotic  
9 disorder not otherwise specified and rule out  
10 schizophreniform, which is a type of schizophrenia when we  
11 are not sure of the time frame, how long it has been  
12 present.

13 Q And you along with Doctor Kohanski and Doctor Morgan  
14 did you collectively or individually arrive at a diagnosis  
15 of Mr. Hughes?

16 A Well, it was both because, as I said, Judge Hayes in  
17 his Court Order specifically stated that Doctor Morgan and  
18 I were a part of the supervision and treatment of Mr.  
19 Hughes, but Doctor Kohanski, who was in training at Hall  
20 Institute, ended up being the day-to-day treating doctor.  
21 I would go back and forth and see him, sometimes with  
22 them, sometimes without them, to do my own assessment as  
23 well. We did all come to the same diagnosis because we  
24 all had the same criteria for that diagnosis. And one of  
25 the things about when you make a psychiatric diagnosis,

1 the book that I stated before, you know, it's not a Bible,  
2 I said Bible, but it's a reference form so that people can  
3 have the same information to make a consistent diagnosis.

4 Q And what type of contact did you have with Mar-Reece  
5 at that time?

6 A At that time, as I stated, I saw him at Hall Institute  
7 where he had been - are you talking about after he had  
8 been transferred there?

9 Q Right.

10 A Okay, he was on a hospital ward at that time with two  
11 correctional officers being treated and I would go see him  
12 sometimes twice a week, sometimes once a day, it varied,  
13 but I would see him on an individual basis and with the  
14 other psychiatrists as well.

15 Q And based on your contact and Doctor Morgan's contact  
16 back in 1994 how did that differ from previous contact  
17 with Mr. Hughes?

18 A Well, we stayed a considerably longer time frame with  
19 Mr. Hughes with longer interviews. There are occasionally  
20 fifteen minute interviews, but for the most part they were  
21 extended interviews and, of course, when we would  
22 interview him, we were doing formal mental status exams.  
23 What a mental status exam is is a series of questions that  
24 are not yes or no questions. I would ask him questions  
25 that show judgment. I would ask him to do things to show

1 concentration. Like one of the questions you ask a person  
2 is what would you do if you were in a theater and smelled  
3 smoke. That is an attempt to find out what your judgment  
4 is. Would you jump up and scream and yell fire so that  
5 everybody would panic or would you calmly get up and say,  
6 you know, something to the manager. So during those times  
7 when we would see him we would also be trying to evaluate  
8 his mental state at that time. So that's significantly  
9 different than saying hi, how are you doing today, are you  
10 feeling okay, are you having any problems.

11 Q And did you arrive at a diagnosis finally as to Mr.  
12 Hughes' mental illness?

13 A Yes, I did.

14 Q And what was that diagnosis?

15 A My diagnosis was schizophrenia paranoid type, chronic  
16 in nature.

17 Q And he is currently being treated for that illness?

18 A He is currently being treated for that illness with  
19 two medications. As I stated Haldol is an anti-psychotic  
20 medication, which corrects the imbalance of chemicals that  
21 we believe causes schizophrenia, the brain chemicals that  
22 allows us to function and to stay level. When those  
23 chemicals are thrown out of whack for some reason,  
24 medication then tries to correct that balance. And the  
25 Haldol that he gets injections every month is a

1 long-acting medication that stays in his system that keeps  
2 him in balance. The Cogentin, which is a tablet that he  
3 takes every day, stops some of the side effects of that  
4 Haldol. Some people get drooling and stiffness and  
5 abnormal movements and Cogentin is a tablet that he takes  
6 that stops those side effects. It doesn't stop all of  
7 them. Occasionally, if you see him tremble, that's one of  
8 the side effects of the Haldol. It's a tremor that he  
9 gets, so it does not stop all of the side effects, but  
10 most of them.

11 Q And have you had occasion for the last year to observe  
12 Mr. Hughes?

13 A Yes, Mr. Hughes was originally placed on medication in  
14 September of '94. He refused medication when he was sent  
15 to Hall Institute. He did not want to take medication.  
16 They had to call the Public Safety Officers at Hall and  
17 hold him down and give him the injection of Haldol on  
18 several occasions. Since that time he has agreed to take  
19 the shots and since September 12th of '94 when he's been  
20 on medication I have been able to watch him, observe him  
21 on the medication.

22 Q And for the past year that you have been observing him  
23 on the medication and with care and treatment how has he  
24 responded?

25 A His response has been very good on the medication. If

1 you will look back at his behaviors before and after  
2 medication, his relating with people, his ability to try  
3 and think in a rational manner, there has been a dramatic  
4 improvement in that. He hasn't expressed any of those  
5 strange beliefs that he had about the numbers and the  
6 colors that he stated to me when I first met him that  
7 system where I tried to explain where he had this  
8 complicated delusional, and if you will remember I said a  
9 delusion is a false belief, he has not expressed any of  
10 that since he's been on medication. He has been able to  
11 relate to me and work with me in a rational manner and  
12 understand what's going on and help you in his defense. He  
13 still has what's called flat affect and what that means is  
14 when he sits there looking he understands what is going  
15 on, he's, you know, listening and he's doing that, but you  
16 won't see any motion from him. He's not going to -- I mean  
17 he may smile occasionally, but he's certainly not going to  
18 show the full range of emotion that you and I would show  
19 in any situation. And that's a result not only of his  
20 illness, but also the medication as well. But aside from  
21 that, those residual symptoms, he sleeps better. He used  
22 to stay up for long periods of time. The medical records  
23 documented that he stayed up until two or three o'clock in  
24 the morning pacing around. He has shown a significant  
25 improvement in his hygiene. He is not doing the fasting

1 that he used to do what he called the seven day fast where  
2 he would stop eating. He has not been aggressive. He has  
3 not been threatening. He has had no write-ups from any of  
4 the Correctional facilities that I am aware of. And so you  
5 can just look at the line from when he started medication.  
6 And a perfect example of how the medication is working is  
7 there was one period of time where they first started him  
8 on pills, the same medication Haldol, they started him on  
9 pills, but they wanted to make sure that he would take the  
10 medication every day and that's why they switched him over  
11 from the pills to the shots because we know that the  
12 medication will be there and during that time that they  
13 switched him over, the medication dropped in terms of its  
14 effect and medical records indicate and document that he  
15 had a regression during that time period until the shot  
16 started taking full effect again.

17 Q And has anything occurred during the past year that  
18 would cause you to believe that he has been misdiagnosed?

19 A There has been nothing to indicate to me that he has  
20 been misdiagnosed.

21 Q Okay. When did you make your diagnosis of the  
22 schizophrenia?

23 A As I stated, I had some real concerns initially when I  
24 saw him. His behavior was consistent with schizophrenia.  
25 After I was able to get more medical records, after I

1 personally talked with family members myself to get more  
2 social history, after I reviewed other records and tried  
3 to put this picture together as we have talked about, I  
4 think in my mind it was clear even prior to September of  
5 '94 that that was his diagnosis. In terms of actually  
6 putting that on a medical report I think September of '94  
7 when that was actually put on a medical report.

8 Q And I think in your previous testimony you stated that  
9 schizophrenia is not something that all of sudden you get.

10 A No.

11 Q Today I have it, tomorrow I do have it.

12 A No, and it's not something that you are due to get.

13 It's an illness that is both genetic and environmental and  
14 some people who are susceptible to it still may not show  
15 the illness if they don't have the right factors there to  
16 bring that out. It's just like diabetes or hypertension;  
17 it's not something that you ask to get nor do you enjoy  
18 having.

19 Q I believe you also testified previously that there is  
20 a prodromal stage of psychosis or paranoid schizophrenia,  
21 is that correct?

22 A That is correct. That was one of the things I really  
23 wanted to try and clarify in my mind because we always  
24 like things to be nice and neat and want to be able to say  
25 that, you know, we clearly saw things starting to happen

1 at this time - sometimes we can do that and sometimes we  
2 can't. And going back to the medical records and looking  
3 at as early as 1985 when he was incarcerated the mental  
4 health professional June 3 of 1985 notes that "Mar-Reece

5 ---

6 Q June 3 of 1995?

7 A 1985.

8 Q '85.

9 A '85. "Mar-Reece appears to be under a great deal of  
10 stress and appears to be depressed." These are records  
11 that were supplied by your office. This is August 17,  
12 1989. "Mar-Reece was seen today. He is again requesting  
13 segregation for a few days to get his head together."

14 There's another one - these are psychologists that are in  
15 the Correctional System that are seeing Mar-Reece now.

16 July 10, 1989 "Mar-Reece related his plans to request  
17 segregation for a few days to escape the noise, lack of  
18 privacy and increasing paranoid feelings." And now we are

19 in 1993, prior to the time and around the time Doctor

20 DeWitt saw him. "Mr. Hughes is moved from his cell so it  
21 can be cleaned. Feces, rags and food are cleaned from his  
22 cell. Cell is scrubbed down. This is July 18th of '94, ---

23 Q Doctor DeWitt was also the one who made the, I guess,  
24 the reference in his report about the probable psychosis?

25 A That's right, the first time any psychiatrist saw the

1 symptoms of psychosis documented. And, finally, this is  
2 February 18th of 1994, the same day he set the fire in the  
3 cell, "Inmate going to court next week, complains of  
4 racialism, hitting self in chest, unable to sit still,  
5 constantly moving hands, staring at the staff, yelling,  
6 keeping peers awake, spitting on the floor, continuous  
7 talking." So once again, as I said, each little piece of  
8 information, yes, you can pull it out and say he was  
9 wanting to get out of the cell so that's why he did that,  
10 but if you go back and put it all together, put it with  
11 his response to the medication, there is no other  
12 diagnosis that's consistent except schizophrenia paranoid  
13 type.

14 Q And he is currently accepting his medication, is that  
15 correct?

16 A He is accepting his medication with no problems.

17 Q And at the time that he was not accepting his  
18 medication, he was -- can you describe what his mental  
19 condition was?

20 A At the time he was not on medication he was  
21 disorganized, at times he was hostile, he was resistant to  
22 accepting the fact that he is mentally ill, he does not  
23 want to be mentally ill, nor does he want to accept the  
24 stigma of being mentally ill. He has done so now that he's  
25 on medication and thinking rationally, but it is not an

1 easy thing to tell a person that you have an illness that  
2 is going to be there for the rest of your life. It's like  
3 if someone told you you had diabetes and you have to take  
4 an injection of insulin every day. It's something that you  
5 have to live with for the rest of your life. There are  
6 good periods and bad periods, of course, and on medication  
7 there are more good periods than bad.

8 Q And were you also asked to make a finding as to Mr.  
9 Hughes' criminal responsibility?

10 A I was not asked to make a finding of criminal  
11 responsibility. As his treating physician I was involved  
12 in the staffing, what is called a forensic staffing  
13 interview, when that finding was made.

14 Q And do you support that finding?

15 A I support that finding based on a review of the  
16 information, my knowledge of Mr. Hughes, a review of the  
17 records at that time. I support that finding that he was  
18 not responsible.

19 Q And could you tell the jury how common it is for  
20 someone to be found not criminally responsible?

21 A That's an extremely unusual finding. When you hear  
22 about insanity. Insanity is a legal term, so you won't  
23 hear doctors using the term insanity. We say that a person  
24 is not responsible, then it is up to the court system or  
25 the judge to say whether he is insane or not. But that's

1 an unusual finding. When you hear about it in the  
2 newspaper and on tv, people have the idea sometimes that  
3 everybody is found, you know, insane and people all get  
4 off, but it is extremely rare because it takes a lot of  
5 data and a lot of information and a lot of interviews with  
6 this person to be able to say that they were not  
7 responsible for a crime that they committed. And because  
8 we are also aware of people wanting at times to appear  
9 mentally ill to get out of things that they do, of course,  
10 that's something that we take into consideration.

11 Q Back in 1994, in February of 1994, ---

12 A Uh-huh.

13 Q --- you wrote some dates on this chart?

14 A Yes.

15 Q There was a finding or a report that was issued that  
16 said that Mr. Hughes was malingering.

17 A Yes.

18 Q Do you recall that report?

19 A Yes, I do. I have that here.

20 Q Would you describe for the jury just to refresh their  
21 memory what malingering is?

22 A Malingering is the faking of psychiatric symptoms and  
23 sometimes it is faking medical symptoms if a person is for  
24 some reason trying to obtain money for insurance purposes  
25 or even if you don't want to go to work one day, you call

1 and say I'm really sick, I can barely get in. That is  
2 technically malingering, but I think all of us can relate  
3 on that level, but in this case it is the appearance of  
4 trying to appear sick for some reason, whatever reason  
5 that might be. In this case psychiatric is what we are  
6 talking about.

7 Q And what is your medical opinion about Mr. Hughes and  
8 whether or not he is malingering?

9 A Well, when looking at this report, there were several  
10 things, including going back over the records. The person  
11 who made the initial referral over to the Gilliam Hospital  
12 was a social worker or psychologist, they are the first  
13 line people who do that, and their observations were that  
14 he had reported some auditory and visual hallucinations  
15 and was expressing some paranoid thought. They became  
16 concerned and then after the fire felt that he needed to  
17 be admitted. At that time he was admitted involuntarily  
18 and I think that's the really important part of this. If a  
19 person is malingering and they want to be seen as mentally  
20 ill and they want to pretend to be sick, in the Department  
21 of Corrections you can go to the hospital voluntarily. Mr.  
22 Hughes did not go voluntarily. A physician saw him, filled  
23 out commitment papers, a social worker and/or  
24 psychologist, you have to have two people to commit a  
25 person to the hospital, also did the same thing and stated

1 that he needed to be committed to go to be evaluated. He  
2 went involuntarily. He did not say I want to go to a  
3 hospital, I'm hearing voices, I'm seeing things, I want to  
4 get out of this. He expressed hearing things, seeing  
5 things and being paranoid, but did not want to go to the  
6 hospital. He was forced to go to the hospital against his  
7 will at that time. That is not consistent with  
8 malingering.

9 Q But you did consider those records in making your  
10 final recommendation?

11 A I certain did. And there were other things in these  
12 reports that also support the fact that he wasn't - they  
13 state that he was selective in response to specific  
14 questions along with selective lapses memory as well.  
15 Well, selective is one term, but also it could be that he  
16 was disoriented at that time and confused where as they  
17 might have seen it as being selective. So, once again, his  
18 behavior if you don't watch and observe him for any more  
19 than five days, which they did, and you don't see him at  
20 the time when he's the most sick, you are not necessarily  
21 going to be able to get the information that you need. I  
22 don't think that they deliberately diagnosed him as  
23 malingering, you know, for any purpose to show that he  
24 wasn't sick on purpose, I'm not saying that. I think they  
25 made a diagnosis based on maybe what they saw at the

1 particular time in the short period of time.

2 Q And how long was he observed during that time?

3 A He was admitted on the 18th and he was discharged back  
4 to Broad River Road on the 24th.

5 Q That's all the questions I have. Thank you, Doctor.

6 CROSS EXAMINATION

7 BY MR. POPE

8 Q Doctor, you said he was with Gilliam at that time in  
9 February about five or six days, is that right?

10 A In 1994, yes.

11 Q And I think you what you were telling Ms. Brice is  
12 that might not be long enough for them to really realize  
13 what's really wrong with man, is that correct?

14 A What I am saying his illness has already shown us that  
15 at different time periods you could miss symptoms with him  
16 as people have done. So, yes, the six days they may have  
17 not been able to get the information they needed and  
18 clearly weren't.

19 Q The first day that you were hired by Mr. Schusterman  
20 to do an evaluation you came up with psychotic disorder

21 ---

22 A No, not the first day. I saw him three different  
23 occasions. I can give you those dates.

24 Q Okay.

25 A Would you like me to do that?

1 Q Yes, ma'am. That was three and a half hours that you  
2 refer to?

3 A A total, not one time for three and a half hours. I  
4 saw him on three different occasions and I gave him a  
5 preliminary when I saw him. Excuse me while I --

6 Q That was prior to your July 29th report?

7 A Okay, what I did was on July 27th I saw him and I had  
8 a preliminary report of psychotic disorder NOS. I also saw  
9 him August 2nd and August 3rd, so perhaps I did misstate  
10 that I saw -- but I saw him on three different occasions.

11 Q Okay, and, again, to answer my question, the first  
12 time you saw him - you said you broke up three visits for  
13 three and a half hours?

14 A Yes, you are right. It was an hour and a half the  
15 first time and I made the psychotic NOS then.

16 Q Exactly. You saw him for an hour and a half and  
17 determined the psychotic, but you are saying that doctors  
18 that saw him for five days may be incorrect?

19 A Because he was in the active phase of his illness in  
20 my opinion when I saw him. When the doctors saw him in  
21 February of '94, as I explained to the jury before, there  
22 are three different phases that you move back and forth  
23 between ---

24 Q Right.

25 A --- so the time I saw him his symptoms were clearly so

1 prominent that I think even if he had been seen by the  
2 Gilliam staff at that time, in July of '94, they would  
3 have had to agree with that. This is July of '94 now we  
4 are talking about.

5 Q Yes, ma'am, I understand. And when he was seen in  
6 February of '94 diagnosed as malingering, you are saying  
7 now maybe that wasn't an active phase, is that right?

8 A I am saying at that time they did not see the symptoms  
9 that I saw and he could have been back in those less  
10 prominent states that I talked about where the symptoms  
11 are there, but not as much. Clearly, someone saw things  
12 that I saw the disorganization, the paranoid, or he never  
13 would have gotten to Gilliam. It's not an easy thing to  
14 get to Gilliam because it's the only hospital in the state  
15 for all of the prisons, so they are very careful. It's not  
16 like you just call up and say I want to go to Gilliam now  
17 because they have to screen you. They only have so many  
18 beds.

19 Q Exactly. He had symptoms that they sent him over to  
20 Gilliam and they spent five days with him and determined  
21 that he was malingering. That part is true, is that  
22 correct?

23 A That part is true.

24 Q And then you said you saw him in July for an hour and  
25 I understand -- an hour and a half, when you saw him two

1 hours and automatically you determine that he was  
2 schizophrenic. At that time ---

3 A No, no, no. I didn't determine that he was  
4 schizophrenic. I said he had psychotic disorder not  
5 otherwise specified and that one of the rule out  
6 diagnosis, which meant that I also had suspicions. I did  
7 not diagnose him as schizophrenic at that time.

8 Q At that time. You diagnosed him later.

9 A No, I did not. That's right.

10 Q That day when you talked to him on the 27th, you told  
11 him that you would be preparing a report for his attorney,  
12 is that correct?

13 A I told him, yes, I did that.

14 Q And that you might be called to testify to that  
15 report.

16 A That's correct.

17 Q And after that he was cooperative with you, is that  
18 correct?

19 A He attempted to answer the questions posed to him.

20 Q And then you said that if Gilliam had seen Mr. Hughes  
21 like you saw him, they would have diagnosed him the same.

22 A No, I didn't say that. I said if they saw what I saw,  
23 perhaps they would have diagnosed. I would never say what  
24 they would have done, no.

25 Q Okay. But then do you recall that after the August

1 diagnosis that he wasn't competent, that he went into  
2 Gilliam September before ---

3 A Yes.

4 Q And I think you noted that in your second report, is  
5 that correct, the October 17th report?

6 A Prior to going to Hall Institute he was at Gilliam for  
7 a brief period of time, that hospitalization?

8 Q Yes, ma'am.

9 A Okay.

10 Q And in that you say "a brief period of time," do you  
11 recall the length of --

12 A I don't, let's see, it would be in the Judge's Court  
13 Order if you have the time frame for that.

14 Q Okay, I believe it would be August 19th?

15 A I can tell you when he was admitted to Hall Institute  
16 and maybe we can work back from there.

17 Q I believe and I'll be glad to let you look at these,  
18 it was August 19th through September 7th?

19 A Right. He was admitted to Hall September 8th. He was  
20 admitted to Hall Institute.

21 Q So he was at Gilliam the 19th through the 7th, roughly  
22 two weeks?

23 A That's correct.

24 Q And while he was at Gilliam for two weeks and that's  
25 in-patient now?

1 A That's correct.

2 Q Okay, and you aware in reviewing their records that  
3 while he was there that he had not exhibited any signs of  
4 psychosis, effective disturbance or any psychiatric  
5 illness during his admission there.

6 A That's what they state, but I also saw him at Gilliam  
7 during that time period with Doctor Morgan and my opinion  
8 at that time was that they were seeing what they were  
9 looking for and that they were validating their previous  
10 diagnosis of malingering.

11 Q Okay, so you tell me that a doctor would have a  
12 diagnosis and stick with it regardless of evidence ---

13 A I'm not saying the doctors. I am just saying the staff  
14 that I saw when I went up there and talked with the social  
15 worker I would ask how is he doing and they'd say, "He's  
16 fine, there's nothing wrong with him." That's all I am  
17 saying; I'm not making any accusations, Mr. Pope, about  
18 anyone.

19 Q Okay and I am not trying to be adversarial about it,  
20 but my question is you are saying basically they had their  
21 diagnosis and they were sticking with it, is that correct?

22 A I am saying what I saw and what they related to me in  
23 the manner they related to him was consistent with that.

24 Q And, again, you are aware that the various notes that  
25 you have reviewed that they said "There is no indications

1 of psychosis and various dates when they have observations  
2 of him, is that correct?

3 A That's correct; yes, I'm aware of that.

4 Q You told us that and, again, I don't want to put words  
5 in your mouth, but you said something to the effect that  
6 they were seeing what they wanted consistent with the  
7 previous diagnosis or something? I don't want to  
8 mischaracterize it. What exactly did you say?

9 A Well, when I went through the records at Gilliam, one  
10 of the things I noticed is that when Mr. Hughes arrived in  
11 February, he was combative and hostile. That was the term  
12 they used - hostile. It took seven officers to control him  
13 because he didn't want to go. After that the information  
14 in the medical records is to approach Mr. Hughes with  
15 extreme caution because of, obviously, the information  
16 they had received and it appears that that's what they did  
17 and we've already determined that if you don't spend the  
18 proper time getting that information, if he's hostile,  
19 you're not going to necessarily get the information you  
20 need. I can show you a report where they didn't get all  
21 the data they needed; they didn't complete the social  
22 history. Would you like to see that report? They didn't  
23 get all the data they needed because at the time he was  
24 combative and hostile and they basically stopped the  
25 initial intake interview where you get things like social

1 history. They didn't even have documented what medication  
2 he was on because they basically just said this guy is  
3 hostile.

4 Q So he wasn't cooperative with them.

5 A He was hostile.

6 Q Which in a setting you are talking about would be lack  
7 of cooperation.

8 A Which is also one of the symptoms of paranoid  
9 schizophrenia.

10 Q And if I understand it seems like just about  
11 everything is a symptom of paranoid schizophrenia.

12 A No, that's not true. I wouldn't say that.

13 Q Now you talked about, well, he must be paranoid  
14 schizophrenic because he involuntarily went to the  
15 hospital and anybody who would be faking or malingering  
16 would want to go to the hospital, is that your testimony?

17 A I said that if you are going to follow that line of  
18 thinking that he is malingering, he would want to go to  
19 the hospital so you could show all these people all these  
20 symptoms that you have and you go and you complain of all  
21 these things. That's what typical malingerers do.

22 Q That would be, of course, unless you had your own  
23 psychiatrist and chose to not have someone else evaluate  
24 you for fear that they may find that you are, in fact,  
25 malingering, is that correct?

1 A Well, this is in February of '94. I was not involved  
2 with this case when that happened. There were no, with the  
3 exception of Doctor John DeWitt who had seen him the year  
4 previously, there were no psychiatrists to my knowledge  
5 involved in February of '94. So I can't --

6 Q I'm sorry; I'm not sure I understand.

7 A Doctor DeWitt saw Mr. ---

8 Q You are talking about the defense psychiatrists.

9 A No, Doctor DeWitt. Doctor DeWitt works for the  
10 Department of Corrections.

11 Q I understand. You said that as far as February of '94  
12 there were no psychiatrists involved?

13 A Right; no, I was not involved. He had been seen by  
14 the Hall Institute in 1992, of course.

15 Q Okay, and he was seen by Gilliam in 1994.

16 A Yes, but you said he had his own psychiatrist.

17 Q He does now.

18 A Yes.

19 Q He has as of July.

20 A I thought that your question was that in February of  
21 '94 date he didn't cooperate because he had his own  
22 psychiatrist and he didn't want to cooperate with them, so  
23 that he could have his own psychiatrist. Was that not  
24 your question?

25 Q I see, okay. He did not have a psychiatrist at the

1 time of his own in February of '94?

2 A His psychiatric treatment of February of '94 had  
3 consisted of an evaluation by Doctor John DeWitt in '92  
4 and '93. That was -- and the evaluation by Hall Institute  
5 in 1992.

6 Q And Gilliam in February of '94?

7 A February 18th of '94, right.

8 Q Okay, so maybe I'll make it clear if I don't say his  
9 own psychiatrist -- a defense retained psychiatrist he did  
10 not have one until July, is that correct?

11 A July.

12 Q And certainly in February of 1994 two charges were  
13 pending. These charges were pending.

14 A Yes, they were.

15 Q And, Doctor, you have been in the courtroom throughout  
16 this trial and have heard the other testimony of the other  
17 experts?

18 A At different periods.

19 Q And so you have heard the testimony of the other  
20 experts?

21 A I have not heard the testimony of Doctor Morgan. I was  
22 not in ---

23 Q You were not present this morning?

24 A No, I was not.

25 Q Have you previously discussed this with him?

1 A No, I did not, no.

2 Q You never discussed --

3 A No, no, you mean today? I thought you were asking  
4 about today.

5 Q I am talking about over all.

6 A Of course, in working; he was the co-treating doctor;  
7 of course.

8 Q Doctor, what are these numbers that you were talking  
9 about?

10 A Would you like for me to pull my notes out for that?

11 Q Yes, ma'am.

12 A I'm sorry this is so disorganized. I started out with  
13 it in order.

14 Q Doctor, while you are looking for that, the second  
15 evaluation that deals with where you are talking about two  
16 weeks?

17 A Yes.

18 Q That would have been August, September of '94, is that  
19 correct?

20 A August, yes.

21 Q At Gilliam that's when they said again that there was  
22 no indication of mental illness, is that correct?

23 A On February of '94.

24 Q I am talking about in August and September.

25 A They did not issue a report at that time. Based on the

1 records they did not issue a report.

2 Q They did not issue a report, but they said there were  
3 no signs of a mental illness.

4 A Yes.

5 Q Doctor, have you found it? We don't need to go into  
6 great detail. I am just trying to understand the numbers.

7 A I'll try and explain it to you. I can't really explain  
8 it to you because it was psychotic, but my notes say that  
9 there are colors, four views of four colors, and then I  
10 tried to take notes, but when you are trying to take notes  
11 from a person who is psychotic, you don't exactly have  
12 word for word. He went on to explain the four views and  
13 the four colors of life as they relate to different people  
14 and they way people are born and the time frame, the dates  
15 of birth, and the way they are born. I could not write  
16 everything down.

17 Q I mean when you say certain dates of birth mean  
18 different -- it's like numerology?

19 A No; well, what do you mean by numerology? I guess it's  
20 different for different people.

21 Q I mean that you assign significance to certain numbers  
22 and certain signs and certain things of that nature?

23 A I'm not familiar enough with numerology to say whether  
24 it is the same as that, but this was a very bizarre  
25 explanation of how numbers relate to people and how you

1 can tell about people by numbers and then he made a  
2 statement about circles and crossing a line and flipping  
3 coins.

4 Q Was it pennies or coins or --?

5 A Flipping coins.

6 Q Did he also tell you about people putting stuff in his  
7 food? I think you had mentioned that earlier.

8 A He stated that he stopped eating because he didn't  
9 trust the people at the Correctional Center, that they  
10 were putting things in his food. On my way out of the  
11 Correctional Facility that day one of the other inmates  
12 said to him "Still putting those snakes in the food" and  
13 started laughing at him as if there was some joke involved  
14 in that or something and I don't know the significance of  
15 that.

16 Q Let me call your attention now, Doctor, if I could,  
17 just a few more questions, as to the SLED files of the  
18 murder in the jail. You reviewed that file too, is that  
19 correct?

20 A The SLED file -- I not have the SLED file. That's the  
21 report that I asked for. I have Doctor Kohanski's report.  
22 I do not have the SLED file. That's the report I asked  
23 for.

24 Q I'm sorry, you didn't review the statement of John  
25 Patton?

1 A John Patton, I also interviewed John Patton, but you  
2 asked me about a SLED file?

3 Q Yes, ma'am, my understanding is that was the entirety  
4 of the SLED file. What you are saying you did not have was  
5 the SLED summary, is that correct?

6 A Okay, yes, but I have Mr. Patton's statement.

7 Q So you reviewed Mr. Patton.

8 A Yes. I also interviewed Mr. Patton at the Department  
9 of Corrections at the Detention Center.

10 Q You talked to Mr. Patton. And did Mr. Patton relate to  
11 you, did you take into consideration the fact of Mar-Reece  
12 trying to flush the knife to get rid of it?

13 A Yes, I did. I also took into consideration both  
14 statements that Mr. Patton said he was talking crazy,  
15 stayed up all night, wasn't making sense. So I took all of  
16 that into consideration, I did.

17 Q Is that in Mr. Patton's statement?

18 A When I interviewed Mr. Patton at the Detention Center.

19 Q When you talked to him?

20 A Yes.

21 Q Okay, did you talk to him in reference to him saying  
22 that Mar-Reece said that the man he killed in the jail had  
23 done something to him?

24 A Yes, I did and also about the little green man.

25 Q For everything I am going to ask you have got some as

1 far --

2 A Well, I interviewed Mr. Patton.

3 Q So you are aware of his entire statement, is that  
4 correct?

5 A I am aware of his entire statement.

6 Q And did you take into consideration when he was asking  
7 another inmate if you could stick a pen in someone's neck  
8 and kill them?

9 A I did. I took that into consideration.

10 Q But by the time you were considering this you had  
11 already made the determination of schizophrenia, is that  
12 correct?

13 A He had already been diagnosed schizophrenic at that  
14 time.

15 Q You took into consideration the fact that he said that  
16 the victim was lucky if he made it out the front door?

17 A I did.

18 Q In essence giving to understand that he knew that he  
19 had injured ---

20 A Everything that is in the statement I considered that.

21 Q Okay. So, Doctor, there is a large volume of evidence  
22 in Mr. Patton's statement and other statements that talks  
23 about Mr. Hughes planning of the murder in the jail, is  
24 that correct?

25 A There's a large volume of evidence that shows he was

1 not responsible and there are some statements that you can  
2 take which show that perhaps you could say that he was.

3 Q Well, let's take for example the little man playing  
4 possum. Okay, what did you interpret that to mean?

5 A To me that was the same kind of incident that when he  
6 touched my foot that that was a paranoid statement. That  
7 was a paranoid statement.

8 Q But you would agree that the little man playing possum  
9 could also be Mr. Waldrop with his feet -- he said, "The  
10 little man's playing possum, he moved his feet over  
11 there," is that correct?

12 A That's what he said.

13 Q Okay. So it could also be Mr. Waldrop who is sleeping  
14 behind the curtain who moved his feet, is that correct?

15 A Is that my interpretation you are asking me?

16 Q I realize that's not your interpretation, but that's  
17 certainly another interpretation.

18 A That's another interpretation, yes. I agree with that.

19 Q So, Doctor, you said and using the example of Gilliam  
20 that they have a diagnosis and they may only see what they  
21 saw that was consistent with their diagnosis.

22 A If they have the information that's relevant, that's  
23 true.

24 Q Likewise, in looking at that SLED report it could very  
25 well be that you only see what's consistent with your

1 diagnosis.

2 A Well, the only problem we have with that is that you  
3 still have another year that he has been on medication  
4 where you don't see the kinds of things you saw before, so  
5 you still can't explain why when this man is given 200  
6 milligrams of an anti-psychotic medication that there's  
7 this dramatic change in behavior, his thinking, his  
8 interaction. There is no explanation for that except the  
9 medication and his response to the medication, the  
10 correcting of the chemical imbalance there.

11 Q Okay, whether you are active or passive, violent or  
12 non-violent, Haldol is going to settle you down or in my  
13 case knock me out, is that correct?

14 A It is going to affect your behavior in some kind of  
15 way whether you cannot talk or drool or go to sleep, yes.

16 Q Doctor, none of this conversation you and I have just  
17 had doesn't cross with what we've just gone through  
18 pertains to the night that killed Brent McCants, does it?

19 A The conversation we just went through ---

20 Q All the aspects of mental illness, of schizophrenia,  
21 as far as him being criminally responsible, you previously  
22 testified that he was criminally responsible the night he  
23 killed Brent McCants.

24 A Yes, I did; yes, I did.

25 Q And nothing we have talked about now changes that?

1 A That does not change my opinion.

2 Q Thank you, ma'am.

3 A You are welcome.

4 MS. BRICE: Just briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. BRICE

7 Q If you could briefly compare -- have you had an  
8 opportunity to compare the data on each of the incidences  
9 that we have gone over? Have you had an occasion to  
10 compare the data?

11 A I'm not sure, Ms. Brice, what you are asking.

12 Q You have gone through all the data that has been  
13 supplied, is that correct?

14 A That's correct.

15 Q From my office or through the Solicitor's office, is  
16 that correct?

17 A That's correct.

18 Q And if you would briefly compare the data that you  
19 have received to the diagnosis that you have made. Do you  
20 understand what I am saying?

21 A Okay, ---

22 Q Let me try to tell you. There have been several  
23 incidences where he has been diagnosed and not diagnosed  
24 and diagnosed again. If you could, explain to the jury and  
25 compare your diagnosis as to why you found certain things

1 in the diagnosis previously.

2 MR. POPE: Your Honor, I am going to object. I don't  
3 think this is new matter. This is exactly what she  
4 testified to the first time her diagnosis. I think her  
5 diagnosis is undisputed even after my cross.

6 MS. BRICE: I think he questioned her as to the  
7 mis-diagnosis and the diagnosis made previously. I am just  
8 trying to clarify it.

9 THE COURT: I'll let you go into it, but let's don't  
10 go two ways and explain again.

11 MS. BRICE: All right.

12 Q Just briefly.

13 A Just briefly this illness presents in a lot of  
14 different ways in different people and it would be nice if  
15 it presented itself the same way all the time, but it  
16 doesn't and it's like I think the easiest way to explain  
17 it is if a person who starts having symptoms of being  
18 thirsty all the time and they go to see a doctor, well,  
19 the doctor may decide there is something endocrin wrong,  
20 maybe they have some kind of -- and they may order tests  
21 and they don't see anything. Then three weeks later they  
22 may go and they are having tiredness in their legs and  
23 they may look at them for a while and they don't see  
24 anything. Well, as things go on and on and on eventually  
25 as you get more symptoms you will finally come to the

1 facts where a physician will have enough data and they can  
2 say you have diabetes. They didn't know you had diabetes  
3 before because they were seeing pieces of the illness.  
4 That's what paranoid schizophrenia and all schizophrenia  
5 if you start to put pieces together if you are just a  
6 little bit agitated one time, well, maybe you won't see  
7 that. Maybe if you are paranoid today and you are not  
8 paranoid tomorrow, maybe you won't be able to see that,  
9 but there is a clear analogy if you look at those two  
10 things when you put it together then you can say, oh,  
11 well, you can't say the person didn't have diabetes six  
12 months ago, it's just that the physician didn't have the  
13 data to make that diagnosis.

14 Q If you would, the data that you had possession of how  
15 did it relate to the data that the previous doctors had?

16 A Well, people had bits and pieces, but they clearly did  
17 not have the volume of data to go back and make the  
18 diagnosis I had and the time frame to work with him, to  
19 see him, you know, time after time after time to be able  
20 to evaluate his response, his day to day change in  
21 behavior, his aggression when his medication was changed,  
22 and the volumes of information, the family history, and  
23 all of those things put together. They did not have that  
24 volume of information.

25 Q Thank you. That's all the questions I have.

1 RE CROSS EXAMINATION

2 BY MR. POPE

3 Q Doctor, you would agree that the best effective means  
4 of judging his action is time, you talk about the cycles,  
5 prodromal and all the different cycles that he'd go  
6 through to be able to see him as close to a given event as  
7 possible?

8 A That would be optimal, Mr. Pope, that's correct.

9 Q Thank you.

10 THE COURT: You can step down. Thank you.

11 Jury Panel, we will take our morning break and this  
12 will be the smoke break for those who wish.

13 (Jury retires to jury room.)

14 Before we take our break, first, does that conclude  
15 the testimony for the defense?

16 MS. BRICE: Your Honor, that concludes the testimony.  
17 We would also seek to move the indictments, the returned  
18 indictments, on the Forney case into evidence at this  
19 time.

20 THE COURT: What says The State?

21 MR. POPE: The State would object to the relevance of  
22 it.

23 THE COURT: I sustain the objection.

24 Well, let me hear from -- he says they are not  
25 relevant. Tell me why you think they are relevant and let

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1 me look over them a little bit for a minute and let you  
2 at least tell me why you think they are relevant.

3 MS. BRICE: Your Honor, I would find they are directly  
4 relevant to the sentencing of Mr. Hughes. Mr. Forney, a  
5 co-defendant, certainly has no more culpability than Mr.  
6 Hughes has in the incident of the murder of Brent McCants.  
7 I think it is important for the jury to know that there  
8 was a deliberation by another jury that found that Mr.  
9 Forney got a life -- was found to be awarded a life  
10 sentence.

11 THE COURT: What was Mr. Forney found guilty of?

12 MS. BRICE: The same charges that Mr. Hughes was found  
13 guilty of, particularly, the murder, Your Honor.

14 THE COURT: What was he found guilty of?

15 MS. BRICE: He was found guilty of unlawful carrying  
16 of a pistol, of armed robbery, of criminal conspiracy, and  
17 of murder, Your Honor.

18 THE COURT: Was he not charged with the possession of  
19 a firearm during the commission of those?

20 MS. BRICE: The indictments I read was the indictments  
21 I have before me. I believe he was charged with what the  
22 court just stated for the record. I do not believe that he  
23 was found guilty by the twelve jurors in his case,

24 THE COURT: Was your client found guilty of possession  
25 of a handgun at the time of the armed robbery?

THE STATE VS HUGHES

1 MS. BRICE: Yes, Your Honor, I don't know on what  
2 basis, but ---

3 THE COURT: I know; is that not a significant  
4 difference that they found that Mr. Forney did not have  
5 the gun at the time? I want to make sure I am right on  
6 what I am saying. Can the Solicitor help me with that?

7 MR. POPE: Yes, sir.

8 THE COURT: I don't have the indictments. It is my  
9 recollection that he was charged and the jury considered  
10 ---

11 MR. POPE: Considered possession of firearm during the  
12 commission of a violent crime and that's in ---

13 THE COURT: On both murder and armed robbery and  
14 returned verdicts of not guilty.

15 MR. POPE: That is correct.

16 MS. BRICE: Your Honor, I believe the case law and the  
17 statute is clear that anything that would tend to show a  
18 mitigating circumstance should be called to the attention  
19 of the jury and I believe that this is a mitigating  
20 circumstance that his co-defendant got a life sentence.

21 THE COURT: But is there not any significance in the  
22 fact that that jury found that at the time of the murder  
23 and armed robbery they determined Mr. Forney did not have  
24 the gun and that they had found at the time of the armed  
25 robbery your client did have the gun or a gun?

THE STATE VS HUGHES

1 MS. BRICE: Your Honor, it would be our position and  
2 our argument that this is a mitigating circumstance. It  
3 should be brought to the attention of the jury.

4 THE COURT: I deny the motion.

5 MR. POPE: Your Honor, for the record I would like to  
6 put in the record too that Mr. Forney's jury did not find  
7 for life. The jury deliberated an extensive period of time  
8 and were unable to return a verdict and because of that  
9 the court gave him a verdict of life. I think that should  
10 be noted from the standpoint they did not ultimately reach  
11 a deliberation on that particular point. I would just like  
12 that in the record.

13 THE COURT: It is my recollection that they found on  
14 Mr. Forney also they did find some statutory aggravating  
15 circumstances, but did not give the death penalty, and I  
16 can't remember whether they found any mitigating  
17 circumstances or not.

18 What about that, Mr. Schusterman?

19 MR. SCHUSTERMAN: Your Honor, just so that the record  
20 is complete, I don't have any problem with everything Mr.  
21 Pope says is true and can be conveyed to the jury, the  
22 fact the jury did deliberate, that they returned  
23 aggravating circumstances, but then were not able to  
24 unanimously vote for death. I think that the overall  
25 concept whether or not a particular charge was found

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1 guilty or not this all comes out of this same event when  
2 we all can see that this all comes out of an event on  
3 September 25, 1992 at 10:43. One of the mitigating  
4 factors, Your Honor, is the relative culpability, one of  
5 the statutory mitigating circumstances is the relative  
6 culpability of a co-defendant. So to that degree the jury,  
7 I think, has a right to know under that concept that this  
8 man here within in the scheme of things, within this  
9 event, got a life sentence. And then if you start -- if  
10 the court begins to then say, well, isn't it true that one  
11 charge he was found guilty or not, we acknowledge the fact  
12 that they can give a life sentence for any reason or no  
13 reason at all, and we are invading their province to then  
14 begin telling them, well, isn't this an entire different  
15 situation, but what the court, in fact, is doing is saying  
16 that because they found him guilty of the unlawful  
17 carrying of a gun that somehow they must have attributed  
18 him to being the shooter or the trigger man and that's not  
19 necessarily true. So as an overall umbrella under a  
20 mitigating circumstance for the jury to know that this man  
21 received a life sentence they may categorically reject  
22 that, they may say, well, yes, Mr. Forney didn't do the  
23 shooting, we think Mr. Hughes did, and reject it, but they  
24 may not and I submit that is not for the court to  
25 determine, but for the jury to make a determination as to

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1 the total facts and situation and that they make a fully  
2 informed decision. Thank you, sir.

3 THE COURT: I deny the introduction of those. Please  
4 make that a part of the record as a court's exhibit so we  
5 will have those.

6 (Court's Exhibits 15, 16, 17, 18 marked and filed.)

7 All right, anything else from the defense?

8 MS. BRICE: Not at this time, Your Honor.

9 THE COURT: Well, this is the time?

10 MS. BRICE: No, sir.

11 THE COURT: Mr. Hughes?

12 MR. HUGHES: Yes, sir.

13 THE COURT: Can you hear me?

14 MR. HUGHES: Yes, sir.

15 THE COURT: Your attorneys tell me that they have  
16 concluded presenting their testimony, so I presume you  
17 have decided to not testify in this stage of the trial?

18 MR. HUGHES: Yes, sir, that's true.

19 THE COURT: Do you have any questions? Do you want me  
20 to go back over what we have been over before about your  
21 right to testify, but your right to remain silent, if you  
22 do not testify, I will tell the jury, just as I promised  
23 you, that you have simply exercised your right to remain  
24 silent. Do you understand all of that?

25 MR. HUGHES: Yes, sir.

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1 THE COURT: Do you have any questions about that?

2 MR. HUGHES: No, sir.

3 THE COURT: And so you are choosing on your own free  
4 will to not testify?

5 MR. HUGHES: That's true.

6 THE COURT: All right. I find that Mr. Hughes is  
7 freely, voluntarily, knowingly and intelligently waiving  
8 his right to testify and exercising in that same fashion  
9 his right to remain silent. That does not, of course, as  
10 I have told you, preclude you from making a closing  
11 argument and I understand you intend to do that, is that  
12 correct?

13 MR. HUGHES: Not of yet.

14 THE COURT: Huh?

15 MR. HUGHES: Not of yet.

16 MR. SCHUSTERMAN: I don't think a decision has been  
17 made at this time.

18 THE COURT: All right, you don't have to - I'm not  
19 rushing you, okay?

20 MR. HUGHES: Yes, sir.

21 THE COURT: Now we are going to take a break, but we  
22 still have a few more things to go over before we get into  
23 arguments. Is there going to be any reply testimony?

24 MR. BRACKETT: No, sir, Your Honor.

25 THE COURT: And has the defense now rested? I may be

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1 moving premature, but you stated you didn't have anything  
2 else at this time. I'm not sure I know what that meant.

3 MS. BRICE: Would you all object to the admission of  
4 the diagram that was presented in the guilt phase? The  
5 diagram was presented by Doctor Dupree in regards to what  
6 schizophrenia was and the symptoms of schizophrenia? I  
7 would offer that into evidence at this time.

8 MR. POPE: Your Honor, I think that was the lengthy --  
9 I would object to that. She has testified to that and it  
10 wasn't admitted at the time. I think the jury has ample  
11 testimony as to schizophrenia.

12 THE COURT: Well, I am inclined to agree. And also, if  
13 I remember, it was more definitional and had some other  
14 things on it that didn't actually peculiarly pertain to  
15 Mr. Hughes, is that correct?

16 MS. BRICE: There were some that did pertain to him  
17 and some that were by way of definition, yes, Your Honor.

18 THE COURT: I'm not going to allow it into evidence.  
19 Anything further?

20 (Court's Exhibit 20 marked and filed.)

21 MS. BRICE: No, sir.

22 THE COURT: Does the defense rest?

23 MS. BRICE: Yes, sir.

24 THE COURT: All right. The State?

25 MR. BRACKETT: Your Honor, I just want to make a part

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1 of the record that at 8:30 this morning John Walker, Harry  
2 Jennings and the other individual, James Gaithers, Jr.,  
3 were here and present in the courtroom -- present in the  
4 courthouse and available to be interviewed and I think ---

5 THE COURT: You must not have been here when I asked  
6 that same question. They told me they interviewed those  
7 individuals and that they did not wish to call them and I  
8 even offered to bring Mr. Jennings up since he would not  
9 talk to them and they opted not.

10 MR. BRACKETT: I apologize.

11 THE COURT: All right. Any reply, just to get  
12 everything procedurally correct, any reply?

13 MR. POPE: No, sir, Your Honor.

14 THE COURT: All right, what is the position of the  
15 defense on the Motion for Mistrial regarding the alleged  
16 prosecutorial misconduct? Do you still pursue that?

17 MS. BRICE: Yes, Your Honor.

18 THE COURT: All right, that Motion is denied and I  
19 find that under Rule 5 that whether or not the request for  
20 disclosure was or was not fully adhered to that the court  
21 has the authority under 5(b)2 to enter such Order as it  
22 deems just under the circumstances and I believe at this  
23 time that order would be one denying the Motion for a  
24 Mistrial. I have listened to the evidence. Mrs. Burry said  
25 she did not need the SLED Report, Doctor Kohanski had

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1 access to the report, Doctor Morgan had access to the  
2 Report, Doctor Barnard Dupree interviewed Mr. Patton and  
3 stuck by steadfastly to her diagnosis throughout this  
4 matter. There was the opportunity for counsel for the  
5 defense to subpoena the SLED agent. We discussed that when  
6 this came up if they wanted to render that further. The  
7 existence of this report or perhaps not the report, but  
8 the evidence of the meat of the report, that is, the gist  
9 of the report, i.e., the statements of the particular  
10 inmates regarding the April '93 incident were evidenced in  
11 an earlier report by Doctor Morgan. It appears that the  
12 counsel for the defendant requested from Doctor Kohanski  
13 access to these reports at least as early as May 7 of  
14 1995; there has been no Motion to the court requesting  
15 further access to those records when Doctor Kohanski  
16 indicated that her superior said she could not produce  
17 them. There has been no request by counsel for defendant  
18 for The State to stipulate to those statements. There was  
19 after, at least not to the court's knowledge, no one has  
20 called it to the court's attention, after March 7th and/or  
21 March 15th of this year, no request to the Solicitor that  
22 I am aware of for the reports Doctor Kohanski indicated  
23 she could not provide and, as I have said, no request was  
24 made to the court for an Order. I find that there is no  
25 prejudice on the failure of The State to provide the

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1 fourteen page summary of the report, that at this time the  
2 defense has had the opportunity to have available the  
3 three individuals we talked about earlier today, I believe  
4 that was Jennings, Gaithers and Walker. Additionally,  
5 Inmate Wimborn testified during the trial of this case.  
6 Additionally, at the start of this trial The State  
7 provided a list of the State's witnesses that were read  
8 into the record and a copy provided to counsel for  
9 defendant. This was in Aiken, I believe, on September 11th  
10 and thereon number 4 was Harry Anthony, number 34 was  
11 James Gaithers, number 49 was Harry C. Jennings, number 76  
12 was John Patton, number 100 was Willie Stroud, number 106  
13 was John Walker, number 110 was Felix Wimborn and no  
14 request was made regarding the nature of those witnesses.  
15 So I deny the Motion for a Mistrial.

16 Anything further?

17 MR. BRACKET: Your Honor, The State would also request  
18 that this be entered into evidence on this issue as a  
19 Court's Exhibit. These were turned over to the defense as  
20 part of regular discovery. It is a York County Detention  
21 Center Daily Population Count 4-12 of '93 which lists  
22 every inmate that was incarcerated there and the cell that  
23 they were incarcerated in on that day and the diagram of  
24 the layout of the jail with this front side of C Block,  
25 C-1, 2, 3 and 4, which was where this incident primarily

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1 occurred with the names of the inmates written inside each  
2 one of the cells that were located in those cells on that  
3 day.

4 THE COURT: Is that not part of the SLED Report?

5 MR. BRACKETT: That's part of the ---

6 THE COURT: I thought ---

7 MR. BRACKETT: No, sir, this was part of the SLED  
8 package. The seventeen pages -- the first seventeen pages.  
9 This was part of the bulk of the ---

10 THE COURT: But I thought the rest was put in, it was  
11 not? Okay, go ahead and put it in, it won't hurt. Let's  
12 just move on.

13 MR. POPE: Your Honor, when you requested - again,  
14 when she is saying report, the distinction we make is  
15 summary versus report.

16 THE COURT: I understand.

17 MR. POPE: The summary is in.

18 THE COURT: I thought the whole report was, but that's  
19 fine. Just go ahead and make that part of the record.

20 (Court's Exhibit 19 marked and filed.)

21 Mr. Schusterman?

22 MR. SCHUSTERMAN: Yes, sir, Your Honor. I would like  
23 to approach the court reporter and have the, you turned  
24 down the Motion, have these Indictments - I would like to  
25 make part of the record.

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THE COURT: Court's Exhibits.

MR. SCHUSTERMAN: Thank you, sir.

(Court Exhibits 15, 16, 17 and 18)

MS. BRICE: And, Your Honor, I would also indicate that while I was in possession of the Detention Center list and the Cell Block Diagram, I did attempt to speak and I did speak with all the persons who gave written statements that I was aware of that was provided to me by the Solicitor's Office. Anyone who gave a written statement I spoke to. Anybody who did not give me a written statement we attempted to communicate with by way of private investigator. On these attempts to locate it was not without the solicitor bringing three of the persons into court this morning that we were able to have access to those persons. In particularly our communications were -- my concern was basically to find the persons who mainly gave the statements as to what occurred on that jail incident in April of 1993 and so as far as the other prisoners, we did attempt to talk to some of them, but we were specifically focusing on statements that we did have within our possession. Just for the record.

THE COURT: The whole request for this has to do with the ability of the experts to accurately diagnose Mr. Hughes, is that correct?

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1 MS. BRICE: Your Honor, we would also submit that ---

2 THE COURT: Well, am I correct first, is that ---

3 MS. BRICE: No, sir, I don't think so and the reason  
4 why is because it is our position that they should have  
5 provided us with exculpatory evidence going to the fact  
6 that there were other persons that had given statements to  
7 the SLED Officer. We did not know about the statements  
8 that were within that summary and it is my position that  
9 it should have been provided to us by --

10 THE COURT: Well, now that you have them, what is  
11 exculpatory in there?

12 MS. BRICE: Well, that Hughes was acting crazy at the  
13 time of the incident in the jail. There were specifically  
14 three persons who I talked to this morning who were not  
15 very willing to speak with me to be honest, but their  
16 statements that were written into the SLED Report were  
17 talking about how my client was crazy at the time of that  
18 incident and that ---

19 THE COURT: And you have got expert testimony that  
20 says that from my understanding unless I haven't been  
21 listening to the same thing that the jury has.

22 MS. BRICE: But it is my understanding I am entitled  
23 to exculpatory evidence by the Rules and it should have  
24 been provided to me. While I do have testimony by the  
25 psychiatrists, I don't feel that I should have been

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1 limited in my ability to speak with select persons that  
2 the Solicitor's Office is saying that I should or should  
3 not talk to. They made a decision themselves I should not  
4 talk to these people.

5 THE COURT: All right. Anything else for the record?

6 MR. SCHUSTERMAN: I'm just going to have these  
7 documents marked. (Referring to Indictments, Court's  
8 Exhibits 15 through 18).

9 THE COURT: Let's do that. Before you mark that, just  
10 briefly. We have still got a list of motions to restrict  
11 Solicitor's argument that we need to go over and we need  
12 to go over the charges. Why don't we take a break. I'll  
13 ask the Solicitor's Office to listen to this. There was a  
14 separate one on the term value, but it's on here too. I  
15 find it. Go through and see if you can knock any of those  
16 out without argument. If not, we need to take care of  
17 those. We need to deal with the charges and -- yes, ma'am?

18 MS. BRICE: If I can just read one thing into the  
19 record. I think this will probably conclude our position  
20 on this, Your Honor. On September 3 of 1995, I replied to  
21 a letter I received from the Solicitor's Office that  
22 basically they made comments in the letter that they were  
23 not going to be providing evidence which was equally  
24 available to me such as prison records, medical records,  
25 mental records, et cetera. I informed them that caused me

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1 concern as I was entitled to receive them from their  
2 office. As you know, there are very -- I have already made  
3 this argument previously, that basically they provide  
4 things to the Solicitor's Office more than they may  
5 provide it to me and, certainly, this goes to the point of  
6 the SLED Report. This is a document that I believe that I  
7 should have been able to get or I should have known about  
8 it, the existence of it, but, Your Honor, I did not know  
9 about the existence of it until I came into court and we  
10 were presenting our case and the Report was referred to  
11 and put into evidence. And I had requested ---

12 THE COURT: I understand all of that and I will have  
13 to look back at Doctor Morgan's Report, but I thought that  
14 there was something in there about these statements and,  
15 in fact, you requested them from Doctor Kohanski back in  
16 March.

17 MS. BRICE: Exactly and I ---

18 THE COURT: And, again, I may be missing the boat  
19 somewhere, but that was my understanding.

20 MS. BRICE: And you are correct in that understanding,  
21 Your Honor, but just for the record I would like to point  
22 out the fact that when I saw these documents, the first  
23 time I saw them was when I was with the psychiatrists,  
24 Doctor Morgan and Doctor Kohanski. At that time I briefly  
25 reviewed them, I looked over them, I saw records that I

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1 had never seen before and at that time I requested them  
2 from the Solicitor's Office and received the SLED packet  
3 that was referred to and was marked off. However, when I  
4 requested it from the office, I was of the impression that  
5 they were handing me the entire document that they had  
6 provided to the doctors and that was not true and I did  
7 not learn that until we were before the court this week.

8 THE COURT: All right, well, let's take a break. When  
9 we come back, we will take care of these Motions and the  
10 charges.

11 (Recess.)

12 Is The State ready?

13 MR. POPE: The State is ready, Your Honor.

14 THE COURT: Is the defense ready?

15 MS. BRICE: Yes, sir.

16 THE COURT: The defendant is present.

17 Now we have received all the evidence. Are there any  
18 outstanding Motions that either side is aware of that have  
19 not already been disposed of? I believe that I have  
20 disposed of all Motions that have been made. I think the  
21 only one taken under advisement was the Mistrial Motion  
22 involving the SLED document and that has been disposed of.  
23 Is The State aware of any Motion that has not been  
24 disposed of at this time? I mean, other than this list I  
25 am going to go over in a minute.

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1 MR. POPE: No, sir, Your Honor.

2 THE COURT: Any by the defense?

3 MS. BRICE: No, sir.

4 THE COURT: Does the defense have any Motions at this  
5 time? Again, other than - you have already handed up the  
6 written Motions.

7 MS. BRICE: No, sir.

8 THE COURT: Do both of you have your written Motions -  
9 Motion to Restrict Solicitor's argument dated the 28th day  
10 of September? You have about nineteen things on it.

11 MR. POPE: Yes, sir.

12 MS. BRICE: Yes, I am aware of that Motion.

13 THE COURT: All right, do you have a copy of it before  
14 you so we can go through it?

15 MR. POPE: Your Honor, before we begin going through  
16 it, I will tell you that a number of them I will be able  
17 to clearly state that I would never say that anyway and I  
18 think some of them I think would fall right into the trap  
19 we were talking about before that you, you know, in  
20 essence have to anticipate my entire closing and, you  
21 know, the court rules I am aware of, but I don't won't to  
22 sit and totally go through this that I will say the  
23 following. The defense already has the benefit of waiting  
24 until after ---

25 THE COURT: We are not going to tailor your argument,

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1 but we'll -- and I understand. Ms. Brice, are you all  
2 ready to proceed?

3 MS. BRICE: Your Honor, I am still looking for that  
4 Motion.

5 THE COURT: It is three pages.

6 MS. BRICE: Yes, sir.

7 THE COURT: All right, what about number one, the  
8 deterrent value? Well, she has made the Motion, I am  
9 asking The State. She is saying she wants me to restrict  
10 these things. I want to go through them and see what ---

11 MR. POPE: I intend to argue deterrent value.

12 THE COURT: All right, what do you say about that?

13 MS. BRICE: It is our position, Your Honor, the jurors  
14 should decide basically what his sentence is based upon  
15 the facts and circumstances of the case and that I don't  
16 know what additional value could be added to the return of  
17 the facts on my client.

18 THE COURT: Well, what does the case law say?

19 MS. BRICE: It is my understanding, Your Honor, that  
20 during the sentencing phase what is come into the scope of  
21 argument would be limited to the specifics of the case and  
22 as far as the deterrent value upon my client I think it  
23 was the way the jury is going to be charged. I think that  
24 that is going to come into play from that aspect, Your  
25 Honor.

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1 MR. POPE: May it please the court, Your Honor? State  
2 v Jones and State v Gates the South Carolina Supreme Court  
3 has previously held that such argument is proper and they  
4 have held it is proper.

5 THE COURT: Well, what gives me some concern is State  
6 v Longworth after they go through talking about -- the  
7 court goes through talking about the fact that -- in that  
8 the defense had asked for a charge not to speculate  
9 whether the sentence imposed would deter others and  
10 Longworth basically said where the Solicitor does not  
11 argue deterrents, then there is no need for the charge.  
12 And also the defendant tried to argue something along the  
13 lines that deterrents themselves or that it would not be a  
14 deterrent. And what concerns me is this sentence by the  
15 court "While we decline to reconsider at this time the  
16 propriety of allowing arguments regarding deterrent, we  
17 hold restriction of appellate's argument in this case  
18 resulted in no fundamental unfairness since the trial  
19 judge permitted neither the solicitor nor the appellant to  
20 argue it," which does doesn't appear to request some of  
21 the other things that they say in the order, but is it The  
22 State's position that it is still appropriate to allow  
23 arguments of deterrents?

24 MR. POPE: Yes, sir, and, again, I would refer to 378  
25 SE2d 594 State v Jones. In Jones again, Your Honor, they

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1 have directly stated, Subsection 6, it says, "Jones also  
2 contends that the solicitor improperly argued the  
3 deterrent effect of capital punishment. We have held that  
4 such arguments be proper" and it references State v Gates.  
5 "Cases relied upon by ..." We could put in all the  
6 evidence about the, you know, outside evidence about the  
7 propriety of the death penalty, but we can't argue as to  
8 the deterrent effect.

9 THE COURT: All right, I am going to take a look at  
10 that over lunch because the Longworth decision, in my  
11 opinion, has perhaps thrown this into a gray area, so I am  
12 going to take a look at the deterrent effect over lunch.

13 How about Number 2?

14 MS. BRICE: Your Honor, Number 2 ---

15 THE COURT: Well, first let me get - the Solicitor  
16 says there are some he's not going to argue. Let's see if  
17 we have to --

18 MR. POPE: Your Honor, I don't believe that, and,  
19 again, I'm not going to get greatly specific, but as I  
20 understand Number 2 is saying that I said every murder  
21 ought to be a death penalty case is my understanding of  
22 what Number 2 is saying and I don't think I will be saying  
23 that.

24 THE COURT: Well, I think you are just going to have  
25 to -- I'm going to have to leave that up -- that's one of

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1 the ones where you are going to have to if you hear  
2 something and I am looking at Ms. Brice and Mr.  
3 Schusterman also, whichever, I mean I am going to charge  
4 the jury that they can consider the victim, some things  
5 about the victim, and so I am going to deny any  
6 pre-argument Motions to Restrict in that regards and it  
7 will have to be a contemporaneous objection.

8 All right, Number 3. I don't understand that. And I  
9 think if I do understand that, you are saying he can't  
10 argue the fact that there has been some evidence that Mr.  
11 Hughes has some mental deficiency, that that ought to be  
12 an aggravating rather than a mitigating circumstance?

13 MS. BRICE: Yes, sir.

14 THE COURT: I am not going to pre-issue any  
15 pre-restriction on argument in that regards and it will  
16 have to just be a contemporaneous objection.

17 All right, Number 4?

18 MR. POPE: Your Honor, I wouldn't argue that.

19 THE COURT: All right, 4 is out.

20 5 would be contrary to the law as I understand it.

21 MS. BRICE: Your Honor, I think that has already been  
22 decided because the reason that was in there was based  
23 upon the second charges and I think the court has already  
24 allowed that in.

25 THE COURT: Well, the character would be allowed

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1 anyway. So 5 is denied. I am not going to restrict him in  
2 that regard.

3 6?

4 MR. POPE: Your Honor, do you want me to respond  
5 first?

6 THE COURT: Yes, because if it is something you are  
7 not going to do, I won't have to spend two or three  
8 minutes of Ms. Brice's time for the defense to tell me  
9 about it.

10 MR. POPE: A lot of these are tailored and they  
11 obviously have been cut out of specific decisions,  
12 specific arguments, or even undoubtedly arguments that Ms.  
13 Brice has heard in the past that has been included in  
14 here. I don't particularly ever say that someone wrote his  
15 own death warrant. By the same token, there are many other  
16 ways to say Mr. Hughes brought himself into this and,  
17 again, this is my concern, Your Honor, as I sit here doing  
18 this, I'm kind of sketching out my argument, but I can't  
19 say that I am going to say that he wrote his own death  
20 warrant. I never thought of saying that until I read this.

21 THE COURT: All right, I am going to require a  
22 contemporaneous objection in that type of argument. Do  
23 you have a case on that by the way?

24 MS. BRICE: No, sir, not any at this time.

25 THE COURT: Well, again, this is the time. If you want

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1 to find anything over lunch, you can bring it.

2 MS. BRICE: I may look over lunch for it, Your Honor.

3 THE COURT: All right. Number 7 -- So Number 6 I am  
4 not going to make any ruling on; that will be subject to a  
5 contemporaneous objection.

6 Number 7?

7 MR. POPE: Your Honor, I think 7 for me to say that  
8 would be contrary to what you are going to tell them  
9 because I think you tell them --

10 THE COURT: 7 is denied.

11 8?

12 MR. POPE: Again, 8 is another one, Your Honor, I  
13 haven't contemplated, but it certainly has some merit upon  
14 reading it. I don't think I will state anything of that  
15 nature, but, again, I'm not ---

16 THE COURT: Again, I will call for a contemporaneous  
17 objection, but I do -- I would have some concern about  
18 that being interjected into the arguments.

19 MR. POPE: Your Honor, again, that's not my style,  
20 but not to say maybe I shouldn't adopt it after going  
21 through the defense's objections.

22 As to Number 9, Your Honor, I think that would be  
23 improper for me to say to the jury that you could ignore  
24 their recommendation.

25 THE COURT: And I am going to charge them that that's

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1 not true anyway.

2 MR. POPE: Argument that I would never seek the death  
3 penalty again if they didn't do it in this case. I don't  
4 think that's going to have a lot of impact on people from  
5 Aiken anyway, so I don't think you will hear me say that,  
6 Your Honor.

7 THE COURT: All right, Number 11. He can't do that.

8 MR. POPE: Giving my personal opinion.

9 THE COURT: The Canons of Ethics would prevent that.

10 MR. POPE: Your Honor, as to 12, my understanding when  
11 you seek the death penalty with the Grand Jury making any  
12 decisions or anything of that nature, I don't think - we  
13 have gone well past that. I mean we have now had a jury  
14 that found him guilty. By the same token I will be  
15 addressing the aggravating circumstance of Mr. McCants in  
16 his law enforcement.

17 THE COURT: I think this is going to require  
18 contemporaneous objections.

19 Number 13.

20 MR. POPE: I don't think I would do that either, Your  
21 Honor.

22 THE COURT: I think that is contrary to what is going  
23 to be charged.

24 Fourteen?

25 MR. POPE: I don't think that's an issue.

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1 THE COURT: I don't think we will hear that.

2 Number 15?

3 MR. POPE: I don't think that is proper on my part.

4 THE COURT: That won't be argued.

5 Number 16?

6 MR. POPE: I think in reading Cockerham and in reading  
7 Reid I think in that particular incidence the solicitor  
8 basically was haranguing the jury saying, look, you are  
9 chicken if you don't do it, you know, and I would never  
10 approach it, but by the same token I will acknowledge that  
11 it is a difficult decision as we have from the beginning  
12 so maybe that's something they need to ---

13 THE COURT: Yeah, I think -- I will be surprised if I  
14 hear any of those particular arguments which are, you  
15 know, are in italics -- I mean not in italics, but in  
16 quotations and I'll have to just ask for a contemporaneous  
17 objection on that, Ms. Brice, in the event you hear  
18 something that you think is in that category and we will  
19 deal with it at that time.

20 MS. BRICE: Yes, sir.

21 THE COURT: Number 17.

22 MR. POPE: I'm not sure I understand that.

23 THE COURT: I don't understand that either.

24 MS. BRICE: Your Honor, this goes to the fact that we  
25 would not want the Solicitor to argue, you know, that he

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1 has the right to a fair trial and he has his rights to  
2 counsel basically setting forward his constitutional  
3 rights are showing that everything is afforded to him and  
4 nothing is afforded to the victim.

5 THE COURT: I am going to have to let there be a  
6 contemporaneous argument on that. I'm not sure that  
7 particular argument would have anything to do with whether  
8 he should receive -- what penalty he should receive  
9 anyway, but, again, getting real restrictive I'm a little  
10 fearful of making a pre-argument ruling on that, so it  
11 would have to be a contemporaneous objection.

12 The same with 18. I think he has got a right to argue  
13 that and if you think he has gone beyond the scope, I will  
14 have to hear from you on that.

15 Number 19?

16 MR. POPE: I don't think that would be proper on my  
17 part.

18 THE COURT: Do what?

19 MR. POPE: Nineteen I don't think would be proper.

20 THE COURT: So that's out.

21 All right, and these have been filed, and so the  
22 record will show, I am referring to, there were several  
23 Motions filed, so the record will be clear what we have  
24 been going over was a Motion to Restrict Solicitor's  
25 Argument consisting of three pages containing nineteen

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1 areas of argument about which restriction was sought dated  
2 the 28th day of August, 1995, filed August 29 at 1:48 PM,  
3 1995 in the Clerk of Court's Office.

4 All right now, let's look at the charge. Each side has  
5 had an opportunity to look at the charge as I have  
6 instructed. There is a page number up on the top right.  
7 Let's go through what I have initially and let's do it  
8 this way. Does anybody have any comment on I'm just using  
9 the last two digits, they are all 22, the first one is  
10 2232, any comments on page 32?

11 MS. JEFFERSON: Not from The State, Your Honor.

12 THE COURT: 33?

13 MS. JEFFERSON: No, sir.

14 THE COURT: 34?

15 MS. JEFFERSON: Yes, sir, in that regard the statutory  
16 instructions and the jury's verdict that the court will be  
17 handing up talks in addition to murder and larceny, also  
18 armed robbery and I realize that, Your Honor, on lines 2  
19 and 3 I am referring to, in addition to line 6, that we  
20 would ask that the term armed robbery be included so that  
21 the language reads "I only have charged you as to the law  
22 of murder, armed robbery."

23 THE COURT: All right, I've got it. I think that is  
24 appropriate.

25 Anything about that from the defense?

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1 MS. BRICE: No, sir.

2 THE COURT: Anything from the defense on 34?

3 MS. BRICE: No, sir.

4 THE COURT: 35?

5 MS. JEFFERSON: Nothing, Your Honor.

6 MS. BRICE: Nothing from the defense, Your Honor.

7 THE COURT: 36?

8 MS. JEFFERSON: Your Honor, on line 23 there is a  
9 reference to the defendant as Mr. Forney. That was just -  
10 I noticed that it was caught earlier.

11 THE COURT: All right, thank you.

12 MS. JEFFERSON: And we would ask that on line 24 that  
13 electrocution - be an additional word or lethal injection  
14 be added.

15 THE COURT: Thank you. That's good.

16 Any problem with that, Ms. Brice?

17 MS. BRICE: No, sir.

18 THE COURT: Number 37?

19 MS. JEFFERSON: Nothing, Your Honor.

20 MS. BRICE: Nothing, Your Honor.

21 THE COURT: 38?

22 MS. JEFFERSON: And again on line 9 the addition of or  
23 lethal injection.

24 MS. BRICE: Yes, sir.

25 THE COURT: Anything else from the defense?

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1 MS. BRICE: No, sir.

2 THE COURT: 39? And what I am going to do on that let  
3 me just tell you those are the Forney statutory mitigating  
4 circumstances. I am going to read down through line 7 and  
5 then I am going to refer to a sheet that we will go over  
6 in a few minutes and read the mitigating circumstances set  
7 forth thereon and then I am going to end up with line 20  
8 "Furthermore you may consider any other mitigating  
9 circumstances which are supported by the evidence in this  
10 case." All right, anything else on that page, Ms.  
11 Jefferson?

12 MS. JEFFERSON: No, sir.

13 THE COURT: Ms. Brice?

14 MS. BRICE: No, sir.

15 THE COURT: All right. 40?

16 MS. JEFFERSON: Your Honor, on line 21 the reference  
17 is made to "Even though you find the existence of a  
18 statutory mitigating circumstance," The State would  
19 request the additional language of "Or any mitigating  
20 circumstance" and that they can consider statutory or  
21 non-statutory and similarly in lines 22 and 23 that's  
22 additional.

23 THE COURT: You certainly don't object to that, Ms.  
24 Brice?

25 MS. BRICE: No, sir, not at all. In fact, on line 24

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1 we would also like included imposition of the death  
2 penalty but may be considered by you in considering a life  
3 sentence.

4 THE COURT: All right, what line now?

5 MS. BRICE: On line 24.

6 THE COURT: All right. " ...the imposition of the  
7 death penalty," --

8 MS. BRICE: But you may also consider a life sentence.

9 THE COURT: Okay. All right, 41? And what I tried to  
10 add down there at line 23 is simply the cover the arrest  
11 matters and events including the April '93 matter.

12 MS. JEFFERSON: Your Honor, on line 23 it appears that  
13 you have added "and for no other purpose," is that  
14 correct?

15 THE COURT: Right.

16 MS. JEFFERSON: The State is requesting that the  
17 language "and future dangerousness" be added after his  
18 characteristics. It is my understanding that Solicitor  
19 Pope does intend to argue that to the jury. In our Brief  
20 for the admission of the evidence as to the second murder  
21 while he was awaiting this trial we did argue not only to  
22 the defendant's character, but also to the future  
23 dangerousness issues.

24 THE COURT: What do you have to say about that, Ms.  
25 Brice?

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1 MS. BRICE: I beg the court's indulgence for just a  
2 moment.

3 Your Honor, it would be our position that the language  
4 of future dangerousness go to the evidence as far as his  
5 character is concerned and I think for the court to  
6 instruct "and as to his future dangerousness" is going to  
7 detract from that and perhaps even focus the jury on  
8 concern that may be outside of his character.

9 THE COURT: Well, but you don't contend that they  
10 can't argue future dangerousness?

11 MS. BRICE: No, sir.

12 THE COURT: Okay, I won't include it.

13 MS. JEFFERSON: Also, I'm sorry, in that regard  
14 starting on line 17 down that is the language in a form of  
15 our Request to Charge Number 3 and you had indicated  
16 yesterday that you would be charging that with some  
17 language, but our concern and we would ask that you  
18 consider noting that the evidence at this level for the  
19 issue of the defendant's character is evidence as being  
20 not offered as substantive evidence of an aggravating  
21 circumstance, it does not have to rise to the level of  
22 reasonable doubt. I realize you don't say that it has to  
23 rise to that level.

24 THE COURT: What I am going to charge is number 3.  
25 Does that cover that?

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1 MS. JEFFERSON: Yes, sir. Thank you.

2 THE COURT: All right, what about 2242?

3 MS. JEFFERSON: We have nothing.

4 MS. BRICE: Nothing from the defense, Your Honor.

5 THE COURT: I will instruct about him not testifying.

6 Now we get into accomplice liability down at the bottom of  
7 the page and I think I pretty much have the language that  
8 The State proposed in Number 1 and 2.

9 MS. JEFFERSON: Actually, Your Honor, our Request  
10 Number 4 is contained at the bottom of 2242 and the top of  
11 2243 and our Request Number 1 is contained in lines 5  
12 through 9 of 2243. We would ask that be charged.

13 Similarly, also, I believe that our Request Number 2  
14 is contained ---

15 THE COURT: Yes, I will get to that, I'm sorry, that's  
16 about another issue. I'm sorry, I was looking at -- but 1  
17 and 4 of The State's are covered in that.

18 Does the defense have any objection to that?

19 MS. BRICE: I object to charging Number 1 and 4. Our  
20 position is that these are very fact specific charges in  
21 regards to the codefendant and it is our position that it  
22 would perhaps suggest to the jury what the position of the  
23 court is on these particular charges.

24 THE COURT: So you don't contend that they are not an  
25 accurate charge on the law, it's just that you don't

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1 believe they ought to be charged in this particular case.

2 MS. BRICE: Yes, sir.

3 THE COURT: All right, I am going to charge it.

4 All right, what about 43?

5 MS. JEFFERSON: Again, lines 10 through 15 are our  
6 Requests Number 2. We request that that be charged.

7 THE COURT: All right.

8 MS. JEFFERSON: And I would note, Your Honor, on line  
9 23 I think there is simply a typo I call to your  
10 attention.

11 THE COURT: I've already changed that. I couldn't  
12 figure out at first what that was, but it's costs. And you  
13 will notice on the end of line 11, the top of 12, I struck  
14 out "Consider the evidence ..." because I said it down on  
15 19 and 20.

16 MS. JEFFERSON: Yes, sir.

17 THE COURT: I didn't want to say it twice.

18 Anything on 43 for the defense?

19 MS. BRICE: Your Honor, lines 16 through 24 it is our  
20 position that contrary to recent case law it is our  
21 position that that language should not be included in the  
22 charge because it focuses the attention away from the  
23 rights of the defendant to the victim.

24 THE COURT: Are you saying that there is case law?  
25 Which was it?

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1 MS. BRICE: That there is case law that says that this  
2 language is appropriate, but it is our position --

3 THE COURT: In spite of that that it isn't.

4 MS. BRICE: Yes, sir.

5 THE COURT: Okay. Well, I'm going to charge it. You  
6 are on the record.

7 Okay, 44?

8 MS. JEFFERSON: Your Honor, I believe at the very  
9 beginning of that section it is the Norris charge and I  
10 believe the defense had a Request to Charge, I think  
11 Number 7, regarding no parole eligibility --

12 THE COURT: Yes, we need to look at that.

13 MS. JEFFERSON: That's all from The State that that  
14 would probably need to be deleted - the Simmons or  
15 Southerland Charge, which I know ...

16 THE COURT: You've lost me, your voice trailed off not  
17 that I didn't understand you.

18 MS. JEFFERSON: Just that that language I believe  
19 needs to be deleted and inserted with an appropriate  
20 charge.

21 THE COURT: I agree. That why I have a question mark,  
22 I have two question marks there.

23 All right, what about 44 other than line 4?

24 MS. JEFFERSON: Nothing from The State.

25 MS. BRICE: Basically, Your Honor, we had the same

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1 concerns, but other than that, the rest of it is okay.

2 THE COURT: But your concern is at the bottom of 243,  
3 line 25 through 244, line 4?

4 MS. BRICE: Yes, Your Honor, we are of the opinion  
5 there should be a charge that based upon the facts of this  
6 case - there should be a charge that Mr. Hughes is not  
7 eligible for parole.

8 THE COURT: Yes. We will get to that in a minute. I  
9 want to make sure I am not overlooking something.

10 Anything else on 44?

11 MS. BRICE: No, Your Honor.

12 THE COURT: 45?

13 MS. JEFFERSON: Nothing, Your Honor.

14 MS. BRICE: None, Your Honor.

15 THE COURT: 46?

16 MS. JEFFERSON: Nothing, Your Honor.

17 MS. BRICE: Nothing, Your Honor.

18 THE COURT: 47?

19 MS. JEFFERSON: Nothing.

20 MS. BRICE: Nothing from the defense, Your Honor.

21 THE COURT: All right, I asked since I gave this to  
22 you struck out lines 17 through 20 because I am going to  
23 cover that later, that's the bias and prejudice or  
24 arbitrary - I'm going to cover that later and I ain't  
25 going to say it twice just in interest of time.

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1 MS. JEFFERSON: 16 through 20, Your Honor?

2 THE COURT: 16 through 20 when I talk about no bias,  
3 prejudice - I have broadened that somewhat. Do you  
4 understand that, Ms. Brice?

5 MS. BRICE: Yes, sir.

6 THE COURT: All right, now what I am going to do at  
7 this point as to recommendation I am going to charge  
8 Defendant's Number 5.

9 MS. BRICE: Your Honor, unfortunately, when I handed  
10 those --

11 THE COURT: Well, this is just on the recommendation.  
12 You will notice I have used ---

13 MS. BRICE: Okay.

14 THE COURT: --- your recommendation.

15 MS. BRICE: Thank you, sir.

16 MS. JEFFERSON: For the record we have no objection.

17 THE COURT: All right. And I am going to follow that  
18 with this language. "Your verdict may not be based on  
19 passion, prejudice, sympathies or public feeling, public  
20 opinion, sentiment, race, conjecture or any arbitrary  
21 fact."

22 What does The State say about that?

23 MR. JEFFERSON: That is my understanding of the law,  
24 Your Honor.

25 THE COURT: Is that correct?

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1 MS. BRICE: Yes, sir.

2 THE COURT: All right. Okay, I corrected the  
3 alternates' names at line 17.

4 Now that's on 48. Anything on 48 other than what we  
5 have gone over?

6 MS. JEFFERSON: Nothing, Your Honor.

7 MS. BRICE: Sorry, Your Honor, it stopped at 47.

8 THE COURT: All right, well, I'll let you look at my  
9 48. The Solicitor made these copies.

10 MS. JEFFERSON: Actually, Your Honor, for the record  
11 ours stopped at 47 too and I then went on to our original  
12 transcript.

13 THE COURT: All right, that's fine. I'll let you look  
14 at mine, but basically all it says is just what I said  
15 about the part I have written in and then I begin to talk  
16 about breaks and he alternates, so it has nothing of  
17 substance. It has no legal principles on it other than  
18 what I just -- now as to State's Number 2, I believe I  
19 cover that.

20 MS. JEFFERSON: Yes, sir, I believe all four of ours  
21 are covered.

22 THE COURT: Ms. Brice, are you ready to look at your  
23 Requests?

24 MS. BRICE: We will renew our earlier objection the  
25 fact that ---

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1 THE COURT: Which, now you have lost me.

2 MS. BRICE: I'm sorry. I think it is already included  
3 in the charge. Thank you.

4 THE COURT: Let me start over. I have gone through  
5 what I have handed out as my proposed charge. I have gone  
6 through all The State's because they have all been  
7 covered. So I am now on your Number 1, which is about  
8 "while in the commission of certain other crimes, the  
9 elements..."

10 MS. BRICE: Could you give me the heading of that,  
11 Your Honor?

12 THE COURT: "Or the necessity of finding the defendant  
13 personal culpability for aggravating factors."

14 MS. BRICE: Thank you, sir.

15 THE COURT: What is The State's position on that?

16 MS. JEFFERSON: Your Honor, while this language in the  
17 Request to Charge of the Defense does contain language  
18 from the Enmund Opinion, it is the position of The State  
19 that Tison actually clarifies Enmund and, Your Honor,  
20 specifically, I note you referenced Tison yesterday and if  
21 you need a copy, we can certainly provide you with that,

22 ---

23 THE COURT: I've got it.

24 MS. JEFFERSON: --- but in Tison the U. S. Supreme  
25 Court did clarify Enmund and did note that they are not

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1 requiring and, in fact, I think the language that we  
2 pulled from some of our Requests that had been included,  
3 and particularly 1 and 4, are from Tison and there are, of  
4 course, clarification in the Opinion, so we would object  
5 to their potential Request 1 noting that Tison later  
6 clarified Enmund stated that "Major participation in a  
7 felony committed combined with reckless indifference to  
8 human life" is sufficient to satisfy the Enmund  
9 culpability requirement. We would submit that that  
10 language contained in Defense Request 1 has been  
11 superseded by Tison.

12 THE COURT: Ms. Brice?

13 MS. BRICE: Your Honor, it is our position that this  
14 is a charge should be stated to the jury and that it  
15 should not take away the facts and circumstances in  
16 regards to our client.

17 THE COURT: All right, well, I'll look at Tison along  
18 those lines because that is a later pronouncement.

19 How about Number 3, which is on the necessity of  
20 finding the defendant's personal culpability for homicide.

21 MS. JEFFERSON: Again, Your Honor, we would object on  
22 the basis that Tison and State v Longworth, a South  
23 Carolina Supreme Court Opinion 438, SE2d 219. These cases  
24 follow the Peterson and Enmund case cited by the defense  
25 in support of this Request to Charge and we would submit

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1 that this is simply not a correct charge under the current  
2 state of the law, rather under Tison and Longworth the  
3 current language is that "Under a period of accomplice  
4 liability is immaterial whether or not the defendant knew  
5 beforehand that a codefendant might be committing a fatal  
6 act." Again, that is the language that we used in our  
7 Request, I think either 1 or number 4, regarding  
8 accomplice liability.

9 THE COURT: All right. What about that second  
10 sentence on the -- the third sentence in the first  
11 paragraph leaving out the word "rather"?

12 MS. JEFFERSON: I do believe that that one sentence  
13 would be appropriate in that the individual  
14 characteristics and the circumstances of the crime are  
15 appropriate situations.

16 THE COURT: All right, well, I'm going to charge that  
17 sentence and none of the rest out of that. Do you  
18 understand that, Ms. Brice?

19 MS. BRICE: Yes, sir.

20 THE COURT: All right.

21 I think I have covered your Number 4, which is the  
22 jury's -- on the jury's consideration of mitigating  
23 factors.

24 MS. JEFFERSON: For the record, Your Honor, we do not  
25 object to that.

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1 THE COURT: Well, I think I have covered that's what  
2 I'm saying.

3 MS. BRICE: Yes, sir. Do you want me to state what we  
4 feel the mitigating circumstances are at this time?

5 THE COURT: Well, no, this is just looking at the --  
6 all you are asking for there is whether you think I  
7 adequately cover this charge in the one I plan on giving.  
8 Do I or do I not.

9 MS. BRICE: We have specific mitigating circumstances  
10 that ---

11 THE COURT: I am going to get to that in just a  
12 minute. Do I cover what you say here, but you don't talk  
13 about specific circumstances in --

14 MS. BRICE: Right; yes, sir.

15 THE COURT: So Number 4 is covered.

16 Well, what about Number 5? What does The State say  
17 about that? That is quote "in the commission of" end  
18 quote - Number 6, I'm sorry.

19 MS. JEFFERSON: As to Number 6, Your Honor, we would  
20 cite the case of State v Damon and I have a copy for Your  
21 Honor in addition to a copy for defense counsel, 328 SE2d  
22 628. In that case, Your Honor, the South Carolina Supreme  
23 Court specifically held that "A robbery committed after  
24 the actual murder can still be used as an aggravating  
25 circumstance. It is immaterial whether or not the thought

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1 to rob was conceived prior to the fatal act" and we would  
2 submit that based upon Damon that the Defense Request to  
3 Charge is not the state of law in South Carolina.

4 THE COURT: I will take a look at that over lunch  
5 also.

6 Now as to Number 7 and 8 those each have to do with  
7 the charge regarding what, in fact, life imprisonment  
8 means. Does The State object to --

9 MR. BRACKETT: No, sir, Your Honor, we don't object to  
10 the Simmons charge being given. We would object to the  
11 language in their proposed charge and would ask that the  
12 court charge directly from State vs Southerland, which  
13 explicitly lays out in about two sentences what the court  
14 should charge when a Simmons charge is appropriate. This  
15 case has an interesting aspect to it that I wanted to put  
16 on the record as well. When the defendant was arrested at  
17 the time of the offense under Simmons or under state law a  
18 life sentence would mean life because it would have been a  
19 second violent offense. The violent offense that he has  
20 previously been convicted on, the burglary first degree in  
21 North Carolina, but that was prior to the Omnibus Crime  
22 Act of 1986. In 1993 the law was amended striking that out  
23 saying that in order to be considered a violent offense it  
24 had to be classified one as of 1986. So in 1993, in the  
25 interim period in there while he was waiting for trial the

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1 law changed, making him eligible for parole under the new  
2 law. And then in 1994 it went back the old way making  
3 ineligible for parole. The question becomes does that  
4 change in the law because it changed to his benefit and  
5 then changed back to his disadvantage, does he still  
6 derive the benefit from that change in the law? What I am  
7 trying to prevent is him arguing here that he is entitled  
8 to a Simmons charge and entitled to tell the jury that he  
9 would never be eligible for parole and then should he get  
10 life, he go to the Department of Corrections and argue,  
11 no, that would be an ex post facto application of the law,  
12 the law changed in 1994 and he is, in fact, eligible for  
13 parole. If their position is that he is not eligible for  
14 parole, The State concedes that. We think that he is not  
15 eligible for parole; however, we want to make clear that  
16 that is their position now so that thirty years from now  
17 if he does get a life sentence, that remains his position  
18 or any Parole Board that considers a potential parole for  
19 Mr. Hughes understands that he gained an advantage at  
20 trial in being able to tell the jury that he was not  
21 eligible for parole.

22 As far as the Southerland, the Supreme Court Opinion,  
23 State vs Robert Southerland 447 SE2d 862, back page 868,  
24 head note 27, there is specific reference, Your Honor, to  
25 the proper charge to be given, the language to be charged

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1 to the jury.

2 THE COURT: I am going to look at this over lunch, but  
3 so that I'll know let me have the defense position on all  
4 of that at this time.

5 MS. BRICE: Your Honor, it is my understanding that at  
6 this time one of the options available is a charge that he  
7 is ineligible for parole. As to whether or not what may be  
8 decided in the future or what the Department of  
9 Corrections may do I certainly don't want to do anything  
10 that would limit my client.

11 THE COURT: I am not going to require you to do that.  
12 We will charge the law as we feel correct. But let me ask  
13 you this as to your Number 7, which is no parole, you ask  
14 that I charge out of, well, you have got an A and B. See  
15 what I am talking about?

16 MS. BRICE: Yes, sir.

17 THE COURT: And then you have got a C. Shouldn't the  
18 offense be the burglary first as opposed to murder, Ms.  
19 Brice?

20 MS. BRICE: Yes, sir, I believe so, yes, sir. I think  
21 that was a typo by my secretary.

22 THE COURT: Okay. Well, I am going to look this over  
23 lunch and also your Number 8 had to do with what happens  
24 if statutory aggravating circumstances are not found.

25 What does The State say about that?

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1 MR. BRACKETT: If they don't find statutory  
2 aggravating circumstances?

3 THE COURT: Well, it covers more than that, but that's  
4 what I understand the basic gist of it is. You know, it's  
5 just they want to see the flip side -- if I understand  
6 from reading this Request is this shows what happens when  
7 a recommendation of death is not made. "The trial judge  
8 must impose a sentence of life imprisonment without  
9 culpability for thirty years when statutory circumstances  
10 is found." If it's not -- wait a minute -- that it be life  
11 if an aggravating circumstance is found.

12 MS. BRICE: Your Honor, at this point I'm not sure if  
13 that's appropriate. I'll withdraw that one.

14 THE COURT: You want to withdraw that one?

15 MS. BRICE: To reconsider the charge, yes, sir.

16 THE COURT: Okay, that one is withdrawn, Number 8,  
17 thirty year parole eligibility.

18 MS. BRICE: Yes, sir.

19 THE COURT: All right, so all I need to do is look at  
20 Number 7.

21 MS. BRICE: Yes, sir.

22 MR. BRACKETT: That's correct.

23 THE COURT: All right, anything further before we  
24 break for lunch?

25 MR. BRACKETT: No, sir.

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1 THE COURT: Anything from the defense?

2 MS. BRICE: No, sir, nothing at this time unless you  
3 want me to give you a list of the mitigating  
4 circumstances.

5 THE COURT: Oh, yes, I do. Did you not look at what I  
6 had prepared? Is it not complete? I gave you last night  
7 the statutory instructions.

8 MS. BRICE: There are some that I would like included  
9 in there that are non-statutory, Your Honor.

10 THE COURT: All right, but I don't charge those, do I?

11 MS. BRICE: I'm sorry. I beg the court's indulgence.  
12 Your Honor, it is my understanding from my consultant,  
13 Jennifer Shealy, who is here, that this court can also  
14 charge non-statutory mitigating circumstances, basically  
15 tell the jury that there are other mitigating  
16 circumstances that are not statutory that can be  
17 considered by the jury.

18 THE COURT: Well, I will tell them that, but you are  
19 asking me to catalog --

20 MS. BRICE: Yes, sir, and it has been her experience  
21 the court has done that.

22 MR. POPE: Your Honor, I would object to that. I think  
23 that in your instructions to the jury after you list out  
24 the statutory mitigating circumstances that are required  
25 by the statute, furthermore you may consider any other

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1 mitigating circumstances supported by the evidence in this  
2 case. It is clear throughout if you tell them they can do  
3 it for any reason or no reason at all, if you have made  
4 clear they can consider anything, I think to go further  
5 and to list the mitigating circumstances, additional ones  
6 that the defense has supplied, is the very thing they fear  
7 sometimes when you give instructions somehow you are  
8 giving weight or directing their attention to consider  
9 specific ones that they may put forth in closing.

10 THE COURT: Well, have you handed the list to The  
11 State?

12 MS. BRICE: No, sir, I can make a copy of it.

13 THE COURT: All right, get a copy and give a copy for  
14 me to look at over lunch and I'll make a decision on that  
15 after lunch too.

16 MS. BRICE: Additionally, Your Honor, we would request  
17 that the jury be instructed that they also consider that  
18 the assault on Mr. Gorth and the death of Mr. Williamson  
19 that they should find beyond a reasonable doubt that Mr.  
20 Hughes is guilty of those offenses.

21 THE COURT: I think in my regular charge, which you  
22 didn't object to, said they could find him beyond a  
23 reasonable doubt -- I mean, said they do not have to find  
24 those beyond a reasonable doubt.

25 MS. BRICE: It is our position that in instructions to

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1 the jury that he should be found in the mitigation portion  
2 of this case that Mr. Williamson -- the actions against  
3 Mr. Williamson and Mr. Gorth the jury should find beyond a  
4 reasonable doubt that he was guilty of those offenses and  
5 that I also believe that a charge should be made to the  
6 jury concerning psychiatric defenses in regards to being  
7 not guilty by reason of insanity.

8 MS. JEFFERSON: Your Honor, it's already previously in  
9 our Request to Charge. I understood Your Honor to say that  
10 you would be charging State's Request Number 3, which is  
11 basically from the Brief we submitted during the pre-trial  
12 hearing as to the admissibility of the evidence of the  
13 second murder while he was awaiting trial on these  
14 charges. And based upon State v Middleton, State v Stewart  
15 and State v Green, all cited at the bottom of our Request  
16 to Charge Number 3, and cited within our Brief submitted  
17 at the pre-trial hearing. We submit that such evidence  
18 does not have to meet the reasonable doubt standard nor  
19 does it even have to meet a clear and convincing standard  
20 under those three cases.

21 THE COURT: I'm not going to charge that those need to  
22 be found beyond a reasonable doubt. This is not a guilt  
23 matter. It is a question of character. I'll tell them they  
24 can only consider it, but they cannot consider it as  
25 substantive evidence of aggravating circumstances, but

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1 only consider as to character, characteristics of future  
2 dangerousness and for no other purpose and so I'm not  
3 going to charge they have to find that beyond a reasonable  
4 doubt and I'm not going to charge a mental defense. That's  
5 not to preclude you from arguing it.

6 MS. BRICE: Then in that case is it my understanding  
7 that the court will also not instruct the jury in regards  
8 to the law concerning the defenses of not guilty by reason  
9 of insanity?

10 THE COURT: What does The State say about that?

11 MS. JEFFERSON: Your Honor, if I understand the law  
12 that while certainly the defense can present evidence in  
13 mitigation of defendant's mental state at the time and  
14 certainly that can be argued that as we do not meet the  
15 burden of proof beyond a reasonable doubt or even a clear  
16 and convincing that a charge as to not guilty by reason of  
17 insanity would not be appropriate.

18 THE COURT: All right, I'm going to charge it. If you  
19 will hand me a charge up on that, I'll charge it.

20 MS. BRICE: Thank you, sir.

21 MS. JEFFERSON: Will that be in regard to the  
22 determination of the second murder, the murder of Mr.  
23 Williamson?

24 THE COURT: Oh, yes.

25 Anything further before we break?

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1 MR. POPE: Yes, sir, before you charge that we would  
2 like an opportunity to review.

3 THE COURT: Yes, that's why I want it written down  
4 exactly what so over the lunch break get a copy of the  
5 list of non-statutory mitigating circumstances and what  
6 you propose I charge regarding not guilty by reason of  
7 insanity.

8 MS. BRICE: Yes, sir.

9 THE COURT: Anything else from The State before we  
10 break?

11 MR. POPE: Nothing further, Your Honor.

12 THE COURT: Anything from the defense?

13 MS. BRICE: No, sir.

14 THE COURT: All right, I see between both arguments  
15 and the charge about two hours.

16 MR. POPE: Yes, sir.

17 MS. BRICE: Yes, sir.

18 THE COURT: Then after we break for lunch before we  
19 start arguments I will then talk to Mr. Hughes about his  
20 rights regarding making an argument, so you all can  
21 discuss that further with him.

22 All right, it is almost 1:00. Let's try to be back  
23 around 2:00, but I am going to give everybody some  
24 flexibility in that because we have got some things that  
25 we need or three of us or five of us or how many of us

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1 there are have some stuff to do. All right, we will break  
2 for lunch at least until around two o'clock.

3 Okay, you all keep the courtroom secured.

4 (Recess.)

5 THE COURT: I can't remember whether or not, -- well,  
6 Is The State ready?

7 MR. POPE: The State is ready, Your Honor.

8 THE COURT: Is the defense ready?

9 MR. SCHUSTERMAN: The defense is ready, Your Honor.

10 THE COURT: Mr. Hughes is present.

11 --- whether or not we went over my the things we  
12 handed out yesterday the statutory instructions on - I had  
13 changed them a little bit in that Number 1 and 2 I add  
14 just "robbery while armed with a deadly weapon," but I  
15 changed that to say "The murder was committed while in the  
16 commission of robbery while armed with a deadly weapon."  
17 Number 2, "The murder was committed while in the  
18 commission of larceny with the use of a deadly weapon."  
19 And I will charge the jury, of course, that that's -- and  
20 I think based on my reading of I think it was the Damon  
21 case that the charge requested by the defense as to "in  
22 the commission of" is going to be covered by me simply  
23 charging the language in the statute.

24 As to the charge on no parole I am going to charge  
25 Roman Numeral I, A, B and C, charging C burglary instead

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1 of murder, burglary first degree.

2 As to the question of ---

3 MR. POPE: May it please the court, before you go on  
4 to the next one, the A, B and C that you are talking about  
5 charging are you charging that in lieu of the Southerland  
6 instruction, the Simmons instruction?

7 THE COURT: About taking the plain and ordinary?

8 MR. POPE: No, sir, the Simmons and Southerland when  
9 the court directed and said it's a direction, and I  
10 apologize, Ms. Jefferson discussed it, it said the court  
11 directed that in any sentence situation the court should  
12 give the following charge.

13 THE COURT: Let me see it. I didn't have a copy of  
14 that case back there with me.

15 MR. POPE: I thought Southerland was handed up.

16 MR. BRACKETT: Yes, sir, I think I handed it up.

17 THE COURT: Maybe you did, okay, yes, you did. I did  
18 review that, however, that is dated 1994 and I believe the  
19 statute changed in 1995.

20 MR. BRACKETT: Which statute --

21 THE COURT: Didn't 16-320 change this year? Wasn't it  
22 changed by the Legislature to require life without parole?

23 MR. POPE: Yes, sir.

24 THE COURT: Well, Mr. Brackett is looking no and you  
25 are saying yes, so I -- who's in charge?

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1 MR. POPE: I'm in charge, Your Honor. The statute  
2 changed as to the part B section if that's what I  
3 understand the court was talking about, the part B as to  
4 the statute saying that you look at 1986 or you look prior  
5 to that did change. Your Honor, our position is that in  
6 Section 27 of the Southerland case it says "We instruct --  
7 that in death penalty cases which future dangerousness is  
8 at issue under Simmons State law prohibits the defendant  
9 from release on parole, which it does, that the court  
10 instruct if you sentence the defendant to death, you must  
11 assume that the sentence will be carried out, that if the  
12 recommendation of death is not made, the defendant shall  
13 be sentenced to life imprisonment without the possibility  
14 of parole." That's on page ---

15 THE COURT: I've got it. Again, that still pre-dates  
16 -- well, no, I don't guess it does.

17 Let me hear the statutory aggravating circumstances  
18 now. The State's position?

19 MR. POPE: He's not -- our position, Your Honor, just  
20 to clarify it would be he's not eligible for parole  
21 because of a prior crime back in '82, that he's not  
22 eligible for parole on the murder because of his crime  
23 back in '82. So the fact that the statutory aggravating  
24 circumstances were or were not found in this particular  
25 case based on our previous discussions involving that

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1 statute, he would not be eligible for parole.

2 THE COURT: So you object to my charging Number 7,  
3 which is the language of the statute?

4 MR. POPE: Your Honor. I don't object to your charging  
5 the statute, but, again, the Supreme Court speaking  
6 directly to if this issue comes up, that this charge  
7 should be given. That would be my concern. I'm just trying  
8 to anticipate down the road. I wouldn't want to see this  
9 case back because we did not give the Southerland charge  
10 that they have directly indicated that we should. I think  
11 the bottom line, Your Honor, what they are saying in  
12 Charge 7 is what you ultimately tell them under the  
13 Southerland charge is the same thing. I think the only  
14 difference is that Number 7 you are just itemizing; it  
15 gets into technical language of the statute of what would  
16 keep them from getting paroled and we are willing to, you  
17 know, just cut to the chase and say we agree that he  
18 wouldn't be eligible.

19 THE COURT: Well, what would be wrong with charging  
20 their Number 7 and following it up with the Simmons  
21 language?

22 MR. POPE: That will be fine, Your Honor. My  
23 understanding you will charge Roman Numeral I, A, B and C?

24 THE COURT: Yes.

25 MR. POPE: Okay, and then following it up with the

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1 Southerland charge?

2 THE COURT: Right. And then C has to charge that  
3 murder and burglary are violent crimes.

4 MR. POPE: Or armed robbery, yes, sir.

5 THE COURT: Murder, burglary and armed robbery.

6 MR. POPE: Murder and armed robbery.

7 THE COURT: Well, see, it talks about violent crime  
8 and it talks about following a separate sentence for a  
9 prior conviction.

10 MR. POPE: Oh, I see what you are getting at.

11 THE COURT: So I think you have to tell them that  
12 burglary, the prior conviction, is ---

13 MR. POPE: The prior conviction is one and ---

14 THE COURT: And these are too.

15 MR. POPE: Which again just brings us back to our  
16 argument. We concede that, Your Honor.

17 THE COURT: All right. Defense, we have been talking  
18 directly and exclusively to the prosecution, the  
19 Solicitor. Do you have any comments on any of that, Ms.  
20 Brice?

21 MS. BRICE: Your Honor, I think that the decision of  
22 the court, in essence, to charge basically our charge and  
23 then follow it up with Southerland, we would agree with  
24 that, Your Honor.

25 THE COURT: All right. Now I think the only other

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1 issue, correct me if I am wrong, that remains is the  
2 Request to Charge regarding the April -- was it the 12th?

3 MR. BRACKETT: April 12, 1993.

4 THE COURT: All right, has the defense handed to The  
5 State its Request regarding the defense of mentally ill --  
6 not guilty by reason of insanity?

7 MR. SCHUSTERMAN: Your Honor, I believe -- yes, sir,  
8 Your Honor, the document that I handed to the court, the  
9 Solicitor has a copy, and I believe that Mr. White made a  
10 copy of State v McIntosh or the pertinent part of State v  
11 McIntosh that we are asking you to charge.

12 THE COURT: What says The State about those Requests?

13 MR. POPE: As to the charge, Your Honor?

14 THE COURT: Yes, sir.

15 MR. POPE: Again, going back to our initial objection,  
16 I don't think -- at this point the proper consideration,  
17 if the court has determined that it is going to charge it,  
18 then we open up the area of the court would also need to  
19 charge guilty but mentally ill because under the same  
20 circumstances they could find him guilty but mentally ill  
21 and then he would be responsible for it. Our first  
22 position is that we don't charge an insanity charge at  
23 all. If we are going to charge the insanity charge, then  
24 we need to charge a complete insanity charge that would  
25 include guilty but mentally ill.

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1 THE COURT: You got -- hand up what you want on guilty  
2 but mentally ill. What does the defense say about that?

3 MR. POPE: Your Honor, I'll be honest I received this  
4 prior to me coming in and I have not gotten the charge of  
5 guilty but mentally ill.

6 THE COURT: All right, well, let's -- we will take a  
7 break I know at some time between the arguments and the  
8 charge and maybe we can -- if I tell you I am going to  
9 charge that, then you will know that you can argue it. So  
10 perhaps we can get structured while you all are arguing.  
11 But what is the defense position?

12 MR. SCHUSTERMAN: The defense position is, Your Honor,  
13 that as I understand it a charge has to be applicable to  
14 the facts and The State has shown nothing other than just  
15 cross examination of the witnesses that he put up that  
16 have all consistently said that in their opinion he is not  
17 guilty by reason of insanity. In order to charge guilty  
18 but mentally ill there's nothing in the record to indicate  
19 that he is guilty but mentally ill other than the  
20 Solicitor's opinion to that. There has to be some facts in  
21 the record to warrant ---

22 THE COURT: I think that under that Smith -- D. B.  
23 Smith case they can rely on lay testimony I think  
24 regarding whether or not he was or was not acting with a  
25 mentally deficiency and I think that there is testimony

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1 that would indicate there was -- well, I don't have --  
2 pull it.

3 MR. SCHUSTERMAN: Your Honor, if I may, what I was  
4 going to say is I will be more than glad to pull that  
5 case. As I recall, this is purely a recollection, that I  
6 don't know that the case said that they could rely solely  
7 on lay testimony to warrant.

8 THE COURT: I think in that case that's all they had.  
9 The defense had an expert that said he was, I think, not  
10 guilty by reason of insanity, was it not?

11 MR. POPE: That's correct, Your Honor.

12 THE COURT: And the defense relied solely on the  
13 testimony, that is, he was functioning normally the day  
14 before, he had been to a doctor, which was not testifying  
15 as an expert, but his regular family physician said the  
16 last time he saw him he was okay and --

17 MR. SCHUSTERMAN: Was that the case, Your Honor, out  
18 of Lexington County?

19 THE COURT: No, ---

20 MR. POPE: Edgefield.

21 THE COURT: --- Edgefield County. But there is  
22 testimony in this record that the jury could conclude that  
23 he premeditated this, that he may have had some mental  
24 problems and been in that promortal -- what ---

25 MR. SCHUSTERMAN: Prodromal.

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1 THE COURT: --- prodromal state and that he did have a  
2 mental deficiency at the time just like you are trying to  
3 prove he had a mental deficiency all the way back to when  
4 he gave a confession. So the defense has consistently  
5 taken the position that whether he is criminally  
6 responsible at any particular time, he has even prior to  
7 and at least at the time of the Brent McCants matter been  
8 suffering under some mental illness.

9 MR. SCHUSTERMAN: And, again, Your Honor, if I may  
10 argue to the court assuming that, and I don't have the  
11 case in front of me, but if that's the case, if I am  
12 arguing the right case, I believe, Your Honor, that the  
13 reason that the court allowed the reliance on that lay  
14 testimony is because there was a relationship between the  
15 defendant and this person who clearly was not an expert of  
16 a very long duration of time and felt that, as I remember  
17 the case, if I am arguing the right case, Your Honor, and  
18 I certainly wouldn't--but there was a relationship of some  
19 fifteen years ---

20 THE COURT: The police chief was a friend. But the  
21 court didn't -- but there was also one of the witnesses  
22 that The State wanted to had been a deputy who drove him  
23 somewhere the next day and said he appeared to be fine on  
24 that particular day. I think that goes to the weight. I  
25 can't start saying -- if somebody only knew him three days

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1 and somebody knew him six days, somebody knew him six  
2 years -- I'm going to charge it, if you will get that  
3 charge. Let me tell you how I am going to handle that  
4 whole situation because I, of course, have ruled that it  
5 can come in and I feel comfortable with that ruling, but I  
6 am going to charge in my charge, and if you all want to  
7 look on page 2241, after I charge that, the asterisk  
8 language at the bottom "and events that occurred after his  
9 arrest and while he was incarcerated" I am going to charge  
10 the following. I propose to charge the following; I will  
11 be glad to hear from both sides. "As to the April 12th,  
12 1993, event in the York County Detention Center, I remind  
13 you that one is presumed innocent of a crime until a jury  
14 finds them guilty beyond a reasonable doubt. I tell you  
15 the defendant is not on trial here for anything connected  
16 with that event." That is after I told them earlier that  
17 they can consider that as evidence of his character,  
18 future dangerousness and characteristics.

19 Does The State have any problem with that?

20 MR. POPE: Your Honor, not that I am aware of. Ms.  
21 Jefferson is going to try to work on the other stuff for  
22 me.

23 THE COURT: She is shaking her head.

24 MS. JEFFERSON: No objection, Your Honor.

25 THE COURT: All right. The defense?

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1 MR. SCHUSTERMAN: No objection, Your Honor.

2 THE COURT: All right, is there anything which we have  
3 not covered? Has both sides looked at the statutory  
4 instructions and the form?

5 MR. POPE: Yes, sir, you have noted there was a  
6 change. I noted that on 1 and 2 as far as "while in the  
7 commission of a robbery and while in commission of a  
8 larceny."

9 Your Honor, as to the defense has handed up  
10 non-statutory mitigating circumstances.

11 THE COURT: Yes, I will get to that in just a minute.  
12 Let me take this one at a time.

13 What does the defense say about these statutory  
14 instructions and the Part 1 and Part 2 verdict and  
15 recommendation or determination?

16 MR. SCHUSTERMAN: Your Honor, the only thing that we  
17 would ask be modified as to Part 2, the jury's  
18 determination of sentence to be imposed that has both  
19 statutory instructions - several times in those documents  
20 you refer to or it's referred to as "life imprisonment"  
21 and we would just ask that the words "without parole" be  
22 added to them when they have a choice.

23 THE COURT: What does The State say about that?

24 MR. POPE: Your Honor, I think that looking at it you  
25 had stated in the Jury's Determination Part 2, Section A,

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1 that he be imprisoned in the State penitentiary for the  
2 balance of his natural life. You have also in your other  
3 charge explained that numerous times and I think now the  
4 defense is even going to have a charge that explains that,  
5 so, Your Honor, I will say it will be redundant based on  
6 the numerous prior times that you have indicated.

7 THE COURT: I'm going to add it; I'm going to add it  
8 in the places where it is appropriate.

9 MR. SCHUSTERMAN: Thank you.

10 THE COURT: All right, have you handed up to me the  
11 non-statutory - is that all on that? I hate to keep sound  
12 like I'm rushing, but --

13 MR. SCHUSTERMAN: The only other issue I think is the  
14 non-statutory mitigation.

15 THE COURT: Yes, and I was asking if anyone had handed  
16 it up to me.

17 MR. SCHUSTERMAN: I believe so; I can hand you another  
18 one.

19 THE COURT: The prosecution has a copy?

20 MR. POPE: Yes, sir.

21 THE COURT: And it is The State's position I should  
22 not reference any?

23 MR. POPE: That is The State's position, particularly,  
24 looking at these particulars that are requested, Your  
25 Honor. They are so fact specific that, again, it would

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1 give the jury the indication that the court has listened  
2 to the evidence and found certain mitigating circumstances  
3 himself and is indicating those to the jury. If you look  
4 at them, it talks about "The brothers and sisters of  
5 Mar-Reece Hughes have established the --"

6 THE COURT: Let's do it this way; they just gave it to  
7 me, so I just have seen it, but Number 1 is covered under  
8 the statutory, is it not? Low IQ. Isn't that under age or  
9 mentality of the defendant at the time of the crime?

10 MR. SCHUSTERMAN: I guess, Your Honor, in regard to  
11 Number 1 instruction we would ask that because it's --

12 THE COURT: I'm not going to charge -- I'm not going  
13 to even consider that. I hadn't said whether I am going to  
14 charge or not. I'm not going to consider 1. I'm not going  
15 to do 4, you can certainly argue that. I understand 2 and  
16 2. goes 1, 2, 2, 4, both 2's are marked out as I have got  
17 it.

18 MR. SCHUSTERMAN: That is correct, Your Honor.

19 THE COURT: Then it goes 4 and the court is striking 4.  
20 The court is striking 1 and 5, 6, 7. I'm not going to  
21 charge any of those that's non-statutory. They are  
22 certainly all fair game for argument, but --

23 MR. SCHUSTERMAN: Your Honor, we would just ask that  
24 based on our request that they be marked as a Court's  
25 Exhibit.

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1 THE COURT: All right, y'all have to put that in the  
2 record, not right this minute, but we'll get that.

3 All right, anything further?

4 MR. POPE: No, sir, Your Honor.

5 MR. SCHUSTERMAN: This is a lengthy charge, Your  
6 Honor, and this was just discovered. Citing State v  
7 Peterson within that case, Your Honor, under headnote 7,  
8 they cite Enmund v Florida, a Supreme Court case, and in  
9 pertinent part, Your Honor, it says: "The United States  
10 Supreme Court held that the Eighth and Fourteenth  
11 Amendments forbidded imposition of the death penalty upon  
12 an individual who did not personally take life, attempt to  
13 take life, or intend that life be taken. During penalty  
14 phase of death penalty cases which involve conspiracy  
15 liability the trial judge should charge the death penalty  
16 cannot be imposed on an individual who aids and abets in a  
17 crime in a course of which a murder is committed by  
18 others, but who did not himself kill, attempt to kill, or  
19 intend that killing take place or that lethal force be  
20 used."

21 MR. POPE: Your Honor, I would point out that Peterson  
22 predates Tison and I think Tison addressed that.

23 THE COURT: What is the date on Peterson?

24 MR. SCHUSTERMAN: Peterson is a 1985 decision.

25 THE COURT: Tison is in '87, U. S. Supreme Court -

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1 1988 of Tison and talking about Enmund. It says, "Enmund  
2 held that when "intent to kill" results in its logical  
3 though not inevitable consequence, the taking of human  
4 life, the Eighth Amendment permits The State to exact the  
5 death penalty after a careful weighing of the aggravating  
6 and mitigating circumstances. Similarly, we hold that the  
7 reckless disregard for human life implicit in knowingly  
8 engaging in criminal activities known to carry a grave  
9 risk of death represents a highly culpable mental state, a  
10 mental state that may be taken into account in making a  
11 capital sentencing judgment when that conduct causes its  
12 natural, though also not inevitable, lethal result." Then  
13 later it says on that same page, "We simply hold that  
14 major participation in the felony committed combined with  
15 reckless indifference to human life is sufficient to  
16 satisfy the Enmund culpability requirement." And I believe  
17 that's the language basically that I am charging that was  
18 handed up to me.

19 MR. SCHUSTERMAN: Your Honor, if I understand, I don't  
20 think the Court in Tison specifically removed the standard  
21 from Enmund. I don't think they rejected that standard.

22 THE COURT: No, it doesn't. It says that this is  
23 sufficient to satisfy the Enmund culpability requirement.  
24 It says that "Only a small minority of those jurisdictions  
25 imposing capital punishment for felony murder have

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1 rejected the possibility of a capital sentence absent an  
2 intent to kill and we do not find this minority position  
3 constitutionally required. We will not attempt to  
4 precisely delineate the particular types of conduct and  
5 the states of mind warranting imposition of the death  
6 penalty here. Rather, we simply hold that major  
7 participation in the felony committed combined with  
8 reckless indifference to human life." So you have got to  
9 have major participation combined with reckless  
10 indifference to human life and that's sufficient. Those  
11 are fact questions for the jury. Major participation as  
12 opposed to minor participation and reckless indifference  
13 to human life. So I am going to charge what I said  
14 earlier.

15 Anything further?

16 MR. POPE: No, sir, Your Honor.

17 THE COURT: Anything further from the defense?

18 MS. BRICE: Your Honor, before the jury comes in, can  
19 we have just five minutes?

20 THE COURT: We are going to do that. I am going to  
21 send word to them that they have got two or three minutes  
22 so that we can all get refreshed and they can get  
23 refreshed and I can make sure I have gotten this changed.

24 And, finally, The State will, of course, open?

25 MR. POPE: Yes, sir.