VOLUME SIX OF EIGHT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. Supreme Court

Appeal from Spartanburg County

Paul M. Burch, Circuit Court Judge

MARION ALEXANDER LINDSEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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RESPONDENT'S EXHIBIT #13 (EXPERT WITNESS LIST).....3089

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INDICTMENT 3944

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

APPLICANT'S EXHIBIT #26 (AUDIOTAPE)

APPLICANT'S EXHIBIT #27 (PHOTOGRAPH)

APPLICANT'S EXHIBIT #28 (PHOTOGRAPH)

Q Okay. And you had access to the Spartanburg detention records, didn't you?
A That's correct, sir.
Q And you reviewed in those records, which would of been prior to the time of this trial, more contemporaneous to the time of this trial, that this inmate had, again, another violent assault within the jail, correct?
A Yes, sir, he got into an altercation with another inmate as well as the officer trying to break it up.
Q All right. And that altercation and inmate, how was that resolved?
A That was resolved with him being disciplined. I think he got 20 days administrative or disciplinary segregation and he got gassed.
Q He got gassed.
Now, why would you gas an inmate?
A To control the behavior.
Q Because he wasn't voluntarily responding to the officer's request to stop the violence?
A That's correct, sir, and that's a normal process within high security environments, yes, sir.
Q Is it a normal process that when an inmate is fighting with another inmate they're automatically gassed?
A Nothing is automatically gassed. But what I am saying is that the appropriate use of gas, in reviewing this use of

force to include the thousands of use of force that, reviews I've conducted, it was a certainly well within sound correctional practice to administer gas.

Q Okay. Is that, again, your understanding of correctional policies, is that the first step when an officer comes upon an act of violence between inmates?

A No, not necessarily so, sir.

Q Is it the second?

A It could be the second. It could be the first. It depends on the situation.

Q It depends upon the level of violence that's occurring at that particular time?

A No, no, it's a potential. It's a major variable also.

Q Okay. Now, in, in the Department of Corrections setting, when he was housed at Dutchman, when he had that incident with fighting another inmate, what level of control did he have in corrections at that time?

A He was in medium custody, sir, if I remember correctly.

Q Okay. And what is, what is medium custody that he was in when he had that fight in 1996?

A Medium custody means that the inmate can move more freely from Point A to Point B without, for example, the use of belly chains or having a direct escort.

Q Okay.

A And that's just an example in layman's terms.

Q So, it's more, it's a more general prison population setting?
A Technically speaking, yes, but you do have general population in a maximum or in, even in a super maximum security environment.
Q Okay. Where did that fight in 1996 occur?
A It was outside of the dining hall if I'm not mistaken, sir.
Q Okay. Where a number of inmates are, are generally together?
A Yes, sir.
Q Okay. It wasn't a fight in his jail cell with his cell mate, was it?
A Not that I can recall, sir.
Q Okay. The December 6th, 2000, excuse me, the, the incident at the, the jail cell in February, excuse me one second, let me get that, at the detention center February 13th, 2004, where did that act of violence on Mr. Lindsey's part occur?
A It was initiated when he was at his cell when he left the cell, and, and went to have an altercation with an inmate because of what the inmates were saying to him through the vent if I'm -- is that the case you're talking about?
Q Yes, sir.

Okay. And that one resulted in gassing, correct?
A Yes, the officer was breaking it up and his hand, his arms got caught in-between, to which I've seen before, and another officer came in and said watch out, and he, he opened with the, with the gas.
Q Okay. Now, at, at your time in corrections in South Carolina, you never supervised or controlled Mr. Lindsey, did you?
A No, sir.
Q At your time in the South Carolina Department of Corrections, you never evaluated Mr. Lindsey for what type of prison setting he should be in, did you?
A No, not as the warden or, or any official capacity there.
Q And, again, past behavior is the best predictor of future behavior, isn't it?
A Yes, sir, and you also have to put in the other variables such as age, mental status, and things of that nature.
Q Okay. Now, Mr. Lindsey has been incarcerated at Lieber Correctional Institution since he was sentenced to, to death, correct?
A That's my understanding, sir.
Q And Lieber Correctional Institution is a more restrictive environment as far as controlling inmates than

at, at Dutchman Correctional Center, isn't that correct?
A My understanding is that is correct, sir.
Q And Mr. Lindsey has had two incidents where he has fought with other inmates at Lieber Correctional Institution since he's been housed on death row in December 2004 and December 2006 with Inmate William Bell in 2004, and a more aggressive one, with Inmate Angel Vasquez in December 2006, isn't that correct?
A He had---
MR. VIETH: Your Honor, let me, let me just understand how PCR's sometimes work cause I, I haven't done this with regards to post-conviction conduct. I would either object to going into anything after the jury rendered a verdict because they wouldn't have heard what he's getting ready to say about 2005, or six, or seven or if that is permissible, then at least I know the door's open for anything I may want to go into with other witnesses for the rest of this trial.
MR. ZELENKA: Your Honor, he's given an opinion. To me, his opinion is subject to impeachment. He's testified the best predictor of future behavior is past behavior. I've got situations where on death row, in a more restrictive environment, he is acted out against other inmates.
I think, in the United States Supreme Court decision of, I believe it's Hill versus Lockhart, it basically says

counsel is not entitled to a windfall based upon changes of facts or changes in the law which may undermine the facts of the original trial. I think it's relevant as far as impeaching his opinion and his opinion is that he could be managed, he could control, as he testified on direct examination, without having violence against other inmates. That was his testimony and here he, in fact, has done it. I'm just pointing out the times that he has violence against other inmates in light of what he testified on direct examination.

THE COURT: I'm not familiar with that case, but common sense is, tells me that you're okay in what you're doing. So, if it is an objection, I overrule it. If it's not an objection, I'll give you some guidance.

MR. VIETH: All right, sir. Well, it's -- no, I'll withdraw it cause I can deal with some other issues at a later date. Thank you.

THE COURT: Okay.

A Do you mind asking the question again?

Q The best, if I can probably rephrase the question, would be best. You're aware that the defendant has had two acts of violence while on death row in South Carolina with two other inmates who are also on death row in December 2004 and December 2006, correct?

A I have general knowledge of that, yes, sir.

Q Okay. And, and you said you reviewed those records too, didn't you?
A That is correct, sir.
Q And you would agree that the best predictor of future behavior is past behavior, isn't that correct?
A That's correct, sir, but you have to put---
Q And, and---
A I'm sorry.
Q And you would agree that the South Carolina Department of Corrections, at Dutchman Correctional Institution in 1996 and at Lieber Correctional Institution in 2004 and 2006, was unable to manage Mr. Lindsey to prevent violence against other inmates, isn't that correct?
A Not necessarily so, sir. Prisons are very dangerous places and they contain violent people. I, I know inmates or know of inmates and I have to manage inmates that have gotten into more trouble before lunchtime than what we're talking about over a period of years, have been gassed continuously and use of force. I've even had to make a sniper, had a sniper to, to kill an inmate in a hostage situation. So, when you put it in the proper context, we have to evaluate prison behavior using prison standards and not community standards.
Q Okay. Let's go back. So, so, what you're essentially testifying is that there are inmates within the Department

of Corrections who are more violent than Mr. Lindsey and would cause a correctional officer more trouble?

Is that what we're saying?

A No, sir, hypothetically that could be true, but that's not what I'm saying. I am saying, because he had these altercations and fights, doesn't indicate to me or any other person with correctional knowledge that he can not be managed within a prison setting.

Q Okay. What is your opinion about Mr. Lindsey, again, cause maybe I didn't understand it. I thought it was that there would be managed without risk of harm or violence to guards, inmates, general public.

Is that not what your opinion is?

A No, sir, my opinion is not to create an unreasonable risk of harm. I'll get on an airplane and fly 37,000 feet, I have a reasonable expectation to get there alive. Sometimes people don't, but it's reasonable to assume that I would get there safely. The same thing is within a prison context.

Q Okay. And you seem to, to assert that that was based upon your understanding that Mr. Lindsey was not a member of a prison gang, correct?

A That is one indicator, yes, sir.

Q That wouldn't fit within your definition of a predator, correct?

A That's another component, yes, sir.
Q Okay. But you make no reference that he has problems with anger management historically before he went into prison and while he's in prison, do you?
A He has issues with controlling his anger just like many thousands of inmates that I've had to manage over the years, sir.
Q Okay. In looking at those records of the South Carolina Department of Corrections, while he's at Dutchman in 1996 and since he's been in the Department of Corrections since 2004, is there any indication, in those records, of suicide attempts by this defendant?
A I remember some indication of possible suicide attempts as certainly him verbalizing that he was going to some harm to himself as well as banging his head against the wall and finding blood and things of that nature.
Q No, I'm, I'm, I'm asking you about while he's in the Department of Corrections.
A Correct.
Q You're referring to---
A The jail.
Q ---an incident in October 2002?
A That is correct, sir.
Q I'm asking you in the Department of Corrections records, is there any information of a suicide attempt?

A I did not discover any what I call a validated attempt to suicide, no, sir.
Q Okay. In giving your opinion of his adaptability to prison, did you have any contact or consult with any of the wardens, jail guards that he had during any of these periods about his relationship with them, his ability and willingness to follow directions of the guards, his interaction with other inmates, his standing within that particular correctional community?
A No more than the official records and those are the people that you refer to put notations in records and have automatic reviews as dictated by policy and that's the nomenclature as well as the protocols that I use, sir.
MR. ZELENKA: Okay. Indulgence one moment, Your Honor.
(Pause.)
MR. ZELENKA: No further questions.
Thank you, Mr. Aiken.
A Thank you, sir.
MR. VIETH: Two, two quick things, judge. One I failed to qualify him. I would ask the Court to qualify him as an expert. I'm sure that's not objected to, but I failed---
MR. ZELENKA: Expert in what?
MR. VIETH: In prison adaptability and future dangerousness.
MR. ZELENKA: As an expert in prison adaptability. I

wouldn't qualify him as an expert in future dangerousness.

MR. VIETH: Okay. Future adaptability then.

MR. ZELENKA: No objection.

MR. VIETH: Failed to do that and can I---

THE COURT: So qualified.

MR. VIETH: One follow-up question.

WITNESS: Thank you.

REDIRECT EXAMINATION

BY MR. VIETH:

A In fights, whether it's outside of jail or inside of jail, someone initiates it.

Does it always have to be one person who initiates a fight or can it be another person who initiates a fight?

A It could be another person initiate a fight and you would have to evaluate it using prison or jail terms. For example, the altercation at the jail. How many times two inmates just are fighting to get the officer involved and then both the inmate turns on the officer, things of that nature, which I didn't see, and these were just jailhouse fights and you're gonna have them.

Q Okay.

THE COURT: Sometimes it's a third party that initiates it.

MR. VIETH: Yes, sir.

WITNESS: That's true, Your Honor. Certainly true.

MR. VIETH: Yes, sir. That's all the questions I have. Thank you.

THE COURT: Anything further, Mr. Zelenka?

MR. ZELENKA: Nothing further.

THE COURT: Thank you, sir. You may step down.

WITNESS: Your Honor, thank you, sir.

MR. VIETH: Let him be excused if he needs to be, Your Honor.

THE COURT: Witness may be excused---

MR. ZELENKA: Yes, sir.

THE COURT: ---Mr. Zelenka?

MR. ZELENKA: No objection.

WITNESS: Thank you sir.

MR. VIETH: Your Honor, what we're trying to do is work out scheduling. So, I'm, we think -- hold on a second.

(Pause.)

MR. VIETH: Your Honor.

THE COURT: I can call over there and try to change my---

MR. VIETH: Oh, no, we're just trying to work this out. If I, if I call Karen Quimby, or Hatcher now, I don't think there's a way that it will be done by 11:10. She has a new baby that she needs to tend to. So, I can, if you don't mind going and then interrupting it and bringing her back for after lunch. She can do that instead of just starting

the whole thing after lunch. It's a time issue for Karen. I'm jury trying to accommodate her.

THE COURT: Have no problem with that unless the State does.

MR. ZELENKA: No, I certainly don't.

MR. VIETH: Go as far as we can and then we'll just stop.

THE COURT: Okay.

MR. VIETH: Karen, come on up.

THE COURT: If you'll come around please.

KAREN HATCHER, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VIETH:

Q Karen, would you state your name please?

A Karen Quimby Hatcher.

Q Okay. And where do you live now, Karen?

A Currently in Woodbridge, Virginia.

Q Okay. And you were the attorney or one of the attorneys in the Marion Lindsey death penalty trial in 2004, is that correct?

A Yes, sir, I was third chair.

Q All right. And let me ask you this, how long now have you been not practicing law?

A Two years.

Q Okay. And that's a short term in, in a big picture?
A It is. My husband is on military, active military orders and, which is how we got to Virginia. And when his orders are up, I assume that we'll be back in South Carolina. But for now I'm not licensed in Virginia and because we're not, could be short term, I did not take the bar up there.
Q Okay. But your intentions are to come back to South Carolina?
A Yes, sir.
Q And practice law, reestablish practice?
A Possibly. I'm a full-time mother right now. So, I'm not sure whether---
Q All right.
A ---what I'm gonna be doing.
Q I believe this case was continued because you were having your child at that time?
Just a couple---
A Yes.
Q ---few months ago, is that right?
A Yes.
Q And just directing your attention back to your schooling and educational background, just tell us when you passed the bar.
A 1997.

Q Okay. And what did you do after you passed the bar?
A After I passed the bar I went to work as an associate with Jim Brooks for a year and then went over and practiced in an office under the direction of Bill Mullin and Mitch Slade, and then I joined the Public Defender's Office in March of 2000 and went back to private practice in August of 2006.
Q Okay. So, you were with the Public Defender's Office from March of 2000 until 2006?
A Yes.
Q Okay. Prior to your going to the Public Defender's Office, had you had any type of training or CLE's, anything of that nature, in death penalty work?
A In death penalty work, no, sir.
Q Okay. Did you have any death penalty qualifications such as second chair or CLE's or anything of that nature prior to the Lindsey case?
A Prior to the Lindsey case, no specific CLE's. I'm fairly certain that -- well, I know that I went to one of the break -- at the public defender conference, they have break-out sessions for part of the day, and I know that I sat in on the capital section of the break-out session and I believe it was in 2004. But it would of been after Marion's trial.
Q Okay.

A If there was one in 2003, I may have, I may have also done that. But I know that there, there was one or two that I did sit in on.
Q All right. Now, one or two break-out sessions seminars?
A Yes, capital break-out sessions.
Q And, so, that would be at the P.D. seminars you usually have down at the coast?
A Yes.
Q Okay. And if that happened, it would of been post Lindsey?
A The public defender conferences are generally the end of September.
Q Right.
A And if the one I sat in on was in 2004 it would of been after Lindsey. I'm not sure if -- if one was offered in 2003, I'm not -- I can't say whether I sat in on one in 2003 or not.
Q Okay. But that would be the most would be a break-out session maybe in '03?
A Unfortunately, yes.
Q Okay. Now, were you involved in the death penalty case prior to the Lindsey case?
A Yes, sir.
Q Okay. And tell the Court when your involvement was in

that case, what the name of the case was, and so forth?
A I was involved as third chair in Eric Dale Morgan's death penalty case. Clay Allen was lead attorney in that case and Roger Poole was second chair. I believe I became involved with that sometime in mid to late 2003. I can't be -- I don't recall exactly when I got involved in that, but there -- I was significantly involved in helping to get ready for that trial.

I didn't make any strategic decisions or, and I wasn't part of the record, but I was involved in that case, and that was in March of 2004. That's when it began. And, so, it would of ended around the end of March and Mr. Lindsey's trial was in May. I was not informed that I was to be part of Mr. Lindsey's trial until about a month before trial.
Q Okay. So, you were, you were involved in a death penalty case that had actually went to trial and sentencing?
A Yes.
Q In March of 2004?
A Yes.
Q Okay. And were you also assigned a death penalty case in the same year after the Lindsey case?
A Yes, sir, I was.
Q Tell us about that.
A I was lead counsel in -- I was assigned to represent Frederick Antionio Evans upon his arrest here in Spartanburg

County, and that became a capital case and which ended up putting me as first chair. That was scheduled for trial and actually did go to trial in early November of 2004 and I'm trying to think. Sometime in two -- I'm not sure when Mr. Evans was noticed, but it would of been sometime in 2003, early 2003. Mid -- well, early to mid 2003 is when Mr. Evans was noticed for a capital case---

Q All right.

A ---for a capital trial.

Q Were you working on that case at the time you were working on the Lindsey case?

A To the best of my ability.

Q Okay. And is that an answer related to both of those cases?

A Yes, sir.

Q Working on them to the best of your ability---

A Yes, sir.

Q ---Lindsey and---

A I -- yes, sir, along with all of the pending cases that were non-capital that I was assigned to.

Q Okay. And what -- and in that regard, Karen, what was the case load like at the Public Defender's Office in that time frame?

A My particular case load was, my best estimation, in the 500 plus case range.

Q All right. That was active files?
A Yes, sir.
Q And you were still going to General Sessions Court for roll calls and things of that nature?
A Yes, sir.
Q When you finished the '04, the March '04 trial, when you got through with that, were you tired?
A Yes.
Q All right. Did you put effort into that death penalty case?
A Yes, I did.
Q And did you have anything to do, prior to that death penalty case, with the, the Marion Lindsey case?
A No, I did not.
Q Nothing at all?
A No.
Q Okay.
A Not to my knowledge.
Q Okay. What---
A I'm sorry. Pardon me.
Q Go ahead.
A At that time I was also in charge of bond hearings for the Public Defender's Office. I don't have a recollection whether I did Mr. Lindsey's bond, but that might of been something I did just looking, just looking back time wise.

That, that was my responsibility unless the attorney who assigned to a case personally wanted to take a certain bond hearing.

Q Okay. When you were asked or told by your, your, your employer, I guess Mr. Bartosh, that, to, to join in on the Lindsey case, what were your role -- what was your role to be?

A Not -- I did not understand my role to be as active a role as it was in the Eric Morgan case. Mike Bartosh needed some assistance with organizing the files, being a liaison between he and Lenora Topp, and basically a gopher role, and I did review all of the discovery, cataloged it, and ran documents to whoever might needed me to, picked up documents. It was a, it was a very limited role.

Q Okay. Were you concerned about the preparation and time that you had to put into that case?

A Well, because I was not lead or second chair, I'm not sure how important my role was as far as being prepared for trial.

Q All right. So, your role was not to make decisions?

A No, it was not.

Q It was not to determine what types of witnesses to call?

A No.

Q It was not to determine whether or not they even call

Mr. Lindsey as a witness in either phase of the trial?
A That would not have been my decision.
Q So, you basically, if I'm hearing you correctly, say you had a first chair in Mr. Bartosh, you had a second chair in Mr. Brannon, and your role was, as you put it, kind of a gopher to go get, get things and make charts and whatnot to---
A Right.
Q ---that are very good charts?
Is that---
A Yes, sir.
Q Is that basically your role?
A Yes, sir.
Q All right. So, many of the questions that I may ask you concerning trial strategy or things of that nature, I assume your answer is you don't know?
A For the most part that's probably accurate.
Q All right. Let's go through some of them and see if those are the answers that I'm gonna get.
With regards to Rod Tullis, do you recall him being a potential witness in this case?
A I do now. I didn't necessarily have any particular memory of that until it was called to my attention in the last, in recent weeks by both you and Mr. Zelenka based on some notes that I had made in the file.

Q All right. And I'm gonna show you that. I believe Mr. Zelenka and I have already talked about it and have no problem with producing that document.

You can -- can you look at that document and just tell us what that is a part of?

A This would of been my cataloging of witnesses and subpoenas that, that the defense was seeking or sought.

Q Okay. And I'll give you a bigger part of that. That's just---

A Okay.

Q ---and ask you is that part of your work product?

A Yes, it is.

MR. VIETH: Okay. All right. Your Honor, at this time I'd move to introduce this one sheet into evidence as Applicant's Exhibit whatever the next number may be, 25.

THE COURT: In without objection?

MR. ZELENKA: No objection. I'm sorry.

(Whereupon, the notes were marked as Applicant's Exhibit No. 25 and received into evidence at this time.)

Q Karen, referring to Applicant Exhibit No. 25 or, Mrs. Hatcher, I'm sorry.

A That's fine.

Q The top part of that does reference Rod Tullis - mental state, is that correct?

A That is Mr. Bartosh's handwriting.

Q Okay. And, so, everything up on top is his handwriting, Marion's, Aunt Betsy, and Tony---
A Grigg.
Q ---Grigg?
A Yes, sir, that's all -- and Rod Tullis, mental state, that's all Mr. Bartosh's handwriting.
Q Okay. All right. Now, the rest of the document, is that your package, software package, whatever you have to make this?
A It's just---
Q Do you type them?
A It's just my typing, yes, sir.
Q Okay. So, this is yours then, the rest of it?
A Yes, sir.
Q So, at that time you had, as a potential expert, Ms. Lenora Topp, you listed as an expert, is that correct?
A Yes, sir, as, as opposed to simply a lay witness who has prior knowledge of, of Mr. Lindsey. She was an expert -- she was someone that we retained.
Q Okay. And you have both a mitigation investigator, and then you have expert in the next column, and then you have all of that under the column of expert witnesses, correct?
A Yes, sir.
Q Okay. So, did someone tell you that, that they were thinking of calling the mitigation investigator as an expert

witness?
A I don't recall and my division of, of sections on this page would have been my own in trying to keep track of who, the people that we had retained and the people who were simply absolutely lay witnesses.
Q Okay. At that time in your life did you know the difference in a mitigation investigator versus a mitigation expert?
A Honestly, no.
Q Okay. All right. And you also listed Doctor Tora Brawley and Doctor Margaret Melikian along with Doctor John Absher as potential---
A Yes.
Q ---witnesses?
And of that list, and also I'm sorry, Benjie Stevens as a family law expert, correct?
A That---
Q Potentially.
A Yes.
Q Potential expert?
A Yes.
Q Okay. And then of that list, Doctor Melikian was the only one that actually was called, if you recall, of those five?
A Okay.

Q Is that right?
A (Witness nods affirmatively.)
Q Okay. Thank you. And -- all right. On Applicant Exhibit 12, which I just showed you has been in evidence, is the records of William Hall Institute. Ask you if you can recall seeing those records. If you can, take a minute.
Is that your initials at the bottom?
A That's my initial and I'm not sure whose handwriting that is. It's not mine.
Q Okay
A But if this is something that's received prior to trial, I'm, I'm certain that I'm familiar with it. I just don't have---
Q Okay.
A ---particular recollection of its substance.
Q All right. In this document, just to refresh your memory, there's a comment by Doctor Narayan that indicated that his testing scores, results from a test of malingering of mental health symptoms reveals some variability in his response pattern, but does not meet the test criteria for malingering.
Do you know why Narayan was not called to testify in that regard?
A I do not.
Q Okay. Do you recall malingering being an issue in the

trial?
A To some extent. Kind of like a newspaper article, I remember the headline of malingering possibly being an issue, but I'm, I'm not -- I'm fuzzy on the details after this long.
Q All right. And, and you've, and you've been fair by saying the questions I'm probably asking you don't know the answers to, but just to cover this record I'm asking you some. So, if you say I don't know---
A Sure.
Q ---that's what -- we're just going through it.
A Sure.
Q The same would be with Doctor Brawley, why she wasn't called to testify, you don't know of your own knowledge?
A No, I don't.
Q Okay. Why Rod Tullis wasn't called, you don't have any independent knowledge?
A I don't.
Q Okay. There's a tape that Mr. Zelenka and I went through some of the boxes here yesterday after we quit and we found this tape and asking you if you can identify that tape as coming from the Public Defender's file or that you received it in any event.
A It's got a stamp, I mean a sticky note that it was my received stamp and then my handwritten note that K.Q. picked

up. So, this -- and my handwriting on the note and on the outside of the case, but it is not my handwriting on the tape itself. This would of been -- I assume that this would of been something that we received in discovery from the State. But I, I'm not -- there's no other indication on there that it came from the State. But I'm not sure how else we would of gotten it.

Q Did you listen to the content of that tape this morning?

A I did.

Q Okay. And that was with me and Mr. Zelenka and the recorder right here?

A Yes.

Q Okay. And you don't recall hearing that tape before today, do you?

A I don't have a specific recollection of it.

Q Okay. All right.

A But I may have. I just don't remember.

Q All right. But there's no doubt in your mind that---

A Actually I'm sure I did based on the note that I have written---

Q Right.

A ---and the other sticky note.

MR. VIETH: Okay. All right. Your Honor, at this time we would move to introduce this tape into evidence.

MR. ZELENKA: No objection. The tape came from the Public Defender's file.

THE COURT: Okay. In without objection.

(Whereupon, the tape was marked as Applicant's Exhibit No. 26 and received into evidence at this time.)

Q Mrs. Hatcher, with regards to the issue in the case being or do you recall a potential issue in the case being infidelity on behalf of Marion's wife?

A Very vaguely.

Q Okay. All right. I'm going to show you what's been in evidence as Applicant Exhibit 14, a note from Rusty Clevenger, and a, a copy of a note that apparently was stuck on that note, asking if you can read that to yourself and, and say if you remember it.

A I do based on my note, my handwritten note on here. I remember finding a piece of discovery about the boyfriend, which evidently is this piece of paper, and part of my note indicates a question that I would assume would of been asked of Mike Bartosh, you know what do you want to do, is there anything you want to do with this, and I'm not sure whether I got a response or whether I just left it with him.

Q Okay. And that would at least give you some indication that someone called the Solicitor's Office indicating they had an affair with Ruby Nell Lindsey?

A That's what it seems to indicate.

Q Okay. Okay. Showing you Applicant Exhibit 15, and I know you haven't seen any of these probably in a while, is that your handwriting at the top of this document?
A Yes.
Q Okay.
A It is.
Q And that's just a report to Judge Few apparently at the conclusion of the case?
A Yes.
Q All right. And on Page 2, which is the only thing I'm really directing my, your attention to, that is accurate that you were retrained or involved in mid March of 2004 and Mr. Brannon came on in March of 2004?
A Okay.
Q Judge Few---
A Yes, I see that. I wasn't informed about my coming in in mid March, but---
Q Okay.
A ---that's what that indicates.
Q Well, it was right after that trial ended?
A At some point after the trial ended. I don't think it was -- mid March was when that trial---
Q Immediate---
A Well, it was When that trial ended, but I don't think I was advised of my participation in Mr. Lindsey's case until

some weeks after that.
Q Okay. Do you remember meeting with Pam Crawford?
A Yes.
Q Okay. And what was the reason for, for Mrs. Crawford being in, up in Spartanburg?
A To the best of my recollection, the State called her to drive up from Columbia and interview Mr. Lindsey in the very early part of the trial.
Q Okay. And I show you what's been placed in evidence as Applicant Exhibit 16, and ask you if these are your handwritten notes.
A They are.
Q Okay. Just tell us what -- you can either read it or summarize it, but what does that tell the Court?
A That there were evidently, just reading the top part of it, that there were, were -- there were three days, parts of three days that Pam Crawford met with Marion Lindsey or I'm not sure whether this is indicating three separate days that Mrs. Crawford met with Mr. Lindsey or -- I'm not sure. But what I have detailed is on May the 20th, Thursday, May the 20th, that Mrs. Crawford had a preliminary discussion from 9:00 to 9:35, and that would be p.m., and then part one of the evaluation would be from 9:35---
Q Okay.
A ---through to 11:10 p.m.

Q All right. And did you stop that interview?
If you'll look at about---
A Yes.
Q ---I respectfully stopped it.
A Yes.
Q Okay. And that was because she was starting, in your opinion, to become fact specific?
A Correct, and I -- and not being a person who is authorized to make specific decisions concerning the case, and just being -- I was simply told to go to the jail and sit in on the interview. I wasn't sure about the, the scope or the range of available, of permissible topics, and once I noticed that they were into the facts, I, I did respectfully stop the interview and just let her know I wasn't stopping it -- that -- just to air on the side of caution, I wanted to run that by Mr. Bartosh first.
Q All right. And then you made a comment of why she said she was here, and that's right after you have mitigation in all caps, mainly to I.V. him---
A To interview him.
Q That would be interview him?
A Yes, sir.
Q And critique Melikian and Brawley?
A Yes.
Q Not to come to a determination of competency, guilt by

I believe I guess, guilty but mentally ill, not guilty by reason of insanity, et cetera?
A Correct.
Q But she was just here, at least she told you she was just here to critique testimony of Mr., of Doctor Melikian or Doctor Brawley if they were called as witnesses and to interview him?
A Correct.
Q And, and you stopped the interview when it was getting fact specific?
A Yes, sir.
Q Okay. Thank you.
Do you recall -- well, when Margaret Melikian got involved in the case, Doctor Melikian got involved in the case, it was later than you, is that right?
A I believe so.
Q And you were doing all you could to get records down to her as you got them?
Is that fair to say?
A Yes, I remember driving a bunch of records down to Columbia, and I could not remember last week whether it was to Doctor Brawley or Doctor Melikian. But based on that, I would assume it was to Doctor Melikian.
Q All right. And just briefly to get this in the record, we've got Exhibit 17, Applicant's, Applicant Exhibit 17

dated Friday, 5/14/04.

Is that your handwriting?

A It is.

Q And just in the, kind of the middle of it, at 1:20 I guess in the afternoon you faxed med records to Melikian, Brawley, and Absher?

A Yes.

Q Okay. And Exhibit 18, Applicant Exhibit 18 in evidence, ask you if this part of your handwriting.

A It is.

Q Okay. And this has at the top of it mitigating circumstances at the very top?

A It does.

Q And in the middle of it, directing your attention to handwriting on future adaptability, what does that say?

A It says future adaptability to prison life can come in through a clinical psychologist because it is evidence of a mitigating circumstance and then lists three state cases.

Q Okay. Now, was this given to you or was this research you had done or do you remember?

A I don't remember.

Q Okay. Do you remember that no one testified about prison adaptability in the trial of this case?

A I, I recall that now.

Q Okay. And why that happened was a decision you didn't

have any input---
A Correct.
Q ---in?
A Correct.
Q Okay. All right. Give me one second, Karen.
(Pause.)
Q Do you recall Doctor Barry Henderson being mentioned as a potential witness by any chance?
A No, I don't.
Q Okay. Show you Exhibit 19, Applicant Exhibit 19, and is that your---
A It is.
Q ---part of your handwriting and just directing your attention to about under M.B.'s, I guess that's Mike Bartosh's?
A Yes, sir.
Q Go down about three or four lines and you see Doctor Henderson?
A Yes, sir.
Q And that apparently says top, waiting to hear from him, friend like---
A Family friend---
Q Family friend---
A ---like Burton?
Q ---like Burton.

A Yes.
Q Is that correct?
A Yes.
Q This isn't dated and we don't know when that was done, but it would of been pretrial I take it?
There's some date there that says someone was served?
A John serving -- that would be a note that a subpoena was being served to someone, but I'm not sure --
Q Okay.
A -- who it refers to.
Q All right.
A So, it does look like it was a pretrial document that I prepared.
Q All right. And Doctor Henderson did not testify. I'll just tell you that---
A Okay.
Q ---in case you didn't remember.
Piedmont Legal Services, are you familiar with them when they were in, when---
A Yes.
Q ---Piedmont Legal?
That document has been introduced into evidence as an application that, that Mr. Lindsey made to go see them.
Were you familiar with that document at all?
A Not to my -- well, not to my current recollection.

Q Okay. I show you Applicant's Exhibit 21, and ask you if you can identify that being your handwriting.
A It is my handwriting in the top horizontal margin and down the left side it is doctor, I mean it is Mike Bartosh's -- actually it is somebody else's handwriting in the middle of the page and I'm not sure whose handwriting that is. It could be Lenora Topp's. I'm not sure.
Q All right. That's a short document.

How about just reading what that, what, what your handwriting says?
A Okay. She called.
Q She being Doctor Melikian?
A I suppose Doctor Melikian.
Q Okay.
A She called Friday, April 30th, 2004. Judy, who is Judy Bogan, Fed Exed lots of docs to the doctor Monday or Tuesday, and has more that she's Fed Exing today. Doctor says it's just too much and she can't be ready. Judy took her number and I have an arrow pointing down to the other handwriting, so, therefore, it's Judy Bogan's handwriting, the doctor said she will not be in today, which was April 30th. And K.Q., I advised M.B., which is Mike Bartosh, and per Mike Bartosh she knew the time constraints before she started and said she'd be okay. She'll call her on Monday.

Q Okay. So, on April 30th, prior to April 30th, apparently there's some records being, some more records being sent down to Doctor Melikian and she's calling to say it's just too much, we can't be ready, and Bartosh is saying she knew what she was getting into when she got this job?
A Evidently.
Q Okay. Do you know whether a continuance was ever requested by Doctor Melikian?
A I don't recall.
Q Okay.
A And I apologize. I'm embarrassed, I'm embarrassed for my lack of knowledge---
Q No.
A ---or recollection. I had a lot going on that year and then it's been a long time since then. So, I, I apologize.
Q No, no apology to it. I mean you've, you've been honest. You had a lot going on. At that time you had three death penalty, penalty cases. This is the middle one of three, is that right?
You had 30 days?
A Yes.
Q Okay. And then lastly on I think exhibits is Exhibit 22, and ask you if you can identify Applicant's Exhibit 22.
Is any of that your handwriting?
A It's all my handwriting.

Q All right. Let's look at Mike, is that your handwriting to, a note to Mike Bartosh?
A I can't say that it's a note to him. It may be---
Q Uh-huh. (Affirmative).
A Well, it may be something for me to ask him or bring to his attention.
Q Okay. And it's talk to doctors question mark, medical records, suicide notes from Rod. Talked to verify some stuff, late lost, weight lost, and pre, pre, pre, post, whatever that may mean.
A I'm not sure what that means.
Q Okay. So, at this note, which is a non-dated note assuming pretrial, you're still referring about these suicide notes from Rod, is that---
A Evidently, yes.
Q All right. Do you remember seeing the suicide notes?
A I don't believe that I ever did.
Q Okay. All right. Do you have any idea why a clinical social worker was not retained as part of the defense team in this case?
A I do not.
Q I may be done. Karen, if you will, give me one second.
(Pause.)
Q All right. Karen, do you have any idea why any neighbors of Marion were not called to the testify on his

behalf?
A I don't have any idea.
Q All right. With regards to his allocution or giving any, reading a letter or note to a jury in a sentencing phase, do you recall what, any plans about that?
Were you part of that discussion?
A Actually I think I do remember something about that.
Q Okay.
A I'm not sure what I remember. But I remember there being discussion of Marion giving, Marion giving an allocution.
Q Did he give you -- did he provide you with what he wanted to write?
A I believe that he did.
Q But you don't, you don't have any major independent recollection?
A I don't.
MR. VIETH: Okay. Okay. That's all the questions I have, Your Honor. Thank you.
THE COURT: Rather than get started, I guess it would be better just to break now.
MR. ZELENKA: Okay.
THE COURT: That suit?
MR. VIETH: Yes, sir.
MR. ZELENKA: That's fine.

THE COURT: Hopefully we can fire back at 12:45.
MR. VIETH: 12:45?
THE COURT: Does that cause a problem with anybody?
MR. ZELENKA: Okay. We eat lunch now, right?
THE COURT: Yeah, go ahead and we're gonna break for lunch, and while y'all have lunch I'll try to get straightened out with these optometrist.
MR. VIETH: Okay. 12:45, Karen.
(Whereupon, Court was in recess for the lunch hour.)
THE COURT: Still under oath.
WITNESS: Yes, sir.
THE COURT: All right.

CROSS-EXAMINATION

BY MR. ZELENKA:

Q Mrs. Hatcher, when you were representing the defendant, Marion Lindsey, in this case, had you handled prior murder cases?
A Yes, sir.
Q Approximately how many of those cases did you handle?
A At that point, maybe a handful.
Q Okay. Had you been involved in, in homicide trials?
A Yes.
Q Okay. Were you lead counsel in those trials or were you---
A Yes.

Q ---always second chair?
A Lead, lead counsel in some.
Q Okay. And in the, the Morgan case, the Eric David, Dale Morgan case, you were third chair in that case?
A Yes, sir.
Q In the Morgan case, did the defense present, in that case, a prison adaptability expert?
A I don't recall. I don't recall.
Q Okay.
A I don't believe so, but I, but I may be misremembering it.
Q Okay. Did they present a clinical social worker as a witness in that case?
A I don't recall. Again, I was third chair and didn't keep the notes.
Q Okay. When you say you didn't keep any notes---
A I didn't retain any notes---
Q Okay.
A ---to jog my memory.
Q Okay. Okay. And we're not here to litigate the, the competency of that, but when you represented Mr. Evans, did you utilize a prison adaptability expert in that case?
A I don't believe that I did.
Q Okay. Did a clinical social worker testify in that case?

A I don't believe so.
Q Okay.
A Again, I apologize. It's been a number of years and I wasn't---
Q That's fine.

In your representation, once Mr. Bartosh asked you to get involved in the case, how much of your work time was spent working on this defendant's case?

A Well, I'm not sure percentage wise because it was not a situation where Mike had said devote half your time or devote a quarter of your time or 15 minutes each day or anything like that. It was when he would come to me and say I need this done or please check on this. So, I'm, in estimation, maybe -- I, I'm not sure how to answer that. I'm sorry.

Q Okay. Now, in the courtroom, we've got seven boxes, which are the public defender's files as represented by the current custodian, the public defender for the Seventh Circuit.

Was it your responsibility, once you got involved, to go through all of the files and create brief summaries of those records?

A I, I don't know that I was asked to do that. Largely the things that I did as far as reviewing or cataloging the discovery, I did that on my own. I don't know that it was a

task assigned to me. I think I just did it.
Q You did it and it became part of the files, correct?
A Yes.
Q And it became a working document for Mr. Bartosh and Mr. Brannon, didn't it?
A Should they, should they have wanted to use it, yes.
Q Okay. Now, at the time that you were involved in Mr. Lindsey's case, how long had you been in the Public Defender's Office?
A I got there in March of 2000. So, four years.
Q Okay. And had you developed a working relationship with Mr. Bartosh?
A Absolutely.
Q Had you worked with Mr. Bartosh on other cases?
A Yes.
Q Had you developed an understanding of, of basically his, his style of trial preparation?
A Yes, sir.
Q Okay. And in this case, when the case was tried, did Mr. Bartosh exhibit to you a belief that he was prepared to try this case?
A To the best of my recollection, I'm sure that he did. But something about Mike is he always generally felt like he could of gone into trial. I mean he always felt generally prepared for trial when it came up. I'm not sure whether

he -- you know, I can't speak to whether he truly believed he was prepared. But he always appeared as, as though he were.

Q Okay. Now, previously you'd described him even that Mr. Bartosh wasn't essentially a heavy note-taker either in pretrial preparation or during the trial.

Is that a fair statement?

A Yes.

Q Did Mr. Bartosh indicate to you an understanding of death penalty proceedings?

A He appeared to.

Q Okay. And one of the documents that's already been introduced I believe as Applicant's Exhibit 18, and let me provide that to you, does that document appear to be a list of the mitigating circumstances that could be presented in a death penalty case?

A Yes, that's what it appears to be.

Q And is the handwriting on this document your handwriting?

A It is.

Q Okay. And that handwriting reflects that, that you're circling various mitigating circumstances, isn't it?

A It appears so, yes.

Q And also, at the, at the side of that information in your handwriting, it's summarizing your understanding of the

existence of the evidence to support those mitigating circumstances as you know it at that time.

Is that not also correct?

A That is what that appears to be.

Q Particularly I look at number six, capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law is substantially impaired.

You've got there, and correct me if I'm wrong, a question mark that says not enough that a neuropsychologist -- what is that?

A Testified.

Q Testified that defendant's organic brain, what?

A Dysfunction.

Q Dysfunction would affect ability to cope/deal with stress and life what?

Life issues?

A Possibly.

Q Okay. And, and you're summarizing a case that may discuss that, is that correct?

A Yes, sir, it appears to be State versus, State v. Huey.

Q Okay.

A Life itself. I'm sorry. That, that word is itself.

Q Okay. And when this was prepared, there's that notation about future adaptability to prison life, correct?

A Yes, sir.
Q And says can come in through clinical psychologist, isn't that correct, what you put on there?
A Yes, sir.
Q And you were aware the defense team had retained a clinical psychologist in this case too, didn't you, Doctor Tora Brawley?
A Yes, sir.
Q And you also note on, on this same page, jailors, et cetera, rate good behavior---
A Between.
Q Between arrest and trial and wouldn't pose a danger as possible information in this case, correct?
A Yes, sir.
Q So, at the time you were involved in this case, you were aware, as part of the defense team, of capacity of the defendant to appreciate the criminality of his conduct as a mitigating factor?
A Uh-huh. (Affirmative).
Q And then also the possibility of future adaptability to prison life and jail information coming through jailors or through clinical psychologist?
A Yes, sir.
Q Correct?
(Whereupon, a document was marked as Respondent's

Exhibit No. 6 for identification purposes only at this time.)

Q Ms. Quimby, let me show you what's been premarked as State Exhibit 6 and ask if you can identify that.

A Yes, sir, this would of been -- this is something that I would of, that I prepared regarding the penalty phase and statutory mitigating circumstances and non-statutory mitigating factors, and it appears to be some handwritten notes by me as to potential applicability to Mr. Lindsey's case.

MR. ZELENKA: Okay. Your Honor, we would move this in as State's Exhibit No. 6.

MR. VIETH: Without objection, Your Honor.

MR. ZELENKA: Okay.

THE COURT: In without objection.

(Whereupon, Respondent's Exhibit No. 6 was received into evidence at this time.)

Q And on the top of it, State versus Alexander, excuse me, Marion Alexander Lindsey, penalty phase, and there's a dot that says specific circumstances of the prong dot characteristics of the defendant just for identification purposes.

Now, particularly, Mrs. Hatcher, if you look at the middle section, there's certain markings on that particular portion, circles and then slashes, is that correct?

A Yes, sir.
Q Do you have any recollection if you made those markings on this document or did someone else on the defense team?
A There's no indication that anybody other than me made any markings on here, but I, I can't testify as to why those two were marked through. I don't have any recollection of whether that was just my own best guess or whether Mike had directed me that those were not avenues that he was pursuing. I don't have any recollection---
Q Okay.
A ---of that.
Q And the two that are scratched through, one of them is prison adaptability, is that correct?
A Correct.
Q And the other one that's scratched through is alcohol/drug exposure/abuse, is that correct?
A Correct.
Q And now, if you move up to the top of statutory mitigating circumstances, they're a series of those mitigators that are also x-ed, is that correct?
A Correct.
Q And on number two, murder was committed while the defendant was under the influence of mental or emotional disturbance, that one's not x-ed, correct?
A Correct.

Q And beside it it says Melikian says yes, is that correct?
A Correct.
Q And that's your handwriting?
A It is.
Q So, you had that information, correct?
A Correct.
Q Okay. And then if you look at number six, which does have an X through it, it says capacity of the defendant to appreciate the criminality of this conduct or to conform his conduct to the requirements of law was substantially impaired.

Beside that, you have a marking that says Melikian says no, is that correct?
A Yes, correct.
Q And on number ten, which also has an X through it, the one related to the defendant had mental retardation at the time of the crime, you also have written beside that Melikian says no, is that correct?
A That's correct.
Q And if you look below, it says we definitely have number two and number seven?
A Correct.
Q And you've got Melikian beside that, is that correct?
A I do. That's correct.

Q Does that suggest that Doctor Melikian had given you that information prior to the time that you made this notation on here suggesting that she could testify about mitigating factor number two and mitigating factor number seven, age and mentality of the defendant at the time of the crime?
A It would appear so.
Q Okay. Now, on this list, you also have listed witnesses at the bottom of that, is that correct?
A Correct.
Q And is that your handwriting?
A It is.
Q And it lists Virginia Lindsey, mother?
A Yes.
Q Bill Burton, former supervisor, correct?
A Yes, correct.
Q Kristopher Wilkins, cousin?
A Correct.
Q And Steve Pilgrim, uncle?
A Correct. It also lists Mr. Lindsey's father, Leon McDowell.
Q Thank you.
And then beside that, in handwriting, it has L.I.F., which identified above refers to low intellectual functioning, it doesn't have any of those folks listed under

that one, does it?
A Other than Virginia Lindsey.
Q Okay. B.G., background is what that was referring to in---
A Correct.
Q ---your notations?
All of those witnesses were listed for that one, correct?
A Correct.
Q C.A., catchall, all of them were listed for catchall, correct?
A Yes, sir.
Q And M for mercy?
A Correct.
Q All of them were listed for mercy, is that correct?
A Yes.
Q And that's your handwriting?
A It is.
Q And all those witnesses testified at this trial, is that correct?
A That's---
Q If you---
A Sure.
Q You don't recall right now?
A I don't recall the specific, all of the specific

witnesses, but I believe that they all testified.
Q Okay. And beside the, the name of Mr. Burton, there's an indication, again, in your handwriting.
What is that indication?
A That he can testify as to desperate, desperate poverty.
Q Okay. Now, during the trial or before the trial, did you prepare a summary of the discovery that you had received from the State and utilized that in your preparation for this case?
A Yes.
Q Let me show you what's been premarked as Defense Exhibit, excuse me, State's Exhibit No. 7 and ask if you can identify that.
A Yes, I can. This---
Q And what is that?
A It is a log or catalog of discovery and the other information and records that we had received from the Solicitor's Office prior to trial.
Q Okay. Is there any indication on this material that exactly when that material or when this was prepared?
A When it was prepared, no, other than prior to trial.
Q Okay.
A It was -- well, there are some dates on here that would indicate that this was prepared after those dates or at least the majority of the -- if they're dates such as under

supplemental notice of aggravating circumstances and witnesses, served May 12th of 2004, obviously that section would of been added 5/12 or after. But I would assume that the majority of this was probably prepared sometime before that and I inserted things as they came in.

MR. ZELENKA: Okay. We would move then to introduce this document titled discovery/other info and records as State's Exhibit No. 7.

MR. VIETH: Without objection, Your Honor.

(Whereupon, the document was marked as Respondent's Exhibit No. 7 and received into evidence at this time.)

Q Okay. Let me hand State's Exhibit No. 7 back to you.

Now, if you would look at the middle section discovery, bate stamped section, and within that section it says probation info, 1994, ABWIK.

A Yes, sir.

Q Do you see that?

A Yes, sir.

Q Does that suggest that you reviewed those materials and put it within your working documents sometime?

A I -- that's -- I would assume that's what -- I, I'm not sure that I reviewed every single document if it were voluminous such as medical records or anything like that. But the vast majority of things, yes, I would of reviewed it and put it in some sort of logical order.

Q Okay. And, and in that, just so I have an understanding of this, in that particular subsection, it, it's got a date on all that subsection, 3/16/2004, is that correct?
A Correct.
Q Does that indicate that, according to the records of the Public Defender's Office, that these are the materials that they received 3/16, March 16th, 2004?
A That would either be the date that we received it or the date it was bate stamped. I don't, I don't recall which one.
Q Okay. Okay. And the, the next section down says discovery, bate stamped, 3/18/2004, is that correct?
A Correct.
Q And the, the first information on that is answering machine videotape recovered from Carol Wright, 9/24/02, is that correct?
A It says audiotape, correct.
Q Audiotape. Excuse me.
A Correct.
Q So, did you review that audiotape?
A Based on the, my handwritten notes on the audiotape this morning, I would say that I absolutely reviewed it at that time.
Q Okay. And on Applicant Exhibit No. 26, answering

machine, in your handwriting, six messages from Friday, 9/13/2002, is that correct?

A Correct.

Q Okay. Which is a day after the SRMC incident and CDV arrest---

A Yes, sir.

Q ---has been placed on there?

And five days before this incident, 9/18?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q Also on this information sheet, State's Exhibit No. 7, the next set down, discovery bate stamped 4/5/2004, it includes SCDC records, open paren, prison, Page 1 through 95, is that correct?

A Correct.

Q Did you review those records?

A I'm not sure. I can't testify, I can't be certain that I did. I assume that I would of reviewed the prison ones and probably ones from the main jail. I'm not sure that I would of reviewed the ones from the hospital.

Q Okay. And 4/5/2004, the jail records you're referring to, the SCDF records, main jail, Page 408 to 1593 total pages.

A Yes, sir.

Q Is that correct?
A Yes, sir.
Q And, and those jail records presumably would of included matters which occurred prior to April 5th, 2004, correct?
A Correct.
Q Discovery, 4/21/2004, Marion Lindsey's school records provided to you by the State, correct?
A Correct.
Q The various photographs and CD's that were included on the CD, 243 photographs?
A Yes, sir.
Q And the 9-1-1 tape and dispatch originally not enhanced, correct?
A Yes, sir.
Q Okay. On that last entry, it says M.B. received earlier than 5/7/04, is that correct?
A That is what it says, yes.
Q And then it says K.Q. keeping all CD's, tapes, et cetera. That's the next reference.
A Yes, sir.
Q And then after that it says currently checked out by Doug.
A Yes.
Q All right. The last two seem to me to be internally

conflicting.
A Doug Brannon did not work in our office.
Q Okay.
A And, so, if he wanted to review any of these items and he took them, he would of taken out of my, taken them out of my possession and my office at the P.D.'s office, and then when he was done with them he would return them to me.
Q Okay. So, you were having communication and contact with Mr. Brannon in addition to Mr. Bartosh---
A Yes.
Q ---at sometime after March 7th, 2004, in preparation for the trial, correct?
A Yes, sir, and that would be May 7th.
Q May 7th. Excuse me.
A Yes, sir.
(Whereupon, a document was marked as Respondent's Exhibit No. 8 for identification purposes only at this time.)
Q Let me show you an item that's been premarked State's Exhibit No. 8 and ask if you can identify that please.
A This appears to be my working list of potential defense witnesses and subpoena information for anybody that, that we may potentially call.
Q Okay. And within that list you have some summary of, of some of their testimony, is that, or potential testimony,

is that correct?
A Correct. That would be just from, to jog my memory about who is who.
Q Okay. And various people provided this information to you?
A Correct.
Q Okay. Let me go down to the lower section where it says Doug, Amy Osbey, acquaintance, Inman, is that correct?
A Yes, sir.
Q On your witness list.
Does that suggest that that was a contact with Doug Brannon to make?
A Yes.
Q And the summary was can't identify these last B.F.?
A Can identify victim's last boyfriend.
Q Okay. And off to the side it says Virginia's trying to get in touch with her, is that correct?
A Correct.
Q But you have her listed as a potential witness?
A Correct. The continuation of the information that I had there says if we find the name, do we need her for anything else. So, I'm not sure how much -- I'm not sure what level of witness she would of been for us.
Q Okay.
A I don't know.

Q But at sometime, while you were involved in the case, you were seeking information about the victim's boyfriend, that's correct?
A Evidently, yes.
Q And there was an indication to you, from Virginia, the defendant's mother, that Amy Osbey would be a potential person who would know that?
A Correct. And because it has Doug beside her name, I -- he may of been making contact with Mrs. Lindsey himself. I don't know that I had -- I don't know that I was a liaison in that.
Q Okay.
A I may of just been the depositor for this information.
Q All right. And this list also includes Bill Burton, correct?
A Correct.
Q Bill Burton's mom?
A Correct.
Q And that's the term is Bill Burton's mom, correct?
A Correct.
Q And over by that it says we took care of him, is that correct?
A Correct.
Q And then it after---
A And that would be not -- that would be referring to

Mr. Burton and his family helping to take care of Lindsey as he grew up.

Q Okay. And then off to the side it says out-of-state?

A Voluntary witness.

Q Okay. That's a summary for voluntary witness.

Under Bill Burton's mom it says Doctor Henderson, correct?

A Yes.

Q And then on down there's another list to name, Timothy Sims, cousin, correct?

A Correct.

Q And now you flip over the next page where it says expert witnesses. It includes Lenora Topp, mitigation investigator, correct?

A Correct.

Q And off to the side it says penalty?

A Correct.

Q Correct?

If you flip over to the first page that says phase and you have her listed for penalty, correct?

A Correct.

Q Doctor Tora Brawley, it says PT; pen?

A To the best of my recollection, that abbreviation would be pretrial, that each of those doctors would be involved pretrial and then at the penalty phase.

Q Okay. Let me go back. Go, go up one on Lenora Topp.
A Okay.
Q Across the top, there's a section that says served on by, is that right -- if you'd refer to the---
A Okay.
Q ---Page 1.
A Yes, sir.
Q And then on, by Lenora Topp, it says 5/15 - D.B. What does that suggest to you?
A That Doug Brannon would of been in charge of having her served.
Q Okay. Would it be that Doug was served, Doug had served her on 5/15?
A I can't speak to that. I, I don't know. I---
Q You don't recall---
A I don't recall.
Q ---why you would of done that notation?
A Well, because it wasn't something that was done within our office. I don't know whether---
Q Okay.
A I don't know how, what manner of service he served her.
Q Okay. Then also on this list, Doctor Tora Brawley, Doctor Margaret Melikian, Doctor John Absher, Rod Tullis, and Benjie Stevenson, correct?
A Correct.

(Whereupon, a document was marked as Respondent's Exhibit No. 9 for identification purposes only at this time.)

Q All right. Thank you.

Let me show you what's been premarked as State's Exhibit No. 9 or Respondent's Exhibit No. 9, and ask you if can look through that. I believe it's a five page document. If you can identify that document or those documents I guess would be a better way to say it.

A Okay. This appears to be -- the first page appears to be just a summary of the State's witnesses divided into witnesses who could testify about the incident itself and witnesses who could testify concerning his prior convictions or other prior bad acts, and other witnesses such as lay witnesses or professional persons. This is based on the State's -- well, these are the State's witnesses.

The second page appears to be a continuation of the information, of what the State -- well, I suppose of the State's evidence, and then the bottom of the second page going into the third page, these are documents that were obtained by the Public Defender's Office, mental health records, and lifetime hospital records chronologically and then the bottom of that page are items that were obtained by Doug Brannon and then some additional records that were obtained by Lenora Topp, school records. Then the last two

pages were a -- it's a chart of -- it's a breakdown of Mr. Lindsey's prior incidents based on the discovery received from the State.

Q Okay. And these were documents prepared actually by you?

A Yes.

Q Okay. As part of this defense?

A Yes.

MR. ZELENKA: Okay. We would move to introduce State's Exhibit No. 9.

MR. VIETH: No objection, Your Honor.

THE COURT: In without objection.

(Whereupon, State's Exhibit No. 9 was received into evidence at this time.)

Q Okay. Mrs. Hatcher, let me hand that back to you.

A Okay.

Q Now, how did you prepare the information to, to place in this document?

Did you review those?

A I would, I would---

Q ---each of those records?

A That would appear to be how I got the information.

Q So, in the record concerning the incident, you've listed the witnesses as being present at the location, correct --

A Yes, sir.
Q -- in the car and you list all those witnesses and their names, correct?
A Yes, sir.
Q Responded to the scene, you break that down between the Coroner's Office, EMS, and EMT, correct?
A Yes, sir.
Q The sheriff's investigators who arrived at the scene, correct?
A Yes, sir.
Q The experts and professionals who are involved in this case, correct?
A Yes, sir.
Q From the State's side?
A Yes, sir.
Q Doctor Wren, Doctor Narayan, Dock Musick, correct?
A Yes, sir.
Q Greg Rock, the SLED toxicology person, Joe Powell, the trace evidence person, correct?
A Correct.
Q Dan Defreese and Jeff Gaines, correct?
A Correct.
Q And you've summarized, beside their employment, exactly what they did?
A Yes, sir.

Q Everything from analyzing GSR data, analyzing gun and bullets, to trace the gun used by Lindsey, is that correct?
A Yes, sir.
Q And that's information that you would of worked on and looked at within the files, is that correct?
A It's information I would of identified to put on this log, yes.
Q Okay. And the next section utilized is his priors, is that correct?
A Correct.
Q And then you break that down between the priors involving Ruby Nell Lindsey, who's the victim?
A Yes, sir.
Q Is that correct?
A Correct.
Q Not only do you list the date of those, you also have a, a summary of those, is that correct?
A A very brief summary, but yes, just a---
Q And this is information the defense utilized in its preparation in this case based upon the information you had, correct?
A I wasn't always involved in any defense, any meetings necessarily that Doug and Mike may of had. I'm not sure. I, I wasn't part of the strategy making or the decision making about how to pursue any of these lines.

Q Okay. But the information you were providing the defense team, 8/1/96, the incident with the law enforcement officer that was involved in that, you've also summarized each of those events against Nell Lindsey, is that correct?
A Correct.
Q The 8/1/96, cuffs, threaten to harm and kill, is that correct?
A Correct.
Q 10/8/96, push, shoved?
A Yes, sir.
Q 2/19/1999, HS only, what does that mean?
A Hearsay.
Q Okay. Any injuries, question mark?
A Correct.
Q Reviewing those records, you weren't able to tell exactly what happened?
Is that what that is?
A Correct. And evidently, by my question about whether it was hearsay only, there appeared to be -- there did not appear to be a, I'm guessing, a complete investigation that would of given me information to make it more clear on here.
Q Okay. And then the two more incidents, 8/21/2000 that you referred to, correct?
A Correct.
Q And 12/1/2001, is that correct?

A Correct.
Q You also summarized five incidents involving other women from 1995 to 1999 that were presented to you, is that correct?
A Correct.
Q You also included other incidents involving males as victims. You've listed out four of those.
A Correct.
Q And other criminal incidents too, is that correct?
A Correct.
Q You also listed other witnesses, lay witnesses involving the particular incident, Latresse Smith, Annette Schaper, is that correct?
A Yes, sir.
Q And other professional persons, persons. One of whom you listed on this was Jimmy Slice of South Carolina Department of Corrections on prison conditions, correct?
A Yes, sir.
Q You also listed SCDC, SCDF on any prior conduct while in either facility, is that correct?
A Correct.
Q And DPPS for any prior conduct while on probation and parole?
A Correct.
Q And you had that in quotes, is that correct?

A Yes.
Q So, you probably got that off the aggravating, notice of evidence and aggravation, do you think?
A I'm not sure exactly where I got that. But that -- the quotation marks to me would indicate that's what they would be testifying about.
Q Okay. Now, within the materials, you also included obtained by the, defense, P.D.'s office, that would be you, is that correct?
I mean your office, correct?
A Correct.
Q And you've got listed there mental health records, some records from 2002 through the present time.
A Correct.
Q Is that correct?
A Correct.
Q Lifetime hospital records, and you've listed out about, from various things from the birth records to the car wreck in 1992, is that correct?
A Correct.
Q And SRMC records from appears to be September of 2002 through March 2004, is that correct?
A Correct.
Q Also obtained by the defense, materials that Doug Brannon had obtained, is that correct?

A Correct.
Q Okay. At the bottom of that page you note, noted school records?
A Yes.
Q Now, on the last page, two pages, it refers to prior incidents.
A Yes.
Q And on 9/13/02, on the prior incidents, a description of the event, bonds out, leaves PH messages, which would be phone messages I assume, is that correct?
A I believe so.
Q And you've got a reference in there not so much an incident, i.e. not reported, but the State got tapes from Carol Wright for trial, is that---
A Correct.
Q So, so, you're going through these records trying to note anything that could be negative as far as potential criminal activity on, on your defendant's part, isn't that correct?
A Correct.
Q Whether they're convicted of it or not, just the information you're pulling out of those files?
A Correct.
Q And, and one of those, 7/30/02, lynching, and has suspects on that, Marion Lindsey and Tim Lindsey, and two

additional DM's, is that correct?
A Correct.
Q And the victim in that case is Douglas Durrah?
A Correct.
Q Okay. You also note two CDV incidents, 12/1/2001 and 1/26/2001?
A Correct.
Q And, again, these were, were materials that you were preparing to assist in the trial of his case, is that correct?
A That's correct.
(Whereupon, a document was marked as Respondent's Exhibit No. 10 for identification purposes only at this time.)
Q Now, let me provide you another document which is Respondent's Exhibit No. 10, and ask if you can identify that document.
A This appears to be generally the exact same list as before with maybe a little, maybe a little summarized with a little less information.
Q Okay. Now, is this a document that you prepared yourself?
A Yes.
MR. ZELENKA: We would move to introduce this as Respondent's Exhibit No. 10.

MR. VIETH: Without objection, Your Honor.

THE COURT: In without objection.

(Whereupon, Respondent's Exhibit No. 10 was received into evidence at this time.)

Q Okay. Mrs. Hatcher, the side of, where it says D, expert professionals, they're additional notations.

Would those be your notations, your suggestions, or would you be summarizing suggestions that the defense team made to you?

A Those appear to be just my, my notes, my questions, or suggestion, or thoughts.

Q Okay. And suggestions or portions of the autopsy to, to object, to suggest other matters, correct?

A Yes, sir.

Q Can we object to the toxicology report, the victim's drugs, correct?

A Correct.

Q Should we stipulate to the GSR information?

A Correct.

Q Correct?

So, it's clear that you were suggesting strategy to the other members of the defense, defense team in these reports, isn't that correct?

A I, I suppose so. It appears to be, as I'm going along doing this as a defense lawyer, questions come to my mind.

I don't---
Q Uh-huh. (Affirmative).
A I don't know that I -- so, yes.
(Whereupon, a document was marked as Respondent's Exhibit No. 11 for identification purposes only at this time.)
Q Okay. Let me provide you what's been premarked as Respondent's Exhibit No, 11, and ask you if you can identify that document.
A It appears to be discovery and other info and records received from the Solicitor's Office.
Q Okay.
A And then the summary. It appears to be pretty much the same information as on the other list just in a different format. Maybe items obtained by the Public Defender's Office and items obtained by Doug Brannon.
Q Okay. And let me ask you this. These seem to be different. They're, they're certainly in different formats.
Did you have one form that you were utilizing -- I guess what I'm trying to ask is why were these multiple different things being done with slight changes?
A Other than the fact that I'm just a nerd and was trying to organize the material into the, in the best readable fashion. I don't have any other reason for that.
(Whereupon, a document was marked as Respondent's

Exhibit No. 12 for identification purposes only at this time.)

Q Okay. Let me provide you what's been premarked as Respondent's Exhibit No. 12, and ask if you can identify that document.

A This appears to be my listing of the potential jurors and a working copy where it lists any potential issues or things that were outstanding, whether they've been served or not, people who had requested excuses and potential reasons for disqualification.

Q Okay. Let me ask you to, to refer to that document to see if it refreshes your recollection.

The first part of that document refers to case facts to keep in mind while looking for potential jurors, is that correct?

A Correct.

Q And did you develop that list of, of case facts to keep in mind?

A Yes, I -- well, I suppose I did. I'm not sure if that was a collaborative effort or not. It may of just been me just trying to keep track of such things as that Mrs. Lindsey worked at Spartanburg Regional and that we should be on the lookout, in picking a jury, for people who might have worked with her.

Q Okay. And one of those case facts, the fourth one

down, is the time of the incident victim had been withholding his children from him for approximately three weeks and is seeing someone, is that correct?

A Correct.

Q And the one up from the bottom, the State has victim's answering machine tapes with repeated calls/messages from defendant, is that correct?

A Correct.

Q So, at the time you were preparing to pick the jury, you already had an understanding of those particular facts in the case including it in your list as factors to weigh out when the defense team is individually looking at each of the jurors?

A Correct.

Q In an effort that includes collaborative information from the defense team, isn't that correct?

A Possibly.

Q And the goal of the jury panel selection at that time was to get a life sentence, isn't that true?

A Correct.

MR. ZELENKA: Okay. Your Honor, I just have this marked for identification. I don't intend to admit it.

THE COURT: All right.

(Whereupon, a document was marked as Respondent's Exhibit No. 13 for identification purposes only at this

time.)
Q Let me show you what's been premarked as State's Exhibit No. 13, and ask if you can identify that document.
A This looks like a, a portion of the previous, of a previous list, but this one is limited only to our, the defense list of, of retained experts or retained, either retained or professional persons.
Q Okay. And was that prepared by you?
A Correct.
Q Is that your handwriting on this document?
A In some places, yes. In other places, no.
MR. ZELENKA: Okay. We would move to introduce this as Respondent's Exhibit No. 13.
MR. VIETH: Without objection.
(Whereupon, Respondent's Exhibit No. 13 was received into evidence at this time.)
Q Okay. Let me hand you Respondent's Exhibit 13, again, Mrs. Hatcher.
Now, on, on this list, on the expert witnesses, struck through are Doctor Tora Brawley, Doctor John Absher, and Benjie Stevens, correct?
A Correct.
Q Yet not struck through are Lenora Topp, Doctor Margaret Melikian, and Rod Tullis on this upper portion, isn't that correct?

A Correct.
Q On the right-hand side circled are Ann Howard, Viriginia Lindsey, Leon McDowell, Bessie Smith, Steven Pilgrim, Kris Wilkins, Lenora Topp, Bill Burton, and Doctor Melikian, is that correct?
A Correct.
Q And whose handwriting is that in?
A I'm not sure. It, it may be Lenora Topp's.
Q Okay. But of that list, all those witnesses testified that were circled that I just identified except for Lenora Topp, isn't that correct?
A I will, I will defer to the record on that. I --.
Q Okay. Also listed in that same list, but not circled, were Robin Keith, Claude Lindsey, Senior, Sharon Pilgrim, Tim Sims, Stephanie Petty, and Bill Burton's mom, correct?
A Correct.
Q And although they were on this list, they didn't testify, did they?
A Evidently not.
Q Okay. But it suggests a willowing down of the particular witnesses to call in this case, isn't that correct?
A Evidently, yes.
Q It also suggests---
A I'm not sure who made the circles.

Q Okay. But let me ask, on State's Exhibit 13, it has some of your handwriting also, doesn't it?
A Yes, sir.
Q So, this particular document had both your handwriting on and Lenora Topp's handwriting on involved in the witness identification, isn't that correct?
A Correct.
Q Let me refer you to Applicant's Exhibit No. 19.
Is there anything on that document that's in your handwriting?
A It appears to all be in my handwriting.
Q Okay. And in addition to what's previously, previously been noted, summarizing the information about Doctor Henderson, there's also information down at the bottom which has now or psychiatrist, correct?
A Correct.
Q Probably for Doctor Melikian, is that correct?
A I would assume. I'm not sure.
Q Okay. By the side of that it says saw D's results---
A Yes.
Q ---and some other information. Feels significant neurological issues, needs to be seen by a neurologist, or neuro, probably neurologist?
A Correct.
Q Underneath that it says Braw?

A I would assume that's Doctor Brawley.
Q Okay. Also in your handwriting summarizing information that you have from her, correct?
A Correct.
Q And then Absher, neurologist?
A Yes.
Q So, you're aware of those particular experts and their potential impact on this case, isn't that correct, at the time you're preparing this information?
A At the, at the time, yes.
Q And do you know that you had ever seen any written reports either from Doctor Melikian, Doctor Brawley, or Doctor Absher at that time?
A Written reports, I don't believe so.
Q Okay. So, the information -- did you have any personal conversations with Doctor Brawley, Doctor Melikian, or Doctor Absher?
A I don't recall. I don't recall.
Q Okay. And from looking through your files, do you recall ever seeing a or hearing about a micro cassette answering machine tape where the defendant had a, left a message at Rod Tullis' office on the day of the murder?
A I have no recollection of that.
Q If something that significant happened in a case, would you probably have heard about it?

A If it were my case, absolutely. I, I can't -- I don't have any independent recollection of it as with the limited involvement that I had.

Q Okay. In Respondent's, excuse me, in State's excuse me, Defense Exhibit No. 22, let me show that to you.

It says suicide notes from Rod, is that correct?

A Correct.

Q There's no indication on that material that suicide notes and answering machine---

A No.

Q ---was taken, does it?

A No.

Q Likely, if there would of been, you would of noted it somewhere within your references on that, wouldn't you?

A I would think that I would unless I lumped them altogether, but I, I don't recall knowing about an answering machine tape.

Q Okay. But you do recall hearing something about suicide notes according to this note?

A Oh, according to that note, yes.

MR. ZELENKA: Okay. I've no further questions at this time. Thank you, Your Honor.

MR. VIETH: May it please the Court.

REDIRECT EXAMINATION

BY MR. VIETH:

Q Mrs. Hatcher, going back in relation to the questions that have just been asked to you in the last hour and 20 minutes, I gather, from what I've heard, is that you were a good taker of information and processing it onto paper so the people in charge of that case could look at it and make decisions?

Is that fair to say?

A Correct, yes.

Q You didn't ever examine any witness in the trial?

A No, sir.

Q You didn't prep any witness for testimony?

A No.

Q You didn't make any pretrial motions to the judge?

A No, sir.

Q You didn't make any opening or closing statements?

A No.

Q You didn't make any decisions on who to call at any phase of the trial, the penalty or guilt phase, is that right?

A Correct.

Q Okay. With regards to the tape that we were just talking about on Rod Tullis, you understand that if there was a tape and Mr. Tullis, you weren't here yesterday, Mr. Tullis testified that he gave that tape to the Public Defender's Office, that that would of been sometime in 2002

or 2003. In other words, the shooting was in 2002, he wouldn't have been holding onto the tape until 30 days before trial in 2004.

So, if that tape was given to the Public Defender's Office two years ago, it could of easily been misplaced on anything else?

A It should of gone into the file and whatever was in the file at the time it -- those kind of materials came into my sort of control. If it had been there when it came to me, it would of it, would still be there.

Q Exactly.

And it came to you 30 days before the trial started?

A I, I don't remember.

Q Oh, I thought you said you got involved 30 days before?

A Oh, well, yes, correct.

Q So, any processing you did was either given to you when you came on board or you received, were still receiving it from the solicitor or mental health records after you came on board?

A Correct.

Q And that got processed?

A Correct.

Q So, before you came on board, in April of '04, about 17 or 18 months had passed since the shooting?

A Correct.

Q Fair to say?
A Yes.
Q Okay. All right. And, again, with regards to the discovery that you were receiving, was the bate stamping and so forth that you did the time you were receiving information?
A Bate stamps were done by the Solicitor's Office.
Q Okay.
A So, I was cataloging the bate stamped material.
Q All right. So, on the exhibits that we're referring to, when you have a, for example, discovery bate stamped talks about Applebee's and so forth, and it's dated 5/7/2004, what does that mean to you?
Is that the day you got it?
A Well, the only way that I could definitively answer that is to look at the discovery itself and see what date it was bate stamped because that could be either the date it was bate stamped or the day we received it. I just don't have -- I don't remember.
Q All right. Just taking one of these packets out, the State put in evidence, like No. 9, State Exhibit No. 9, you see where we have September trafficking, 5/6/04---
A Yes.
Q ---and 5/7/04---
A Yes.

Q ---to 5/14/04, what do these dates represent?
A That's, that's what I'm saying is that my initial thought would be that that's when he received it, but it's possible that that could be the date that those items were bate stamped. But, more likely, I suppose it's when we received it.
Q When you got it.
This is when you, you were receiving evidence on, on the Marion Lindsey case most likely?
A Most likely.
Q Okay. Now, you've been practicing law for sometime and I know you're in a break now, but if you had an indicted person that's indicted by the Grand Jury on October 7th, 2004, 2002, excuse me, shooting his, and the -- it was September I think -- if you're indicted October 7th, 2002, would you, as a lead attorney in any death penalty case, want discovery quicker than 17 months later?
A Absolutely.
Q Okay. And if, from indictment on October 7th, 2002, until these were bate stamped, that's about a 17 month window, my calculations, where nothing's going on?
A Yeah.
Q Okay. And with regards to the, the death penalty cases that were going on in your office at the time, it was mentioned a few, a little while ago by the Attorney

General's Office, I believe Morgan got the death penalty?
A He did, and that has, after Roper v. Simmons, because Mr. Morgan was 17 at the time of the offense, his sentence has now been -- he's been resentenced to life.
Q Okay. And Evans got the death penalty?
A He did.
Q Okay. And, so, whether you called, assuming you did not have a social mitigator or licensed social worker or a prison adaptability expert in any of these trials, would you want to reconsider that at this time for another trial?
A I can't speak to this case, but -- because I, I was not a decision maker. But, in hindsight, that would of been something that---
Q To consider?
A ---I think would of been appropriate.
Q Okay. I'm gonna share with you just a -- this is a, been marked in as a Court Exhibit. It's American Bar Association guidelines for the appointment and performance of defense counsel in death penalty cases. Just referring to one quick section on, and give you your opinion on it. The reasons -- this is on work load. The responsible agency should implement effectual mechanisms to ensure that the work load of attorneys representing defendants in death penalty cases is maintained at a high level, or, excuse me, at a level that enables counsel to provide each client with

high quality legal representation in accordance with these guidelines.

You would testify, in my examination of you, that you had 500 active cases, roll calls, continuing to work on a daily basis, and only had 30 days, is that correct?

A Yes.

Q Okay. And do you -- would you agree that the case load was significant to be involved in three death penalty cases?

A Yes, sir.

Q Okay. Did that trouble you?

A Very much so.

Q Okay. And whether any records that you may have acquired, prison records or jail records or so forth, were required by the Public Defender's Office, do you have any independent recollection whether any experts ever saw them except for Margaret Melikian getting some records?

A I, I, I know that I took records to Doctor Melikian. I can't speak to what any of the other experts -- I don't, I don't recall.

Q Okay. And in the trial of the case, do you know whether Doctor Melikian was ever asked to address the issues that were marked on Exhibit 6 that were shown to you earlier where you had Melikian says yes, Melikian says no, Melikian says no?

Do you know whether any testimony was ever elicited

from her on the stand in conformance to that?
A I would have to defer to the transcript. I don't recall.
Q The transcript would speak for itself?
A Yes, sir.
MR. VIETH: Okay. That's all the questions we have, Your Honor. Thank you.
MR. ZELENKA: Just a couple, Your Honor.
My co-counsel's advised me we didn't formally introduce State Exhibit No. 8, and I would like to do so.
MR. VIETH: Without objection, Your Honor.
THE COURT: In without objection.
(Whereupon, Respondent's Exhibit No. 8 was received into evidence at this time.)
MR. ZELENKA: Thank you. Just a couple of follow-ups.

RECROSS EXAMINATION

BY MR. ZELENKA:

Q At the time that Mr. Bartosh was representing the defendant from March 2004 through the time of the trial, what was his trial case load on it?
Do you know?
A I know that Mr. Bartosh was in trial an awful lot. I, I have no idea about numbers.
Q Okay. In the way the Public Defender's Office handled his cases, who made the, the case assignments?

A Generally -- previously it had been Joe Petty in his capacity as sort of an office manager/chief investigator. He retired and that position was taken by Judy Bogan, and Judy assigned cases as they came in.

Q Okay. Now, Mr. Bartosh was the Public Defender for Spartanburg County at the time, is that correct?

A Yes, sir.

Q And did he assign the cases to himself when he chose to take a particular case or is he just in the normal rotation?

A I, I'm not exactly sure. There was a -- I'm now -- there was a separate sheet of paper that was on a bulletin board. It was sort of a murder rotation. And the, the people who had been in the office for a very short period of time obviously did not get assigned to murder cases. So, there was a separate rotation for that, and it was based on general experience.

Q Okay.

A And it was more of, kind of round robin thing. It was rotation.

Q Okay.

A With this case and Eric Morgan, it, it seems to me that initially the attorneys were flip-flopped and I believe that Mr. Bartosh initially represented Mr. Morgan and Mr. Allen may have been assigned to Mr. Lindsey, and at some point, fairly early on, there was some flip-flop of that and, and I

don't remember the circumstances. I, I don't -- that's just something that I just remembered.

Q Okay. Thank you, Ms. Quimby.

No further questions, Your Honor.

MR. VIETH: Nothing further, Your Honor.

THE COURT: You may step down. Thank you.

Let's take about a 15 minute recess.

MR. VIETH: Ask that she be excused too, Your Honor.

MR. ZELENKA: No objection.

WITNESS: Thank you.

THE COURT: The witness is excused.

WITNESS: Thank you.

MR. VIETH: Thank you.

(Whereupon, a short recess was taken at this time.)

MR. VIETH: Please the Court.

THE COURT: Yes, sir.

MR. VIETH: We call Bill Burton to the stand.

THE COURT: Come around and be sworn please.

BILL BURTON, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VIETH:

Q Mr. Burton, state your name and occupation and where you presently live please, sir.

A He name is Bill Burton. I'm from Macon, Georgia, and I

run a, the United States part of a German chemical company.
Q Okay. And you testified in the first trial in this case, is that correct?
A Correct.
Q And you were contacted, I assume, by defense counsel on behalf of Marion Lindsey for that purpose, is that correct?
A I was.
Q And how long did you have to speak with his attorneys in preparation for your testimony roughly?
A After I was contacted and asked to testify, I suppose as a character witness, I tried to, because this was my first experience in a courtroom, I tried to talk to Mr. Bartosh several times and, and really couldn't get a hold of him. I wanted some background on what kinds of questions or what kinds of information I should provide and what kinds of questions I should expect and how I should, in general, in general prepare for the trial.

It was difficult to contact him. He was clearly an extremely busy man. I believe the preparation was the day of the trial or the day before with a group of many people, other witnesses, I believe. So, I didn't have any one-on-one or discussions with him at all other than to say, say what you know about Marion.
Q Okay. Do you know, Mr. Burton, whether that was pretrial or, or just before the sentencing phase if you

recall?
A Can't recall.
Q Okay. Did you sit in any of the trial other than as a witness?
A I believe I sat in the trial for several days.
Q Okay. All right. If you testified as one of the first witnesses for the defense in the sentencing phase, would that then refresh your memory to believe you may of sat through some of the trial in the guilt phase?
A I really can't recall.
Q All right. That's fair enough.
When you did speak with Mr. Bartosh though, you don't recall whether he had already been convicted or not?
A No.
Q Okay. And when you talked with him initially it was -- excuse me. Do you want to say something?
A I was aware that guilt was not as much the issue as the sentencing.
Q Okay.
A But I can't remember how.
Q All right, sir. When you met with Mr. Bartosh, you say you first met with him in a group of people that were gonna be character witnesses?
A Yes, I believe that's true.
Q Okay. And was it a -- well, let me rephrase it. I

don't want to lead you.

How was the general questions posed to you and to what your role was, why were they calling you?

A Say what you know about Marion was pretty much the scope of it. It was clear -- I left that meeting with the general impression that the, the case was unorganized and I was very concerned about it, that I didn't understand the logic of -- the, the direction that the defense was going, and I, I'm not an experienced person in this. But just as a layman, I wanted to understand what was the strategy and what were the facts and how could that best be used to defend the, to defend Marion and hopefully avoid the death sentence, but I didn't have a very good feeling about the preparation.

Q All right, sir. So, were you called as a witness the same day you talked about being a witness?

A Yes.

Q Okay.

A Or the day before it could of been.

Q Okay. And you did testify and the transcript speaks for itself. I'm gonna ask you to go ahead and tell the Court what you would want to tell the jury sitting in that chair today about Marion Lindsey, and if you cover old ground, you cover it.

A Okay.

Q It's not that much testimony.
A I would say things that I didn't, maybe I didn't have the composure to say in the first testimony I gave or, or was not prepared to say is that, you know, Marion was seeking -- I became involved with Marion as a young boy knowing him as a, a person at the swim, public swimming pool, giving swimming lessons, trying to help the kids.

He clearly wanted approval. He wanted a, a parent figure he could look up to I think. He, he was anxious to show an adult his achievement with swimming, jumping, and then later on, you know, catching a fish at my parent's farm to immediately show my mother what he did. He seemed a guy who wanted to have a family, who needed adult approval, and who didn't have it all.

Q When did you---
A Not to say that---
Q When did you first get involved with Marion?
A I guess he was six years old.
Q And what was your role when you met him?
What were you doing?
A I was a lifeguard at a public swimming pool near where Vic Bailey is now. Near Jolly Street.
Q All right. And did -- there were other kids there that you would monitor for safety at the pool and so forth?
That was your job, lifeguard?

A I was a lifeguard but also gave swimming lessons to the kids afterwards.
Q Okay. Did you become more connected, if that's the right word, with Marion than some of the other children that were there?
A I did. I don't really know why. Maybe he hung onto me a bit after he learned how to swim and he was able to have some success in the pool and eventually I went to his house. I knew his brothers from the pool as well and got some connection with them through Marion also. So, then I became -- then I met his mother and the rest of his family, of course, and saw where they lived and then I guess that relationship lasted 13 years or so.
Q Okay.
A Well, like I said, Marion was desperate for attention, desperate for approval, involvement with adults. And I could see that, at his house, I believe it was condemned and now cleared away for some other, some other building over there behind Roebuck Car Wash, that he didn't have any supervision at home. He and his brothers played in the street after school. They were fairly unsupervised, completely unsupervised. They didn't have any help with their studies or I didn't believe had any encouragement to perform in school and, and I know Marion struggled. He had a real difficult time in school.

Other than his seeking adult approval, and longing for that family, normal family, what he visioned or what he saw through my family, a normal environment, or for an improved one, it, it was clear that he lived in real poverty conditions. The house was, although it was clean, it was falling apart and it was eventually condemned and looked as it should have been.

You know, Marion lived in an environment where he, he wanted a family, but the environment he lived in made it difficult for him to prepare for that later in life. He lived on the street. He didn't do well in school. His success and education was let, very limited. And, so, so, when he got older and went into the working world, he struggled still with poor educational background, and I believe that the threat of losing the family, which he wanted so desperately to have himself later in life---

MR. SIMON: Objection, Your Honor. Speculation.

THE COURT: It is speculation.

MR. VIETH: I understand.

THE COURT: I'll have to sustain that.

MR. VIETH: Okay.

Q How did he react -- let me put it this way.

Did he have a father that took care of him?

A He did have a father. I never met him.

Q Okay. Do you know what his relationship to Marion was

through whatever Marion may have told you?
A Marion didn't see much of his father to my knowledge.
Q Okay.
A And had---
Q How did he perceive -- well, how did you perceive Marion in that role with you?
A I think he wanted a male figure to look up to. I was happy to provide it.
Q Okay. When was the last contact that you had with Marion as best you can recall?
A I would say -- let's see. Around about 1990.
Q He was born in 1973.
So, that would of been about 17 or so?
A Okay. It could of been '91 then. I was working for a company, you know, was in a position to help Marion get a job. Marion came to work for me and what I hoped would be the start of a good future for him. I was later transferred away to another location with the company, and Marion left for reasons I don't recall, and I lost touch with him pretty much at that point.
Q Okay. And I know you and I have talked, and I know you have philosophical feelings about the case and we can't go into that. I've explained that to you.
Is there anything else that we haven't addressed relative to the relationship with Mr. Lindsey that you want

to say or have we covered it?
A I just think the threat of losing his family made him pop.
MR. SIMON: Objection. Again, speculation, Your Honor.
MR. VIETH: Yes, sir, I, I understand that.
A Sorry about that.
Q That's fine.
THE COURT: Sustained.
Q Answer any questions -- and I appreciate you being here. You came from Georgia to be here today, did you not?
A I did.
Q Answer any questions the State may have.
THE COURT: Your witness.

CROSS-EXAMINATION

BY MR. SIMON:

Q Afternoon, Mr. Burton.
A Good afternoon.
Q I just have a few questions for you before you leave.
You testified earlier that you lost contact with Marion around 1990, sometime early 90's?
A Early 90's.
Q By any chance, do you recall your trial testimony?
A I read it.
Q Okay. Now, I know earlier you, you said that you lost contact with, with Marion and he, he left the company that

you were working for and he left and you couldn't remember why he left.

Do you recall testifying at trial that you actually tried to assist him in regaining his job with the company?

A I don't recall that.

Q Don't recall that.

A I certainly would have of. I believe that.

Q And if it's in the transcript, you would say that that would---

A I would.

Q ---you would of said that?

A Yes.

Q Okay. Again, you said, you said you lost touch with him around 1990?

A Well, that is to say that while I was transferred away from the Spartanburg area I, I knew of Marion's activities through my mother and him continuing to visit our farm for fishing activities or what have you.

Q But you didn't have any direct contact with him?

A No.

Q And you didn't have any -- I'm taking it you also didn't have any contact with him when he began his relationship with Nell Lindsey?

A I did not.

Q And you didn't -- you weren't aware of, of actions that

were taken by Mr. Lindsey after you moved away?
A I was not.
Q And, in fact, you indicated at trial that, that you first became aware that he was involved in a shooting of Stafford Wilkins?
You were informed of that by Mr. Bartosh, correct?
A Or I learned of it in the trial I believe.
Q And, so, you were not aware of a number of different incidents that Mr. Lindsey had with his wife, I guess, like, for instance, any threats he may of made towards her?
A Not until I heard it in the original trial.
Q And you were not aware of the fact that he was, he was involved in a sell of drugs?
A No, not until the trial.
Q And you're not aware of his relationship with other women while he was married?
A Correct.
Q And you, you don't know why he was let go from Milliken, do you, or from the company you were working with?
A No.
Q And, so, if that was due to some conflict he may of had with his supervisor, you were not aware of that, correct?
A I don't remember, no.
MR. SIMON: All right. Just one moment, Your Honor.
(Pause.)

Q Just a couple more questions.

By any chance, were you aware of Mr. Lindsey having an imaginary friend named Jimmy?

A I believe I came, became aware of that later on.

Q But you didn't know that from your previous relationship with Mr. Lindsey?

A I can't recall it.

MR. SIMON: Okay. No further questions, Your Honor.

MR. VIETH: Your Honor, just two quick questions I forgot to ask him. That's my fault.

REDIRECT EXAMINATION

BY MR. VIETH:

Q Did, did you ever talk to Marion about desires to have family and children, Mr. Burton?

A Oh, yeah, absolutely.

Q And what were---

A That was the major subject is achieving that typical or ideal family situation that he didn't get to enjoy.

Q Okay. Second question. In your testimony was asked of you by Mr. Gowdy, would you have given him any money or assistance if he needed an attorney to help see his children or anything of that nature, did you know, at that time when you were asked that question, that he had seen a Mr. Tullis to get help and Piedmont Legal Services?

A I was not aware of that.

Q Okay. And obviously you would of helped him?
A Of course.
Q You told him that.
And if the question had been asked of you by the defense attorneys would you have asked the jury for mercy if, if that question had been posed to you, would you have done it?
A Of course.
Q Thank you. That's all we have.
MR. SIMON: No recross, Your Honor.
THE COURT: You may step down. Thank you.
MR. VIETH: Thank you.
Your Honor, can he be excused to return to Georgia?
MR. ZELENKA: No objection.
THE COURT: Thank you, sir. You're excused.
MR. VIETH: Thank you very much.

MRS. BURTON, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VIETH:

Q Mrs. Burton, how are you this afternoon?
A Pretty good. Nervous.
Q Have you been in the courtroom since this case began yesterday, have you not?
A Yes.

Q Why is that?
A Because I love Marion. I love Marion.
Q Okay. And are you related to Bill Burton?
A Yes, I'm Bill's mother.
Q Okay. Mrs. Burton, you sent a letter to Judge Burch on March 13th, 2008, that was referred back to the attorneys involved in this case that essentially indicated your concern over Marion's sentence and the, and the fact that you didn't think your son or your son had conveyed to you he didn't think he was properly prepared to testify and that letter was sent to us. Okay.
A Correct.
Q And as a result of that, we got in touch with you, is that correct?
A That's correct.
Q And so, as -- you apparently were on the witness list. I believe they had a witness list with your name on it in the trial of the first case.

Were you familiar with that?

A I didn't know that until today.
Q Okay. Did anyone ever talk to you about the case?
A No, I didn't even know about it except through Bill. When they called Bill, then I found out about it. I had no idea.
Q Okay. Had you been asked to testify at that time, what

would you have told this jury about the relationship with Marion that you had and about Marion in general?

A Okay.

Q And also preface that by saying give us the time frame for which you had a relationship with him.

A Okay. I, I met Marion when he was about six or seven. As Bill told you, he was a lifeguard at the city pool, and after the pool closed, sometimes he would put a bunch of kids in the pickup truck and bring them out to the house and they would fish and play in the lake. And I knew right in the beginning that Marion was special to Bill cause he was the one that he talked about all the time, and introduced me to all the kids, but I don't remember any of them except Marion. He always had a big grin on his face and seemed so happy.

And Bill was proud of him when he learned how to swim. Although Marion kind of, I think, was, didn't really want to learn to swim because that meant Bill wasn't gonna spend so much time with him. So, I think he really was kind of sorry he learned to swim cause then Bill was spending time with other kids.

But he would come out to the house and they would fish and play, and then he would thank me and Bill went off to the Air Force Academy after he graduated from Spartan High. He was a lifeguard while he was at Spartan High, and he went

off to the Air Force Academy. So, Bill couldn't bring Marion out to the fish anymore, but sometimes his brothers would bring him or his cousins, and he would always come to the house and ask me if it was all right if they fished. He never just came out even though I gave him permission to come. He always came to the house first and asked me could he.

And when he left, he would always come and knock on the door and thank me. And we have other people that would come out and use the pond, and Marion's the only one I know of that ever did that.

So, he became special to me too, but in kind of a remote way because I really didn't see him all that much. But I know that Bill would go to the house and visit and he would tell me how poor it was, and, you know, how Marion didn't have much. And I think occasionally he might take him a birthday present, and he didn't come home much because when you're at the Air Force Academy you don't have much vacation time. But I think he did stop and see Maron. I call him Maron cause that's his nickname when he was little. So, excuse me if I call him the wrong thing sometimes.

Bill would stop and see him when he did come home occasionally, and then after that he would come out to the farm, out to the house occasionally. But that was really our only, only contact until after the trial. But I've

gotten to know him even better since then, and I know there's been a lot of talk about adaptability to prison life, and I think Virginia---

MR. SIMON: Objection.

A ---and I know more about that---

MR. SIMON: Objection, Your Honor. Objection.

Q Hold on. Hold on.

A Okay.

MR. SIMON: Speculation.

WITNESS: Okay.

Q Well, let me ask you---

MR. SIMON: It's going into---

MR. VIETH: I'll rephrase it.

THE COURT: Rephrase. Okay.

WITNESS: Okay.

Q Since his conviction, have you visited him on, at the penitentiary that he's presently at?

A Yes, I have gone down to Lieber Correctional Institute many times to visit him, and we correspond on a regular basis. We write -- I think, for three years, we've written about once a week back and forth and I have a lot of letters from Marion, and I know at one point there's, there's been talk about the suicide issue and in one of the letters and I have all of his letters. He said that he wasn't going to appeal anymore, that he wanted to just let them kill because

he wanted to die. He was -- felt so bad about the way things had gone, and I kind of had to talk him out of it saying maybe they'll outlaw the death penalty, maybe you'll get to see your sons, maybe they'll want to see you when they grow up. And I hope I changed -- I think I changed his mind for that time.

Also, he wrote poetry while he was in prison, and he would mail me his poems and ask me to make copies for him. And one of the poems he wrote about his experience, and in the light of trying to teach other young people not to follow in his footsteps. And I was so touched by that poem I gave it to a friend of mine at Mobile Meals who's a minister, Donald Gibson. And he has made copies of that poem, poem and used it in his church activities and especially with other young people, and has said what an impression that poem made on, on the young people that he shared it with.

When I visit Marion in prison, I see the relationship between him and the other inmates who are also in the room where you visit the death row inmates, and they have -- and also his interaction with the guards that take him, and, you know, bring him the food that I get out of the machine, et cetera, and there is not a feeling that anyone is afraid. It's almost a feeling of congeniality, comradery almost, you know, of a closely knit group. I don't see any animosity.

I don't see any fear of violence and that sort of thing when I visit him at Lieber.

Q Okay. What was your occupation?

A Well, mostly a mother, but later on a middle school science teacher. I taught at Dawkins Middle School in District Six and Spartanburg Day School.

Q Okay. Where do you live?

A I live out in the country on District 3 out toward Pacolet.

Q And is that where you lived when Marion visited you---

A Right.

Q ---to go to the pond?

A I've lived there, I've lived there as long as I've been, been in Spartanburg, and I've know Marion, Marion for 33 of those years.

Q Okay. Had you been called in this trial and questioned about whether or not to ask the jury for mercy, would you have given the jury that answer?

A I can't tell you what I would of asked them, you know. Definitely I would of asked for mercy. I would -- I know that, in my life, I had an aunt who made a big difference in my life, and she -- I give her credit for what I am today. And I often wished that I had been able to be that person for Marion. I wish I had known him more when he was younger so that, like The Blind Side, maybe I might have been able

to help him to reach his full potential and to excel in school. Even now I correct his, his grammar when he writes me letters.

But I wish I had been able to do more and I would certainly have asked for mercy because I don't think one action on a part of a person defines that person's life.

Q All right. Thank you so much for being here. Answer any questions that Mr. Zelenka might have.

A Okay.

CROSS-EXAMINATION

BY MR. SIMON:

Q Afternoon, Mrs. Burton.

A Hello.

Q Now, you testified that you've known Marion for about 30, I believe you said 33 years?

A Right.

Q And you mainly knew him initially from your son bringing him over?

A Right.

Q And then him stopping by fishing after that?

A Right.

Q I guess after your, your son went off to the Air Force Academy?

A Right.

Q Was there any, at any point in time that those visits

to come fishing, did those tailor off?
A No, I don't think so. Maybe when he started having a family of his own they did. I don't -- I would say probably they did. You're right. Probably they did tailor off when he had a family of his own. I guess he didn't have as much time to come fishing.
Q Okay. Now, when Marion would stop by, would y'all have any -- did -- from, the impression I'm getting from your testimony, when he would stop by, he would just basically say may we use the pond and thank you for using the pond, is that correct?
A Right. We might of said how are you, you know, and talk about the weather, if the Braves won or something like that, but not any in depth conversation.
Q Okay. And so, you didn't, during that time, you didn't have a whole lot of discussions with him about his family?
A About -- no, only what I knew mostly from Marion was through Bill. I knew that Bill said---
Q That---
A ---you know, he followed him.
Q But from---
A But me personally, no, just---
Q Okay. No -- not from you personally and with Marion?
A Right.
Q Okay. And were you -- I take it then you were not

aware of his relationship with his wife, Nell?
A Oh, no. No.
Q You were not aware of the nature of that relationship?
A No. No.
Q And you were also not aware of, I guess you would not, not be aware of Marion's involvement in selling drugs?
A No, I was not.
Q And you would not have been aware of his being involved in a shooting?
A No.
Q Or any of the criminal domestic violence incidents he may of been involved in?
A No, all I knew was that he was a happy little kid that, you know, and then a young person that came. That's, that's all I knew. I didn't know him intimately at that point, you're right.
Q And you didn't get into further contact with him until after the trial was over?
A Correct.
Q Can I take it then you also did not, he never discussed with you an imaginary friend named Jimmy?
A No, I didn't know that until -- you'd asked about his relationship with his father though. I do know that Bill had told me that he was sad that he didn't, that his father never came to his games---

Q Ma'am, I'm gonna stop you there cause---
A Oh, that's not me. Okay. All right. I'm sorry.
Q But -- and at the time of the trial, was -- okay. Now, your son testified at that trial and you're aware that he was testifying at trial?
A Right.
Q By any chance, did you come to watch any of the trial?
A No, I didn't.
Q And by any chance did you offer to anyone to come testify on his behalf?
A I didn't think I would be any good.
Q Okay.
A I didn't think I had that much to offer really, and I was against the death penalty anyway. So, wouldn't have been probably accepted. I don't know.

MR. SIMON: Court's indulgence, Your Honor, just one moment.

(Pause.)

MR. SIMON: No further questions, Your Honor.

MR. VIETH: Nothing else.

Thank you, Mrs. Burton. You can come down.

THE COURT: You may step down.

MR. VIETH: Your Honor, at this point, I have talked to the news media that's here, and they've assured me that putting up the witnesses for Mr. Marion's or Mr. Lindsey's

family and so forth would not be televised or reported and, and I trust them. But I note the camera's still there. I just want to make sure that we're all in agreement. The camera's gone.

All right. The camera's gone. Then we're good to go. Thank you very much. I appreciate that.

THE COURT: Okay.

MR. COLLINS: Your Honor, we call Mrs. Virginia Lindsey to the stand.

THE COURT: All right. Come around and be sworn please.

VIRGINIA LINDSEY, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. COLLINS:

Q Ma'am, can you tell us your full name?

A My full name is Virginia May Lindsey.

Q All right. And Mrs. Lindsey, do you know that young fellow sitting over there in the orange jumpsuit?

A Yeah, Marion is my son.

Q All right. So, you are, you are Marion's mother?

A Uh-huh. (Affirmative).

Q And you understand I'm gonna ask you some questions this afternoon about you and your family history.

A Yes.

Q Okay. And are you comfortable answering those questions for me?
A Yes.
Q All right. Well, we're gonna go through this slowly so you can get comfortable.
Okay?
A Okay.
Q Can you tell us, at this point, where do you live?
A Right now I live on in Inman, South Carolina.
Q And Inman, that's here in Spartanburg County, correct?
A Spartanburg County.
Q Have you been a life long resident of Spartanburg County?
A All my life.
Q All your life.
All right. And you don't have to lean up for each answer.
A Okay.
Q We've, we've got that microphone turned up. If we got to get you to speak up we'll let you know.
A Okay.
Q Now, so, you were, you were born here in Spartanburg County?
A Yes.

Q And raised here?
A Yes.
Q All right. When you were growing up, where, in Spartanburg County, did you and your family live?
A Inman.
Q Lived in Inman.
Did y'all go to school there in Inman or was there more -- where did you go to school?
A Yeah, went to school in Inman.
Q All right. And how far did you go in school personally?
A Tenth grade.
Q Did you complete the tenth grade?
A No, I quit in the tenth grade.
Q All right. So, you completed nine years of school or through the ninth grade---
A Uh-huh. (Affirmative).
Q ---and then quit high school?
A Yes.
Q And did you have brothers and sisters growing up?
A Yes, I had three sisters and five brothers.
Q So, eight of you total?
A Nine.
Q Nine.
A Well, it's four girls, five boys.

Q Four girls and five boys.
Okay. And where did you fall in that, in that range? Were you the baby or the oldest or somewhere in the middle?
A I was the third child.
Q So, one of the older children?
A Yes.
Q Of the children that, of the siblings, the brothers and sisters you had growing up, did any of them graduate high school?
A No, just only my baby sister and I did all I could to help her get through high school.
Q Okay. So, the majority of those nine children quit at some point during high school before---
A Yes.
Q Did, did you have any difficulties in school learning? Did you have any personal difficulties in school?
A No.
Q How about any of your brothers and sisters?
A I think Paul did. My brother, Paul, I think he had difficult learning.
Q Okay.
A I think, as far as I know, he's about the only one.
Q All right. But there was at least some history of somebody in the family having some learning difficulties?

A Yes.
Q Now, your parents, what were their names?
A My, my daddy name was Smiley Leon Pilgrim. My mother name was Ruth Pilgrim.
Q All right. So, that's Smiley?
A Smiley.
Q Like, like Smiley with -- smile with a Y?
A Yes.
Q All right. And then Ruth Pilgrim was your mother?
A Yes.
Q And did Smiley and, and Ruth, your, your parents, did they stay together your entire childhood?
A No, my father left when I was an early age of 13.
Q Were the, the children that, the nine that you just described, were they all Smiley's children?
A All except two.
Q So, the two, the two youngest girls?
A A boy and a girl.
Q A boy and a girl?
A Uh-huh. (Affirmative).
Q All right. And once, once they divorced when you were 13, did, did Smiley ever come back home?
A No, he never came back for around about seven years later, but he didn't stay. Just come in and visit for a couple days and went back.

Q And that was really the only contact you had with him at that point?
A Yes.
Q By then you were 20 years old?
A Yep.
Q All right. Now, when you and your brothers and sisters quit high school, did y'all immediately go to work?
A Yes, I went to work at Inman Mills cotton mill. I went to Inman Mill and worked there. I was 17 years old, and I worked there till I was 19.
Q And is that -- most of your brothers and sisters worked there as well?
A Well, Steve, he worked at Inman Mills. Bessie, she worked at Inman Mills, and my sister, Lizzie, she always worked at nursing home work.
Q And then I think you had a few other brothers that may or may not have been working during that time?
A Yeah.
Q Is that right?
A Yeah, that's right.
Q Now, is it fair to say that money was tight in that household growing up?
A Yes, money was very tight because my mama, she wasn't never able to work and we had to get out and pick peaches and pick cotton, every little thing we could do to help put

food in the house and keep us warm and stuff cause my father wasn't sending us no money at all. So, it just what we made in picking cotton and peaches and stuff like that so we could survive.

Q Well -- and living in that household, there were nine brothers and sisters and your mom. So, that's ten people.

A Yes.

Q Was there anybody else in that house?

A Not at the time.

Q Okay. How big was that household, that house that you lived in?

A For that house, it was pretty well big cause it was a two story house, and we had two bedrooms downstairs and two bedrooms upstairs.

Q So, there---

A This was back in 1962.

Q All right. So, you had two or three folks per bedroom?

A Yes.

Q Was it, was it heated and was it heated well?

A Well, we heated by oil, oil heater. But after daddy left us, we didn't have money to buy oil. So, we just -- my grandma, she brought us a little coal heater to use. So, that's what we used to keep warm by.

Q Do you have to do anything to keep, to keep the air out from the outside?

A Yeah, we had to put quilts and things down under the doorway to keep the air from coming in where the cracks was at. So, we had to put quilts and things down at the doorway to keep the air from coming in up around the window top, ceiling.

Q How about food in the household, how did y'all -- how were y'all able to, to eat?

What did you eat?

A Well, my grandmother, she worked all the time for white people taking care of their kids. So, she would get food from them to bring to us and then, when she get paid, she could take a little money and buy food so we'd have something to eat and stuff like that. And then, so, later on, mama, she met this man, Willie James Farr, our baby brother's father. She met him and he came in and he helped as much as he could. But, you know, back then he wasn't doing nothing but cutting peach trees, pruning peach trees, and stuff. So, there wasn't too much money in the house at all---

Q Now---

A ---with nine kids.

Q Nine, nine kids and your mom?

A And my mom.

Q Now, as you, as you grew up and started working, did, did you eventually have children of your own other than

Marion?
A Yes, when I grew up and start working, I had my oldest son, Claude, when I was 17. I got married when I was 17, but I didn't live with my husband for three years and we got a divorce. Then I had -- well, I had Frederick before we got the divorce. I had Claude Lindsey and I had Frederick Lindsey. I had a little girl by him also, but she got killed in a car accident at seven months old. So, it was Claude, Frederick, and Vanessa Elaine by my husband.
Q And when you had these children, did you continue to live with your mother there in that house?
A Yes, I lived with my mother all the time, yeah, cause we never did get a place of our own. Once we got married we never got a place of our own. We all lived in the same house. We never did move out on our own.
Q So, your, your husband moved into that house with you, and then when you divorced he moved out?
A Yes, sir.
Q Did your brothers and sisters continue to live in that house with you as well?
A Yes, we all lived in that house, and this was a smaller house at the time. It didn't have but just two bedrooms, my mama bedroom, and another bedroom. So, the girls had a bed on one side of the room and the boys had a bed on the other side of the room. So, all the boys slept together and all

the girls slept together.
Q And where was this -- where was this smaller house located?
A The smaller house, it was located over across Highway 26 on Old Furnace Road, Clock Road at the time.
Q And so, this -- was it a four room house?
A Yes.
Q Two bedrooms and two other rooms?
A Yes, living room---
Q All right.
A ---and kitchen.
Q And by the time your children came along, how many folks, once you had Marion, how many folks were living in that house?
A When I had Marion -- well, I had moved out of the house from my mother when I had Marion. I lived on Jolly Street in Spartanburg, and I had a two bedroom house, living room, and a kitchen. So, I had all my kids then, and I had Tim while I was living in the house. But I had all my kids except Tim. Then I had Tim in 1983. So, he was there too then.
Q How long did, did Marion live in the house with your mother?
A Let me see. I think he was like seven years old when we moved out the house with my mom.

Q So, during the first several years of his life he was in this house with you and your mother and brothers and other folks?
A Let me see. Yeah.
Q How many folks were living in that four room house for those seven years?
A It was me and, me and my three boys, and let me see. My sister two kids, my mother, me, and my brother Steve, and my brother Willie, my sister Robin.
Q And was your -- was Paul there as well?
A Yeah, Paul was there as well. But he was in service, but then when he did come out the service he was there too---
Q So---
A ---also.
Q ---at some, at some points, 11, sometimes 12 people in that four room house?
A Yes, and I always wondered, I look back now, and I always wonder how did all of us live in that little bitty house.
Q Even then, was there still a struggle for money?
A Yeah, it was still tight, but, you know, we had got older where we could get out and work and make more money then. But it was still tight though, the money was.
Q Now, Vanessa was the, the daughter that died at seven

months old, is that correct?
A Yes.
Q And when Vanessa passed away, did you take it pretty hard?
A Yep, pretty hard. Yeah, cause the -- when she passed away, back then it wasn't rescue squads, ambulance like it is now. We had to wait for somebody from the funeral home to come to pick her up and carry her to the hospital and that was a long wait, and then she had a big gash cut in her head, and she was bleeding so bad. And, so, we had to wait for somebody to come and get her and carry her to the hospital. So, yeah, it was pretty rough on me.
Q Okay. As a result of that, did, did you have some emotional difficulties?
A After that, right after -- well, it took me about, I guess, about a year to really come to my senses, you know, and realize that she was gone and I wasn't gonna have her no more. So, that's when that happened.
Q And is it fair to say that that affected your life for sometime to come?
A Yes.
Q And, and your ability to just deal with day-to-day stuff?
A Yes.
Q All right. Now, at some point did you have, did you

remarry after Marion was born or did you have a live-in boyfriend that stayed with you for a while?

A Yeah, after, after Marion was born I had a live-in boyfriend for like 20 years name of Roger Sims. That's Timothy Sims father. We lived together for about 20 years.

Q And did, did Mr. Sims, did he have a drinking problem?

A Yeah, he had a real bad drinking problem.

Q And as a result of his drinking did he get violent there in the home?

A Yes, he did.

Q And were the boys, including Marion, were they kind of the -- did they take the brunt of his violence sometimes?

A Yes. Yes.

Q Were you able to protect them or, or help them out in that, in those situations?

A Yeah, and then sometimes -- well, Marion, he would run across the street and get my mom cause she lived the next street over. So, he would run over there and get my mom, tell her he was over there fighting me. And, so, when my mom get there, then he would get in the car and leave.

Q So, he was -- Marion was exposed to that kind of violence from a very young age?

A Yes, he was.

Q And did he react -- let me rephrase it. Let me ask it this way.

Did, did he do everything he could to get away from those situations?
A Well, he, he didn't have too much of a choice cause Marion was small at the time. So, he didn't have too much a choice. He just had to live with it.
Q He just had to live with it?
A Uh-huh. (Affirmative).
Q Okay. Now, your first husband and then Mr. Sims, neither one of those was Marion's biological father, correct?
A No.
Q Who was Marion's natural dad?
A Marion natural father was Leon McDowell.
Q And you were -- were you ever married to Mr. McDowell?
A No, I wasn't married to Mr. McDowell.
Q Did Mr. McDowell ever live in the house there with you?
A No.
Q Matter of fact, he had a family of his own, is that correct?
A Yes.
Q Did Mr. McDowell have much interaction with Marion growing up?
A No, he wasn't there for Marion like a father, but sometimes he would come by and give him a little, a few dollars or something to give him something to eat or

sometime he would come by and give us his credit card to go get him some clothes to wear. But really he just wasn't there all the time. Every once in a while he, he would pop up and give him a little money to do stuff with.

Q Well, by every once in a while he'd pop up, was that once every six months, once a year?

How, how frequent was that?

A Probably about once a year.

Q Did your other children, did they get to spend time with their natural fathers?

A Yes.

Q All right. Well, for example, Tim and his dad lived in the same house, correct?

A Yes.

Q And did your other, your older children, did they get to spend time with your ex-husband?

A Yes, they daddy would come and pick them up on weekends. They would go and spend the weekends with him and his other wife. They could go live with them on the weekends, and Marion, he was always crying and wanting to go, and I'd tell him he couldn't go. And he always saying why didn't I go, he couldn't go. So, I had to explain to him that that was they, they father.

Q So, he was the only one in the group that didn't have a dad who would come to visit him?

A Yes.
Q Now, when Marion was growing up, did he have situations where he had injuries to his head?
A Yes, when Marion was about six or seven he fell on his head and busted it right here, and then we had carried him to the doctor for that and got him fixed up for that. About two weeks later then when we went to visit my friend girl over at her house, and he was climbing up on the, balancing on her porch, and she had a cement porch, he fell off and hit the head again in the same place. And then, after Marion got 16 years old, he had a car wreck and got his eye all busted up and his knee all busted up and he had been in some rough things.
Q All right. So, Marion's got some scars on his face around his eye and his ear.
A Yeah.
Q Is that the result of that car accident he had at 16?
A The eye part is, but the ear part is where he got run over with a car when he was about a year old. My brother, Paul, ran over the, backed over him with a car when he was about a year old.
Q All right.
A So, that's why the scars is in his head.
Q All right. And, so, that was his Uncle Paul?
A Yes, Uncle Paul.

Q So, he was run over when he was about a year old?
A Yes, sir.
Q And then six or seven he had two---
A Head injuries.
Q ---two head injuries to the same location---
A Yes.
Q ---on the front of his head?
A Yes.
Q And then at 16 he had a bad car accident that caused some more damage around his eye socket and some other places?
A Yes.
Q Now, in addition to being, in addition to the head trauma, was there a time when he was poisoned by kerosene?
A Yeah, I think he was about, about -- he must of been about eight months old at the time when he got poisoned by the kerosene that -- we lived in a house where I say we had to burn a coal heater. So, we had to have wood and stuff to start the fire and kerosene. So, we always start kerosene with a -- I mean the fire with the kerosene.

So, my brother, Steve, he had a quart jar of kerosene sitting down right behind the heater. So, Marion was crawling around in the floor and I was at the sink washing dishes. So, all of a sudden I heard a big scream, and then I looked around, and he had done poured the kerosene all up

in his face, down his clothes, and he was gasping trying to get his breath.

So, I ran over there and grabbed him and run to the refrigerator to get some milk, to try to get some milk in him. But I was so upset and stuff I couldn't get the milk in him. So, I throwed the milk down and grabbed him up and grabbed my oldest son, Claude, and my baby brother, Jimmy, and told them to come on, we got to go take him to the doctor.

So, we got in the car. I told his brother, Claude, to hold him up in the window so he could get some air cause he couldn't breathe, catching his breath. So, just like I said then, it wasn't rescue squads and stuff like that that come around then like they do now. So, we went to the police station at Inman, and the police station, they called somebody to come with the rescue squad. So, we rushed him to the hospital at that time.

Q Now, these, these other folks that you've talked about in this stories, Paul and Willie, and I think you mentioned Robin --

A Uh-huh. (Affirmative).

Q -- those folks were around and, I guess, big influences on Marion's life?

Is that fair to say?

A Yes, cause my sister, Robin, she took care of Marion

while I worked. I went back to work when Marion was six weeks old, and my baby sister, Robin, she took care of him while I worked. I would pay him every two weeks to take care of him while I worked.

Q Now, would you describe Paul and Willie as nice men or good men?

A They got good attitudes and stuff. They got good attitudes, but they always love to fight. They just love to fight a lot and beat their girlfriends, Paul did, Willie did, and they would just loved to fight a lot.

Q Did, did those two, were, were they like Mr. Sims, did they drink a lot?

A Now, Willie -- Paul, he drunk real heavy. Willie, he drunk, but he didn't drink as heavy as Paul, but Paul was a real heavy drinker and he still a real heavy drinker.

Q And you said they both had a, a tendency towards violence?

A Yes, uh-huh. (Affirmative).

Q Were they violent to each other there in the household? In other words, did they fight there at the house?

A No, not really.

Q Did they fight with the women in their lives?

A Yes.

Q Okay. And was that usually a one sided fight or was it two sided?

A Two sides.
Q Did they get in fights with other folks there in the community?
A Yep, they -- Paul, he got in a lot of fights. I can't remember Willie getting in too many fights growing up, but Paul, he got in a lot of fights and stuff when he was growing up.
Q Both of them own guns and knives?
A I know Paul owned guns and knives. Willie, I don't think he toted a gun too much, but Paul did.
Q Willie, ever once in a while, did he have a gun or a knife?
A He might of had a knife. I don't think he had a gun.
Q And you ever aware of any incidents where they shot at others in the neighborhood, where there were any gun fights in the neighborhood?
A Well, I remember one time when Paul, it was a little cafe down below our house where we lived, and Paul, he had got into it with some guys down there. So, it was like three or four o'clock in the morning, he came home, bamming on the door. So, he didn't give nobody time to open the door. He just kicked the door open and came in, and we didn't all wondering what was going on.

So, he come in there. He know my mama always kept a pistol. So, he come in there and got my mama pistol and

went back out the door shooting it, and then the guy that he was shooting at, they were shooting back. So, he went out the back door, and the guy that was shooting him shot through our house, and we all had to get down on the floor cause they was doing the shooting. And my brother, Steve, he was hollering y'all get on the floor, get on the floor. So, we did that. And, so, that's the night I remember.

Q Do you remember an incident with Paul and Willie and a cat?

A Yeah, I remember that incident, incident. Marion had a little cat, a little small kitten, and Paul -- he didn't like it. Paul and Willie didn't like the cat. They didn't like the cat. So, they had been telling him mama, they gonna kill that cat, you need to get him out of there.

So, one night, we was just sitting there watching TV and stuff, and all, the little kitten come in there, and Willie was trying to get him, get the kitten out. Paul said leave it, open it up, we'll put him in the heater, and, so, Paul opened -- Willie says open the heater, Paul. So, Paul, Paul, he opened the heater and held it open while Willie throwed the cat in the heater, you know, and that hurt Marion too cause he loved that little cat.

Q I was gonna say was Marion in the, in the house when, when that happened?

A Yeah, Marion was there, yeah, cause he was small. He

was there.
Q So, Marion got to watch his two uncles---
A Burn his cat.
Q ---toss his cat and burn it alive?
A Burn him alive.
Q Now, Paul, is -- he's -- is his name Fred?
A No, that's my brother Paul.
Q Your brother Paul.
A My -- my son is Paul Frederick.
Q All right. So, there was a, there was a different Paul in the family. I think he went by the name Fred---
A Yeah.
Q ---is what y'all called him, correct?
A Yeah, Fred.
Q And was Fred close to Marion?
A No, Fred and Marion didn't get along too good. They didn't get along good. I think Fred was, always thought I did more and cared for Marion than I did him. So, I think Fred had a lot of anger in him about that cause one night Marion had went out and stayed all night, and Fred had went out and stayed all night. So, when Fred came home, I was waiting on him behind the door with a switch, and I gave him a whooping.

So, Marion stayed out all night, come home, I didn't give him no whooping. I sent him on to school to punish

him. So, Fred didn't like that. He think -- he thought I always thought I cared more about Marion than I did him.

Q Now, did Fred eventually pass away?

A Yeah, Fred passed away. Fred got drown in, in Jocassee Lake in 1998, and he was 27 years old.

Q Did---

A They never recovered his body.

Q All right. Never found his body?

A Hu huh. (Negative).

Q Did, did that seem to have an effect on Marion?

A Yeah, Marion, he, he was pretty upset about that. Him and his -- him and Fred brother, Sammy, they even went over there on the lake and got in the boat and tried to go find him they self. So, it was, it was pretty -- yeah, it hurt him pretty bad.

Q How long was Marion at that point?

A Marion -- let me see. He was 27. Marion must of been about 23.

Q Now, at some point when Marion was growing up or a young adult, did you live on Bobo Street in Inman?

A Yes.

Q Is it fair to say that that's a pretty rough neighborhood?

A Yes.

Q And while you were living there, did you and Marion and

other members of the family, were you exposed to drinking and drug dealing and violence?

A Not, not at my apartment.

Q Not at your apartment, but in the neighborhood as a whole?

A Yeah, oh, in the neighborhood, yes.

Q And was that a normal part of every day life in that neighborhood?

A Yes. Yes.

Q Did you observe, as his mother, an effect that that might of had on Marion?

A Yep, I think it did.

Q All right. What types of things did you see?

Not what, not what you think you thought or -- but what kind of things did you see in Marion that caused you some concern about living on Bobo Street?

A Well, Marion, he really didn't live that much with me on Bobo Street. It was just me and Tim. But he would always be on Bobo Street, and be a lot of more guys out there on Bobo Street. But I can't say that I ever saw Marion just sell drugs on Bobo Street. I've had a feeling that Marion was selling drugs. But I had never saw him sell drugs.

Q As his mother looking back, do you wish that Marion had never been exposed to that environment on Bobo Street?

A Yes, I sure do.
Q Now, I want to switch gears with you just a little bit.
A Okay.
Q At some point, when Marion was about 15 years old, did he get in a fight with one of his brothers there at the house?
A Yeah, Marion got in a fight with him and Paul Frederick got in a fight one day. I was at work. So, my oldest son, Claude, he called me at work and told me to come home cause Fred and Marion were fighting. So, I got off my job and went home, and at the time Fred had his half brother there too, and they both were fighting Marion. So, Marion -- my oldest son, Claude, he got a stick and told them to get up off of him, get up off of him cause that's the only way he got them off of him, but they had Marion down on the ground, him and his, Fred and his half brother did.
Q Did you have a conversation with Marion or, or get in an argument with Marion after that fight?
A No, I told Fred to get his brothers and he leave and his brother leave and don't come back to my house no more. So, they left and they stayed gone. Freddie stayed gone for about a week or two in a boarding house, boarding room house, and then later he came back.
Q Is there ever a point during Marion's life that you told him you weren't gonna, you didn't love him anymore?

A Yes, Marion and Fred got to fighting one night. When I lived in Spartanburg on Jolly Street, they got to fighting over the telephone. Fred wanted the phone. Marion was on the phone. Fred wanted it. So, they got in a scuffle about the telephone.

So, I went in there to try to stop them from fighting. So, Marion, he hauled off and held me down on the bed. So, I told him don't never ask me for nothing else in your life cause I won't never give you nothing else and I won't never buy you nothing else and I don't love you no more and you don't treat your mama like that. Yeah, I told him that in anger.

Q Now, how did Marion react to that?

A Marion didn't like that. He went in the bathroom, went in the bathroom, poured out a whole lot of pills and took a whole lot of pills. And, so, I was laying on the bed watching TV and I heard him call Tim in the room. So, Tim went in the room. Tim, he was small. So, he called Tim in the room, told Tim to go in there and tell his daddy to come here.

So, Tim come back there and told his daddy that Marion said come here. So, he went in the bathroom and Marion in there down on his knees throwing up. So, he came back and say you better call the rescue squad or something, that boy done went in there and took a whole lot of pills. Say he in

there throwing up.

So, I went in the bathroom and he was on his knees throwing up in the commode, and he had a bunch of more pills laying on the back of the commode. But then he had took all kinds cause I had all kinds like Tylenol, Advils, Ibuprofen, everything up in the cabinet where he just mixed them all up together and took them.

Q Once -- did he get to the hospital that evening?

A Yes, they carried him to the hospital and they pumped his stomach and they kept him for, up there for, at the hospital like three days and after that they put him in mental health for two weeks.

Q So, for a little over two weeks he was in inpatient treatment for the suicide attempt?

A Yes, sir.

Q When he was released from the inpatient treatment, did he come home?

A Yeah, he came home after that.

Q Was there any follow-up treatment that Marion was required to get?

A No, they just sent him home. They didn't tell me I had to bring him back for no follow-up or nothing.

Q Did, did you or any of the other family members ever get him to a mental health professional, a psychologist or psychiatrist, after that?

A No.
Q Never took him to counseling?
A No.
Q All right. When he, when he got a little bit older, did he make some other -- well, I will come back to that in a minute.
A Okay.
Q Okay. Through that same time period as a teenager, was Marion still in school?
A Yes, Marion was still in school. I think he quit school when he was about 17.
Q So, within a year or two of this happening he quit school?
A Uh-huh. (Affirmative).
Q Is that fair?
A When, when the accident happened about the pills.
Q Yeah, the pills.
A Yeah, it must of been two years later.
Q All right. Now, did Marion have problems in school?
A Yeah, he had problems in school. He couldn't learn. He didn't make nothing but D's and F's and he always repeating. He repeated the first grade I know. But he never had a good report card. Everytime he come he had F's and D's.
Q And F's are failing grades and U's were unsatisfactory,

is that right?
A Yes, uh-huh. (Affirmative).
Q Did you or anyone in your family ever get Marion some help in school.
Did he ever get a tutor or special training?
A No.
Q Once he left school at 17, did he get a job?
A No, I don't think so.
Q Okay. Did he -- how was he making money?
A Well, he was going with this girl named Stephanie Petty and she had a lot of money. So, he, you know, she give him money and stuff then. He didn't have to work cause she kept him up. So, after then, later on, he got into the drug business.
Q And when he was selling drugs, how did he spend the money that he was making?
A When he helped me, he helped me a lot when he was selling drugs cause he had, he had to help me make the house payments. Back then we was trying to buy a trailer, a trailer, a mobile home and he would help me with the payments on the mobile home and stuff like that, and he would help me buy groceries and stuff.
Q So, you used that money to, basically to help keep the family up?
A Yeah.

Q Were there times when he tried to work a legitimate job?
A Yeah, he, he worked. He tried to work. He'd go out and work for about three or four months or six months or something and he'd quit doing that and back in the drugs again. I guess them, them fast dollars, he could making -- them little jobs he had wasn't doing him no good.
Q Well, was he able to help the family out as much when he was working a real job as he was when he was dealing drugs?
A No.
Q There wasn't as much money to go around?
A No.
Q Well, when did -- that was when he was -- you said he started off seeing Stephanie Petty.
When did he meet Nell?
A Marion met Nell when him and Stephanie was living together. Nell got pregnant by Marion. So, Nell and her mama, they was always at Marion's house knocking on the door trying to get Marion. The baby needs this, Nell needs that, the baby need this. They wouldn't never leave him alone. She was always at his house knocking on his door cause she was pregnant by him or she done had the baby and they was always needing diapers, they need to go to the doctor, they need to do this. And so, Stephanie, she stuck with that for

a while, but then, after that, she got tired of it. So, she just left.

Q And after he, after Stephanie left, did he and Nell start seeing each other more seriously?

A Yes.

Q And eventually did they get married?

A Not right away they didn't. They didn't get married right away. I think the oldest little boy must of been around about five or six when they got married I would think. I'm not for sure, but they didn't get married right away I know.

Q How many kids did they have together total?

A Two boys.

Q Two boys.

A Uh-huh. (Affirmative).

Q And did you ever get a chance to observe Marion with those two children?

A Yeah, Marion was at my house with them two boys all the time. They was at my house all the time. Him and them two boys and Nell, and Nell also.

Q Did he spend a lot of time with them?

A Yes, he did.

Q He---

A He took care of them, yep, took care of---

Q Did he do things that a normal dad, a normal father

would do with them?
A Yes, he took them to the barber shop, got their hair cut. He'd take them to, out to eat, take them to the park. Yeah, he done a lot for those kids.
Q Now, what was his relationship like with Nell?
A Well, as I know, just like I said, Marion and Nell, they argued a lot, but I never saw Marion hit Nell, and I never saw Marion and Nell just fighting. But I do know they argued a right smart and it was all right. You know, everybody gonna have their ups and downs. So, that's all -- I ain't, I ain't never seen him hit her.
Q Was there a time before this shooting in 2002 where Marion and Nell were gonna breakup?
A Yeah, they had already broke up, but I didn't know it cause he didn't let me know what was going on. But I didn't know they was already broke up. So, he, he hung at the house a lot. Right before that he hung at my house a lot. But I still didn't know that him and her was on the outs about breaking her up.
Q Well, when you found out, did you have a conversation with Marion about it?
A No, I didn't have a conversation with Marion about it, but I know he would come to my house and lay in there on my bed talking on the phone to her for a long period of time. But I still didn't -- he still didn't explain to me what was

going on. But still one night he came by and brought some groceries and told me to take them over there, call Nell to come get it so the kids would have something to eat. So, I got on the phone, called Nell, told her to come and pick up the groceries, Marion left some groceries for the kids. So, she came and picked up the groceries and stuff.

Q How did Marion react to that first separation between them?

A He wasn't angry with her. I know that. She was -- cause she always have a habit of leaving and coming back, leaving and coming back. So, he didn't never was angry with her when she left. He just let her go, but she, eventually she end up coming back.

Q Well, let's skip ahead to the month right before this shooting took place.

Okay.

A A month right before this shooting took---

Q Well, a month or so before the shooting took place.

Were, were Marion and Nell separated shortly before the shooting took place?

A Yeah, they was separated, but they was still being together cause Marion and Nell come to pick me up one Sunday, me and my niece and her kids, and we went out there, and his kids grandmother house, picked them up, and we all went out to eat together. That was a month, about a month

before this incident happened. So, we all went to The Junction and ate, and when we came back, Marion he put me out, me and my niece and her kids. So, him and Nell and they kids left.

Q As time progressed, was there a point where Marion stopped getting to see the kids?

A Yeah. Now, that's when I knowed that Marion wasn't seeing the kids because he had called me one day and told me to call Nell and tell her to bring the kids to my house so he could see them. And so, I did. I got on the phone. I called Nell and she, and her mother answered the phone and she said Nell wasn't at home. She said I can have you to call her when she get here.

So, it wasn't but like ten, five or ten minutes later Nell called me. I said Marion said, asked if you could bring the boys over here so he could see them, and she said tell Marion I ain't bringing him nothing over there. He ain't seeing my boys. So, I said okay.

So, I hung up the phone and I called Marion back. I said Marion, she said that you wasn't seeing her kids. And so, Marion said well, mama call her back, tell her if she don't let me see them I'm coming over there to get them. So, I called back over there. I said Nell, Marion said if you don't let him come and see the kids he coming over there, and she said well, tell him to come on, tell him to

come on.

So, I called Marion back. I say Marion I said she said come on, but I said don't go over there cause you know when you go there they gonna have the police waiting on you. So, Marion, he didn't go.

So, about 15 or 20 minutes later the police came to my house looking for Marion. So, I said Marion don't live here. I don't know why them people sent y'all over here. They know Marion don't live here. So, after that I got on the phone and called Nell back. I said Nell, why you called, send the police over here, you know Marion don't live over here, why didn't you tell them where he lived. She said I ain't send the police to your house, I ain't send the police to your house.

Q At that point was -- did Marion ever get to see the kids?

To your, to your personal knowledge, did he ever get to see the kids again after that?

A No.

Q All right. Now -- but after that, you continued to have some conversations or some contact with Nell, correct?

A Yes, Nell---

Q Matter of fact, I think she took you to bingo?

A Yeah, Nell use to take me. She use to carry me to bingo and she use to carry, come back and pick me up. So,

one particular night she carried me, and she came back to pick me up, her and the baby. So, we got home and the baby, he was squealing and hollering wanting to stay with his grandma, wanting to spend the night with grandma, and she said you can't stay, and he just squealing and hollering.

I said, well, Nell, you might as well just let him stay. He's gonna holler. She said, well, I'll take him home and get his clothes and I'll bring him back. But she didn't never bring him back. So, that's the time I knew that they wasn't letting nobody see the kids.

Q Now, about this time, somewhere there in the first week of September of '02, did you get a phone call from Marion about the suicide?

A I got a phone call from Tim. I was at work. Tim called me at work and said, mama, you need to get off from work. Marion just called me. He say he down there. He's fixing to kill his self. I said Tim, y'all go down there and talk to him. Tim said no, mama, you got to get off, you got to come on. So, I got off from work, went down there.

So, me and my sister and my brother, Steve, we all went down there and Tim and we talked to Marion and stuff and tried to calm him down. So, my brother, Steve, he gave him a nerve pill he had. So, he took the nerve pill and we tried to calm him down and stuff. So, my sister, Bessie, she prayed for him and we stayed down there with him about,

till about eight o'clock that night.
Q Now, did, did Marion give you anything while you were there that, that evening?
A Yeah, he gave me some suicide letter. He had wrote one to me, one to Tim, one to Tray, and one to Alex.
Q And Tim is his younger brother, correct?
A Yes.
Q And the other two, Tray and Alex, are his sons, correct?
A Yes.
Q And when he gave you those particular notes, what did you do with them?
A I carried them to my house and I had them in a box I kept in my closet. So when, then when the incident happened, I returned them to Rod Tullis office, his lawyer. Rod Tullis.
Q Okay. Now, after this, after this evening when everybody left, did you or any of the other family members try to get Marion some professional help?
A No, I kept telling my sister the day that we was there let's call the rescue squad, Bessie, let's call the rescue squad. She said no, no, no, we don't need no rescue squad. We gonna talk to him and stuff. Like I said, anytime somebody suppose to be trying to kill his self you suppose to call for some help. She said no, no, we don't need no

rescue squad. So, to this day I regret that I didn't.
Q Now, switch gears on you one last time.
A Okay.
Q Before Marion's trial in 2004, did you get the chance to talk to Mr. Bartosh, Mr. Brannon, or Ms. Quimby?
A I got to talk to Mr. Brannon and Lenora Topp and it was on a Saturday evening about 12:30, 12:30 they came to my apartment, and we sat down and talked about what had happened and stuff. And I was, you know, telling them about I don't know what happened, I don't know how it happened, why it happened. And that's what they talked about, and they was telling me that they was gonna be the one, you know, help, trying to help Marion. So, that's the only time I talked to them.
Q When they came on that Saturday, do you know how long they stayed at your house?
A They stayed there about an hour.
Q About an hour?
A Uh-huh. (Affirmative).
Q And while they were there, was anybody else they talked to?
A Yeah, they talked to my sister, Bessie, cause she was there, uh-huh. (Affirmative).
Q So, they, they spent an hour talking to you and your sister, Bessie, together?

A Yes.
Q Aside from that meeting, did you have any opportunity to talk to them or prepare for your testimony at trial?
A No, I didn't.
Q So, that was the only meeting?
A Yes.
Q And then, based on that one hour meeting, you were then called to testify both at the guilty phase and at the sentencing phase, correct?
A Yes.
Q During that hour long meeting, did you feel like you had been prepared enough to testify during Marion's trial?
A No, I didn't think I had been prepared enough cause it wasn't enough time. They didn't get me, ask me enough questions and stuff about it and nothing. I don't think I really was.
Q Did you feel you had enough time to give them background information about Marion and your family and his history?
A No, which they didn't ask me nothing about that. But I don't think I had enough time to give them all that stuff before the trial. Bartosh or either, either Lenora I didn't, Mrs. Topp.
Q How, how long before this trial was this meeting you had on Saturday afternoon?

A I think it was -- I'm not for sure, but I'm thinking it was like about two weeks. I'm not sure.
Q About two weeks ahead?
A Yeah.
Q So, that would of been the beginning of May of 2004, correct?
A Yes.
Q And the shooting had taken place September of 2002?
A Uh-huh. (Affirmative).
Q So, about 18 months between the time the shooting took place and the time they talked to you for the first time?
A Yes.
Q And then they had two weeks from there to the trial?
A Yes.
Q During this conversation or at any point did someone from the defense team ask you to sign releases for medical records or school records or any other kind of information on you?
A No, I don't think so.
Q Okay. If they had asked you if they could get your school records or your medical records or something else to help Marion, would you have done that?
A Yes.
Q In, in your conversations with them did you, did you mention other witnesses or other people who might be able to

help Marion?
A No.
Q Did you ever talk to them about a Doctor Henderson?
A Yes, I talked to them about Doctor Henderson.
Q Was that during that meeting on Saturday?
A Apparently cause -- I don't know whether it was or not. I don't remember.
Q All right. But at some point, during, during your conversation, you talked about Doctor Henderson?
A Yes.
Q Who is Doctor Henderson?
A Doctor Henderson was Marion's doctor. His name was Doctor Barry Henderson and he treated Marion from when he was a baby till after he got grown.
Q Did -- was he just Marion's doctor or did he have more of a relationship with him?
A Well, he had more relationship with him cause Marion use to go play with his kids. They had a, some kind of game room down the street from us that Barry owned. So, Marion and them, they use to go down there all the time, him and his brothers, and play video games with his sons and stuff. So, he was, you know, more than just a doctor to him.
Q So---
A He was just like friends to him too.
Q So, he not only knew Doctor Henderson, but he knew his

children as well?
A Yes.
Q And, in your opinion, would Doctor Henderson have been able to testify about his treatment of Marion as well as what type of person Marion was?
A Yes, he would of.
Q All right. And at the time of his trial in 2002, was Doctor Henderson still alive?
A Yes, he was.
Q But at this point, is Doctor Henderson deceased?
A He deceased.
Q And the, the last thing I need to talk to you about right now is do you have -- did your -- I'm sorry.
Did Marion's defense team talk to you or prepare you to ask the jury to have mercy on your son?
A Yes, they did.
Q Okay. They give you the opportunity to do that?
A Yes.
Q Did you feel like you were prepared to make that request when you were on the, on the stand?
A Not really I didn't.
Q Having given some time to think about it and talk through with, with attorneys now, what would you say differently -- what would you have said differently to that jury in 2002 if you had been prepared?

A Well, I would of asked for mercy on my son because I have -- I lost a son. I would ask for mercy for him not to get the death penalty. He had to be punished for what he did do. But I wouldn't desire him getting the death penalty cause it hurts to lose somebody I know, and I, and I didn't just lose only a son. I lost a daughter and a son and plus I lost my two grandsons. So, I would of asked for mercy for them not to send him to the death penalty.

MR. COLLINS: Your Honor, if I may have just one moment please?

(Pause.)

MR. COLLINS: Your Honor, if I may have just a few more moments?

(Pause.)

Q Mrs. Lindsey, by comparison to the amount of time that you spent with Mr., with, with Marion's previous lawyers---

A Uh-huh. (Affirmative).

Q ---how much time, in talking to lawyers and investigators and other folks and preparing for today's trial have you spend---

MR. SIMON: Objection, Your Honor. Relevance.

THE COURT: Help me out.

MR. COLLINS: Your Honor, the relevance would be a comparison between the amount of time that it's taken to prepare for her testimony today as opposed to what, and her

ability to testify to what she's wanted to testify as opposed to what they did in the initial stages. Initially -- originally we would not have considered asking it or going down this line of questioning. However, I believe Mr. Zelenka has already opened that door by bringing in information about events subsequent to the initial trial in 2004.

And so, you know, he's, he's asked that comparison with Doctor Aiken, and I think we're now allowed, at this point, since he's opened that door, to, to ask this line of questioning of Mrs. Lindsey.

MR. SIMON: Your Honor, the amount of time that they've spent is never irrelevant because -- I guess, the, the way we're seeing what they're trying to argue is that they would have to have spent more -- I guess the comparison -- hold on one second, Your Honor.

(Pause.)

MR. SIMON: It's irrelevant because how much time they spent -- the issue here is whether or not counsel was ineffective or deficient in anyway in terms of the amount of time that they spent. However long they spent would not be relevant because the issue is how long it would take for a reasonable counsel -- I guess you're looking at this from what would a reasonable counsel do, and the amount of time that they would of spent may be different for anyone. So,

comparing the two would be irrelevant.

THE COURT: Well, you've got a point, but this type of hearing, I'm gonna give you some leeway on it.

MR. COLLINS: Yes, sir. Thank you, Your Honor.

Q Ma'am, in preparing for today's testimony in this hearing, how much time do you believe you've spent talking to our investigator, Caroline Graham, the attorneys, and the professionals, Doctor Vogelsang and Doctor Melikian?

A I would say six months.

Q Would, would you say altogether you'd spent a total of four or five days over the last six months?

MR. SIMON: Objection.

THE COURT: Sustained.

Q During that six months, ma'am, how much time do you think you've sent?

I know we've been preparing for over six months.

How much time, in hours, do you think you spent with those professionals, investigators, and attorneys?

A I spent a lot of time and I think it's been like 20 hours of talking and speaking with them.

MR. COLLINS: All right. Your Honor, that would be all the questions I have for this witness.

CROSS-EXAMINATION

BY MR. SIMON:

Q Good afternoon, Mrs. Lindsey.

A Good afternoon.
Q How are you doing?
A Fine.
Q I'm gonna start with something that they asked towards the, the latter part of questioning you just went through.
A Okay.
Q You testified you had met with the attorney, Doug Brannon, and Lenora Topp, is that correct?
A Yes.
Q And tell me if, if I'm wrong about this, you said that basically y'all just talked about the crime and what happened, correct?
A Yes.
Q Did you talk about -- y'all did talk about your family history some though, correct, at, at that meeting?
A We may have. I'm not sure.
Q Okay. You would, you would of talked about being married to Claude Lindsey?
That that -- would that have been something you would of talked about?
A No.
Q And are you saying you wouldn't have talked about you having two miscarriages at that meeting?
A I don't know what meeting it was that I told them that, but I do remember telling them I had two miscarriages.

Q Okay. Do you remember telling them that your first son was Claude Leon Lindsey, Junior?
A Yes.
Q And at some point in time you talked about your daughter, Vanessa, being killed in a car wreck?
A Yes.
Q And you talked with them about, about your second son, Frederick?
You talked about him being, him drowning in the lake?
A Yes.
Q And you talked about the fact his body was never found?
A Yes.
Q And that was around 19, sometime in '97?
A '98.
Q '98.
Okay. And, and you told them that Marion's father was Leon McDowell, Senior?
A Yes.
Q And you told them that he never paid child support?
A No.
Q You didn't tell them that?
A He didn't, he didn't pay child support.
Q Okay. But you did tell them---
A Yes.
Q Okay. And you also told them that your fourth son was

named Tim Sims or Timothy Sims?
A Timothy Sims.
Q And his father was Tim Senior?
A Yes.
Q And you told him that Mr. Senior helped out with, helped you with the kids for sometime around 17 years?
A Yes.
Q And he's now on disability?
A Yes.
Q And that would be for Milliken?
A Yes.
Q I guess the, the company.
A Where he worked at Milliken until he, he got sick. He had about five strokes, mini-strokes and he got -- he wasn't able to work. So, he quit Milliken.
Q But you would of told -- you told Doug Brannon and Lenora Topp about that, correct?
A Yes.
Q And you also talked about the fact all your kids had, all had their own children, correct?
A All of my kids have their own children?
Q Yeah. Well, all, all three of your sons.
A Yes.
Q And you, you also told them that Marion was the only one who married the mother of his children?

A Yes.
Q And you also told them that none of your, none of your son's finished high school?
A No.
Q But that you told them that they had?
A Yeah, I told them that.
Q And you told them that you worked shifts usually in factories?
A Yes.
Q And it's usually second shift?
A Yes.
Q Would you have told them that you, you spoiled Marion because he didn't have a father who interacted with him to any extent?
A Did I tell them that?
Q Yes.
Well, would, would you have told them that?
A No.
Q You wouldn't have told them that?
A That I spoiled Marion?
Q Yeah, let me step back.
Would you have told them that you spoiled Marion?
A I could say a little bit, yes.
Q And, and would you have told him you would of done that because he didn't have interactions with his father?

A Yes.
Q And you could of told them that your mother helped you raise the children?
A Yes.
Q And your, your mother is now deceased?
A Yes.
Q And I guess, as you testified here, you, you have told him that you and your family are very poor?
A Yes, we were.
Q And you had -- you told them you had eight siblings?
A Yes.
Q And all those had at least two children?
All of your brothers and sisters would have, have at least two children?
A Two or three.
Q And your nieces and nephews grew up with your kids?
A Yes.
Q Now, with -- I know earlier you testified about the incident where your brother, you said he, he ran over Marion when he was a child?
A Yes.
Q Now, you weren't there when that occurred, were you?
A No, I was at work.
Q And so, you didn't actually see what happened?
A No.

Q And your sister, Bessie, came and picked you up?
A Yes.
Q And that's something else you, you would of told Doug Brannon and Lenora Topp too, correct?
A Yes.
Q And I believe you testified that that's, that's how you received the bad cut to his ear?
A Yeah, to his ear and his head.
Q And that's also something else you would of told him?
A Yes.
Q And you also would of told them about Marion falling and hurting his head?
A Yes.
Q Usually on a concrete porch?
A Yes.
Q And you would of told them about Marion breaking his arm?
A Yes.
Q And you would talk, you talked about the number of times you moved---
A Yes.
Q ---when he was a child?
And y'all talked about the, the incident where he, he took the, the, all the pills, correct?
A Yes.

Q And, let's see, you had talked about the fact that Fred and Marion, they were always arguing?
A Yes.
Q And you would of, you would of told them that Marion took it very hard, correct?
A Yes.
Q And you would, you would of talked about the efforts y'all took to try to get the death certificate?
A Yes.
Q You would of talked about him having a relationship with Stephanie Petty?
A Yes.
Q And you also talked about y'all meeting Stephanie Petty's grandmother?
A Yes.
Q And y'all liked her?
A Yes.
Q And y'all -- and you told defense counsel and Mrs. Topp that too, correct?
A Yes.
Q And you, you would of told defense counsel that, what you thought about Nell?
A Yes, I would.
Q And you would of told them that you, you thought -- you told them you thought she was a nice girl and you loved her?

A Yeah, I did.
Q And you would of shared with defense counsel that you believed that the, when they had problems, I guess when Nell and Marion had problems, it was when there were money issues?
That would of been something you would of told defense counsel, correct?
A Yes.
Q And you would of told them that you knew Marion was selling drugs, you just never actually saw him do it?
A Yes.
Q And you also didn't question him about it?
A No.
Q And you would of also told him he spent money on you and, and helped out with your household when he was making money---
A Yes.
Q ---selling drugs?
A Yes.
Q And you also talked with them about an incident that happened between Marion and Sharon Elder?
Do you remember discussing that with them?
A Sharon?
Q Sharon Diane Elder.
A I don't know her.

Q And you testified to a lot of these things during the, the sentencing phase of your son's trial, correct?
A Yes.
Q And I just want to take a step back to -- let's go to the incident where he took a lot of pills.
A Uh-huh. (Affirmative).
Q Now, you testified that he -- you had a bunch of different kinds of pain medications in your bathroom and he took a lot of pills?
A Yes.
Q Now, when y'all took him to the hospital, didn't you tell the, the doctors at the hospital that overall he was generally a pretty stable kid, didn't cause any problems at home, didn't cause any major problems or anything?
A No, I don't remember that.
Q You don't remember that?
A No.
Q Okay. Now, you talked about how you believed Marion -- it was your understanding that Marion thought that his family was very important to him?
A Yes.
Q But you're also aware that he had girlfriends on the side too, aren't you?
A Yes, I know that.
Q And this was while he was married?

A Yes, I know that.
Q In fact, at the time of the shooting, you were aware that he had a girlfriend at that time?
A Yes.
Q Okay. Now, with -- earlier you discussed the incident with, when his uncles threw his cat into the heater.
A Uh-huh. (Affirmative).
Q You didn't do anything to stop that, did you?
A No.
Q And on the -- and then earlier you also discussed the time where you-all were called and went to talk with him about a, where he said he was gonna commit suicide?
A Yes.
Q And you said that you thought about calling to get help for him?
A Yes.
Q But you didn't?
A No, I didn't.
Q And at no point did you ever attempt to, to seek out professional help for your son, correct?
A No, only the time that he was in the mental health after taking the pills. That's the only time that I know he got help at that time.
Q Okay. Now, with the initial hospitalization on that, when he, when he first went in, that was in November of '88?

A Uh-huh. (Affirmative).
Q That be about right?
A Yeah, about right.
Q And he was there for three days, correct?
A Yes.
Q And he was released from the hospital on, I say around November 24th?
Does that sound about right?
A Yes.
Q And at that time, do you, do you, do you recall having a meeting with Marion and the doctor before the release?
A Yes.
Q And did y'all have a conversation about why he took the pills or that the, or what the, or what the doctor believed his treatment should be as a result of him taking the pills?
A I can't remember what we talked about, why he took the pills. But I know -- I was telling her that I didn't want him to go to the mental hospital, that he wasn't crazy, and she said well, we ain't saying he's crazy. We just gonna put him down there for a couple of weeks just to make sure that he don't try this again.
Q But you didn't think he had a problem, correct?
A No.
Q And at any point did he ever indicate that the, he didn't think that the pills were toxic when he took them?

A Didn't care I don't guess. He was so mad I don't guess he cared. He just went in there and took them.

MR. SIMON: Okay. Just a moment of Court's indulgence.

(Pause.)

MR. SIMON: No further questions, Your Honor.

MR. COLLINS: If I may, Your Honor.

REDIRECT EXAMINATION

BY MR. COLLINS:

Q Now, Mrs. Lindsey, you just went through a long list of pieces of information with opposing counsel, is that correct?

A Yes.

Q And there were some of those pieces of information that you didn't know anything about, correct?

A Yes.

Q Those things that you didn't know about, you couldn't have provided that information to the defense team, is that correct?

A That's correct.

Q Are there other folks that might of been able to give those pieces of information to the defense team?

A Could have been. I don't know.

Q In other words, they didn't make it up out of thin air as far as you know?

A No, hu huh. (Negative).

Q Is it possible that some of those other pieces of information that they thought you gave could of come from somebody else as well?
A I don't know. I'm not sure.
Q All right. Well, you weren't the only one that knew about Marion's background and history, correct?
A That's right.
Q As a matter of fact, Marion knew that information, correct?
A Oh, yes.
Q Those pieces, that information that you do specifically remember giving to Mr. Brannon and Mrs. Topp, is that information that you would have volunteered or would you have been confirming what they already knew?
A Confirming what they already knew.
Q Okay. Now, they also asked you about Marion having girlfriends as an adult?
A Yes.
Q When he was growing up, did the other men that lived in your family, did they have more than one significant woman in their life?
A Yes.
Q All right. In other words, they had a, they had multiple girlfriends?
A Yes.

Q Is that a pattern of behavior that Marion saw over time?
A Yes.
Q And did he, as an adult, behave in the same fashion that he saw his uncles and older brothers behave?
A Oh, yes.
Q And were these the same older men who tossed his cat in the fire?
A Yes.
Q And the same older men that were shooting guns through the house and out of the house?
A Yes.
Q And the same men that got into fights there in the neighborhood with others?
A Yes.
Q Now, each of those incidents we talked about, the, the cat and the, the gun fight with the bullets through the house, Marion was there for each one of those, was he not?
A Yes, he was.
Q And he would of seen the behavior of those older men?
A Yes.
Q And then, as a child, he would of also experienced the emotional effects from those events, correct?
A Yes, he would. Yes, he would.
Q Was it, as an adult, were you afraid when the bullets

were zinging through the house?
A Yes, I'm an adult and I was afraid, yes.
Q And was Marion there on the floor with you?
A Yes, he was on the floor with me.
Q Was he an elementary school kid at that point?
A No, he was just a baby at that point.
Q Okay. And these other things that, example, the cats and the other traumatic events, do you, were you afraid at those points too?
A Yeah, I just couldn't see how they could just stand up there and open the heater and throw the cat in there. It surprised me cause I couldn't see how they just opened a real hot heater and throwed the cat in it. But I was sitting there when they throwed it in there and it was an awful smell in the house. The smell was so bad you couldn't hardly stay in the house. But they did it.
Q For a long time did that smell remind you of what happened?
A Yep.
Q Why didn't you try and stop it?
A I was scared of them.
Q You were scared of your brothers?
A Yeah. Yep.
Q Why were you scared of them?
A I don't know. I was too scared to tell them not to

throw the cat in the heater. I didn't know what they might do cause they already done grabbed the cat up and throw him in the heater. He might would of throwed me in there too.

Q And these were the uncles that were there living in the house with you and Marion?

A Yeah, they lived there.

MR. COLLINS: Okay. Your Honor, I have no further questions.

THE COURT: You may step down. Thank you.

MR. SIMON: No---

THE COURT: No questions.

MR. SIMON: No, sir.

THE COURT: Okay. You may step down.

MR. VIETH: Call another one?

MR. COLLINS: Your Honor, if you would like, I have another family member on standby who we can call now or---

THE COURT: Be fine.

MR. COLLINS: Yes, sir.

Bessie.

THE COURT: Does anybody need a brief recess?

(No response.)

THE COURT: Court Reporter?

COURT REPORTER: I'm fine.

THE COURT: Everybody all right?

This witness going to be lengthy?

MR. COLLINS: She is not going to be as lengthy, I do not expect, as Mrs. Lindsey. I would expect we would probably finish up right about five o'clock.

THE COURT: If you'll come up to the stand. I need you to put your left-hand on the Bible and raise your right please, ma'am.

BESSIE SMITH, being first duly sworn, testified as follows:

THE COURT: Have a seat. Make yourself comfortable there.

DIRECT EXAMINATION

BY MR. COLLINS:

Q Ma'am, can you tell us your full name?

A Bessie Gene Smith.

Q All right. And Mrs. Smith, are you related to that gentleman seated over there in the orange jumpsuit?

A Yes, I am.

Q All right. And that's Mr. Marion Lindsey, correct?

A Yes.

Q How are you related to Mr. Lindsey?

A I'm Marion's aunt.

Q And that is on his mother's side, correct?

A Yes, sir.

Q All right. So, the young lady who just testified a moment ago, Virginia Lindsey, you are sisters with?

A Yes, sir.
Q And is it correct that the two of you had -- there were nine siblings in that household?
A Yes, there was.
Q Now, just -- I'm gonna ask you some very personal questions about you and your family. So, if, if you can kind of work with me. We'll go slow to get started.
Are you currently living in Spartanburg County?
A Yes, I am.
Q And have you been a life long resident here in Spartanburg County?
A Yes.
Q And when you were growing up, did you grow up in the same household with your eight brothers and sisters?
A Yes.
Q And was that house there in Inman?
A Well, it was on Inman route, but we kind of grew up back out in the country.
Q Okay. So, it was not a home that was up in the city?
It was out in the middle of nowhere?
A Right.
Q All right. And how many folks were living there in that house when you were growing up?
Do you remember?
A Well, all of us really. All -- my mother and, and, and

my brothers and sisters.
Q Now, who was your father?
A Smiley Pilgrim.
Q Smiley was your father?
A Yes.
Q And how old were you when Smiley and your mother divorced?
A Well, they didn't, they didn't divorce. He just left.
Q He just packed up and left?
A Yes.
Q And how old were you when that happened?
A About ten or eleven.
Q So, you were just a little bit younger than Virginia?
A Uh-huh. (Affirmative).
Q When, when he left, where were you, where were you in school?
A I think I was in the fourth grade.
Q Were you able to continue going to school after he left?
A We went sometimes.
Q Sometimes.
How far did you make it in school before you, before you quit?
A Like seventh grade.
Q And when you left in the seventh grade, did you go to

work?

What, what was life like for you at that point?

A Well, I was working before that because I think we were picking peaches. We had to start working early because, after daddy left, so we could buy food and stuff and for the house and help, help mama.

Q Fair to say that things were tight in that house?

A Yes.

Q All right. So, even at a young age all of you started working?

A Yes.

Q All right. Once you left school in seventh grade, did you keep working?

A Yes.

Q What kind of jobs did you have?

A I picked peaches with my stepfather.

Q And who was your stepfather?

A Willie Farr.

Q And how soon after Smiley left did he come into the picture?

A About two years or so. About two years or so.

Q What kind of man was, was he?

A God send. That's what I say cause when Willie came it was eight of us. Let me see. It was eight of us. Yeah, it was eight of us when he came in, and he came in and took

care of us the best he could. And I don't know no other man would of did that with no eight kids and -- cause my mom, after my dad left, she went into a deep depression. And she stayed in the bed most of the time. And we was having to bed, bathe her, feed her in bed, and stuff to that nature.

And my grandma, she would come in and, and bring us food and, and bring us clothes that she get from the people she was working for, and my step-dad, back during that time, you know, you, you couldn't get no job in no plant and stuff. So, he did outside work and he pruned trees and drove tractors and stuff like that and he would pay the bills and stuff and try to put, keep food in the house.

But when he first came there I was young and mom and them -- the man wouldn't let me pick peaches then. So, I had to stay at home and take care of my brothers and sisters and them while my sister and them go out and work. So then he stayed with, took care of us.

Q Now, at some point as you got a little bit older, did you stay in the house like Virginia did or did you move out?

A Well, after I was -- Virginia and them, they -- my older brothers and sisters, they got married and moved out. But then, Virginia, she end up coming back home. But after a while, I got married and I moved out.

Q And you and your husband started a, a new life away from your, from your family?

A Yes.
Q All right. How far away did you move from them?
A I didn't move too far. About three miles over the road.
Q All right. Did, at that point, did you go back and work on your high school education?
A Yes.
Q And were you able to eventually get a GED?
A Yes, I went back to school and got my GED. I studied at Spartanburg Technical College.
Q And you and your husband, did you have some children?
A Yes.
Q How many children did you wind up having?
A We had five children.
Q All of them grown now?
A Yes, they all grown. Thank God.
Q All right. Now, is it fair to say that the life you and your husband and your five children had was different than the life that Virginia and Marion and those kids had?
A Yes, in a sense, yes, it was.
Q Now, Virginia and Marion were living in that house. They had some of your brothers and sisters, Willie, Paul, and Robin living there, is that correct?
A Yes.
Q Now, as adults, when Marion was around, could you tell

us what the behavior of Paul and Willie was like?
A Paul was, he was kind of rowdy. He -- growing up as a child, he was a real quiet and shy and timid. But after he grown, was beginning to grow up, I think he's about 15 when he got his first little girlfriend, and he caught her with -- he went up there to see her one night. She was with another boy. And ever since then, it just seemed like he wasn't the same, you know.

He would get in fights and stuff and he would drink. He started drinking at an early age. And, so, then he went to the Army, went to the service.

And Willie, I can't recall too much about Willie because Willie was, stayed gone a lot. You know he just -- he was on the go all the time. When I would go to mom's house, Willie would always be -- if he wasn't out there working on some kind of old raggedy car, he was, he would be gone with his buddies and stuff you know.

But Paul, he gave mama a lot of trouble because he just, he was -- he stayed in a lot of fights, like I said, and, and it wasn't because he initiated the fights. It's because he was always having to fight because somehow seemed like the guys was jealous of Paul for some reason, and they would always pick at him and juke at him and pick fights out of him, and he would always end up fighting, you know, and I think it was mainly Paul wasn't -- he wasn't fighting

because he was mean. He was fighting to protect his self and because Paul grew up without daddy, and he just felt like he had to protect his self.

And it was this man that use to come to our house when we were growing up, and he always carried a hawk bill knife. And he would get Paul around in the house, you know, and he would teach him how to pop it, how to come out of his pocket, and when he come out it would be open. And Paul just thought that was amazing.

And so, he would tell Paul how to do that. And as Paul got older, like I said, he became a teenager, he would always carry that hawk bill. And when somebody mess with him, he would pull out that hawk bill, and, you know, and show him he had a hawk bill so they would, you know, try to keep, scare them from messing with him. I think that was -- he called his protection, you know, because Paul was a timid scary kind of person growing up.

And like I said, he felt like that, that he had to protect his self because he didn't have nobody else to protect him. He know he didn't have no daddy to run to. He know he didn't have, you know, no bigger brother to run to, you know, or whatever. You know how children is. They -- but I think that's the way he was.

But anyway, he got in a lot of fights and stuff and he begin to drink. And, so, he went to the service.

Q When he came back, did he come back to live with your mom and Virginia?
A Yes, he came back to live with mom, yeah.
Q Did he continue that same kind of behavior as far as you know?
A Yes, and he was worse after he came from service seemed like. But he got married and he had two, two girls. And they, they lived with mama also, you know.
Q So, the even worse behavior came along while Marion was growing up?
A Uh-huh. (Affirmative).
Q And the, the, the third in that group was Robin, correct?
A Uh-huh. (Affirmative).
Q Now, did Robin display some of the same behaviors that, that Willie and Paul did, the fighting and the drinking and the problems?
A No, Robin didn't. She wasn't a drinker and nothing like that. Robin, she, she was a smart girl going to school and stuff. But mama started having problems out of Robin at an early age because she -- you know how teenagers is. They want to have boyfriends. That's the problem mama started having out of Robin, and, you know, and she start liking boys early.
And -- but Robin, she was real smart in school and

everything. She worked while she was in her senior year. She worked and paid for her graduation, all her graduation stuff herself by baby-sitting. She was baby-sitting for, for Virginia, my sister, Virginia. She baby-sitted Marion and for Virginia. And she worked in that senior year and bought all of her stuff for school and everything because mom couldn't do it.

But then, later on, I don't know what happened to her. She just got -- she got, messed around and got on those drugs, and from then on she just been, you know, kind of out here in the street. But she's, she's not robbing. She never been a violent person.

Q All right. Now, is she, is she currently incarcerated?

A Yes.

Q Has she been in and out of jail for the last couple of years?

A Yes, she's been in and out of jail.

Q Okay. And now, is it fair to say once you started having your own family, your contact with that household, with your mother and Virgina started getting -- it decreased a good bit?

Is that fair to say?

A Yes.

Q You guys led your life, they led their life?

A Right.

Q Now -- but were you around for your sister, Virginia, when Vanessa, her, her daughter, died?
A I wasn't living in the household, but I was living in Inman. They came to my house and got me when it happened and I went down. I -- but I, I wasn't living in the house.
Q How did that event affect Virginia?
How did Vanessa's death affect Virginia?
A Well, Virginia was kind of devastated and so was my mom cause she kept faulting herself for it. Virginia, she was devastated from that. I think it -- that kind of took a toll on Jen. She never was, seemed like, the same after that, you know. She was in like depressed stage sometimes. Sometimes she wasn't, sometimes she was. But it was kind -- it was devastating.
Q Did she begin to drink at that point?
A Well, after the, after Vanessa was killed, her husband, he was drinking and then he began to drink more, and then he started going with the girl, with our cousin that mom was, that was raised in the house with us. So, that took a toll on Jen. That was devastating for her because the lady that he was going with, our cousin, she was like a sister to us.
And so, when he started going with her, that kind of tore Jen's nerves up and, and Jen put him out and they separated. And then they moved up closer to Inman, my mom and Jen and them did. And then yeah, Jen, she started to

drinking. I think that was her way of coping with all that had happened. She started drinking and staying out late and stuff like that. But she was working.

Q Now, did the drinking and depression, did that affect her ability to care for her kids?

A Well, I don't -- I can't say that really because Jen, while she was drinking, she was working and it wasn't an everyday drinking thing. It was like the weekend drinking. You know, they would work all week and then on Friday night, when they get off of work, then they would start drinking, you know, and they go out, her and her friend girls.

Well, Jen worked second shift, and, you know, if anybody know, when you work second shift, the kids are in school in the mornings. About time the kids get out of school, get home, you're going -- if you're not on your way out the door you already gone. So, by the time they got home, Jen would be gone to work or she would be on her way to work.

So, it wasn't like she saw them a whole lot because she was having to work and they just be there with mom and she would be working. So, when they came home from school, mom would be there, they would be there, but mom -- sometimes she felt like getting up, cooking for them, sometimes she didn't, you know, and they are, pretty much did for they self.

They was -- they would play out in the yard and stuff. Mama would watch them. They would play out in the yard and stuff because they was small at that time. They was small during that time. Marion, he was real small. Marion was about -- I think Marion was about two when Jen, when Jen started drinking like that. He was about two years old, and the other boys, they was small too.

Mama would watch them and they would play out in the yard in the dirt, and, you know, and get dirty and stuff. But mama would be there with them. Steve would be there out in the yard working on old raggedy cars and motorcycles and stuff. But Jen, she would get off I think about 11:00. She's go in at 3:00 or 4:00 and get off at 11:00 or 12:00 at night and on second shift.

But mom and Steve and Paul and them all, Willie and them all, they would be there at the house. But they would just play around out there in the yard, and Marion, he always stayed pretty much out there at the, at the barn with Steve. You know, cause he loved to hang around Steve. Steve pretty much kept Marion around him all the time and everything.

Q So, these -- your mom and the uncles were primarily responsible for the guidance and care of Marion at, at a young age?

A Uh-huh. (Affirmative).

Q Now, did, did Virginia like bingo?
A Yeah, her and mama played bingo.
Q How much time on the weekends did they spend doing that?
A Excuse me. I don't know. Bingo, if you play bingo you know bingo. It's a, like a every night thing. They have it somewhere every night, and it wasn't like a weekend thing. It was like every night if you wanted to go, you know. They would play on the weekends too, but they would go sometimes through the week too.
Q So, there were times when kids were left at home while your mom and Viriginia would go play bingo?
A Yes, they was there. They be there with Steve or whoever be there.
Q Whichever one of the uncles was there to care for them?
A Yeah, whichever one. Whoever be there.
Q Are we talking once in a blue moon or was this a regular activity to go play bingo?
A Well, they played pretty good much. Sometimes every night.
Q Now, at some point did Marion come live with you?
A Yeah, Marion stayed, came and stayed with me one time.
Q And do you remember how old he was?
A Hu-huh, I don't, I don't think -- that's been so long ago. I Marion might of been about 13, 12, 13, something

like that.
Q It's early teenage years?
A Yeah.
Q When Marion came to live with you at, at that age, what did you observe about Marion and his behavior when he first showed up at your house?
A Marion was always grinning and cutting up, you know. He was crazy about my husband cause my husband couldn't talk plain, and Marion would always -- he loved to be around my husband and hear him talk to me and they always laughing, teasing him about the way he talked. But anyway, he wanted to come over and stay with me, and I let him cause he liked being around my son. You know, him and my son was tight. And Marion wanted to come over there and stay with me a while and I told him he could.

And then, too, I don't think Marion cared too much for his step-daddy, Jen's friend, you know, the man that was living with them. I don't think he cared too much for him. But anyway -- but he loved being around us and being over to the house and being around the boys. And so, I let him came and stayed with me and he stayed with me. I done forgot how long Marion stayed there. It might of been a couple of months. I don't know.
Q Did he have some -- did he have some adjustments to make when he came to your house?

A Yeah, well, yeah, you know.

Q What kind of adjustments?

What was different about your home that he had to adjust to?

A Well, one reason -- one thing, I didn't let my boys run around. They pretty much stayed at home, and they was, they was in a lot of sports. Well, of course, they played a lot of sports. They didn't have time to run around, and they would, you know, be at practice and stuff. They be practicing and when they came in, they knew when they came in, the first thing they had to do was do that homework. They knew they had to get they homework done and I had chores for them to do. They had chores to do at home, and they knew what they had to do.

And Marion, he fell right in there, you know. He fell right in there and they got along and they get down in the floor and play the game stuff. And Marion, you know, I think I, I kind of paid Marion attention, you know. I paid attention to what was going on with him and I cared about him. I loved him. Marion, he was a sweet child. Marion sweet and, and I could see that Marion, he just wanted attention.

He, he acquired a lot of attention. He wanted that attention. He was gonna get that attention. You know, you be talking and he gonna talk, talk, talk, talk, you know.

He's gonna let you hear him. But Marion, when he wanted a lot of attention and I could tell that he wanted a lot of attention, and see, I was getting -- I always give my kids a lot of attention I tried to. And I always -- we always had family talks around the table if, if, if we had to wait till supper time. I'd always see what was going on with them, asking them what was going on with them and stuff like that.

And I always try to pay Marion attention and listen to him when he talked and stuff. Because -- and I would, you know, tease him and he tease me, you know, and I laugh at his old silly jokes and stuff. But Marion was a child that just wanted that attention, and I think he liked being at my house because of that, because he could get that attention and he, and he could feel like he was at home, you know. He had that family home feeling when he was at my house.

Q Other than the, the attention, was the -- were there differences between the two homes and the structure and the rules?

Can you compare the two homes?

A Well, I worked also, you know, just like Jen did. And I don't know if I can say. For one reason, for one thing I can say, other than having a mother and a father there, a family life, doing things together, you know, and, and that kind of stuff, and going to school with them and being in, active in their lives and they PTA meetings and in they

school work and in they sports activities cause I did a lot of that. I did a lot of going to the schools and, and being involved in my children's activities and stuff.

But Jen didn't and I'm not saying she wrong for that. But Jen didn't do a whole lot of that with, with Marion and them when they was going to school. Marion and them didn't get that push from her. They didn't get that I'm going to your PTA meeting and seeing what you doing over there, you know. I'm gonna show you over there one day and see what you doing. They didn't get -- she didn't do that. Like I said, she worked second shift, and when Bubba and them would come in from school, she would be gone to work. And sometimes, if Bubba and them didn't have no clean clothes, they would had to wash some on their hands.

Q Now, who is Bubba?

A His older brother.

Q Okay.

A They would -- sometimes they had to wash clothes on their hand to have something to wear to school. I -- Marion use to have to do it too. He use to have to wash clothes on his hand. I seen him washing clothes on his hand and washing his tennis shoes so he could have something to wear to school or because sometimes Jen didn't have money to go to the laundromat and wash clothes and stuff, and they would, had to like do the best they could, you know, and

sometimes they didn't go to school because they didn't have clean clothes and didn't have nothing to wear to school. You know, so, sometimes they didn't go to school and stuff.

I can't say there was a whole lot except that my kids was in a harm with they dad and they mom, and cause me and my husband, we had our ups and downs too. So, it wasn't all lovey dovey. But we had that structure there. We had that foundation there. We had those rules there that they knew they had to go by and they knew what they had to do.

But on the other hand, on, in Marion's and them home, Marion and them pretty much had they freedom. Jen worked. She cared about them. She loved them. She gave them everything she could. Sometimes they be walking around there, Marion be walking around there with more in his money pocket than I did cause Jen be done gave him money. I be broke. He be walking around there at twenty or thirty dollars at a young age, you know.

She gave them -- she gave, gave, gave. She gave to the point she would give them her last dime. Bill collectors be calling her. She be done gave her her bill money. That's just the way she was. She thought it was more important to give them than to pay her bills because, like I said, Jen was raised in the house, stayed in the house with mama pretty much all her life. Jen never learned responsibility. She never learned responsibility. She didn't know what it

was really to run a household because she was there with mom and mom pretty much took care of everything, and she didn't know too much about that part of it.

So, if she would just work, pay what she wanted to, give the kids what they wanted if they wanted it, you know, and that was it. I mean I gave my kids too. But I didn't give them my bill money. I let them know mama got to pay bills, daddy got to pay bills. You, you get this when you need it when we can afford to give it to you.

But Jen, she was a good mama. She tried to be a good mama to Marion and them just like all parents do. We do the best we can and we have no control over what our kids do after they grow up. Marion, he came up kind of rough. We came up, we all came up kind of -- we all came up rough. We had a struggle. We really did.

Sometimes it be snow on the ground knee deep. We couldn't even go in the kitchen and get a cup of flour out of the barrel. We didn't have nothing. And when I say nothing, I mean nothing and snow was on the ground knee deep. We didn't have nothing to keep warm. We didn't have nothing to eat. My stepfather had gone at that time, gone on with his life, and we, we was doing the best we could.

And so, when Jen, you know, when she got out, call herself going out on her own, I guess she did the best she could with what she had.

Q I'm gonna jump you forward in time a little bit, talk to you about one more thing.

Back a couple weeks before the shooting at the Inman Police Department, did you have the opportunity, with other family members, to go to Marion's house one evening?

A Before the shooting?

Q Before the shooting, yes, ma'am.

A I went to see Marion with Jen, with my sister, Virginia, and my brother, Steve, one, one time when Jen called, had called me one time and said something about Marion is gonna kill his self and she called me crying and going on. And, so, we went to see Marion that day. I met them down there and we went and talked to Marion.

Q You got to spend sometime with Marion face-to-face?

A Yes, I did.

Q Could you describe for us how he appeared and how he was acting that evening?

A He was depressed. He was -- Marion was depressed. When I got there he was talking about he didn't have nothing to live for and he was tired of all the stuff that was going on. And, so, me and my brother, Steve, and my sister, we sat down and tried to talk to him, and, you know, talked to him about it. And we was trying to find out why he wanted to kill his self, and we was trying to tell him that he had something to live for. You know, he had his whole life

ahead of him and stuff. But Marion was really depressed at the time and he didn't want to -- he act like he didn't want to live. He just wanted to end it all.

Q How long did y'all stay with him that evening?

A I don't know for sure. I think we might of stayed there about an hour or more.

Q What did y'all do specifically to help him out?

Do you recall?

A Well, my brothers, he talked to him. Steve, he talked to him and I went -- I think I went out when Steve was talking to him, and I don't know what they talked about. And, so, I went back in there, Steve was sitting on the bed with him cause he was curled up there in the bed and Steve was sitting on the bed talking to him when I went back in there. And I said -- I think I recall asking him why you want to kill yourself. You know, honey, you got your whole life ahead of you and some stuff like that, and he was just shaking his head.

And so, I said Marion, you just need to pray. You know, I told him you just need to pray and we talked to him like that, you know. Talked to him the best we could. My sister, she all upset.

So, my brother, Steve, said well, we gonna go. He said I think he gonna be all right. So, I went on the outside. We finally left. So, I don't know what happened after that

cause I went back home.
Q As far as you know, nobody got Marion professional help that night?
A Hu huh, no, didn't.
Q The ambulance wasn't called?
A No, my sister mentioned it. She said I should of called, went on and called the rescue squad and just took him on and got him some help. I said well, you might of should have. I said I don't know. I said now, you the mama, you know, you know like that cause she was kind of worried about him after we, we had left there. She kept saying she should of called the rescue squad and carried him and got some help because Marion had tried to kill his self one time before. He had took some pills when he was younger.
Q When he was about 15 or so?
A Yeah, he had took a lot of pills then tried to kill his self, and he had to stay in this place for a little while and they treated him.
Q Now, after this -- after y'all left that evening, between then and the time of the shooting, did you have some more conversations with Marion?
A After?
Q After the evening where he was talking about killing himself---

A Uh-huh. (Affirmative).
Q ---between then and the time of the shooting, a couple of weeks later, did you have any conversations with Marion?
A Yes, I talked to Marion.
Q How often did you get to talk to him?
A I didn't see Marion after we left out from down there to his house that day. I didn't see him anymore after that. I don't think and I had a dream one night, and I think it, it probably was God telling me, trying to show me something that was going on with Marion because I woke up and seemed like the Lord said call Marion. He was just saying call Marion and Tim and talk to him. He said they just running around here. He said they don't know whether they going or coming. That's just the way the voice came to me.

And, so, I didn't call that day. I waited till the next day and I called Jen on her job. I said Jen, I said where is Marion and Tim. She said I don't know where Tim is. She said but Marion been calling up here on my job all day long all upset about that woman. I said what is his cell number, and she gave it to me.

And, so, I called Marion and he talked to me and he was upset and he was talking about what it was going on. He was talking about his boys, talking about -- said that Nell was trying to take the children away from him and he wasn't gonna get to see his children no more. She was telling him

he wasn't gonna get to see his children no more. And he said you know how much I love my children. You know I, I do all I can for my children. I said, yeah, Marion, I said I know that.

And, and, so, I said Marion, I said don't worry about that. I said don't worry about that woman. Just let her go on. I said you just tend to your children, and he said, yeah, he said that's the, that the thing, Aunt Toot. Said I can't. She said, she won't let me see them. She said I ain't gonna see. She ain't gonna let me see them no more. She don't want me to see my children. That's what he kept saying. She ain't gonna -- she don't want him to see his children no more.

And I, and I just talked. I said Marion, I said you know, you know I know. I said you listen to what I'm telling you. I said cause you know I know what I'm talking about. I said you go on. I said leave that woman alone. I said just go on. I said go on and live your life and forget about her. I said you'll see your children again. I said don't worry about that.

And, so, he was crying and going on. He was upset and he said okay. I talked to him and I talked to him about the Lord and stuff. And so, he said, okay, Aunt Toot, okay. He said I feel better now. He said I feel better since I talked to you. I said well good. And so, we hung up.

And, so, the next day he called me and he was telling me -- he was all upset again. And he was telling me that he had went and got this job at BMW and he suppose to been starting to work that Monday. But Nell and them had went down and her mama, her and her mom had went down and took out several warrants on him. And he said how I'm suppose to be able to take of my children if I don't have no job. He said I done went up there and got this job at BMW. He said, and if I go to jail or if I go up there and start to work, and they come up there on my job, police come there on my job and arrest me, and then I ain't gonna have nothing, I ain't gonna have no job.

So, I didn't know what to tell him. I said well, Marion, I said go ahead to work. I think I said go on -- I think I remember calling, recall telling him go ahead on his job. I said go ahead on. And then Marion said no. Said if I go up there they gonna come and get me. The police gonna come and get me and arrest me. Then I still ain't gonna have no job. That's what he kept saying.

He said I don't know why they went and took out all these warrants on me. He said cause I ain't did nothing what they said I did. He said you know for yourself, Aunt Toot, I ain't did that. I said you didn't Marion. And I said didn't I just see you and the boys down at the fish, down at the duck pond. He said yeah, cause I had saw him

and those boys down at the duck pond. He had the boys down at the duck pond earlier before that. But I think about a week before that or so. And I had saw them down there.

I said didn't I just see you with them boys down at the duck pond. He said yeah, Aunt Toot. That's what I'm, that's what I'm trying to tell you. He said you know I take care of my kids. I said I know you do, Marion, and, and Marion do. He did. He loved them boys. That -- Marion was crazy about his children. He would buy them children fifty and sixty -- he pay more money for his shoes than I paid for mine. I mean he would dress them boys from head to toe. Them children, you didn't see them children raggedy. You didn't see them going without. Marion, he loved them boys. He bought for them. He bought for their mama. I mean he dressed her too. You didn't see her raggedy.

He would go and spend four and five hundred dollars on her in one day. And he would give her money, put in her hand. She go shopping all the time. She shopped all the time. Marion buy her a car. Every year, like Nell had a new car. Marion, he give her money. He give them boys money. He take them shopping, take them out to eat.

I think -- but about -- it wasn't long before this happened, before the shooting happened. He had carried his mom, Nell, and the boys, they had went to Greenville to eat. He carried them to Greenville to eat and then he took them

shopping. I think he spent a lot of money that day on, on them up there shopping cause he was shopping for the kids, her and the kids and he bought them some stuff up there in Greenville. They went to eating and then he took them shopping and stuff. It wasn't -- wasn't about -- it might of been a month before this happened. I don't know if it was a month.

Q Now, going back to that phone call, after you told them to go on to work, what, what happened on that phone call?

A I told Marion, I said Marion just go ahead and he said no, I -- if I go over there and get the job they gonna come and get me and I'm gonna lose anyway. Said ain't no use in me going over there. And I said Marion, I said don't know. I don't know what I said to Marion. I just kept trying to talk to him and tried -- I just talking to him and talking to him because I saw he was upset and he was hurting, and I was kind of feeling what he felt because I had been through something similar.

And I was trying to tell him Marion, you know I know what you're going through. Just go ahead and forget about it, you know. Go ahead and somebody clicked in. He said okay, Aunt Toot. He said I'm gonna try. He said I'm trying to do the best I can and about that time somebody clicked in on the line and I said hold on, Marion. And I answered the call. And when I clicked back over to talk back to Marion

he had hung up.

And I kept trying to call him back. And he wouldn't answer his phone. And I tried several times to call him. But everytime I called him he never picked up the phone. And this had to be no more than a couple of hours, three at the tops, before all this happened.

Q Now, leading up to the, the trial for Marion, did you spend anytime with his defense team, the, the attorneys, and the investigator?

A They came out to my house one day, Mr. Bartosh, Mr. Brannon, and this lady come out there to talk to me.

Q When was that?

Do you remember?

A It was before the trial. I -- it was about -- I can't recall if it was a week before the trial or a few days before the trial. But it wasn't long before the trial. They came out there. They came out there and asked questions.

Q How long did they stay out at your house that evening?

A Probably about 30 or 40 minutes.

Q Did they talk to you and your husband together?

A No, I wasn't with my husband at the time. Me and my husband divorced.

Q So, just the two -- just you at the time?

A Uh-huh. (Affirmative).

Q And other than that 30 minute meeting, 30 or 45 minute meeting with Mr. Brannon and, and the other lady, did you have any other conversations with the defense team before you testified?
A No, I didn't.
Q During that conversation did you have the ability to talk to them about Marion's family history, things that happened to you and to Marion as he was growing up?
A Not really. Not really.
Q What kind of things did y'all talk about?
A She asked me a few things. They asked me a couple of things about Marion and, and what kind of child he was growing up. They asked me a few things about him when he was growing up, and then they was asking me a lot of stuff about me, which I told them I didn't want to answer because I wasn't the one on trial. Marion was. And so, they got some information, a little information about Marion when he was growing up and stuff and what kind of home he grew up in. Just little stuff like that.
Q Before you took the witness stand at the trial, did you ever have the opportunity to prepare with them your, your testimony, practice?
A No, they just pretty much came out there to the house and asked me a few questions and told me that I would be testifying, would I testify. I told them yes, I'd do what I

could if it was gonna help Marion.
Q Any contact from an attorney representing Marion between the time of the shooting and April or May of, April or May of 2004 when they came out to your house?
A No.
Q And no other contact between then and the trial?
A No.
Q By comparison, how much time have you spent with myself, Mr. Vieth, and our investigators and professionals preparing for today's hearing?
A Quite a bit. I think I've met with y'all about three or four times, and we spent a pretty good much time going over stuff. Sometime all day.
Q All right. Well, Mrs. Smith, thank you for your cooperation. If you will answer any questions that the Attorney General may have far you.
A Okay.
MR. SIMON: Just a minute Your Honor.
(Pause.)
CROSS-EXAMINATION
BY MR. SIMON:
Q Good afternoon, Mrs. Smith.
A Hello.
Q I, I just have a few questions for you. First earlier you talked about some phone conversation you had with Marion

not too long before the shooting.
A Yes.
Q If I'm not mistaken I believe in one of those conversations you said that he had talked about getting a job with BMW and how he believed that Nell had taken out a lot of warrants on him.
A (Witness nods affirmatively.)
Q He was the only person you heard that information from, correct, about -- I guess first about being hired by BMW.
A No.
Q You heard that from someone else?
A Yes.
Q Was it someone else within the family?
A Yes.
Q Okay. And about the warrant situation, would you -- did -- you only heard that about, from Marion, is that correct?
A No.
Q You heard that from, again, somebody else in the family?
A Yes.
Q And, and I don't know if you know the answer to this, do you know if they learned that from Marion?
A I don't know.
Q Don't know.

Okay. Now, in the conversations that you said that you had with Marion, I believe you said they were -- the, the last set of conversations you said you had with him were a few hours before the shooting.

Did he say anything about tracking down his wife during those conversations?

A No.

Q Did, did he say anything about her having to, looking for her because she had a boyfriend?

A No.

Q At any point in time did he ever say anything in terms -- I guess, in those conversations, did he ever say anything about believing that she had a boyfriend and that boyfriend was helping her take her kids, take his kids away from her?

A No, he didn't say nothing like that. He just kept saying that she was, didn't want him to see his kids. She was talking about taking his kids away from him, and he just kept saying, he said, Aunt Toot, you know I can't live without my boys, you know I can't live without my boys, them my heart, Aunt Toot, you know that hurt me. I said I know Marion. You know, he just kept saying, you know, I love my boys. But never, on no occasion, did I hear him say anything about no man or, or seeing no man or anything to that nature.

Q Okay. And at the time, do you know if he had any girlfriends at that time?
A No.
Q Okay.
A I mean not to my knowledge.
Q And during the course of their marriage, did you know if he had any girlfriends while he was married to Nell?
A Not to my knowledge.
Q Okay.
A I know he had a girlfriend. I, I was around Marion all, a lot when he was going with this girl named Stepp, but he wasn't married then.
Q Okay. Do you know what kind of jobs he may of had during, I, I guess, over the course of time?
A What kind of jobs Marion had?
Q Yes.
A He was a good mechanic. He worked on motorcycles at one time. I do know that. And he worked at this plant called Zeman or something. He was working at this plant one time and he was working on motorcycles at one time. He had his own shop with his uncle and he had jobs. He had worked. Marion had worked. He always done something with some kind of job, have some kind of job making money.
Q Now, now, earlier you testified that, I guess, when he was younger, that he come, he came to stay with you a little

while?
A Uh-huh. (Affirmative).
Q You thought he was a child that liked attention, correct?
A Uh-huh. (Affirmative).
Q That's -- I just wanted to make sure I heard that correctly. I think I have just a couple more questions for you.

You talked about the, the one time you had gone with your sister and your brother cause he said he wanted to commit suicide.
A Yes.
Q And, and y'all sat and talked with him.
A Yes.
Q And you said, you said that he -- y'all talked to him for about an hour or so?
A Yes.
Q Then y'all -- after y'all thought he was not going to, you decided to leave?
A Pretty much cause I had left the room and my sister and my uncle was the last two in there with him, and they came out and they said we was ready to go, asked me was I ready to go and we said we was ready to go. And so, I think my brother was asking -- I don't know if my brother or my sister saying something about you think he gonna be all

right, and then going up the road that's when my sister talking about I should of called the rescue squad. She said I should of called the rescue squad and carried him and got him some help, and she just say I just don't feel good about this situation, and she was asking me. I told her I don't know. I said you the mama. I don't know.

Q Okay. Now, you loved Marion very much, right?

A Yes, I loved Marion to death.

Q And if you thought he was in any danger at that point, you would of done something, right?

A Well, pretty much, but that was his mom's call, you know. I, I can't step over her. I can be there and support her, and I can be there to support him. But that's his mom's call on whether to carry, you know, to go that far.

Q But if he felt he was in serious enough danger, you -- would -- you would of encouraged her to seek help for him, correct?

A Somewhat, yes.

MR. SIMON: Okay. Just a moment of the Court's indulgence.

(Pause.)

Q I just have just a few more questions, and it's regarding the, the, the phone calls you had on the day of the shooting with Marion.

At any point in time did he tell you where he was at

when he was calling you?
A No, not as I can recall.
Q And he didn't, he didn't tell you he was going anywhere that day?
A Not as I can recall.
Q Okay. Did you know he had a gun that day?
A No, I didn't. I wasn't aware of that.
Q And he, he didn't talk about having a gun?
A No, he didn't say anything to me about having no gun.
Q All right. Now, have you ever told anybody else about these phone calls that you had with Marion that day, the day that -- did you share that with -- I know you mentioned earlier you had met with Doug Brannon and Lenora Topp.
Did he -- did you tell them that when you talked with them?
A I told them that I had talked to Marion not long before the incident happened, that he had called me, we had a phone conversation, yes.
Q All right. so, so, you told them you had a phone conversation about that day?
A Conversation, yes.
Q All right. I believe that's it. No further questions.
MR. COLLINS: No follow-up, Your Honor.
THE COURT: You may step down. Thank you.
WITNESS: Can I say add something?

Can I say something free about Marion?

THE COURT: She wants to make a statement to --.

MR. COLLINS: Your Honor, I have no objection to her making a statement for the record.

MR. SIMON: Your Honor, we would object to her making a statement. I mean there's no question on the record for her to answer and---

THE COURT: Okay. Okay. That settles it. That's fine. You may step down. Thank you.

All right. Let's meet back at 9:30.

Y'all have a good evening.

MR. VIETH: Thank you, Your Honor.

MR. ZELENKA: Thank you. You too.

(Whereupon, Court was in recess for the evening.)

Wednesday, July 20th, 2010

THE COURT: Good morning.

Everybody ready?

MR. VIETH: Yes, sir.

MR. ZELENKA: Your Honor, just a matter of clarification. I no doubt confused you yesterday when I cited a certain case. I think I cited it as Hill versus Lockhart. The case I was actually referring to is Lockhart versus Fretwell. I hope your law clerk didn't have to spend anytime trying to track it down. But there's a copy for you. I apologize, Your Honor.

THE COURT: Thank you.

Ready, Mr. Collins?

MR. ZELENKA: Yes, Your Honor.

The Applicant would call Mr. Steve Pilgrim.

THE COURT: Mr. Pilgrim, if you'll come up here. Got a Bible waiting on you.

WITNESS: Okay.

STEVE PILGRIM, being first duly sworn, testified as follows:

THE COURT: Have a seat right there and make yourself comfortable.

DIRECT EXAMINATION

BY MR. COLLINS:

Q All right. Sir, can you tell us your full name?
A Steven Roosevelt Pilgrim.
Q All right. And Mr. Pilgrim, are you related to that gentleman over there in the orange jumpsuit?
A Yes, I am. He's my nephew.
Q So, Marion Lindsey is your nephew?
A Yes, sir.
Q All right. And this afternoon or this morning I'm gonna ask you some personal questions about you and your family and Marion. So, we're gonna go through it kind of slow.

Okay?
A Okay.
Q Let's start off with some basic stuff.

Where do you live?
A I live on here in Spartanburg.
Q All right. And have you been a life long resident of Spartanburg County?
A No. Well, yeah, in Spartanburg County I have, yes.
Q All right. When you were a boy growing up, what part of the county did you live in?
A Inman.
Q You lived up in Inman?
A Uh-huh. (Affirmative).
Q And were you one of nine brothers and sisters I

believe?
A That's right, yes, sir.
Q Who were your parents?
A Ruth Pilgrim was my mother and Smiley Pilgrim.
Q And so, the, the -- you and your mother and all your siblings and Smiley all lived in the same house up there in Inman?
A No, Smiley didn't live there. It's just my mother.
Q All right. About what age were you when Smiley left?
A I was six years old.
Q And growing up, what was, once smiley left---
MR. SIMON: Objection, Your Honor. Relevance.
MR. COLLINS: Your Honor, this -- the family history information that we're getting from Mr. Pilgrim and the other family members is important for a couple of reasons. Number one, it is information that should have been gathered by the original defense team, and our position is that it was either not gathered, was available to them and not gathered. Secondly, it's essential for the expert witnesses that we have coming later this afternoon, Mrs. Vogelsang and Mrs. Melikian, and third, and probably most important, at the original trial is it was information that would have humanized or shown one of the statutory mitigating factors, which is the personal history and background of Mr. Lindsey.
And, so, for those reasons, this family history is

essential for those three reasons. One, what the defense team should of known. Two, to give a background information for the expert, and, three, it's relevant for the statutory mitigating factor of Mr. Lindsey's background history and family social background.

MR. SIMON: Well, I guess, before I, before I respond, Your Honor, I'll just ask if it's the Applicant's position that they would of had these witnesses testify to this full extent at trial.

MR. COLLINS: We would of at least presented that evidence at trial and had it not been admissible at that point we would of at least proffered it for the record. So, yes, sir, Your Honor. Part of our contention is that the defense team had these witnesses available, the four family members we presented yesterday afternoon and today, and did not fully develop their testimony.

For example, Mr. Pilgrim's testimony was approximately two pages in length when you read the, the transcript. It's our position that there's much more information that should have come out both during their investigation and at trial through Mr. Pilgrim.

MR. SIMON: I guess with the, the understanding that they think that this evidence should of been, all of this testimony should of been put in at trial, we're gonna withdraw our objection.

THE COURT: I -- if the objection stands, I'm gonna overrule it, but we're not gonna spend all morning now going back a hundred years in history.

MR. COLLINS: Yes, sir.

THE COURT: Let's move on with this thing now.

MR. COLLINS: Yes, sir.

THE COURT: We bogged down yesterday.

MR. COLLINS: Yes, sir.

Q Mr. Pilgrim, let's, let's jump specifically to some family members that you interacted with growing up and as an adult.

A Okay.

Q All right. Were -- did you have or spend a good bit of time with Virginia Lindsey, Bessie Lindsey, with Virginia Lindsey and Bessie Lindsey?

A Yes.

Q All right. Did you also spend a good bit of time with your sister, Robin, I believe it is?

A Yes, sir, I did.

Q All right. What is Robin's full name?

A Well, her name is Robin. She married. She's Robin Keith now. But it was Robin Sally Lou Pilgrim.

Q All right. And did you also spend a good bit of time with Paul and Willie as well?

A Yes, I did.

Q Going specifically into those five individuals, Mrs. Virginia Lindsey, did Mrs. Virginia have a problem, when she was raising Marion, with drinking and drug use?
A No. No.
Q Okay. Did, at any point, she exhibit suicidal behavior?
A At one time she did.
Q All right. Tell us very briefly about what happened with Mrs. Virginia Lindsey and that suicidal behavior.
A What happened, I think, her and Marion's father kind of -- he didn't take -- he didn't take care of Marion. He didn't have anything to do with it, and I think they got into it about that. And she just got upset about it, and, and decided she didn't want to live no more.
Q So, when, when that stressful situation took place, Mrs. Lindsey attempted to take her life?
A Yes, sir.
Q And was she admitted into the hospital for those, for that situation?
A I don't know for sure.
Q Now, Bessie Smith is another sister, correct?
A Yes.
Q And did -- was there a point in time when Bessie Smith also attempted---
A She did too, yes, sir.

Q And was that during the period that Marion was alive and part of the family?
A Oh, yeah. Yes, sir.
MR. SIMON: Objection on hearsay as---
MR. COLLINS: And I'll be honest, Your Honor, I'm not sure, not certain of the objection. He was testifying -- if I understood his answer correctly, there was a time that Mrs. Smith attempted suicide when Marion was alive. I don't think he got into what somebody said or didn't say. So, I -- maybe I misunderstand the objection.
THE COURT: All right. Well, be careful. Go ahead.
MR. COLLINS: Yes, sir.
Q Were you around Mrs. Smith when, at the time when she attempted suicide?
A Yes, sir. Yes, sir.
Q And what was going on in her life at that time that triggered the suicidal behavior?
A Well, it's about the same thing. Just between her husband and they just -- they had a lot of kids, and it's kind of rough taking care of them, and they, they had some problems, and, so, she decided -- they had broke up two or three times too, and she just didn't want to live anymore.
Q And was she hospitalized or---
A She was, she was hospitalized.
Q Okay. And do you remember how long she was in the

hospital?
A I -- a month maybe. I don't know for sure cause it's been a long time.
Q Okay. And Robin, did she also exhibit that same type of behavior?
A She sure did.
Q How many times did she---
A She---
Q ---attempt to take her life?
A About three times.
Q Do you remember the circumstances around those three attempts?
A Well, she was -- she been, she been kind of depressed for a long time and she -- I really don't.
Q Did she spend sometime in, in the hospital?
A She did. Yeah, she did.
Q All right. On more than one occasion or just once?
A More, more than one.
Q And did Robin also exhibit some violent behavior during, during the time that she was around Marion?
A Yes.
Q What---
A Yes.
Q Do you remember any specific instances or events that you recall?

A I don't -- I can't remember them right now cause it's been a while.
Q All right. But she is currently incarcerated, is that correct?
A She incarcerated right now.
Q And is that for her violent behavior?
A Violent behavior, yes, sir.
Q And your brothers Paul and Willie, did they also both---
A Oh, yeah, yeah.
Q Did they go to prison for their violent behavior?
A Yeah, they both went to prison.
(Whereupon, a photograph was marked as Applicant's Exhibit No. 27 for identification purposes only at this time.)
MR. COLLINS: Now -- Your Honor, if I may approach the witness?
THE COURT: (Witness nods affirmatively.)
Q Sir, I'm gonna show you what's marked as Applicant's Exhibit No. 27.
Do you recognize that?
A Yeah. Yes, this the old house we use to live in.
Q All right. And where was that house located?
A It's on Brock Street in Inman.
Q And that particular house, how many folks lived in that

house when you lived there?
A Pretty close to ten people.
Q All right.
A It's a four bedroom house, and it's about ten of us.
Q About ten of you.
Was Marion one of those ten people?
A Yes, Marion was born. This is the place where my sister had Marion. This is the house that we was living in.
Q And how old or how long did y'all stay in that house after Marion was born?
A After Marion was born, we moved -- we moved to Spartanburg in about '81. So, he was born there. We was there probably ten years or longer.
Q All right. So, the first ten years or so of his life were in that four room house?
A In a little four room house, yes, sir.
Q Now, did that home have inside plumbing?
A No, sir.
Q And did that home have air conditioning?
A No.
Q What type of heat did it have, if any?
A We just had an old wood stove, coal. Sometimes we used coal. Sometime we used wood.
Q Now, during the time that y'all were living in that house, did Marion witness violence and violent behavior by

the relatives that were living there?
A Yes, he did.
Q Which ones exhibited that type of behavior?
A My brother Paul and, and Willie.
Q Now, were those isolated events or was that something that he exhibited on -- they, they showed out on a regular basis?
A They showed out on a regular basis.
Q Okay. Now, did they, did they act violently towards you and the other family members?
A Sometime.
Q All right. And were they also violent towards folks in the community around you?
A Yes, sir.
Q How about the women in their lives?
A Yes, they was violent towards them too.
Q While you were living in that house, did Marion have a series of accidents---
A Yeah.
Q ---causing some head injuries?
A Yes.
Q Were you there when he was run over by an automobile?
A Yes, I was standing right out in the yard when he was ran over.
Q Tell us what happened that day.

What did you see?

A Well, my brother, Paul, wanted to borrow my car and, and he drink a whole lot. So, he didn't really look, and Marion always followed me everywhere I go, and, and my brother just got in the car and backed up. And I looked. I said well, he ran over a rock with my car. And I -- then he looked back. I said oh, that was the baby and Marion was the baby and I ran and grabbed him.

And I kind of hollered and called my brother to come back because the baby -- I had the baby in my arms. So, we grabbed him. I grabbed him and we took him to Inman Police Department and he never cried, never, never moved or anything. And we took him to -- we took, got the ambulance and took him to Spartanburg Regional. And, like I say, he never responded, and, until we got him to the hospital and they got to the working on him he finally responded.

And, and they checked him. They sewed him from here up. There was places in his head where he had, where the car ran over his head, and later on that let him came back home.

Q So, he even came home from that head injury that particular day?

A He came home that night, uh-huh. (Affirmative).

Q And were there other times when Marion fell and hit his head?

A Yes, uh-huh. (Affirmative).
Q Was that something that happened more than once?
A Oh, yeah, yeah, yeah, because we, we lived in a, a, a place with no grass, just an old house, and he crawled outside. That's, that's how he got ran over cause he always trying to follow me. He crawled out, outside.
Q Now, I want to skip forward in time to those weeks immediately before the shooting took place.
A Uh-huh. (Affirmative).
Q All right. And about three weeks or so before the shooting, did you have an opportunity, along with other family members, to go see Marion one night?
A Yes, I did.
Q What prompted you to go to Marion that evening?
A My sister and them had called me and said that he was, said he gonna kill his self. So, we all got together. They all came to my house and then we all got in the car and went and talked with him.
Q How long did you stay with Marion that evening?
A I was there probably about two or three hours.
Q And what was Marion's -- what did -- what was he like that night?
A He was depressed, real depressed, and, you know, usually he ain't like that, and he usually not -- he was real depressed and he was depressed and talking about he

wanted to see his kids and, and him and his wife was having problems and -- but I hadn't -- he usually not like that.

Q Was he crying that evening?

A Yes, sir.

Q Was that something you had seen him do before?

A No, no.

Q So, in all these years, you had never seen Marion cry until that night?

A Right. Not since he got grown. Now, you know, not when he was a kid, you know. Not since he got grown.

Q Once you left the home, had he calmed down a little bit that evening?

A He calmed down a little bit that evening.

Q When you left, were there other folks there with him?

A Yeah, I left my sister and them down there.

Q And that would of been Viriginia and Bessie?

A Uh-huh. (Affirmative).

Q Now, did you later get a telephone call from him in the, in the next week or so?

A Yes, sir.

Q What, what did -- what was the phone call about?

A It was about my house.

Q All right. And was there anything in particular that Marion wanted that evening?

A Yes.

Q What was he wanting?
A He wanted a gun.
Q Do you keep a gun in your house?
A Yes, I do.
Q All right. Is -- now, is that something that's normal for your family members?
Most family members that you have have guns and knives?
A I, I think I'm about the only one cause most of them are -- I'm about the only cause my other brothers ain't allowed to have one.
Q Had them in the past, but don't have them anymore?
A That's right. They not allowed to have them.
Q Now, do you still have that gun?
A Not that one I don't.
Q Okay. To the best of your knowledge, did Marion ever get a hold of that gun?
A No. No, he didn't get a hold to my gun.
Q Did you have someone break into your home shortly after that phone call though?
A Yes, I did.
Q What was the home like when you got, when you got back?
A It just looked like somebody had trashed it looking for something.
Q Were they able to find the gun?
A No, didn't.

Q And did you get another follow, follow-up phone call from Marion after that?
A No. No, I didn't get another phone call.
Q Did you ever talk to him after that?
A I never did get to talk to him after that.
Q Okay. Now -- so, you didn't talk to him the day or two before the shooting?
A Not a day or two. It's liked probably a, three weeks where we went over and talked to him, and he had talked to me maybe three weeks before then.
Q All right. Now, did you -- were you in a position to help Marion out financially in that last month or so before the shooting?
A Yes, I was.
Q What types of things did you do for Marion?
A Well, I -- he come by there and he needed some money and I, I would loan it to him.
Q Do you know what the money was for?
A Yeah, he was -- he wanted to take his wife out to eat.
Q Do you know why he was wanting, why that was important to him?
A Because -- yes, he, he told me. He sit and told me he wanted to try to get back with her, and so she would go out, you know, he would take her out to eat. And, and he did that three or four times there right before this happened.

Q Now, leading up to the trial of this case, jumping forward to 2004 --
A Uh-huh. (Affirmative).
Q -- did you have the opportunity to meet with Mr. Brannon, Mr. Bartosh, or Ms. Quimby?
A Yes, I did.
Q And how many times did you meet with them?
A Just one time.
Q When was that?
A It was the day before the trial started. I think it was on a Saturday. Well, it was a day, a day before and it's like 20 or 30 minutes.
Q All right. Who all was there when you talked to them?
A A Mrs. Todd, Topp, Lenora Topp.
Q Okay.
A Mr. Bartosh, and Mr. Brannon, and my sister, and I think my sister, Bessie. It was the peoples I think that's gonna put on the witness stand.
Q So, it was a group meeting the day---
A Yes, sir.
Q ---before the trial started?
A Yeah.
Q And had you ever met any of those individuals before?
A I had never and it was Bill Burton. We hadn't -- I hadn't really talked with him that much neither. So, we all

was there for about 20 or 30 minutes.
Q And what did you discuss during that meeting with the defense team?
A Okay. They just asked me what was my, my, my condition, my health, what was I suffering from and I told them. And I told them that I was, I had become disabled at the time, and they asked me what was it, and asked me was I depressed and I told them I was depressed and had anxiety, and that's about all that they asked me.
Q Now, so, your depression is from the anxiety and the depression?
A Yeah, uncontrolled hypertension too.
Q But you gave them this information the day before trial?
A The day -- I think it was the day before.
Q At that point did they ask you to sign any releases to get medical records or psychological records or anything else?
A No.
Q If they had asked you to do that would you have?
A Oh, I been glad to do it.
Q Were -- during the year, year and a half leading up to that trial, from the time of the shooting until the trial in 2004, were you still living here in Spartanburg County?
A Yes, uh-huh. (Affirmative).

Q And were you available at, during that time to talk to them?
A Yes, sir.
Q And if they had asked, would you have talked to them?
A Yes, I would of talked to them. Gladly.
Q Okay. Now, did you feel like you were adequately prepared to take the witness stand and testify in front of that jury?
A No, I wasn't because I, really I had, I had never been on a stand before, and it's kind of nervous and they just -- I mean I didn't, they didn't ask me nothing. Just about, about my health.
Q All right. Did they ask you about the events leading up to the, the, the weeks before the shooting?
A No. No.
Q Or anything about Marion's personal history?
A No, they didn't.
Q By comparison, how much time have you spent preparing for today's testimony in this hearing?
A By just, it's, it's a whole lot greater than what because I've been talking with y'all more than them because they was just one day before, and they told us what we gonna, that we's gonna, they gonna call us. And, like I said, that's all they asked me was about my health.
Q One last little topic we need to talk about.

Did they prepare you to or ask you if you wanted to address the jury and ask for mercy for Marion?

A Yes, they did.

Q All right. What was that conversation like?

How did they prepare you to, to ask that of the jury?

A They, they told me not to do that. They told me not to ask the jury for mercy.

Q If you had been given the opportunity to ask that jury for mercy for Marion, would you have done so?

A I would.

Q And what is it that you would of told that jury that afternoon?

A Well, that we all make mistakes and that was a mistake, and, you know, I care for my nephew. He my favorite nephew and he made a mistake, and I wouldn't want him to, you know, get the death penalty.

MR. COLLINS: Your Honor, we would move Applicant's Exhibit 27 into evidence.

MR. SIMON: No objection, Your Honor.

THE COURT: In without objection.

(Whereupon, Applicant's Exhibit No. 27 was received into evidence at this time.)

MR. COLLINS: And if may have just a moment, Your Honor.

THE COURT: Sure.

(Pause.)
Q Mr. Pilgrim, those are all the questions I have for you right now. If you'll answer any that the Attorney General has please.
A Yes, sir.
CROSS-EXAMINATION
BY MR. SIMON:
Q Morning, Mr. Pilgrim.
A Morning.
Q How are you doing this morning?
A Pretty good.
Q I want to start with I guess the Applicant's 27, the picture.
A Yeah.
Q Could you tell us, when did you take that picture?
A When did I take this picture?
Q Yes.
A I took this picture Sunday past.
Q This past Sunday?
A This past Sunday.
Q Okay. Now, earlier you, you testified I guess that before you took the stand you had not talked too much with them about Marion's history?
A That's right.
Q Or, or your health conditions?

A That's right.
Q Do you recall your testimony on the stand?
Have you looked at that since then?
A I might have. I don't remember.
Q Okay. So, you, you -- do you recall testifying that you, you were a witness to the car accident you talked about earlier when Marion was run over?
A I don't remember talking about that to them.
Q Well, I'm -- do you remember testifying about that at trial?
A No, no, no, I didn't. I don't think I talked -- I don't think they asked me about that.
MR. SIMON: Just one moment.
(Pause.)
Q All right. Mr. Pilgrim, I'm gonna show you a part of the record of the trial.
A Okay.
Q This is from the record on appeal.
A Okay.
Q It's the transcript of the trial.
A All right.
Q Let the record reflect I'm showing him Pages 2078 through 2080. Just please review that. Just read it to yourself.
A Okay.

Q Does that refresh your recollection about what you testified to at trial?
A Yes.
Q And you did testify about the, the car accident, correct?
A Yeah.
Q And you testified about the kerosene incident---
A Yes.
Q ---when Marion was, was a child?
A Yes.
Q You talked about how long you stayed with the family when Marion was growing up, is that correct?
A Yes, uh-huh. (Affirmative).
Q You also talked about the, your health conditions too, correct?
A Yes.
Q And does that reflect, refresh your recollection as to whether or not you talked about that with counsel for them to know to ask you those questions?
A Okay. Now which questions is you, is you referring to?
Q I guess about the, the incidents when he was a child and your medical history.
A Yes, sir.
Q That would of been information that they would of learned from talking with you?

A Yeah. Yeah.
Q And you testified you lived with Marion for seven years, correct?
A Yes, seven. I said seven.
Q And you testified here and I believe then too that Marion followed you around a lot?
A He followed, yes, he did.
Q And you tried to do anything like you, like you tried to do?
A Yes. Yes, sir, because I was a mechanic.
Q And you taught him about -- you taught him how to fix things, correct?
A Fix things, yes, sir.
Q And this was something that occurred even after you left, you quit living with them, you were still involved in his life, correct?
A Yes, sir.
Q And he continued to follow in your footsteps?
A Yes, yes, he did.
Q And would you, would you say that you had access -- you were in contact with Marion consistently through like while he was growing up?
A Yes. Yes, I would say that, yeah.
Q Now, earlier you, you had testified about, in the talking about your brothers, Paul and Willie.

A Yes, sir.
Q You said that there was violence in the home and a lot of violence?
A Yeah.
Q How do you quantify a lot?
Well, what kinds of -- I guess what I'm wondering is how are you defining violence?
A Going out, getting in fights, getting guns, trying to shoot people, stuff like that.
Q But---
A That's violence.
Q But inside the home, what kind of---
A Well, when you do that, you coming back in the house with that kind of stuff around kids, and it's just -- and, you know, drinking and when you get in fights you coming back home, you still upset and cussing and stuff, doing all kind of stuff. So, it's just really turmoil really living in a house like with a small house, and that's, that's just -- that's what I was talking about.
Q Okay. Now, you, you've said that, during your testimony a little bit earlier, that you were told not to ask for mercy?
A Yes, that's right.
Q When, when do you recall when you were told that?
Would it of been something that was told to you right

as you were walking up to the stand?
A No, it's in that 20 or 30 minutes we was talking with Mr. Bartosh and them in the office. It was, it was -- it was while we was discussing that. They talked to everybody that day, that morning right before the trial.
MR. SIMON: Okay. Court's indulgence for just one minute.
(Pause.)
Q Just a few more questions.
Now, now, earlier you testified that your sisters, Virginia and Bessie, attempted suicide?
A Yes, sir.
Q Were you present when they attempted?
A No, I was not present because I had---
Q So---
A ---moved out. I moved out then.
Q So, you don't exactly -- you don't know from seeing personally what they did?
A Well, they -- I was kind of the person they would call everytime something would happen.
Q Okay.
A And said, well, Jen in the hospital, well, Virginia, and my other sister. They, they would tell me, call me, let me know cause I was kind of like the contact person.
Q But you didn't actually see what they did?

A No, I didn't see what they did.

MR. SIMON: Okay. I believe that's it. No further questions.

MR. COLLINS: Your Honor, very briefly on one topic if I may.

REDIRECT EXAMINATION

BY MR. COLLINS:

Q Mr. Pilgrim, that photograph that's there in front of you that you---

A Uh-huh. (Affirmative).

Q ---took here recently --

A Yes.

Q -- how, how much different is that house now than it was when Marion was growing up there?

A It's still about the same. It's still the same house. It's just the grass ain't been cut, but it's still the same house.

Q So, the same size, no additions to or deletions from it?

A No additions, nothing. That's just the way it was when we was coming up.

Q All right. Essentially, mow the grass and it looks just the same?

A Yes, sir.

MR. COLLINS: All right. Your Honor, I have no further

questions.

MR. SIMON: Nothing further, Your Honor.

THE COURT: You may step down. Thank you, sir.

MR. COLLINS: Your Honor, the Applicant would call Tim Sims.

TIM SIMS, being first duly sworn, testified as follows:

THE COURT: Okay. Have a seat right there. Make yourself comfortable.

DIRECT EXAMINATION

BY MR. COLLINS:

Q Sir, can you give us your full name please?

A Timothy Roger Sims, Junior.

Q And Timothy Roger Sims, Junior?

A Yes, sir.

Q And Tim, are you related to that fellow over there in the jumpsuit?

A Yes, sir, that's my brother.

Q All right. So, are you the younger brother of Marion Lindsey?

A Yes, sir.

Q How big a difference in age is there between you and Marion?

A Ten years.

Q You and Marion do not share the same father, is that

correct?
A No, sir.
Q Did you grow up in the same house together?
A Yes, sir.
Q Growing up, what was, what was the relationship like between you and Marion?
A Well, my daddy was in the household till I was about 11, and he got sick and moved back with his mom, and my brother raised me, take, took care of me like he was my daddy the whole time from then on.
Q So, you were about 11 and he was about 21 when he took over this parenting role?
A Well, yeah, basically.
Q And once that happened, did you and Marion spend a lot of time together?
A Yes, sir, because he never had a father, and, so, he treated me like a son, like he want his father to treat him.
Q How old are you now?
A Twenty-six.
Q And how old were you at the time the shooting took place and Marion went to jail?
A Nineteen.
Q Nineteen.
So, for about eight years Marion stood in that role as your father?

A Yes, sir.
Q Did you see Marion on a regular basis?
A Yes, sir.
Q How often did you and he talk or see each other?
A Well, I was with him on everyday. You know, everywhere he went, nine times out of ten, I was right there.
Q Now, while you were growing up with Marion, did you get in some trouble?
A Yeah. Well, not growing up with him. I didn't get in no trouble until he left, left and went to prison.
Q At this point, what kind of criminal convictions do you have?
A I have a drug charge back in 2003. That's it.
Q Did you spend sometime in jail for that?
A No, I got probation and I violated and I had to do six months.
Q How about now?
Are you, are you working?
A Yeah, I do brick mason.
Q All right. Working full-time right now?
A No, not right now.
Q In-between jobs?
A Uh-huh. (Affirmative).
Q All right. Do you have any current pending criminal charges?

A No, sir.
Q Are you married?
A I'm getting married next year.
Q All right. Now, at the time Marion was tried you didn't have any criminal charges, correct?
A No, sir.
Q Were you a father at that point?
A Yes, sir.
Q When you said you were around Marion on a day-to-day basis, did you get a chance to see his interaction and relationship with Nell Lindsey?
A Oh, yes, I know everything about him and Nell.
Q How did you, how did you get personal knowledge about what was going on in their relationship?
A As far as---
Q Well, did you see them together?
A Oh, yeah, I lived -- I done lived with him and her.
Q While they were together?
A Yes.
Q And were his children in the house at the same time?
A Yes, sir.
Q All right. Now, how would you describe that relationship between him and Nell?
A I mean it was, it was -- I mean everything was going good, you know. He do everything he could for her and her

mom, everything that he could. Anything they needed he was there for them both at the -- and everybody argue and fuss, you know. That's in the relationship. They did do that. But I never once seen my brother put his hands on Nell. I don't know. You know, I wasn't there everytime, but I know the whole time I was around I never seen him put his hands on Nell.

Q When you said they fussed and fought and argued, were those verbal arguments?

A I mean normal arguments, you know, loud this and all that. But it would calm down. He never done nothing to her in front of me. I never seen it.

Q Did you ever see her hit him?

A No, sir.

Q So, no physical violence between them that you observed?

A No, I never seen it.

Q Now, while he was married to Nell, what kind of work was Marion doing?

A Well, for one, he painted cars. He worked, I think, at Milliken or something like that, one of the two. But as things -- he, he start -- he got into the drug game or whatnot to take care of me and my mom and my, my other brothers and everything because my daddy wasn't there. He got sick and went back and stayed with his mom. So, Marion,

Marion had to do what he had to do to survive, provide for our family.

Q What did he do with the money he earned selling drugs?

A He took -- anything that was needed, he took care of it. It didn't matter if it was her side of the family or my side of the family or anybody family. He would do anything for anybody if you needed it.

Q Now, in the, about in the couple of months preceding the shooting, that relationship, close relationship between you and Marion continued?

A Yes, sir.

Q Still seeing him everyday?

A (Witness nods affirmatively.)

Q You got to speak out loud.

A Yes, sir.

Q All right. Now, about a month and a half before all this happened, beginning of August of 2002, did you get to spend the evening with Marion and Nell?

A Yes, sir, three, I think three weeks before the shooting we all went to The Junction to eat. He took me, my, I had a newborn, my wife, my cousin, her newborn, and her other son, and my niece, and we all went out to eat at The Junction and he paid for everybody three weeks before the shooting.

Q All right. Well, let's back up and talk about some

details that evening.

How did you get from the, from your house to The Junction?

A Him and Nell came and picked us up from home.

Q All right. And when he arrived, who all was in the car?

A Him, Nell, and the youngest son. We had to go back to his, her grandma house to pick up Alex.

Q And, so, did all of you fit in the same car together?

A Yes, he was driving a Suburban and we all fit in the Suburban.

Q Now, once -- and when -- all of you went to the same restaurant and had dinner together?

A Yes, sir.

Q And did all of you leave together?

A Yes, sir.

Q When you got back to your house, who got out of the car?

A Everybody got out at my house, at my mom's house except for Marion, Nell, and the kids. They left together.

Q And all of those left together?

A Yes, sir.

Q All right. Sometime after that did you have the opportunity to go with other family members out to Marion's house one night?

A Excuse me?
Q Was there a -- did you get a phone call one night that prompted you and your family members to go out to Marion's house?
A Did we, me get a -- excuse me now?
Q Did Marion attempt suicide or---
A Yes, sir.
Q ---indicate he was going to at some point?
A Yeah, I got -- my family -- he called and my -- I had to call my mama and get her off work and me, Steve, my mama, and my Aunt Bessie all went down to where he was staying at.
Q All right. Who did you get the phone call from?
A I think Marion.
Q So, Marion called you that evening?
A Yes, sir, I think I recall.
Q What was his voice like that night?
How did he sound?
A He sounded real -- you know, I never heard him sound nervous and crying to me. I know like sounding broken up in the heart and was like -- he was just like, man, I feel like I'm about to take my life, you know. I was like no, no, don't do that. I asked him where he was at and everything and then I got off the phone. I told him I'd be down there. I got off the phone with my mom -- I got off the phone with him to call my mom at work. I told her we needed to go down

there and check on him and see what was going on.
Q How long did it take for you to get there?
A It took us about 30 minutes.
Q And when you got to the house, were you able to find Marion?
A Yes.
Q Where was he?
A He was in the room laying in the bed.
Q What was his demeanor?
What was he like that night?
A He just was like, looked like he was just wanting to let everything go, and he, he gave us the letters and all that about what he was gonna do and all to my family. He looked down. It looked just -- it didn't looked like the Marion, Marion I knew.
Q All right. Was Marion crying that evening?
A Yes, sir.
Q How many times, as an adult, had you seen him cry before?
A Twice in my life.
Q When were those other two times or the other time?
A The day that the shooting and the time that we talking about right now.
Q Were those the only two times you saw him cry in his adult life?

A Yes, sir.
Q Now, how long did you stay with Marion that evening?
A We stayed there about from -- we got there around about 5:00, 6:00. Stayed, stayed till about 8:00, 8:30, 9:00, somewhere around in there.
Q And when you left him that evening, was he still pretty much in the same condition?
A Well, not really. We all talked to him and my Uncle Steve gave him a nerve pill to calm him down, and we all talked and it looked like everything was gonna be all right. So, we all just packed up and left. We didn't stay the night.
Q You left him there at the house?
A Yes, sir.
Q Anybody get him any professional help, take him to the hospital, anything like that?
A No, sir.
MR. COLLINS: All right. Now, if I may approach the witness?
THE COURT: Yes, sir.
Q Tim, I'm gonna show you what's been marked as Applicant's No. 13, and there are some handwritten pages here at the beginning of this packet.
Can you tell us if you recognize those handwritten documents?

A Yes, I do, sir.
Q What are those documents?
A Those suicide notes that he wrote.
Q Are those the same ones where you were talking about that he gave to you and the family members this evening?
A Yes, sir.
Q And who were those suicide notes addressed to?
A Well, I think he had one for Nell, the boys, me, and my mom. That's what I know for sure.
Q Okay. So, you actually held them in your hand and looked at them that evening?
A Yes, sir.
Q And when you left that evening, who, who had those notes?
A My mom.
Q So, everybody read them, handed them back, took them up?
A Handed them to my mom and she put them up.
Q All right. Now, at some point did Marion express some concern to you about his relationship with Nell?
A Well, right at the end -- well, yeah, right after the suicide notes or what, whatever, he was starting, you know what I'm saying being -- he was still down, you know. He wasn't the same man I knew. We like go out, have fun together. He was getting, like he was getting weak in

the -- it was just --.
Q Was he changing?
A Yeah he was changing, laying around in the bed, something he don't usually do. He just was not the same Marion.
Q Was there a point at which he asked you to play private investigator for him?
A Yes, sir.
Q What was it he asked you to do?
A He called me -- I think it was the day before the shooting. Yeah, I think it was and he asked me to call Nell on three way because he couldn't get in touch with her. She wouldn't answer his number.
Q Well, before getting that close in time with the shooting, after that, after that incident with the suicide notes, at some point did he ask you to go drive by Nell's house?
A Yes, sir.
Q And what, what was the purpose for you going out to Nell's home?
A He called and he was like I think -- can you check something out for me because I think that Nell seeing another dude. I was like yeah, and he was like go by the house and tell me if you see a Lexus in the yard. That's exactly what he said. I said okay. So, I went by. I seen

the -- I went by. I seen the Lexus that he was talking about and everything and I kept going. I came back.

I didn't want to tell him what the situation was, that I seen the car or not because I knew that he was upset and sick about the situation, and I told him it wasn't there, which it really was there. I didn't want no trouble or nothing, no nothing like that. And I told him it wasn't even there, but it was there.

Q Was the car you saw Nell's car?

A No, sir.

Q Were you familiar with Nell's car?

A Yes, sir.

Q And after that incident, what was the communication like between Nell and Marion?

Were they able -- was he able to contact you?

A No, I know that he wasn't able to contact her and he, he wasn't able to see the kids because he, he told me -- he was, he was calling me and telling me to take the kids something to eat over there because they wasn't -- he couldn't get in touch with them. They told him don't be around there and all that, don't come around. So, I would take -- go to McDonald's and take food over there myself and reach it to her mom to give the kids.

Q Now, a moment ago you started talking about a three way telephone call?

A Yes, sir.
Q When did that happen and what, what prompted that phone call?
A Well, he called me and he was like I can't get in touch with Nell. She won't answer the phone, but she would answer my mama house phone because she loved my mama and she might not answer Marion phone. But she will answer my mom phone if she called. So, he told me to call her and for, so he could talk to her on three way.

So, I called from my mom's number and she picked up. And he was like -- he told her -- he was like Nell, I understand you don't want to be with me no more, just let me get the boys. And she, she was upset already at him. So, she was like -- she was started cussing. She was like no, you not seeing them. I'm not dealing with you. We staying away from you, and I heard his son in the background, Tray, say I want my daddy. She said no, you don't, you is not -- we is not living with him no more, that's not your daddy, and hung up the phone. Yes, she did do that.

Q And how close in time to the shooting was this?
A This was the day before.
Q The day before the shooting.

You initiated a phone call from your mom's house?
A Yes, sir.
Q And did you talk to Nell when you, when she first

picked up the phone?
A No, didn't say nothing. He said something as soon as she picked up.
Q Okay. And did you stay on the telephone call during the entire conversation?
A Yes, sir.
Q So, what you were talking about is something you physically heard between the two of them?
A I heard both of them.
Q Now, after that phone call that day, when was the next time you heard from or saw Marion?
A Well, I didn't see him -- the next day, around about five o'clock, about five o'clock he called and he was like can you go down -- Amy got some information, this girl named Shirley, she got some information that somebody told me about Nell. He was like go down the street and get her number and well tell -- give her my number and tell her to call me. I knew that that was trouble when he said go tell her to call him cause he needed to ask her some questions. I knew that that was trouble.

So, I did -- I didn't even -- I hung up the phone and went and got in the shower. I said I wasn't going to tell Amy that because I don't want no more trouble between Marion, Marion. So, I didn't go. He called back. He was like did you go down there, talked to Ashley, Shirley. I

was like no, I forgot, I forgot all about it.

At the time, I was -- I had a friend living with me named Chawney. He, he said let me speak to Chawney. I let Chawney talk to him. He looked, he looked up to Marion. He looked up to Marion. Anything Marion asked him to do he would do it because Marion took care of him too. So, he got on the phone and went down -- Marion told him to go down there.

MR. SIMON: Objection. Hearsay.

THE COURT: Be careful what anybody else said---

WITNESS: Yes, sir.

THE COURT: ---unless we look at it further.

MR. COLLINS: Yes, sir.

A All right.

Q Let me -- let's go back and do it this way.

Did you get in touch with Amy as a result of your telephone conversation?

A No, sir.

Q Once Marion had a phone conversation with your roommate, Chawney --

A Yes, sir.

Q -- did Chawney leave the house?

A Yes, sir.

Q Did Chawney eventually come back to the home?

A Yes, sir.

Q After that telephone call between Marion and Chawney and Chawney leaving the home, did you have another conversation with Marion later that afternoon?
A Yes, about 30 to 45 minutes later he called back crying and said, said that she had told him a whole lot of stuff about Nell, and that her new boyfriend or whatever, he said he don't know what's, where his head it all messed up, and he was crying that day, that, that same day he was crying and going on and all out of his mind about whatever, what she had told him or whatever.

So, I was like just calm down, just let that go, just meet me at our other brother house, Claude. I said just meet me over there. We gonna play the game and talk about the situation. He was like okay, I'm gonna come over there, and I left to go to, to my other brother, Claude, house and he never showed up and that's the day of the shooting.
Q So, shortly thereafter is when the shooting took place?
A Yes, sir.
Q Now, where was Marion living at this time?
A I don't know.
Q What part of Spartanburg?
A I would say off Reidville Road. Linville Hills.
Q Off Blackstock Road here in Spartanburg?
A Yes, sir.
Q And was that a yes?

A Yes, sir.
Q All right. Now, for Marion to travel from Linville Hills here in Spartanburg to your mother's house in Inman, how long would that have taken him?
A I would say 15, approximately 15, 20 minutes.
Q And the neighborhood that your mama lives in, is that the same neighborhood that Nell's mother lives in?
A No, sir.
Q Does Nell live in that neighborhood?
A Yes, sir.
Q Did Celeste live in that neighborhood?
A Yes, sir.
Q If Marion had traveled from his home to your mother's home to pick you up, would that have, would it have been necessary for him to go near or by Celeste's home?
A Yes, sir.
Q Once you had this phone conversation, were you still at your mama's house or did you pick up and leave?
A I packed up -- I got my girlfriend and my son and one of my friends, and I told them let's just -- we packed up about five, ten minutes after I got off the phone with him.
Q So, if Marion had come by your mother's house, you would not have been present?
A No, sir.
Q Did you see Marion again before the shooting?

A No, sir.
Q Did you talk to him again before the shooting?
A No, sir.
Q All right. So, the last conversation you had with him before this event was when he was crying?
A Yes, sir.
Q And that's only second time in his adult life you heard him?
A Yes, sir.
Q Now, did you ever have the opportunity to tell this story to Mr. Bartosh, Mr. Brannon, or Mr., Ms. Quimby?
A I never talked to anyone and no one did not talk to me period.
Q From the time of the shooting until the time of Marion's trial in 2004, did you live in Spartanburg County?
A Yes, sir.
Q And---
A Well, I lived in Inman. Spartanburg County.
Q And you were not in jail at any point?
A No, sir. Well, I -- no, sir.
Q Did you see your mom on a regular basis?
A Yes, sir.
Q Did you see your Uncle Steve?
A Yes, sir.
Q Did you see your Aunt Bessie?

A Yes, sir.
Q Were you available to talk to the defense team if that had been an option?
A Yeah, I was available, yes, sir.
Q Would you have been willing to talk to them?
A Yes, sir.
Q Did anybody from that team ever contact you?
A No, sir.
Q Anybody from your family, your mother, Aunt Bessie, Uncle Steve, ever communicate that they may want to talk to you?
A No, sir.
Q Now, were you here for the trial?
A Yes, sir.
Q You were here for the, from the very beginning all the way through to the end?
A Yes, sir.
Q At some point did you approach one of the defense attorneys?
A Yes, sir, I, I approached Doug. I forgot his last name.
Q Mr. Brannon?
A Yes, sir, I approached him and was like I know more about Nell and Marion than anybody. Can I please get on the stand, and he was like well, we gonna get back to you and

we'll let you know, and I ain't never heard nothing else from them.

Q So, you, at the trial, made a request to be able to testify?

A Yes, sir.

Q After you requested to testify, did they, anybody take time to talk to you, find out what you could say?

A No, sir.

Q Is what you told us today consistent with what you would of been able to tell Mr. Brannon, Mr. Bartosh, and Ms. Quimby before trial?

A Sir, can you repeat that?

Q Is what you told us today what you could of told those attorneys before the trial?

A Yes, sir.

Q And is that what you could of testified to if you'd been called?

A Yes, sir.

Q If you had been given the opportunity, would you have also asked the jury to have mercy on your brother?

A Yes, sir.

Q If you had been given that opportunity, what would you have told this jury?

A I would of told the jury I don't -- Nell did not deserve what happened to her, and my brother deserved to be

punished because -- but, at the same time, he don't -- I don't think he deserve death because it's one -- his wife already gone and we don't need him gone. His kids got to grow up with no mom and dad, and at the same time I would, all -- his kids might want to come to him one day and, and ask him what happened or why he do this or what went down, and he might -- they might want to know. And if both of them gone, they would never get to know exactly what happened. People can tell them anything, but they might want to grow up to talk to their father and ask him what happened.

MR. COLLINS: Your Honor, if I may have just a moment?

THE COURT: Yes, sir.

(Pause.)

Q Mr. Sims, thank you for answering my questions. If you'll answer any that the attorney general has for you.

CROSS-EXAMINATION

BY MR. SIMON:

Q Good morning, Mr. Sims.

A Good morning.

Q Just have a few questions for you.

First, you, you testified that -- you testified that you had not seen your brother involved in any violence with Nell?

A Yes, sir.

Q Is that correct?
A Yes, sir.
Q So, you're saying you're not aware of an incident between them in August of '96 where there where, where he may of threatened to harm or kill her?
A In 1996?
Q Yes.
A No, sir, I don't recall.
Q And you don't recall an incident between them I guess where he, he pushed and shoved her in October of '96?
A No, sir.
Q How about in December of 2001, weren't, weren't you present at the -- didn't you go to Applebee's with them one time?
A Yes, sir.
Q And you're saying you didn't, you weren't there to see him slap her and tear her clothes there?
A I was, I was there, but I did not see him slap her or tear her clothes off. I was on the other side of the car, on the other side of the building. I know they was arguing and fussing and he some kind of way got the jewelry and threw it in the road. But, honestly, I never saw -- I didn't see him snack her or rip her clothes off. I did not, not see.
Q So, so, you just didn't see that personally?

A I didn't see that.
Q Okay. You also testified about receiving a phone call where you said that Marion said he was gonna attempt suicide?
A Yes, sir.
Q He didn't actually attempt suicide, did he?
A No, sir.
Q And y'all actually, after talking with him, y'all left? You felt comfortable enough with the situation to leave?
A Yes, sir.
Q Another time, to your knowledge, he didn't have any weapons on him at that time, did he?
A To my knowledge.
Q And you talked a good bit about conversations you had with Marion I guess on the day before and the day of the shooting. Now, I'm gonna start with -- let me start with the last conversation y'all had.
At the end of that conversation, you were under the impression that Marion was gonna come over and y'all were gonna play games and talk over the situation, correct?
A Yes, sir.
Q And there's no discussion about him looking for Nell at that point in time?
A No, sir, he didn't. No, sir.

Q And he didn't make any mention of looking for a gun or anything at that time?
A He didn't mention that to me, no, sir.
Q He, he didn't make any mention of, of him having a gun at that time?
A No, sir.
Q And a lot of the conversations that, that, within those last couple of days y'all had, and I guess even going back that three weeks before when you said you were doing an investigation for him, that was looking to see if she was involved with someone else, correct?
A Yes, sir.
Q And wasn't necessarily to check up on the kids?
It was just to see if she was involved with someone else?
A Yes, sir.
Q Now, at the time wasn't -- Marion was involved with someone else himself, wasn't he?
A Yes, sir.
Q And he actually had, I guess, for a while while he was married, he had other girlfriends, correct?
A Yes, sir.
Q Now, earlier you talked about the fact you had a -- you have a drug conviction?
A Yes, sir.

Q And you pled guilty in August of 2003, is that correct?
A Yes, sir.
Q And you were sentenced. You were given a sentence of six years suspended to eleven months probation.
A Yes, sir.
Q So, in May of 2004 you were on probation, correct?
A May of 2004?
Q If, if, if you were -- you pled guilty in August of '03?
A Uh-huh. (Affirmative).
Q And you basically had eleven months probation?
A Uh- huh. (Affirmative).
Q You were -- in May of 2004, which was nine months after, you would of still been on probation, correct?
A No, sir, I had violated then. I was waiting to go to Court.
Q So, you violated probation by then?
A Yes, sir.
Q Okay. You had been a witness to Marion being violent with others in the past, correct?
A Yes, sir.
Q Would that include a, a situation at one point where you and him may of gotten into an altercation with a Douglas Durrah, Durrah?
A I don't even -- I don't recall that name.

Q How about a Dwayne Durrah?
A I don't, I don't know that name.
MR. SIMON: Okay. Court's indulgence for just a moment.
(Pause.)
MR. SIMON: Just a little bit longer, Your Honor.
(Pause.)
Q Just one last question.
Have you ever, have you ever gone by using your brother's last name?
You ever gone by a Tim Lindsey?
A No, sir.
Q No.
Okay. No further questions.
MR. COLLINS: Your Honor, if I may briefly?
THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. COLLINS:

Q Mr. Sims, the attorney general asked you about Marion's relationships in addition to Nell.
You remember that?
Just a moment ago he -- the attorney general asked you about affairs that Marion had while he was with Nell.
A Yes, sir.
Q Was that something that both of them did?

Did both of them have relationships outside their marriage?

A Well, it was from -- I didn't, I didn't -- I can't -- I didn't never see her with a man or with another dude or nothing like that. I can't -- I ain't never see that.

Q Okay.

A I seen the car that he asked me was there. But as far as her being with somebody outside the marriage, I can't, I don't recall that.

Q So, you had suspicions that you were never able to confirm it?

A (Witness nods affirmatively.)

MR. COLLINS: All right. No further questions, Your Honor.

MR. SIMON: Nothing further, Your Honor.

THE COURT: You may step down.

Let's take about ten or fifteen minutes.

Was there any further questions?

I'm sorry.

MR. SIMON: Oh, no, Your Honor.

THE COURT: You may step down.

(Whereupon, a short recess was taken at this time.)

MR. VIETH: Please the Court, call Jan Vogelsang please.

THE COURT: Come up and be sworn please.

MR. VIETH: And, Your Honor, Mrs. Vogelsang has a packet of material that we're gonna give a copy to the Court and to, to Mr. Zelenka as a guide to go by.

THE COURT: Okay.

MR. VIETH: I think we're gonna introduce it as an exhibit early on, and I'll go ahead and give Don a copy right now.

JAN VOGELSANG, being first duly sworn, testified as follows:

THE COURT: Just make yourself comfortable there and you're welcome to use this table there as you need to.

WITNESS: Thank you.

MR. VIETH: This is mainly a guide for the Court to go by in her testimony.

THE COURT: You want me to put this table down there for you?

WITNESS: That would be great.

THE COURT: You can just put it wherever you need it.

WITNESS: Wonderful. Thank you very much.

MR. VIETH: I'll go through some qualifying questions first, Your Honor, before we introduce it.

DIRECT EXAMINATION

BY MR. VIETH:

Q Jan, would you please state your name.

A Jan Vogelsang. V, as in Victor, O-G-E-L-S-A-N-G.

Q Where do you work, Ms. Vogelsang?
A I have a private practice in Greenville, South Carolina.
Q Okay. Now, what does your private practice entail?
A It entails the diagnosis and treatment of mental, emotional, and behavioral disorders. I conduct bio-psychosocial assessments for the Courts in different types of cases, and I do educational presentations in various settings.
Q And what degrees do you hold?
A I have a Master's Degree in clinical social work from the University of South Carolina, and I have an undergraduate degree in psychology from Pepperdine University in California.
Q And Ms. Vogelsang, what is a clinical social worker?
A A clinical social worker is a mental health professional who is trained, licensed, and credentialed to diagnose and treat mental, emotional, and behavioral disorders. They can be found in a number of settings such as private practice, psychiatric hospitals, mental health centers. They can be found in the military and business.

They provide approximately 60 percent of all the mental health treatment in the United States. They're also trained to conduct the bio-psychosocial assessment as an assessment tool.

Q All right. Are you licensed and board certified?
A I'm licensed by the South Carolina Board of Examiners in social work in South Carolina. I am board certified by the American Board of examiners in social work.
Q Okay. Are you published?
A Yes, I have had a book published as a guide for clinical social workers in the courtroom in all types of cases. It's called The Witness Stand, A Guide For Clinical Social Workers In The courtroom. I've also participated in an advisory fashion in creating the crime victims handbook for the Thirteenth Circuit solicitor's Office in Greenville, and I am presently on the editorial board to review publications for the National Organization of Forensic Social Work.
Q All right. Have you held any appointments, Ms. Vogelsang?
A I was appointed by the governor of South Carolina to the Crime Victims Advisory Board. I have been appointed by the city council in Santa Monica, California to the Parks and Recreation Commission, and I was appointed to the board of the American Board of Examiners.
Q All right. And what is the Crime Victim Advisory Board?
A That is a board that was set up by the Legislature in South Carolina to address the needs of crime victims to

compensate them for things such as lost wages, burial expenses, mental health counseling, and other expenses incurred as a, the result of being the victim of a crime. I served on a panel with a judge from Sumter, South Carolina and the police chief of Charleston, and it was our job, as part of that panel, to decide compensation and then also we worked on and proposed legislation on behalf of crime victims to the South Carolina Legislature.

Q Okay. Are you licensed to diagnose and treat mental disorders?

A Yes.

Q Were you asked to diagnose mental disorders in this case?

A No, I was not.

Q Okay. Could you describe your work experience?

A After I completed my internships at William Hall Institute, Greenville Area Mental Health Center, and the Veterans Administration Hospital in Salisbury, North Carolina, my first job out of Graduate School was in Watts in Las Angeles, and in that capacity I worked with abused children. I worked with gang members. I worked with teenage boys who were living on the streets in Hollywood and prostituting themselves for, for money to survive. And at that time I also began to get my supervisory hours for private practice.

When I returned home to South Carolina, my first job was at Baptist Medical Center. I was their emergency room social worker and also their maternal child care supervisor. In both of those jobs I had early on been called to Court to testify in such areas as termination of parental rights, child abuse and neglect, and issues regarding adoptions and placement of children.

When I came home to Greenville, my first job was with the United Way Agency called Family Service Greenville, and I was the program director for their domestic violence program. And in that capacity, worked with women and children and sometimes their husbands in domestic violence situations and was called to Court frequently to testify as to family violence and Battered Woman Syndrome.

In 1986 I went to private practice with Behavioral Consultants. This was a group of clinical social workers who began the practice. We brought in psychiatrists and psychologist and we worked in a multi, multidisciplinary approach to mental disorders, behavioral disorders, and emotional disorders. And, again, during that time, continued to testify in both Family and Criminal Court in different types of cases.

In the early 90's I got some additional training under Doctor Edwin Copeland in neurological problems that affect how children and adults learn and problems that they have

with learning, and began a solo practice, which I maintain until this day.

Q All right. And what professional organizations do you belong to?

A I'm past president of the South Carolina Chapter of the National Association of Social Workers. I served as president twice in the South Carolina Society for Clinical Social Workers, and I think I mentioned I've served on the board of the American Board of Examiners in clinical social work.

Q All right. Have you received any awards or recognitions for your work in this field?

A For the State of South Carolina, been social worker of the year. The Senate and the House passed motions recognizing leadership in the field of social work. The Clinical Society awarded me leadership in the field awards, and recognitions from the Thirteenth Circuit Solicitor's Office for services rendered on behalf of victims, and alumnus of the year at the College of Social Work at the University of South Carolina.

Q All right. You indicated that you conduct bio, bio-psychosocial assessments, bio-psychosocial assessments in your private practice and what is that?

It's always been difficult for me to say.

A The bio-psychosocial assessment is a clinical social

work method of gathering extensive information on an individual in an effort to understand how they came to their current circumstances. It is conducted through clinical interviews, both with family and non-family, through a review of as many documents as can be obtained both on the person being assessed and family members. It is based on consulting with other professionals who've been involved with the individual being assessed, and also reviewing, a review of their records if they created any records.

It involves a review of research and studies and literatures to see if the, the information gathering and finding is, relates in anyway to the findings of researchers in the same areas. It involves visits to the community. It involves the creation of visual aids and these are used both in private practice with private clients by clinical social workers to help them understand how they arrived at their current circumstances, to help them gather resources, and to plan treatment. In a Court case, the information is used to assist the Court in the disposition of the case.

Q All right. And even though you're not a doctor, are you able to use things like cancer or head injuries, so forth, in your evaluations to make any diagnosis?

A We are. Again, we work in a multidisciplinary approach. We refer to doctors, doctors refer to us, and we all share that information and take it into consideration

especially if there are medical conditions that affect behavior.

Q And what is the purpose of conducting this assessment?

A Well, it's not the purpose of the assessment to make excuses for an individual or make excuses for their behavior, whether it's a private case or, or a Court case. The purpose is to try to come to some understanding or to shed some light on the behavior and how that person came to their current circumstances.

Q All right. When we went back to the, to the long word that we used, just break it down into what they mean?

What is the bio part of it mean?

A Well, again, this refers to any conditions that would come under the heading of medical. They're certainly some mental health conditions, certain types of depression, and other disorders that have medical dynamics, physiological, biological dynamic. We are not allowed to prescribe drugs. We are not trained medically. But we are trained to talk to doctors, to read their records, to consider their findings, and to factor those in as part of your assessment.

Q All right. And what is the psychological part of the assessment?

A Ph.D. psychologists are especially trained in advanced psychological testing. They're allowed to do types of testing that other professionals are not trained or allowed

to do. And so, again, in a multidisciplinary approach, we refer to psychologists for testing. We meet with them. We talk with them on the phone. We ask for their opinions. We want to know what their findings are, and if those, in anyway, relate or helpful in understanding our client. And, so, again, we're factoring in their test results or what their findings are.

Q Okay. And, finally, what does the social part mean?

A The social part has to do with the environment. It has to do with family systems. It has to do with child development. It has to do with all the experiences in a person's life that may have impacted on them in some way. And, so, it includes areas such as education, socioeconomic levels, race, gender, culture, any of the dynamics or events or experiences that impact on our lives everyday and those of our family members going back, you know, not just your own generation, but looking at any patterns in other generations as well.

Q All right. And do you go back in generations, in prior generation to help make this assessment?

A Yes, you do.

Q Okay. And why is that?

A It's very much the same as when you go to your family doctor and the family doctor wants to know who in your family has had heart attacks or strokes or any other medical

conditions. They know that certain patterns run in families and can place some members of the family at higher risk to also have those conditions, and we do the same thing in mental health. We know that there are patterns of behavior that tend to run in families.

So, we are looking at those prior generations, especially down to the parents, and then the current generation, how it is affected them, and how it's affecting their parenting of their own child at this time.

Q Okay. What is background and, and childhood history of parents matter to, to you?

A Well, we don't grow up in a vacuum. We're shaped, to a large degree, by our parents, by the experiences they had growing up, by how they were parented, any events in their lives that may have influenced their own ability to parent. And, so, looking at their lives and who they are when they begin to have their own children is important in terms of, of looking at the individual who's being assessed.

Q All right. And in addition to that, is it beneficial to interview neighbors, coaches, teachers, and of that type?

A It, it is. The assessment includes non-family as well whenever non-family can be located and they are willing to speak about that person. And as you mentioned, teachers, coaches, friends, neighbors, others who knew the person being assessed.

Q All right.
A As well as other professionals who've had some interaction or to review their records.
Q Okay. Why do you review records?
A We're trained, in clinical social work, to rely on one, one, more than one source, to rely on more than the person being assessed and documents are especially important in that those that were created earlier in a person's life, earlier before they have come to a crisis stage gives you a, a slice of that life, gives you a view when there was no investment in the future, there was no investment or knowledge of what those records would mean at a later date. So, they seem to carry them with a bit of, of, maybe less bias because they were created long before the event that's being assessed.
Q All right. Do you also try and attempt to visit the community, and, if so, why?
A The, the importance of the community is that for children whose families are failing, the community is often the last resort. The kinds of programs they have, the organizations that exist, the kinds of things a child can be exposed to in the community can often be a strength. It can be a positive in their lives. It can make a difference in their lives.
Q Okay. Do you review literature and research as well in

your profession?
A Yes.
Q And why do you do that?
A As you were doing the assessment and gathering this information and beginning to identify patterns and to see things, it's important to understand if others, not involved in this particular, with this particular person or this particular case, have done studies, done research that described this behavior and what their findings are, and if there is any consistency information, guides, or leads as to other places one might look or other things one might consider when looking at that individual.
Q All right. And in trying to illustrate or, or, or give us all the benefit of that background, do you sometimes do visual aids?

Do you find them to be beneficial?
A Yes, both in my private practice and in Court I use visual aids. The information that is being gathered is often voluminous, and it is helpful to find a way to condense that information in a way that is easily understood either by your private clients, and easily explained in the courtroom because professionals are taught a lot of jargon and, and taught a lot of terms and language that is often difficult or confusing. So, the visual aids are an effort to take that information and condense it in a way that's

better understood.
Q All right. And how do your assessments differ from psychologists and psychiatrists?
A Well, we're each trained in a different way. Doctors have medical training. They have, can prescribe medicines. Psychiatrist often do more of the mental status exams. There, their assessments tend to be briefer and psychologist, again, conduct testing and are more focused on testing results. All of us are trained to do therapy if we are, so choose to do therapy. But the social, clinical social worker is trained to gather more background information to have a broader more comprehensive view of the individual.
Q Have you been qualified in State and Federal Courts to do this assessment and give your opinions?
A I have.
Q In which states?
A South Carolina, Georgia, Florida, North Carolina, Virginia, Tennessee, Alabama, Texas, California, and Alaska.
Q Okay. What other types of cases have you testified about?
A In Family Court I have testified in custody cases, adoptions, divorce cases, cases regarding child abuse and neglect, and then in Criminal Court as well, domestic violence cases, sexual assault cases, non-capital murder,

those types of cases.
Q Are clinical social workers trained to assess both victims and offenders?
A Yes, they are.
Q And why do you do both?
A It is a part of the history of the profession of social work, going back to the late 1890's, that they worked with attorneys and worked with the Courts both in the areas of victimization and corrections. Both with victims and offenders. And that has continued to be part of that history since that time.
Q All right. Jan, have you ever turned down cases?
A Yes.
Q And why?
A Most frequently the reason I turn down capital cases is that I'm contacted too late. These assessments take a significant amount of time. I am usually called in eight months to a year prior at least. And, so, at least two or three times a month I get calls from attorneys whose cases are going to trial in two weeks or two months, and you simply can't complete one of these assessments in that short a period of time.
Q Were you asked to conduct a bio-psychosocial assessment on Marion and his family?
A I was.

MR. VIETH: Your Honor, I would ask that Ms. Vogelsang be qualified as a clinical social worker with expertise in bio-psychosocial assessments and giving her opinions based on those findings.

MR. ZELENKA: No objection.

THE COURT: So qualified.

Q Ms. Vogelsang, did you conduct a bio-psychosocial assessment on Marion Lindsey?

A I did.

Q And was this assessment conducted in keeping with clinical social work standards?

A Yes, it was.

Q Could you list who you interviewed?

A I interviewed Marion Lindsey, Virginia Lindsey, Bessie Smith, Steve Pilgrim, Timothy Sims, Patsy Burton, Robin Pilgrim, the former investigator, Lenora Topp, Rod Tullis, and among the professionals, I spoke with Margaret Melikian, and Tora Brawley. And in addition to those interviews, read testimony of some of those same people and then I've been in the courtroom the last two days to hear the testimony of some of those same people.

Q Okay. Could you list the records you reviewed?

A I read Lenora Topp's records and Mr. Lindsey's mother, Virginia, I saw her medical, some of her emergency room records, and her prior criminal domestic violence offense.

Bessie Smith, I saw her mental health records and her prior I believe CDV offense.

Steve Pilgrim, I saw his mental health records, his priors, and his medical records.

Tim Sims, Timothy Sims, I saw his birth records, school records, and his Department of Correction records.

Robin Pilgrim, I saw her medical records, her prison records. Actually I visited her in prison and I saw her mental health records from Patrick Harris.

I saw a Court order regarding Paul Frederick Lindsey, the brother who drown at Jocassee, declaring him dead after his body had not been recovered for, for quite a period of time.

Mr. Lindsey, Marion Lindsey, I saw a document where he applied for legal aid. I saw his medical records, his mental health records, his school records, his Department of Corrections records regarding Stafford Wilkins. I did look through some of his Department of Corrections records looking to see if there was any history, prior family history prior to the crime, his priors, and his suicide letters, and I did review the letter that Mr. Zelenka provided this morning that he had written to the victim's mother, to Mrs. Wright.

I saw the William Hall records, and, again, I was interested in the social work history that was done in, at

William Hall. Even though that record was post-crime, the social work history does provide some family history. So, I saw that and I looked at Doctor Narayan and Musick's report to see if they had collected any family history prior to the crime.

I, I think that is it. I mentioned Marion's mental health records, records. Let me just make sure one second.

(Pause.)

A I think I mentioned that I read the testimony of many of the family members and Mr. Burton and also the testimony of Doctor Melikian.

Q Okay. Did you consult with any professionals?

A I consulted with Doctor Melikian and Doctor Brawley and, again, read the records from William Hall.

Q Okay. Did you review research literature or other studies that related to your findings?

A I did.

Q Did you visit the community where Marion lived?

A I visited parts of that community, yes.

Q Did you create visual aids to help demonstrate your findings?

A Yes.

Q Did you create a family tree that demonstrates who is in Marion's family?

A Yes.

Q Is this visual aid typical of the type of demonstrative clinical social workers use in capital trials?
A It is.
Q And Ms. Vogelsang, you explained earlier that patterns of behaviors in family systems can be passed down from generation to generation, is that correct?
A Yes.
Q And does this family tree also show any patterns of behavior you found in that family?
A And I think maybe you -- did you give all these out so that everybody has it?
Q Well, I was gonna ask if that's a yes, and then I was gonna go ahead and ask---
A Yes.
Q ---to go ahead and make these as an exhibit.
A Yes.

MR. VIETH: Okay. Your Honor, at this time there are exhibits she made. Consistent with her testimony, we'd like to offer them.

MR. ZELENKA: To introduce as exhibits?

MR. VIETH: As exhibit only, uh-huh. (Affirmative).

MR. ZELENKA: Well, I don't know what that means.

MR. VIETH: Well, for the Court's use. It's mainly, mainly---

MR. ZELENKA: As demonstrative evidence?

MR. VIETH: ---for the -- demonstrative, right.

MR. ZELENKA: Cause I have an objection to the genogram.

MR. VIETH: Okay. When we get to that part of it.

MR. ZELENKA: Okay. Just want to the make sure that -- I've got a copy of it.

Q All right. Would you briefly describe who is on this family tree?

A The easiest way I think to adapt visually to this family tree is to start with Marion Lindsey, who is sort of down at the bottom in the center of the tree, and from Marion you can see his wife, Ruby Nell Wright Lindsey, and his two children. And then just going up from Marion, it's, it's easier to go on up and identify the generations.

To his left you see his mother, Virginia Pilgrim Lindsey, and to the right you see his father, Leon McDowell. Going up to the next generation you see his grandmother, Ruth Martin, and his grandfather, Smiley Pilgrim, and then going up above that you see his great grandparents, who are Porter Pilgrim, Bessie, Doc, and Mattie. We don't have a tremendous amount of information on that generation as you can see.

Coming back down to his grandparents, Ruth Martin and Smiley Pilgrim, you see, from left to right, his aunt and uncles that you've heard about in the testimony. There's

Bobbie, Lizzie, Bessie, Paul, Robin, Willie, Steven, Jimmy. And looking to the left of Marion you see his three brothers, who are half-brothers, by his mother and Claude Lindsey. That would be Fred, Vanessa, and Claude. And then to the right you see his half brother, Timothy Sims, by Timothy Sims, Senior.

Q Okay. As you conducted this family history, did any patterns appear to emerge?

A The patterns are identified down on the left side of the page, and wherever you see the dark blue, that would indicate the people who were most frequently in Marion's life and in his home. Under orange---

MR. ZELENKA: Your Honor, I would object to that testimony. Hearsay under 801. She's asserting it for the truth of the matter asserted. It's not admissible.

MR. VIETH: Your Honor, I think the expert can gather the information, whether admissible or not, to render an opinion.

THE COURT: Since she is an expert, I'm gonna let her go forward and there's not a jury here. It's my decision, and I'll sort it out.

MR. VIETH: Yes, sir.

Q Go ahead.

A At any place on the family tree that you see the color orange it would indicate sub, a pattern of substance abuse,

possession, or distribution.

MR. ZELENKA: Your Honor?

THE COURT: Yes, sir.

MR. ZELENKA: Just to clarify, I would have an objection to, to any of the designations that she has on the particular family tree that she's pointing out as hearsay. Under Rule 801, and more specifically, under 803(19), which specifically speaks of reputation among personal family history, that those matters also are not admissible specifically under South Carolina Rules of Evidence.

MR. VIETH: Your Honor, we would cite Rule 702 at testimony by experts and the basis for opinion testimony of experts as 703 to come in. Also, judge, as you're familiar with the Council case, which is an outstanding case that deals with the importance of a social history to be part of a case. We would hand that case up if, if the Court needs to review as well. But specifically 702 and 703. It's certainly, certainly extremely important to get in a social history through the mitigation expert.

THE COURT: I'm gonna overrule the objection. But like I say, I will be careful of how I weigh this. But it is a social history and also we got an expert witness who has been qualified. I'm not gonna give it that strict an interpretation to, to sustain that objection.

Go ahead.

Q Okay. All right. Go ahead, Ms. Vogelsang.
A Another pattern in the family that's indicated with the color red are any mental, emotional, and behavioral impairments that were discovered during the assessment. Green makes reference, mostly by lines, to sexually inappropriate behavior in the family, and the yellow's indicative of charges of criminal domestic violence, assault, or having served time in prison.
Q Okay. Ms. Vogelsang, you stated earlier that family history has an impact on individuals. You don't grow up in a vacuum I believe you said.

What did you learn about Marion's family history?
A Well, the most significant thing that I learned about Marion's family history was, again, referring to the family tree. The aunts and uncles that he lived with and was brought up with and their history. In other words, when Marion was born and he came into the world and into this home, who was there, who was present, and these were aunts and uncles who had had very difficult childhood themselves, and I will not belabor that history again since it's been heard for the last two days.

But there were, of course, the issues in the family of poverty. I think this is what would of been described more like a share cropping family. They were working on the land of, of other landowners, and in that, in that environment,

we see the first indications of abandonment and desertion, and this becomes the important pattern, the important thing as we look at this family. With Smiley Pilgrim leaving a woman who was in poor health with eight children, and then the struggles that they had after that with food, with shelter, with clothing.

The one story that stands out in my mind that sort of distinguishes the type of poverty that they experienced, and, and this is important when we talk about poverty because millions of people come out of poverty and lead healthy productive lives. They are safe people. They don't break laws. So, we don't want to categorize everyone whose grown up in poverty in this way.

But this was a degree of poverty where literally there were only three spoons to eat within this family, and, for me, that was the information that helped to distinguish that this was, in fact, abject poverty, that they did go cold, that they did go hungry, that the children got up in the morning early to see who could be the first to get one of those spoons and eat first. So, when we're talking about the poverty that was described, I would put it in that area of abject poverty.

The other thing that I don't think was mentioned in the testimony is their grandfather, Porter Pilgrim, did, was sexually inappropriate with some of the boys in the family.

We heard about Paul and Willie and how extreme their behavior was, and these were the two boys that were most often molested by their grandfather, Porter Pilgrim.

MR. ZELENKA: Your Honor, I've got to object that. She's -- that's clearly hearsay.

THE COURT: I'm gonna sustain the objection unless she shows that that was applicable to Marion Lindsey.

I think this is getting way, way too far, counsel.

A I -- that's the extent of the information I had gathered that I did not hear mentioned for the last two days, and the -- one of the purposes of the assessment is, is to explain the impact. And, for me, the significance is to understand what had happened to these aunts and uncles, that when Marion came into the world, when he came into this home, these were the people he was living with. These were the experiences they had had and who was there in this home, either the aunts or the uncles, who was there who had the skills, who had the education, who had the understanding or ability to get him through the most basic of developmental stages. And, in my opinion, some of the experiences that have been described regarding these aunts and uncles played a significant role, if not the most significant role, in the kinds of things that Marion experienced growing up in that household.

Q Okay. What did you learn about his mother?

A Well, again, she grew up in this environment. She herself was abandoned by her father, and then, again, this becomes a theme in the family. She was raised by a mother who was often sick and just not able to care for her children. And, so, that brings into question what sort of parenting skills Virginia had when she began to have children of her own.

Q Well, what, what do you have about the father?

A With Mr. McDowell, we are now, I think, looking at the fourth person, significant person in Marion's life who abandoned him, was not present for him, never acted in his life as a father, was not living with his mother in the home, and, in fact, had a wife and other children. And so, for me, that is the, the fourth person that we begin to see in this pattern of abandonment.

Q Okay. When was Marion born?

A He was born . .

Q Where?

A At Spartanburg Regional Hospital.

Q Okay. Can you describe what you learned about the circumstances in his family before his mother met his father and became pregnant with him?

A Well, his mother had been married to Claude Lindsey. She had had three children with him. And according to the records, she had had five pregnancies, including two

miscarriages, between 1967, I believe, and 1972. And then Marion was born in 1973. And, of course, again, she had suffered the loss of this daughter at the age of seven months. And even though this was a, a few years before Marion was born, she never had intervention, never had any treatment, any kind of grief counseling, and just sort of dealt with that loss on her own, and, and it changed her in a number of ways.

Q Okay. Can you describe what you learned about Virginia following the death of Vanessa?

A Well, she again, changed. The children were left with her mother. She did work. But she also was still a young woman. She would go out and party. She had a number of boyfriends. She was not home and present to, to pay attention, to be involved as one would want a mother to be with her children.

Q What did you learn about Virginia's behavior and how it affected Marion?

A Well, once Marion was born, he was largely left to his grandmother, and he was left, again, both with an absent mother and an absent father and he was left in the presence of these aunts and uncles who were living in the home. And, so, the impact was that there was no one present that I could identify who could help him as he began to go through developmental stages. Certainly his Uncle Steve was the

hardest working, the most steady. He cared very deeply about Marion. But he really was one of the sole supports of the family. So, he was not there a lot, especially during the day, as Marion was growing up.

Q Okay. How did Virginia support her children?

A She worked in the mills and worked second shift and sometimes third shift.

Q Could you describe the living conditions?

A The living conditions in the home were crowded. There were, at times, ten people living in the home. I think one of the people who had not been mentioned yet was Mr. Sims. Perhaps he was mentioned. But I think I counted, given, at any given time during those early years up till around ten or eleven, twelve years old, there were approximately ten people in the home. For many years it was a four bedroom home, and the, the conditions were not good. There was not indoor plumbing. There was not heating and the neighborhoods were considered to be rough.

Q All right. Well, were we able to attend or were you able to obtain some photographs in your packet?

A Yes.

Q Okay. And can you identify what the photographs represent or what they, what they are?

A This particular photograph that's the next item in the packet was one of the only photographs the family had

because Virginia lost all the family pictures and albums. But she did have this particular picture and what you can see in the background are two houses, and that's what I had been asking for is did they have pictures of, of any of the houses they lived in, and they are unable to identify the three older men who are in this photograph. So, I don't know who they were. Just people in the neighborhood. And then to the left is Marion and he's holding Tim's head, I guess, to try and get him to look at the camera.

Q Okay.

A And, and I would add that the items in this packet are the kinds of things that I would have produced and used at trial. They would of been blown up on poster board or mounted on poster board or if the courtroom had monitors for the jurors and the judge, then they would of been put on Power Point. But they would of been where everyone in the courtroom could see them clearly.

Q Okay. And the other photographs?

A There are two more photographs of Marion, and, again, if they're available at trial, we try to have a photograph for the developmental stages for various ages. But these were the only ones that Virginia had and he looks in these pictures to be around between four, five, six years old.

Q Okay.

A And on the one, you can see the, the mother, Viriginia,

was showing me this one because of the stitches. She happened to have this, these two photographs, but there was stories about him falling a lot and having to have stitches in his head, and she, she had that photograph of him.

Q All right. You, you reviewed the transcript of the trial to find whether any pictures whatsoever of Marion to humanize him at all were presented to this jury?

A Yes, I didn't see anywhere in the transcripts I was given where visual aids were used.

Q All right. Could you describe the medical care that was given?

A Well, I think Marion received pretty traditional medical care. I didn't see his medical records. He saw Doctor Henderson and it appears that whenever there were injuries he was taken to the hospital. At one point when he was very small, because of a lack of resources in the family, for example, when he was run over by the car or when Vanessa was, was killed in the motor vehicle accident, early on in their lives it appears that the resources simply weren't there. They would, they would go to the police department first, and then the police would help them get the children to the hospital. But later on it appears to me that Marion received more traditional medical care.

Q Did you learn about the injuries he suffered as a small child?

A Yes, the, the car accident, the ingestion of kerosene, and then I think around the ages of five and six they were living at a house where he was often falling down or falling off the porch or down the steps.

Q And how were they treated for those injuries?

A Well, the, the early injuries, as I said, required them to find a way to get to the hospital, and they typically went first to the police department. But later Marion received more traditional care from Doctor Henderson and then hospital care in Spartanburg.

Q Ms. Vogelsang, you do -- do clinical social workers receiving training also with child development?

A They do.

Q And what do clinical social workers mean when you talk about child development?

A When we're trained in, to understand child development, we're trained to look at the stages that children go through and the kinds of skills that they have to master in order to come out on the other side as an adult who is safe and healthy and productive. We know that most parents do an amazing job of this without any kind of degrees or training, any kind of Ph.D.'s in childhood education. They simply, through their own family, through their friends and neighbors, through their churches, through parenting classes, through television and articles, simply pay

attention and manage to do a fairly decent job of getting their children to adulthood.

If they have children with any kind of special needs or special situations, it requires even more of the parent to be paying attention and to not be neglectful of these stages, and, of course, the basics that are required are food, clothing, shelter so that a child can come into the world with a sense of trust that their most basic needs are gonna be taken care of as they begin to move into all the skills that they have to learn beginning with walking and talking, toilet training, and all of those early activities that they have to master.

At a certain age children begin to be able to be reasoned with, and this is a critical stage when parents start to pay attention to things like choices and responsibilities and teaching consequences. Children learn these things through play. They learn it through toys. They learn it through interactions with other people. But it is one of the most important things that have to happen for children is they master these stages.

As they get older and engage in more complex relationships, they have to learn how to get along with people, how to share, how to learn restraint when others act a certain way, and most importantly, they have to learn how to deal with rejection. How do you act, how do you behave

when somebody doesn't want to be around you or doesn't want your friendship anymore or doesn't want a love relationship with you anymore.

Again, more complex activities in these stages as children grow are forming your own identity, being part of the family, being part of the family system, but developing your own identity that is separate and apart from the family, and then, finally, one of the most important skills to be mastered during the developing years is this is the skill of resilience, to be resilient in the face of adversity.

Q Okay. Was there anyone in the home to help Marion get through these developmental stages?

A No.

Q And why is this significant?

A Well, it leaves a child guessing at what is right. It leaves them guessing at how to behave. It leaves them confused about some of the stages of development. There are things that they can pick up in different places. They can pick up some things in school. But the most significant thing is that if a child misses one of these stages of development, it is very very difficult to go back and pick it up. It is hard to recoup and to go back and try to master these skills later in life.

Q And do clinical social workers believe that young boys

need a strong adult male in their lives?
A Yes.
Q And why is that important?
A There comes a time, developmentally, when little boys begin to move away from the female figures in their lives, and to mimic and copy and imitate males, and it's part of the process of growing and becoming an adolescent and then become a young man. And, so, if you have strong caring involved male figures who expose you to healthy activities, to sports, to, to the kinds of things that are legal and are safe and are activities that, that you can learn from, then you're going to have a young man who's at much less risk to end up in trouble.

Studies by the United States Department of Justice on neglect show that neglect is one of the greatest indicators of juvenile and adult incarceration. And, so, when you have males paying attention to young boys, they are at less risk to end up in illegal activities. If they are not surrounded by positive male figures, and, in fact, they're surrounded by more negative male figures, then they are going to copy and imitate that behavior usually.

Q Okay. Jan, what is resilience as you're using there?
A Well, when we talk about resilience, we're talking about how, how we learn to face adversity. The -- it's important for children to learn and to know that no one gets

through life without bad things happening, and some children seem to come into the world with a little more resilience than others. But what we have learned is that there are many things in life, throughout childhood, throughout the developmental stages, that assist children in becoming more resilient, able to face the bad things that happen, and that that resilience can make all the difference in who they become as adults when they're under tremendous stress.

Q All right. And you have in part of your pack, I believe, two pages dealing with resilience when childhood and homes that fail to produce resilient children?

A Yes, I do.

Q And were there any strong male figure influences in Marion's life?

A There weren't. There weren't. And if you look at the development of resilience in childhood, and the things that are required in the home, this is one of the ways of looking at Marion's home and the impact that this had on him. For example, under the development of resilience, you need the unconditional physical and emotional love and verbal affection. I think that the people in Marion's home loved each other and cared for each other, and if you were to ask them they would say that they did. But the question is how was it expressed in the home.

One of the most important activities in building

resilience is, in a child, is using calming words, but teaching that child how to have an inner voice that helps them to calm and soothe themselves. And if they can learn to calm and soothe themselves, then they're going to be able to restrain their behavior in difficult circumstances.

And then if you go down this list and you look at some of the elements that have to be in the home, modeling behavior that communicates confidence, optimism and results, labeling feelings, and helping a child to recognize those feelings, using language that helps a child face adversity, preparation for adverse situations.

And so, when I look at this, I ask myself how is Marion Lindsey prepared, as a child, to face a lot of the adverse situations that were going on in his home especially in regards to violence. Teaching children how to problem solve. It seemed to me one of the most significant behaviors in this family was that no one saw any options for resolving problems in relationships other than violent options. That seemed to be the only options anyone felt were available.

Providing comfort and encouragement in stressful situations, I think this was a stressful home. It was not a stable environment, and there was no help managing feelings or impulses.

And, so, then after you look at whether or not certain

conditions are present in a home, then, or what needs to be present in a home, then you have to look at how homes failed to produce resilient children. And, so, in going down this list and looking at this list, I was trying to see what, how, how Marion's home failed in that regard.

Lack of guidance and mental health intervention. While there was mental health intervention, it was short term and ineffective and recommendations were not followed. There was a tremendous amount of divorce and separation and fractured relationships in this entire family system. There was abuse in this home, and I think for Marion, it was more of the emotional abuse and neglect. Abandonment, there is a pattern in this family that goes to his mother, goes to his father, and it is a pattern that runs throughout this entire family system where the care of children is not the primary concern in the family.

There was not homelessness. His grandmother was disabled to the extent that while she tried to help Viriginia with the children and all her children, it was often difficult for her to do so. She had a number of medical conditions. Of course, immigrant status does not apply in this case.

There certainly was a lack of role models. Marion did grow up witnessing violence. There was a lack of consistent caregiving. It is hard for me to imagine how trust would

have developed in this family when the pattern of behavior is to have relationships, to be involved in relationships with people who seem to also be having other relationships. And, so, there seemed to me to be a complete lack of trust and inability of trust in relationships in the family.

Worry about violence in the home. We know, in hindsight, from Doctor Brawley that there was probably some impaired cognitive functioning with Marion. We don't know the ideology or how far back it goes, but that it was there.

Inability to deal with aggressive feelings, this was certainly a major pattern of behavior in this home. They dealt with aggressive feelings with guns and knives and fists. So, there wasn't the talking. There wasn't the calming. There wasn't the soothing.

Repression of feelings, you can certainly see in the mental health records where the professional staff felt that there was more going on and more that needed to be explored, but the information from the family is everything will be okay. We need to, we need to leave and be discharged.

The sense of helplessness. Children who grow up in these kinds of homes do feel powerless and do feel helpless and they know that at the age of five or six they can't pack their bags and walk away. There's nobody coming to rescue them. So, they learn to accommodate themselves to these, this environment, to these activities, to these behaviors

because they have no escape from the time they're young, and certainly this family was die, defined by poor problem solving skills, and, again, inability, the inability to consider other options regarding relationships other than violence.

Q Jan, in this regard, were there any strong male figures or influences in Marion's life?

A Not in the home. Not in the home.

Q Okay. Was there anyone?

A I think that Mr. Burton was the one person whose efforts could have made a difference if Marion was living in his home. His efforts and that of his mother were admirable. They were, I think, beyond the call of duty in their care and their concern. I think that Mr. Burton's influence may help explain, in the school records, between the second and the sixth grade, when you look at descriptions of Marion's behavior, and you see courtesy and respect, and respect for authority, and a number of positive blocks that are checked in, in regard to his behavior in the classroom. I wonder, if it wasn't, it was, in fact, during that period of time that he was exposed to Mr. Burton.

Q Do you have an opinion -- go ahead.

A I'm sorry. Marion was living, from the day he was born, he was living everyday, every week, every evening, every month, every year with this family system in which he

was witnessing a constant threat of harm. The type of behavior that makes children very anxious. He was witnessing how they were dealing with problems, and while I think Mr. Burton tried and did many good things for him, it simply was not enough to compensate for the time he was having being exposed to something else that was not as positive.

Q Okay. So, with regards to building resilience, was Mr. Burton able to do that, in your opinion, with Marion?

A I think that the good things Marion tried to be in life, some of the things we heard over the last two days, his dream of having a family, his wanting to have a different kind of family, I think that those things probably came, those hopes and dreams and those attempts where unfortunately he was guessing at how to do that. He was thinking that giving things, material things, giving things to his wife, gives things to his children, that's how he thought you could make a family.

But I think when he went to the Burton's house, when he spoke to them, when he saw how they lived, I think that gave Marion hope that he could somehow provide that without really having the skills that you have to learn day after day after day and not the ones that he was being exposed to week after week and month after month and year after year. But whatever strengths Marion had, I would suspect that he

had learned from the Burton's.
Q Okay. What about the community that Marion lived in.
A Well, you know, Marion was born in '73, and it was during the 80's when he was getting around 12, 13, 14, that especially the cocaine and crack business started invading small communities. It was almost as though the drug dealers were dropping off of 85 and dropping off of 95 and dropping off of some of the major corridors in this country. I was working in Watts and, you know, the early 80's when I saw all this beginning to happen.

And, so, when he gets up around 11, 12, 13, he begins to see what's going on and he begins to notice. He begins to see his family members dealing in drugs and using drugs. And, so, just like many small rural communities, and, and also here in Spartanburg in the neighborhoods he was in, he began to be exposed to that, the drug culture that was growing up in certain neighborhoods.
Q All right. And why is the health of the community that someone lives important?
A Well, again, as I said earlier, you know, for some children, when everything is going wrong at home, when everything is as it was in Marion's home, you hope that there is something outside the front door that can make a difference. Whether it's Scouts or sports or church or community programs. And there was, in one of the

neighborhoods, a community program that might have been helpful. There were programs available that could of helped Marion with some of these learning problems. Certainly with some of the mental health problems. But the family just simply did not avail themselves of those services. But those are the ways that the community can make a difference.

Q Okay. What was the age of Marion when he started school?

A He started school at six.

Q All right. And what did you learn about his schooling?

A The records that I have do not demonstrate, for me, the kinds of problems that the mental health center, who evaluated him, seemed to have the impression that he had. He failed the first grade, but there's no indication that he was misbehaving or rocking the boat or not paying attention. So, we don't really know why he failed the first grade.

In hindsight with Doctor Brawley's testing, we know there were problems. His mother says he had speech problems and was in special classes. From the second grade to the sixth grade, his record looks relatively clean. Again, no indications of fights or disrupting the classroom or having to be sent to the principal's office. I think he gets in trouble one time for slapping a little girl, and then he got in a wrestling match, match with a little boy, and the little boy tossed him over his shoulder and it was Marion

who had to go to the hospital and have surgery on his elbow. I believe there was another incident where a little boy screamed a racial remark to him, and he got in a fight over that.

But I don't see, in the school records, the kinds of behaviors that would say that this was a child with a conduct problem. Plus, you have this whole block between the second and the sixth grade where he's getting average to above average on marks on behavior. In the eighth grade, which correlates with the time when Marion hit the streets, it correlates with Mr. Burton no longer being in his life, it correlates with Virginia going to third shift, it correlates with absences from school, it correlates in the period of time when he is noticing that his uncles are driving cars and buying jewelry and having girlfriends, and he is being exposed to what cocaine looks like, what crack looks like, and he, in my opinion, just simply succumbs to the streets, that this life that he has had has finally claimed him.

And he is getting ready to repeat the eighth grade for the third time. He's being suspended. He's now getting into fights. He's becoming a street person. And, so, by the ninth grade, he was placed in the ninth grade, he's now up to 16, 17 years old, certainly not wanting to do the eighth grade again, it's very embarrassing, and, so, he

drops out of school.

Q Okay. Did he get any help with homework from what your investigation revealed, found?

A No.

Q Okay. Who would of been the one that could of helped him?

A The person who would have been the biggest help who was no longer in the home was his Aunt Robin. She's the only person in the family who graduated from high school. Aunt Bessie left. She got her GED. But she left to raise her own children. Aunt Lizzie really -- Aunt Lizzie had helped Ruth raise the kids when Smiley Pilgrim left. And, so, as soon as she was able to leave the home, she left the home. Robin traveled with a carnival at times. She would come back into the home. She, you know, have problems in, with crack, her crack addiction. So, this is the one person who had the intellectual level to try and help her.

She is the one person who helped Uncle Steve, and Uncle Steve had the least problems of any of the other children. She tried to teach him to read even though he had a hard time learning. But he relied on her. So, the one person in the home who might have helped just simply wasn't there.

Q And what about the uncles that he had?

A Again, nobody graduated. The uncles were in and out of prison. Willie went to prison for 15 years for beating a

man to death. Paul was getting in trouble with drugs and with violent behavior. Aunt Robin ultimately ended up in prison, which is where she is now.

There were family members having to get mental health treatment, Aunt Bessie, Robin, Steve, Uncle Steve. So, there just really was no one present in the home who could help him.

Q So, what did Marion do at night then?

A Early on, before he got to the eighth grade and hit the streets, Marion would often go to a neighbor's house when the chaos at his house became too much for him. He would go to a neighbor's house. His mother would sometimes get off work, pick up grandma, and they would go play bingo pretty frequently. He was lonely. He was scared. There, there was a threat of harm in the house most of the time, and he would go to a neighbor, and he would watch television with them, and he would watch his watch so he could get home right before Virginia returned from bingo.

Q How would you describe Marion's uncles' treatment of him?

A Well, I, I think, think those stories have really been covered well for the last couple of days. What I would add to it is that the stress of the constant threat of harm, even if they were not beating on him, even if they were not abusing him physically, things like throwing a child's pet

in a heater in a fire and watching it die, what does that mean to a child. That means if you could do that to the cat, you could do that to me.

Watching them hit their girlfriends, watching them fight with each other, seeing the power that they had, that constant threat of harm is thought to be just as powerful, if not more powerful, than actually being beaten yourself. And, so, I think it was this, this atmosphere that he was living in with this threat of harm, and when you have -- I have in the packet a list of some of the family members and some of the things they were charged with, some of the behaviors that they engaged in were criminal domestic violence, assault and battery with intent to kill. His mother, he witnessed his mother shoot at Mr. Sims.

And, so, when a child is growing up seeing this level of threat day after day, week after week, month after month, then certainly you are going to have a child who, under stress, does not know how to act, does not know how to react becomes extremely over-reactive, becomes anxious, and even his Uncle Steve, who he loved and most admired and most wanted to be like, even Uncle Steve had problems in relationships.

So, it seemed to me that, for Marion, there was just not a, an oasis. There was not an island. There was never a place of peace except when he would maybe go over to this

neighbor's house or be with Mr. Burton.
Q Okay. In looking at your list, I guess what, what did you learn about Uncle Paul?
A Uncle Paul shot at three cousins. He had criminal domestic violence charges. He was involved in drugs and he had spent time in prison.
Q That's Uncle Paul?
A Yes.
Q Okay. And what about Willie?
A Willie has been convicted of criminal domestic violence, assault and battery with intent to kill, and he has served 15 years in prison for assault and battery of a high and aggravated nature.
Q Okay. And what about Aunt Robin?
A Aunt Robin has served time for drugs, for crack, and she is currently serving time. She was charged with assault and battery with intent to kill, kidnapping, and robbery. I believe that those charges were lowered and she was given a little bit less time, including probation violation, but she's at Leath Correctional.
Q All right. Now, you met, went down to see her last week I believe?
A Yes.
Q Okay. Did Marion ever witness any violence from his mother?

A Well, you know, I, I would not classify Virginia as a typically violent, as a person, person who was constantly involved in physical altercations with people. But she had a very volatile relationship with Mr. Sims. They fought and argued all the time, and on at least one occasion Marion witnessed her pull a gun and shoot at him, and she didn't hit him, but she shot at him several times. And as the family members have admitted, they all had guns.

Q What did you learn about Marion's behavior during this early to middle school years?

Have we addressed that?

A I, I think we've thoroughly addressed that.

Q Okay. When did he begin having problems in school?

A Well, again, I think the serious problems began in the eighth grade---

Q Okay.

A ---when he began hitting the streets.

Q All right. And could you describe what you learned about Marion's suicide attempts at 15?

A Well, when he was 15, his brother, Fred, came back into the home and he was desperate for his mother's attention. He was also attention seeking from Virginia because she was not there much. And, so, he was jealous of the attention that Virginia was giving to his half brother.

They got in a fight and he went into the bathroom and

took, according to the records, I think somewhere between 45 or 50, maybe 60, over-the-counter medications such as Tylenol, Neuprin, that sort of thing. And at the hospital, he told him it was because his mother said that she didn't love him anymore, that she was gonna send him to a boys home, and that he just, you know, he got very upset, and that moment, wanted to take his life.

Those records also reflect that, on the one hand, Virginia is telling the doctors that he's been a relatively good kid, a relatively stable kid. Yet, the doctor is concerned with some of his recent conduct, fighting in school, that sort of thing. And, so, he is looking at conduct as, as part of what's going on.

Virginia talked to the doctor about Marion having a temper and having some temper outbursts. Marion told the doctor that he had wanted to give, you know, you know, he wanted his mother's attention. He was attention seeking. And like any 15 year old, he wanted to leave that place.

And so, Virginia, feeling that people stayed in that kind of setting would be thought crazy, thinking that they could take care of themselves, that it was not something that they couldn't handle, resisted the doctor's recommendations, and it's clear from the records that the doctors and the staff thought that further assessment and further treatment was needed. So, when they would not stay

at that facility, they recommended outpatient treatment, but there's no indication that the family ever followed up on it.

Q Okay. Well, as to the suicide attempt apparently described a gesture of some sort, is that significant to you in a clinical social work prospective?

A Well, it, it is because we take gestures very seriously. The word seems to imply that it's not important, but in mental health, whether we're in our private practices or a hospital setting, when, especially when a child engages in what is defined as a gesture, we're asking ourself a number of questions.

Why was this the only option that this child could consider.

Why would, why would they have not gotten attention from their mother in some other way?

Why would they not have learned how to do that?

Children and adults can accidentally kill themselves through what beings as a suicidal gesture.

So, we see it as a red flag. We see it as a behavior that requires more examination, digging deeper, looking into other layers of the family, but we can only do that if they agree to stay in treatment.

Q Okay. In your opinion, from a clinical work, clinical work prospective, Jan, what impact in Marion's home life was

on his admission for suicide attempt?
A I'm sorry. Could you repeat that?
Q Right.
My question to you is, in your opinion from a clinical social work prospective, what was the impact on Marion's home life on his admission for a suicide attempt?
A Well, again, getting back to this family system, Bessie, when she had conflicts in her marriage, attempted suicide and had to have mental health treatment.
Q Okay.
A Robin, when she had problems with drugs and was in conflict with her mother, and having to care for her mother, attempted suicide, according to records, and then family recalled a couple of other attempts. Virginia checked herself into the ER with an overdose during a conflict with Mr. Sims.
So, again, one of the dynamics that, that this mental health center did not have when they saw Marion, they did not have that kind of history. They did not know that, when under tremendous stress especially as it relates to relationships, that family members resort to feeling depressed, feeling like they don't want to live. And, so, they take something and, and they end up in a mental health setting.
Q All right. Mrs. Lindsey testified I believe earlier in

the week that there were recommendations made for that suicide attempt were for counseling and so forth.

Did she follow through with that for Marion?

A No.

Q Okay. Was that important, in anyway, to you?

A Yes. Again, if a 15 year old, you know, he, he -- the EMS was called. The EMS took him to the hospital. They gave him something in the ambulance to make him throw up, and, and the mental health center attempted a thorough assessment. They ended up with really no family history at all. So, they had very little to work with. Yet, they were still concerned enough to keep trying to talk to Mrs. Lindsey about some further evaluation.

MR. VIETH: All right. Your Honor, I've got a little longer to go.

Do, do you want me to keeping going and finish up?

I'm just checking your schedule. I'll be glad to keep going.

THE COURT: Go on for a little while longer.

MR. VIETH: Yeah, I'm fine to finish up. I just wanted to make sure you were okay.

Q All right. Are clinical social workers required to understand cultural issues in families?

A Yes.

Q And what is the practice of roots?

A Roots is a cultural practice that came to the United States, the southern part of the United States, with slavery. And while, during that period of time, the people who were brought here practiced traditional religion, they also practiced roots, and sometimes it was practiced for medical reasons. Sometimes it was practiced for good. Sometime it was practiced for evil. But it was a form of voodoo or black magic. It's called different things in, in different parts of the southeast and in the islands.

But it is the use of plants. It's the use of powders. It's the use of liquids to try and affect the lives of another person. If you are angry with someone or if you want something good to happen to someone, it can be used either way.

Children who grow up learning about this practice typically turn out just fine even if it's being practiced in their homes. Their parents explain to them that it's, it's part of their heritage, that their ancestors practiced it. They teach them how it was brought to this country. They teach them the role it played in helping them to survive when they had no other resources. And, so, those children grow up with a, an understanding of roots that is healthy.

Children who are growing up in homes where there is mental illness or there is violence or there is other chaos or confusing behavior are simply further confused by the use

of roots, and especially if it's being used to deal with problems in relationships.

Q All right. Did you learn about other family members affected by roots?

A Yes.

Q Okay. And you have an exhibit in your packet on that?

A I do.

Q Okay. And go ahead and reference that.

Tell us what you have there.

A This is part of a physician's notes from the treatment of Steven Pilgrim, who has been in treatment since the 90's for anxiety, depression, and panic attack, and posttraumatic stress disorder. And the doctor saw Mr. Pilgrim July 15th, '02, and it says I last saw Steven back in May. He had been maintained on Xanax one milligram QID. He continues to be quite anxious today and seems to be preoccupied with thoughts about somebody putting the root on him or putting something in his drink that will cause his penis to draw up inside him.

He actually has the idea that his wife is putting something in his food and says that almost everybody in his family believes in the root and root doctors. There is not much question that he is an anxious man, and I don't feel the Xanax is really covering him, but I do not plan to increase it at this time. We will maintain him on the same

dosage and plan to see him again in three months.

And, again, this is the uncle that Marion most looked up to, most wanted to immolate. He's a very nice man. But Steve has become so upset in a relationship that he shot a woman. It was only a flesh wound and nobody pressed charges. Almost every entry in his mental health records, which is just hundreds of pages, makes reference to the conflicts that he has with his wife.

And, so, again, that continuing pattern of just not knowing how to problem solve, not knowing how to get help, not knowing how to resolve these family conflicts that are such an entrenched pattern in this family.

Q Okay. Do you have an opinion how the roots affected Marion?

A Marion was very confused by the practice. I think, in the scheme of all the things that were going on in the home, this was just one piece of it. This was just a part of it. But like most children, and as I said, who are in a chaotic environment, who are in an environment that is confusing in anyway, the use of potents, the, the idea of some magical solution only confuses things for those children further, and I think they confused Marion.

Q Ms. Vogelsang, a clinical social worker is trained to examine neglect and emotional abuse?

A Yes.

Q Could you describe, based on that training, what you have learned about neglect and emotional abuse of children?

A Well, it, it is one of the areas, especially in Family Court, that is particularly difficult for professionals to describe and to substantiate. Physical abuse, sexual abuse, there's often medical evidence. There's bruises or there's lacerations. These are things you can photograph.

It's very difficult for professionals to describe and substantiate cases of emotional abuse, and what Doctor Garbarino, James Garbarino, who's a development specialist, refers to it as a psychological battering of children. And, so, he came up with a model to try and help us to describe what this is and what it means. And, so, one of the visual aids I would of presented in Court was with a few examples under each element of this model.

I, I tried to apply to Marion to show what we would be talking about when we talked about psychological, emotional abuse, and neglect in his family. And, so, if you look at the issue of rejection, which, which was part of a very strong pattern in this family in terms of how people reacted to rejection, so that when a child is small, he's treated and situated, his needs are not worthy of consideration. That's just a general statement explaining rejection.

And, so, as it applies to Marion's family, he's abandoned by his father. His mother is not involved in

important areas of his life. Parents do not work together in Marion's best interest. He watches brothers leave with their fathers and is left behind. These are some of the many examples that could be given about things that happened as he was growing up that brought him to adulthood with a fear of rejection and an over-reactivity to rejection.

The next one is isolation. The child is not exposed regularly to activities outside the immediate environment. And, so, with Marion, I pointed out that he had minimal exposure to church, to Scouts, and other positive activities. I think he tried to play football briefly. Nobody was coming to his games, and he got very unhappy about that and he quit.

Greatest exposure to negative behaviors within the home, which I have already described in detail, and then no exposure to positive relationships outside the home and community with the exception of, of Mr. Burton and his mother, which I talked about, and I, and I think his as close as possible relationship with his Uncle Steve.

Number three is terrorism and this has to do with the things children witness in a home that are not physical to them. In other words, this is not someone beating them or sexually molesting them or doing anything physical to them. But they are witnessing a threat of harm constantly within the home.

And, so, Marion witnessed his uncles fighting and beating girlfriends and wives. He witnessed his mother shoot at her boyfriend. He saw his uncles throw his favorite pet into the fire. All of these things are behaviors that would create a threat of harm for a child.

Under ignoring, the parents or adults failed to notice the child's needs and followed through with appropriate help, and in this family, there was just no understanding of his special needs for success in school. Ignoring the recommendations of doctors for mental health treatment, and the lack of protection and supervision from other adults in the home.

And then, finally, corruption, and for me, in this family, the notion of corruption is the most important, and it has to do with how a child is mis-socialized. Can a child be mis-socialized. Can they, through witnessing negative behaviors, violent behaviors, can they become socialized to do the same thing or mis-socialized, and can that lead to illegal behaviors.

He witnessed his uncles beat his girlfriends. He witnessed his mother shoot at her boyfriend's tires and at her boyfriend. He witnessed the uncles profit from drug dealing, and, again, these are just a few examples, under each category, to demonstrate the kind of psychological impact and the threat of harm, the power of the threat of

harm, and how it can, in fact, corrupt a child and mis-socialize a child especially if they're other elements present as well.

Q Okay. Thank you.

With regards to the drug environment of Marion that we talked about briefly, when did he begin selling drugs?

A You know, I, I had to interview and review records and talk to you-all and really think through trying to get a clear time line in my mind of what happens from the eighth grade on, and the best understanding that I was able to gather about Marion was that around the age, between the ages of 12 and 14, and, again, about the time he starts having problems in school, his role appears to be, to be more of one as delivery boy, courier, carrier for his uncles. In other words, he's -- I did not learn that he was out in the streets actually selling and dealing drugs.

He was certainly learning about it. He was certainly watching it. He was certainly aware that it was going on. He was participating, but it was more a, a case of him carrying the drugs to whomever his uncles had sold the drugs to.

Q Okay. And did this benefit him financially or any of his family?

A It did. Of course, there's not as much money in delivery or being a runner, I think it's called a runner.

I -- there's not as much money, but he used his money to help pay for his grandmother's medicine. He gave money to his mother and, and bought, you know, clothes and shoes for himself.

Q Not what you would say typical mafia drug dealer type person?

A No, no, certainly not at that age.

Q Did he complete school?

Did you find that he completed school or not?

A He dropped out in the ninth grade.

Q All right. From a clinical social work prospective, what is the significance of his school performance?

A Well, I, you know, in spite of the impairments we've learned about with Marion, I think he was a child with potential. With some extra help, with some tutoring, with special programs, with involvement by the adults in his life, I, I think that Marion had potential to get through school, to graduate, and, and maybe to do other things, to, to go even a little farther, if possible. But I -- those opportunities just weren't present.

Q All right. What did you learn that Marion had witnessed regarding the relationship in his life?

A Well, I, I think I've covered pretty thoroughly that, that most of what he witnessed during his developmental years was violent. He did not see relationships resolve

calmly. He did not learn options for resolving relationships. He did not learn how to control his impulses, how to restrain himself.

Q Okay. What was his relationships with girls or women before he became involved with Nell?

A His relationships were pretty erratic and chaotic at times. He had a very early relationship with a young woman who he was in love with. This was a crush, sort of puppy love early on. And his mom informed him that, that this young lady was his cousin. He did not know that and she insisted that they breakup. And at that time he became very depressed, very sad, very upset, and then we have the situation, at 15, where he goes into the mental health over rejection of his mother.

And then, when he begins dating, same thing. Whenever he's rejected, he becomes very upset, very over reactive, and then he meets this woman named Stephanie and has a relatively long term relationship with her. But that too ends up in a violent act when she shoots, he shoots her boyfriend or one of her past boyfriends.

Q And that's the Stafford?

A Stafford Wilkins, yes.

Q Okay. Did he go to jail?

A Yes, he did.

Q Okay. How old was he when he met Nell?

A He was around -- let's see. Twenty-two years old.
Q Okay. Can you describe his life with Nell?
A Again, the, of course, the bulk of my focus on Marion's life has been on the childhood issues and how he developed into who he has now become when he meets Nell, and at 22 I don't think Marion knows anymore about healthy relationships than he did before. And, so, he meets Nell and it, again, there is this incredible instability.

He's staying at Stephanie's and he's having a relationship with Nell, and he, he and Nell get pregnant, and he has a baby, and then he's living back with Stephanie again. And, and the whole relationship appears to me just to be a rollercoaster. They will have some good periods of time, more stable periods of time. He appears to me to love being a father, love having children. Yet, he and Nell will breakup and Nell goes to her mother and he goes to his mother and sometimes they both go to his mother and they both go to Nell's mother.

And, so, it certainly was not what we would consider a stable relationship. They fight. They argue. He has CDV charges. I found one conviction, but I think there were two or three times when the police were called, they were arrests that are on the record.

And, so, it seems to me that, from 1995 when they met, they're married in '97 when he got out of jail after

shooting Stafford Wilkins, and then from '95 on to the time of this crime, the relationship appears to me to be very conflicted in serious ways much of the time. But there are these, seemed to be these brief periods when they're getting along. They have another baby I believe in '99. Either '97 or '99.

In '99 they have a second child and Nell tries to go back to school. He tries to start his own business. He holds -- he gets jobs. He doesn't always keep them. They're one or two where it appears he was there for a year, maybe a little longer. He gets the jobs and then when he feels he can not provide all the things he wants to provide for the family, he goes back to dealing drugs where he can get the money he needs to provide the things that he thinks he wants his children to have, wants Nell to have, and wants his family to have. So, it's just a very unstable erratic kind of life from my prospective.

Q All right. And he ended up with two children from that relationship?

A Yes.

Q How, how was he as a dad?

A If -- all reports, as a father, Marion was a very good father. He wanted to be all the things that his father never was to him. Having said that, I don't know that Marion knew a lot about fatherhood. I don't know that he

had the knowledge. I think a lot of times Marion was guessing.

There's no indication that he, that I found that he abused the children or hit his children or were mean to him, them. If he was, I have no knowledge of it. He's not on the Central Registry. And anyway -- but -- and, and was -- he, he loved his children by taking them to eat, taking them to do things, giving them things. But I don't know, I could not get a grasp, from him or anyone in this family, that there was an understanding that there is even more to parenting than doing those things. But in his mind, from his prospective, he was showing these boys all the love he could give.

Q Okay. Well, now what do you learn about any violence in Marion's relationship with Nell and have you addressed that?

A There was violence. There was the incident at Applebee's. There was one conviction for CDV that I could find on one record. I think police were called at other times. I think Nell made other reports. There certainly were reports of, of, you know, him becoming aggressive with her or being violent toward her. But the only conviction I saw was the, this one CDV.

Q All right. What did you learn about Marion's brother, Paul, or is, is it Fred, I forget which one now, during this

period of time?
A In '98, one of the major losses to Marion was the drowning of his brother, Fred. This is the brother he had fought with. Over the years they had become somewhat closer. They had gone to Virginia and worked together for about eight months. And, so, this was, this was a major loss for him.
Q And how did he respond to that death?
A He became very depressed, very sad, very down. What I would say, you know, for about a year was, it was just a normal grieving process over the loss of his brother. He had some guilt over their fighting as children and he would, he would -- he kept remembering that he took the medications and it was because of a fight with Fred. And, so, for a long time he struggled with the guilt over Fred's drowning.
I think he even went with an uncle and maybe a brother to try and find his body, but his body was never recovered. He had gone fishing with a friend up at Jocassee.
Q How would you characterize Marion's life in the years before this crime?
A I think that Marion, just like what he witnessed growing up, had other relationships. There was a complete lack of understanding with Marion and this family about fidelity and being committed to a relationship and what that meant. And, so, there is a pattern in this entire family

of, of both men and the women of, and I'm talking about Marion's family, I'm not talking about Nell, but, but in Marion's family, you had a relationship that was your love or committed relationship, and then you had all these other relationships off and on, and then typically they seemed to be married to, or involved with others who had other relationships.

Now I'm not speaking of Nell because I, I don't know. I'm, I'm not that clear on that part of it. But, but there was such a pattern of infidelity that he witnessed and then became part of that I think in those years leading up, even though he was with Nell off and on, he also was with other women as well, and I really have nothing to add to what I've heard in my interviews and heard over the last two days that he became extremely depressed over the loss of his boys, and, and I think Nell as well, but predominately the loss of his boys.

And that family visited with him. They prayed over him. They gave him nerve pills. But, again, in the condition he was in, as it's described, not a single person called EMS, got him in their car, took him to the ER. In fact, they left him. They just, they just left him there.

Q Okay. So, in your opinion, why did Marion take his wife's life?

A Typically, as, as you know and I know Mr. Zelenka has,

has heard me say this many times over the years, that it is very very difficult to point to one thing in a person's life and say this is the reason they took a life. In this case, this is the reason he took Nell's life. I find it virtually impossible to be able to point to one thing. And, so, I always look at the accumulation of factors in a person's life.

MR. ZELENKA: Your Honor, I've, I've got to object. It goes to speculation.

THE COURT: Sustained.

MR. ZELENKA: Thank you.

Q Okay. The, the documents that you have that's accumulation of risk factors that you were about to refer to, is that correct?

A And, and those are actual occurrences in his life, and, and the accumulation of risk factors, again, what, what -- the point that, that I want to make, which is a fact in his life as well, and not speculation, is that in spite of this accumulation, the, the event that stands out the most in his life for me is this family system and the behaviors that he witnessed consistently throughout his developing years.

This accumulation is based on studies and literature and research that says most of us can handle one or two stressors in our lives at any given time. We know that we're gonna lose a job, a parent's gonna die. We may have a

change in financial status, that most of us can function with one or two. But any of us, no matter what our backgrounds, when we get between the third and the fourth stressor, we begin to see changes in our behavior, our ability to concentrate, to remember things, to parent our children, to manage our jobs well.

And, so, with this accumulation of risk factors, we are looking at the sort of ongoing and building events in his life from the time he came into the world. That would ultimately -- it would be reasonable to say this affected his decision making, this affected his judgment, this affected his insight, and his, his impulsivity, and would place him at higher risk to end up committing a serious act.

MR. VIETH: Okay. All right. Judge, give me just a second.

THE COURT: Sure.

(Pause.)

Q Let me. Just a couple quick questions, and I promise you we're finishing up.

Jan, I want to go just real briefly on the transcript of the trial. I'm gonna refer to Volume V of the transcript. I'm just gonna read, it's very short, on Line 2082 or Page 2082. There is a, there is a direct examination question by Mr. Bartosh with Bessie Smith and let me find that. Question on Line 6, Mr. Bartosh to Bessie

Smith, Mrs. Smith, did you attempt suicide?

A. Yes, I had a -- and at that point Mr. Barnette stands up, and Barry Barnette stands up and says Your Honor, I and the Court sustained the objection. Mr. Barnette said don't understand the relevance of this. The Court sustained it. At that point Mr. Bartosh just says that's all I have, Your Honor, and there was no other questions or anything generated from that effort by Bartosh to address Bessie Smith's history.

Is this something now that you have been able to shed to that jury had you been testifying in the capacity that you've been for the last hour and a half or so?

A Yes.

Q Okay. And obviously that, that just ended that point and there came, was not connected in the way of anything?

A That's correct.

Q Okay. And also with regard to Virginia Lindsey, and I'm looking at Page 2055, starting on Line 24, this is Virginia Lindsey's direct examination by Mr. Bartosh.

How many brothers and sisters do you have?

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

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

A. No, I have a brother who is dead.

Q. Do you have a sister named Bessie Smith?

Bessie Smith is the answer.

Has she ever attempted suicide?

Yes, she has.

Does she suffer from any -- do she suffer from any mental illness?

At that time Mr. Gowdy objects. Said I hate to object, but I'm gonna have to for a lack of foundation, and that was sustained.

Mr. Bartosh continues.

Do you know if she had been treated for anything?

A. Yes, I do.

Q. What has she been treated for?

Mr. Gowdy says I'm going to have to and the Court sustained. They then go into some questions about suicide.

But these are questions, again, that in your capacity as an expert, could of testified to you---

MR. ZELENKA: Object, Your Honor.

Q Could you have testified to these?

MR. ZELENKA: Object. It goes to speculation. She's not a lawyer or a judge who can testify about the admissibility of evidence.

Q Well, would you---

MR. ZELENKA: Specifically, Your Honor, this goes back to my objection under Rule 803 and my objection under Rule 801, which was the same thing the solicitor was objecting to at the time. That objection was sustained because it went

beyond the admissible range of evidence for family history coming in as hearsay evidence.

She's saying she could of testified about it. The record suggests that she could not have testified about it. She is a clinical social worker. She's being asked an opinion about the admissibility of evidence, which is beyond the area of her expertise.

MR. VIETH: Your Honor, the point of, of the, of the question that was asked that Judge Few sustained was that she wasn't qualified to testify as to whether someone had mental illness or not. Judge Few, specifically, on, on other points in the transcript, where he goes through foundation not being laid.

My only question to, to Ms. Vogelsang is when, when they asked Virginia did Bessie ever attempt suicide, and does she suffer from any kind of mental, mental illness, it was objected to for lack of a foundation. My only question is, based on the review of all the notes and records and so forth that Ms. Vogelsang's had in her capacity as, as an expert in this case, could she have addressed that issue and the jury never got to hear did she have mental illness. I think she could of addressed it one way or the other based on her records as an expert.

THE COURT: I'm gonna let her answer that, but I understand exactly where the State's coming from about it

too for development of this.

Go ahead.

Q Could you have addressed that issue?

A Yes.

MR. VIETH: Okay. Your Honor, that's all the questions I have. I would move to introduce, with the packet, the three photographs as a separate exhibit. These come in as Applicant's exhibit and I don't know the next number, but we would offer the three photographs to come in as one.

MR. ZELENKA: I have no objection---

MR. VIETH: Okay.

THE COURT: ---to that.

THE COURT: Same three.

MR. VIETH: Three of those, but then the -- let's address the exhibits that Ms. Vogelsang made, the development of resilience in childhood, homes that failed to produce resilient children, family and Marion's children home, CDV arrest and/or convictions, psychological battering of children, and the accumulation of risk factors. See if there's any objection to any of those coming in. We would offer them as to what she could testify to and from.

MR. ZELENKA: Well, I understand Rule 1006 I believe of the rules of evidence do allow for summaries to come in. I assume that is the limited purpose they are seeking to present that information. However, we've earlier made

hearsay objections, which would suggest, we would assert, that some of that evidence is thereby inadmissible. So, I have to object to the summaries. Under Rule 1006, the contents of voluminous recordings, photograph, which can not conveniently be examined in Court may be presented in the form of a chart, summary, calculation provided the underlying data is admissible in evidence.

MR. VIETH: Well, that---

MR. ZELENKA: All the underlying data is hearsay. So, we've objected to it. So, we have to continue to object to the introduction of these summaries.

THE COURT: The testimony is there. I'll sustain the objection. It's there anyway in one way or form or another.

MR. VIETH: Keep this part out of it?

THE COURT: (Nods affirmatively.)

MR. VIETH: Okay. Since the testimony in.

Okay. And then the -- well, I guess the same objection on the family tree?

THE COURT: What about the family tree?

MR. ZELENKA: I don't know that the testimony is about the family tree. We would assert the same objection.

THE COURT: Based on the other information?

MR. ZELENKA: Yes, sir.

THE COURT: Well, that's testified too. So, let's just keep it clean.

MR. VIETH: All right. And then the letter from the, doctor report of Doctor Dunlap concerning the root. We move that into evidence.

MR. ZELENKA: I think she's already read it into evidence, but---

MR. VIETH: She has. That's true. She has.

MR. ZELENKA: To that extent I didn't object to it. I was provided a copy. I don't have any objection.

THE COURT: Okay.

MR. VIETH: Put the photographs as a separate exhibit and this Doctor Dunlap separate exhibit.

THE COURT: Okay.

MR. ZELENKA: My assumption is that she had a medical release from them on that.

MR. VIETH: Gosh, Don, we didn't go steal it from him.

MR. ZELENKA: No, I understand. I mean he may have some problems there.

MR. VIETH: I don't know.

THE COURT: Okay.

MR. VIETH: All right. I'll take my chances of putting them into evidence.

(Whereupon, the photographs were marked as Applicant's Exhibit No. 28. The report was marked as Applicant's Exhibit No. 29. Both were received into evidence at this time.)

MR. VIETH: That's all the questions I have.

THE COURT: Unless I hear an objection, let's get some lunch and come back.

MR. VIETH: All right.

MR. ZELENKA: No objection from me.

THE COURT: Okay.

MR. ZELENKA: What time, Your Honor?

THE COURT: Let's, let's try to be back at 2:30.

MR. ZELENKA: All right, sir.

THE COURT: Is that rushing anybody up?

MR. VIETH: No.

MR. ZELENKA: I hope not.

(Whereupon, Court was in recess for the lunch hour.)

MR. VIETH: Your Honor, I have been advised I need to make what wasn't introduced into evidence at least a, an exhibit for identification. So, I'll need to do that at this time. I think you've got that. I used it. That's in -- I'm not.

THE COURT: Okay.

MR. VIETH: So, I'm gonna take that. It's been put in evidence.

(Whereupon, the remainder of the documents from Doctor Vogelsang were marked as Applicant's Exhibit No. 30 for identification purposes only at this time.)

MR. VIETH: Thank you.

(Witness returns to the stand.)

THE COURT: Still under oath.

MR. ZELENKA: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. ZELENKA:

Q Mrs. -- are you ready?

A Yes.

Q Okay. Thank you.

In your direct examination, Ms. Vogelsang, you stated that you were on the Crime Victims Advisory Board?

A Yes.

Q Are you currently on it?

A No.

Q And when did you get removed from the Crime Victims Advisory Board?

What year was that?

A I think I served somewhere between the late 80's and up to the mid 90's. The last two years being by appointment.

Q Okay. With respect to the award you got from the Thirteenth Judicial Circuit, when did you get that award?

A That was back in the 80's.

Q Okay.

A And it was a number of certificates of recognition for services.

Q And that was for Family Court matters?

A No, that was for my work with victims.
Q In Family Court or in Circuit Court?
A It was actually services to the victim witness office, volunteer training, education.
Q Okay.
A That kind of thing.
Q Was Nell Lindsey a victim?
A Yes.
Q Had she been a victim for a while?
A Yes.
Q Was she entitled to victims witness services?
A Yes.
Q Okay. With respect to some of your testimony on direct, at one point you said one of the defendant's family members beat another person to death, is that correct?
A Uncle Willie I think served 15 years for assault and battery with intent to kill and I thought the information was that he had been beat him to death. He may of just beat him badly. I don't recall.
Q Well, that's a pretty big difference between---
A Yes.
Q ---killing somebody and assaulting somebody of a high and aggravated nature, isn't it?
A Yes.
Q You basically resolved facts in your position as a

social worker, isn't that correct?
A This was my mistake in the testimony. I don't think he was beaten to death. I think he was beaten nearly to death.
Q Okay. You testified that in the event where the defendant went to the hospital, having taken some over-the-counter medication, you referred to that as attempted suicide, didn't you?
A Yes.
Q Medical reports say it wasn't an attempted suicide, isn't that correct?
A It says -- it refers to it as a gesture.
Q But it also states in there wasn't suffering from suicidal ideations, correct?
A Yes.
Q It says in there that Lindsey reported he didn't realize the medication was toxic, correct?
A That's correct.
Q It says in there if he knew how bad he was going to feel he wouldn't have done it, correct?
A Yes.
Q And he said the reason he did it was to get attention?
A Yes.
Q Correct?
He didn't say he did it to try to kill himself?
A Yes.

Q Did he?
A That's correct.
Q And the hospital didn't think he was trying to kill himself, did they?
A They thought it was a gesture, but they took it seriously.
Q Well, they had to take it seriously---
A Yes.
Q ---because they had to remove the pills. It did have a medical effect.
A And they recommended follow-up treatment.
Q And where did they recommend follow-up treatment from? Does it say that in your records?
A Discussed with mother per phone need for psychiatric follow-up and recommended transfer to psychiatric open unit for follow-up, follow through evaluation. Also offered different support system avenues, family conferences, et cetera. All of which was rejected by the patient and his mother. That's one record and then I think there may be a couple other places where that same thing is noted.
Q Okay. And what was the date on that record?
A 11/22/88.
Q 11/22/88.
When is the next incident of any alleged suicide attempt by the defendant?

A I think that in the weeks prior to the shooting.
Q In the weeks prior to the shooting?
A Yes.
Q There was an attempt?
A There are -- there were family interviews and Marion told of other times when he felt that way, but as far as treatment or anything like this, no, not until the time of the shooting that I know of.
Q There was no attempt, was there, weeks prior to?
A There were threats.
Q There were threats?
A Feeling, feeling suicidal, feeling like he wanted to take his life, telling the family he had a gun. But as far as, you know, actually attempting to shoot himself, no.
Q He didn't attempt to shoot himself, he didn't use drugs?
A That's correct.
Q Made no overt action, did he?
A That's correct.
Q Individuals came, talked to him, satisfied with his mental state at that time and left, correct?
A That's correct.
Q Never called law enforcement, brought him on the scene?
A No, they did not.
Q You stated you followed the clinical social workers

standards, is that correct?
A Yes.
Q Is it the standard of practice not to do written reports?
A It depends. If a report is requested, then, of course, it is provided. If it is not requested, it is up to the discretion of the social worker.
Q Well, don't clinical social workers usually do reports for other parts of a multidisciplinary team, that those individuals will rely upon those reports?
A No, not necessarily.
Q So, when the Department of Mental Health did, their social worker did a social history---
A Uh-huh. (Affirmative).
Q ---that would be above the clinical standards, is that correct?
A No, actually that report that is done at William Hall is not actually a report. It is sort of a social work fill in the blank type history. I don't know if on the top of it they call it a report, but it is not the type of report or style of report we're trained to do in school. That is more an information gathering document that William Hall uses and has used for many years.
Q Okay.
A Even when I was there.

Q So, you're trained in school to do reports?
A Under certain circumstances and certain situations.
Q And you didn't do a report in this case?
A No, it was not requested.
Q It would of been useful to you to have done a report in this case, wouldn't it have?
A No, not necessarily.
Q Well, you wouldn't have made a mistake about somebody murdering somebody when he didn't do that, would you?
A Reports are often filled with inadvertent mistakes, and, so, I very well could have. But I think the information that I've given to the Court today and the visuals I've provided I'm confident in their accuracy.
Q Your past president of the National Association of Social Workers for South Carolina?
A Yes.
Q And the National Association of Social, Social Workers for South Carolina has a policy statement in opposition to the death, death penalty in all its forms, isn't that correct?
A Actually I think it's national policy. I don't know about the State of South Carolina. It is a, something that's decided at a delicate, delegate assembly every three years, and I believe that the states just adopt or go along with the national policy, and the vote on that is very

close. About 50/50, about half the social workers support that policy and about half are against it from my understanding with slightly more being against it.

Q Okay. How did you vote?

A I did not vote.

Q Okay. Did you make a policy statement that you disagreed with that national policy when you were president of the, the state unit?

A No, it was never an issue while I was the president, and I have never taken a stance on the death penalty one way or the other or participated or joined any groups either for or against.

Q Okay. Now, you testified that you frequently were involved as an expert witness in child custody cases?

A Yes.

Q And in those cases, were you asked to make recommendations to the Court as to whether there should be visitation with respect to particular individuals within that custody situation?

A Yes.

Q Did you recommend, in your expertise as a clinical social worker, that certain individuals not have visitation rights?

A That's correct.

Q And would the criteria that you would look at in making

that determination involve that particular individual's life-style?

A Yes.

Q And would you recommend someone to have visitation rights over a child when that individual had given that child alcohol when that individual was young?

A No.

Q You saw that in Mr. Lindsey's records, didn't you?

A I don't recall seeing that in Mr. Lindsey's records, but if I had and I was involved in a child custody case, then that would certainly be one of the issues that would influence my decision.

Q Okay. I thought you read the testimony from the trial?

A I did.

Q You don't remember that part of the testimony from the trial where that---

A I---

Q ---situation was described?

A I don't. If you want to show it to me and refresh my memory I'll be glad to look at that.

Q Was that -- wouldn't that have stood out, in your expertise as a clinical social worker, as a critical factor on that person's relationship with their children?

A It, it certainly would have. I read -- the testimony was one of the first things I read well over a year ago when

I was contacted. I don't recall that particular piece of information. I don't find it surprising and certainly consistent with other information about the family. And if I were in a Family Court case, that would be a very big concern to me.

Q Okay. And would it be a concern that the individual carried a weapon?

A Absolutely.

Q Had shot at other individuals in such a manner that he had, in fact, been sentenced for the crime?

A Yes.

Q Would it be a factor that he sold drugs?

A Yes.

Q Would it be a factor that he had multiple incidents where he had been violent towards his wife, the children's mother?

A Yes.

Q Is that the person, type of person that you would recommend having visitation rights with a child?

A No.

Q Yet, in your direct examination you said, and I think this is a quote, from all sources he was a good father?

That's what you said?

A And I added to that that as Marion understood fathering, which was predominately giving material goods to

his children, that's certainly -- I think I went on to say that I didn't think he had any understanding of what true parenting was, the kind of things children needed, that he thought that buying them things, giving them things, taking them places, and it -- and in many areas of his life was just simply guessing at what was normal.

Q Okay. So, I guess what you're saying is in this situation, had the Court asked you at the time, you would of recommended that parental visitation rights with Mr. Lindsey would of been cut off from his children, is that correct?

A Well, I, I certainly would have worked with a guardian ad litem. I would have taken her information into consideration. I can't speculate as to what other things that I might have learned if it was a custody case. But based on what I have learned in this case, I would have been very hesitant or would have recommended to the Court, that at the very least, there would be no visitation without supervision and someone from the Court present. I could have also very well have said that I did not recommend visitation.

Q Okay. On direct examination you said you don't take all the cases that are asked of you in, in death penalty cases, correct?

A Yes.

Q Well, approximately how many times have you testified

in a jury trial setting in South Carolina let's say?
A Oh, in South Carolina?
Q Yes, ma'am.
A Okay. You're gonna have to give me a minute to count. Over 22 years, in South Carolina -- let me think one second. You're asking me to go back 22 years. I'm gonna say at least five jury trials. I believe more.
Q Okay. And approximately how many times have you testified in post-conviction relief cases?
A In South Carolina?
Q Uh-huh. (Affirmative).
A At least five times over 22 years or more.
Q Okay. Would it be fair to say then that in each of the cases, except one that I'm aware of, a clinical social worker did not testify in the original trial?

And to refresh your recollection, there was one case you did testify in post-conviction relief that the clinical social worker who testified was not qualified to give an opinion on adaptability to prison life because it's beyond the area of expertise for clinical social workers. That's the one case that I know of.
A And you're asking cases in which a clinical social worker had testified at trial?
Q Had not testified at trial, and you were being called in post-conviction relief matter to say that you were there

and available and could of testified if called upon.
A Well, I would say in most of them they had not used a clinical social worker. I'm going way back to the early 90's. I can't tell you my memory's perfect, but I would say, in most of them, that, especially in the 90's, early 90's, they had not called upon a clinical social worker although there were a number of us at that time who were being called to do it.
Q Okay. Now, in your sources you listed a number of family members---
A Yes.
Q ---who you spoke with, but a couple of folks that you didn't speak with were members of the victim's family who also had long, long term relationships with the defendant, and why didn't you speak with them about the defendant's reactions, attitudes, and demeanor in those relationships?
A Actually I did speak with Teresa Pilgrim, who I believe was a member of that family or a friend of that family. Typically I am more than willing to do that if someone in the family is willing to, but---
Q Uh-huh. (Affirmative).
A ---most often they're either advised by the attorney not to or they just simply are not willing.
Q Did you make any attempt?
A I always ask the mitigation investigator to inquire if

anyone is willing, and if they are, then I'm willing to do it.

Q Okay. So, the mitigation investigator in this case was Carol Graham?

A Yes.

Q Do you know if Ms. Graham, Ms. Graham contacted anyone about that?

A I don't know. I know that she did speak with Teresa Pilgrim. She -- I asked her if there was anyone who was willing to be interviewed. I did speak with Teresa Pilgrim. I did meet her, and, of course, I saw photographs. I did read some statements early on and am familiar, familiarized myself with the crime and some of the statements and certainly after years of working with victims---

Q Okay.

A ---I like to believe that my heart is with them.

Q Okay. Did you speak with Stephanie Petty?

A No, that was one of the people that I had asked to speak to. I believe Ms. Graham did contact her and she was not willing.

Q Okay. Did you speak with Sharon Smith?

A No.

Q Did you speak with Carol Wright?

A No, I did not.

Q Did you speak with Doctor Narayan?

A No, I read his report.
Q Did you speak with Bennie Godfrey---
A No.
Q ---who is the law enforcement officer at the scene?
A No, I think I read a statement by Mr. Godfrey.
Q Did you talk with what Latresse Smith?
A No, I believe Latresse was another person that Ms. Graham tried to contact and, and asked to speak with me and she declined.
Q Did you talk to Ladrell Crump?
A No.
Q Did you talk with Lanita Skinner?
A Is it Lanita Swindler?
Q Yes.
A No, I did not. She was another person that I asked about, and I did see a document from Ms. Swindler, but, no, I, I did not interview her.
Q So, I assume you didn't talk to the mother of Lindsey's other child?
A That's correct. I saw the document where she was seeking child support. Marion told me about her and the other child, but I believe Ms. Graham told me she had declined to be interviewed.
Q Okay. Did you talk with Stanley Springs, Staggs?
A No.

Q Would you agree that the information provided to you is only helpful if it's reliable?
A Well, that's a difficult question to answer because I assume that much of the information in, and the reviews is coming from the prospective of the person I'm interviewing. That's why we're trained to rely on other sources to look at records and to interview, consult with other experts. But I don't assume that every piece of information that I gather in an interview is or even see in a record is a hundred percent accurate. But I try to rely on as many sources as possible, and then use my education, background, training to come to as accurate a conclusion as I possibly can knowing that none of us have crystal balls and can be a hundred percent sure.
Q Okay. Your testimony revealed, or appeared to reveal, that there was no physical trauma towards this defendant directly when he was growing up, is that correct?
A Not that I knew of through interviews. I did not see that kind of trauma through records except for him being ran over, and pouring the gasoline on himself, being in a motor vehicle accident, those sorts of things. But as far as someone else beating him up, no.
Q Okay. Let's -- you brought up a subject that I was kind of curious about by your terms run over.
Information you had, what exactly happened to the

defendant when he was 18 months old?
A He was---
Q Did the car really run over him or did it---
A I think the record says that the car hit him in the head. Let me see and I can read it to you exactly.
Q Okay. Hitting him in the head and running over him, that's a pretty gross difference, wouldn't you agree?
A That's correct. In the---
Q So, why did you use the word run over?
A Probably because, in every interview, I receive detailed descriptions and then the record that came in was very difficult to read. We asked for clearer copies and I will happily correct that now. I think it says -- I will read it exactly. Patient was backed over by a car. I guess that's sort of run over, backed over, run over. It's what it says.
Q Well, when I think of run over, I think of tires.
A Well, it says backed.
Q I think of more damage to an individual---
A Uh-huh. (Affirmative).
Q ---than a scrape on an ear.
A Well, it says multiple lacerations. I can't tell if it says right ear or left ear. It gives the, I guess, the sizes of the lacerations. It says backed over by car. It says ran over by car on Tuesday, radial laceration, two

abrasions to side of face, hurting. Sounded like run over by a car to me.
Q Okay. He was released that day though, wasn't he?
A Yes. Well, I'm -- well, hold on a second. I think so.
Q I thought that's what he testified before.
A I, I think he was released that evening. Hold on one second. Was in R, ER last Tuesday to be sutured and something on Saturday and sent back on Saturday to be checked. Told to return today. So, it looks like he was released that day, but two follow-ups.
Q Okay. To take the sutures out presumably?
A And to check the injuries, sure.
Q Okay. Now, you indicated the family, even though they were suffering in poverty, as far as their relationship with, with Marion, still had a semblance of providing medical care, correct?
A Yes.
Q They had a regular family doctor, Doctor Barry Henderson, that they utilized?
A That's correct.
Q The -- who made those decisions to take the, take Mr. Lindsey to the doctor when situations like that occurred?
A His mother and his grandmother I think for the regular type checkups or if he had a cough or a cold, sinus. I

believe that it was usually his mother or his grandmother who took him.

Q Okay. And his grandmother was a regular caretaker of Mr. Lindsey throughout this time, isn't that correct?

A She was. In spite of poor health, she was in the home with him for a significant amount of the time along with all the uncles and the aunts and others.

Q Okay. And there was testimony that, as Mr. Lindsey was growing up, he looked towards Steve Pilgrim in essentially a role as a father, isn't that correct?

A He did. Of all of the relatives, the one, one uncle that he could count on not to be threatening, not to witness threatening things with him. Steve was gone most of the time. He started baling hay and running cows when he was a young boy. He dropped out of school to do that, and Steve was a real workaholic. He was a real supporter of that family. And, so, when he was home, Marion liked to follow him around. He was the uncle Marion kind of tried to attach to.

Q Okay. Well, when you testified that there was no one in the home to assist in the developmental stages, there were people in the home to assist in the developmental stages?

A No.

Q Correct?

A No.
Q Steve wasn't there?
A He wasn't there much of the time. Steve also had to drop out of school. Steve did not have the skills to help a young boy like Marion through the developmental stages. He could love him. He could try and give him things. Out of everybody, he probably gave him more attention. But in terms of child development, the way I described it, I don't think so and I'm not saying that Marion witnessed it, but Steve believed in the practice of roots. He shot a girl, according to him, leaving a flesh wound. He had---
Q When did he shoot the girl?
A It was, it was at sometime during his teenage years.
Q Not while Marion was there, but not---
A No, I just said Marion did not witness. But I'm saying he too had these relationship problems, and I don't think that he had the skills to help Marion. Especially a child that had some of the special needs Marion had, and the way I was talking about describing.
Q Okay. And as far as that sense of nurturing, what you said that Steve, Steve didn't have, that's contrary to Steve's testimony under oath here, isn't it, that you sat there---
A I don't think it's contrary.
Q Okay. What, what did Marion tell you about the

practice of roots in his home while he was growing up?
A Just that, you know, it was confusing to him. He didn't understand it, that he got it -- you know, it just made him feel mixed up about such things as the difference between roots and home remedies, which a lot of families used, in addition to traditional medical care. It confused him about hearing family members talking about putting the root on each other if they messed around or if they had an affair or if they were mad at their girlfriend or mad at their wife, you put the root on them to make them sick or to make them die. And, so, that was part of what he heard growing up.
Q Okay. Do you have notes of your interview with Marion?
A I do.
Q Show me in the notes where he told you that.
A I, I may not have written that. I don't write everything down, but I do recall discussing that with him.
Q Are you saying you didn't write it down?
A I may not have because it's impossible for me to write down every word in an interview. So --.
Q Well, when you said that you hadn't looked at your notes yet, had you?
A No, but I, I'm saying I don't know if it's in my notes or not, but I'll look right now to see.
Q Your notes of your interview with Marion?

A Uh-huh. (Affirmative).

(Pause.)

A No, it's not in my notes.

Q Okay.

A I do remember the conversation though if you want anymore detail.

Q No.

In your review of the school records you noted in his early schooling up to at least sixth grade he was not a conduct problem within the school, correct?

A Not according to the records I saw.

Q Okay. And that's what you have to rely on, isn't it?

A Well, in, in the interviews, you know, his mother talked to me. It was more of a problem when he got older.

Q Okay. Well, you already chose to reject a lot of her testimony, her statements already, haven't you?

A I don't believe so.

Q Well, she said she didn't allow guns in the house, but you said everybody in the family had guns.

A Well, I think someone else testified to that too. I think Steve.

Q But you objected to the mother's testimony?

A I don't remember objecting to Virginia -- I don't remember saying that Virginia didn't tell me that. I'm not sure what you're referring to.

Q Well, you said everybody in the family had guns, correct?
A Yes.
Q And didn't Virginia testify she didn't allow guns in the house, didn't allow drugs in the house?
A I don't recall her saying that. But I, I will accept---
Q Okay.
A I will accept that.
Q But you didn't talk to any of his teachers?
A No, the investigator tried to locate his teachers, and the one she talked to did not remember him.
Q Okay. And you asserted that, at the time he was in the eighth grade, that's when things start, when he chose to take a, a life-style on the streets, is that correct?
A I think the word I used is that he succumbed to the streets, that he gave in to the streets, that his mother, I believe at that time, went to third shift. I think that he was no longer having the time he had before with Mr. Burton, and he was shown crack and how to turn a hundred dollars into five hundred dollars and how easy it was, and this is when you see the school records starting to change. He starts having a number of absences.
Q Okay. But I thought you had said he was exposed to that stuff earlier on even before the eighth grade?

A Well, he, he was. Children tend to either take to that life-style and that crowd at different times. It's hard to predict. In Los Angeles you're born into the life. In other places in the country you may be brought into that life for a bag of potato chips and a Coke when you're seven years old. For, for Marion, it was around the eighth grade being a runner for his uncles.

Q Okay. Which uncle was he a runner for?

A Paul, for Willie. Paul and Willie and -- no, just Paul and Willie.

Q Okay. And when did Willie serve his 15 years for assault and battery of a high and aggravated nature?

A I am not sure I have that record with me.

Q So, you don't know?

A I, I don't recall.

Q And when he was serving that time, he wouldn't have been in the family then, would he of?

A No, but he would have been in the family earlier, and I believe there were cousins, at that time, I don't remember their names, but there were also cousins involved in the drug dealing as well and I think it was the cousins who showed him what a rock looked like and how to turn a hundred into five hundred.

Q Okay. So, that wasn't Uncle Willie then?

A I, I don't recall. He just grew up seeing his uncles

dealing, using, selling drugs and his cousins.
Q Okay. Now, did you interview Stanford Wilkins?
A No.
Q Okay. Stanford Wilkins was shot by the defendant, correct?
A Yes.
Q And Stanford Wilkins doesn't know why the defendant shot him, isn't that correct?
A My information comes from the reports, the police reports and the statements, and I don't recall if he knew why Marion shot him or not.
Q Okay. You testified that he thought Marion was his friend, correct?
A I testified to that?
Q No, Mr. Wilkins testified at trial or didn't you read that testimony?
A I, I did not see his transcript from the trial.
Q Okay. You talked about his relationship with, with Fred?
A Yes.
Q And just to be clear, who's Fred?
A It's Frederick Paul, which sometimes gets confused with his Uncle Paul. Frederick is his half brother.
Q Okay. And what type of relationship did he have with, with Fred?

A Not good early on. When he was younger he was jealous of his older half brother. They fought a great deal. He felt like his mother gave Fred more attention, and this was the half brother that he had had the argument with when his mother said I don't love you anymore, and I'm gonna put you in a boy's home.
Q Okay. And that's, that's one day in their life together, correct?
A Yes.
Q That off -- everything you just testified occurred on that one day, right?
A Yes.
Q Yet, he had developed a relationship with Fred in such a way that he went out-of-state and lived with him?
A That's correct.
Q And worked with him, correct?
A That's correct.
Q Was Fred older or younger?
A He was older.
Q Okay. You testified you spoke with Rod Tullis?
A Yes.
Q When did you speak with Rod Tullis?
A I listened to his testimony and then I asked him a couple of questions afterwards that I had not had a chance to. We had made efforts to get with him prior to, was that

yesterday or the day before, and had not been able to have an interview with him. So, I listened to his testimony and just asked for a couple of clarifications.

Q Okay. So then you judged his testimony, you took his testimony into account?

A I did.

Q Okay. Did you know that Mr. Tullis had been disbarred?

A I did.

Q Did you know the reasons for his disbarment?

A No.

Q Did you know that the reasons for that is a matter of public record?

A I am sure it is a part of the public record, yes.

Q Okay. Did you know or realize that his testimony conflicted with the lawyer's testimony earlier in the week?

A Which lawyer are you talking about?

Mr. Brannon?

Q Mr. Brannon.

A Uh-huh. (Affirmative).

Q Ms. Quimby.

A I don't -- I didn't hear all of Ms. Quimby's testimony, and I don't recall that -- I wasn't here for all of Mr. Brannon's testimony. And as I've said before, the reason we read records and talk to so many people is to not rely on just one person. But since he had represented him, I

thought it was important to at least hear what he had to say.

Q Okay. You make determinations of believability, don't you, with every person that you testified, that you interviewed?

A I don't have any internal test of believability. Again, I assume that people are talking to you from their prospective, from their experiences, from what they believe to be true, and this is why we try to have more than one source because I certainly don't assume that everybody is telling the truth a hundred percent of the time.

Q Okay. Did you listen to the micro cassette that Mr. Tullis was talking about?

A No, I have not.

Q Did you want to listen to it?

A The cassette that was shown to me I think maybe yesterday afternoon, I don't think -- it was not my understanding that it was the micro cassette.

Q No, the cassette I believe you're referring to is already been introduced as---

A Right.

Q ---Applicant's Exhibit 26.

A Yes.

Q And those are the telephone calls---

A Uh-huh. (Affirmative).

Q ---that the defendant made the Friday before the incident.
A Yes.
Q The micro cassette, have you ever seen it?
A No, I have not.
Q Do you know whether it's included on any of the evidence summaries that the Public Defender's Office had of material acquired by the defense?
A I, I do not know. It was my understanding that the defense team did not have it.
Q Okay. Kind of a conflict in testimony there that somebody needs to resolve, isn't there?
MR. VIETH: Your Honor?
A Sounds like a legal issue to me.
MR. VIETH: I object.
MR. ZELENKA: Well, I mean she's relying upon---
MR. VIETH: But you're going, pitting the witnesses against each other, and, and, two, if they had or as we brought out in testimony, that tape was a 2002 tape. They started getting discovery in '04. Mr. Tullis would of given it to them in '02 or three. It could be lost, but to say that she didn't see it means that Rod is lying is just not a factual basis to that. He wants to draw that conclusion. That's fine. That's---
MR. ZELENKA: No, my point is, Your Honor, the, the

relevance, I think, to the question is I'm not drawing the conclusion. She's saying she got the information that she was relying upon in her opinion based upon the testimony that came from the witness stand, and I'm trying to determine what reliability she gave to that testimony, if any. If she---

THE COURT: That's fine and that's---

MR. VIETH: That's fine.

THE COURT: ---not pitting. That's not the traditional pitting of the witness.

MR. ZELENKA: No, I'm not trying to pit.

THE COURT: So, you're okay. Go ahead.

A You know, I heard about the tape long before I ever met Mr. Tullis or, which was yesterday. Mr. Vieth told me about the possibility of this tape existing. So, I, I knew that, that someone, whoever had talked to Mr. Tullis, that there was information about a tape. I never saw it. I never heard it.

Q Okay. And unfortunately I have to ask you this question, when did Mr. Vieth tell you about his knowledge of the existence of the tape?

A I don't remember.

Q Was it within the last week and I'm separating the tape from suicide notes.

A Right. Right. It wasn't the last week. But I don't,

I don't recall when -- I don't recall when I heard about the tape. I just remember there being a conversation about his former lawyer having a tape, possibly having a tape. But I just -- I don't remember when.

Q More than a week ago?

A I would say in the last couple of weeks, but that's a guess.

Q Okay. When did you interview Marion Lindsey?

A November of '09.

Q Okay. That was certainly before you had heard anything about this tape, correct?

A Yes.

Q Did Marion Lindsey ever tell you that he called his lawyer on the day of the crime?

A I don't recall him telling me that.

Q Did Marion Lindsey ever tell you that he called his lawyer and threatened to kill himself?

A I just looked through these. I don't recall him telling me that, and, and I would say again, I mean I am trying to remember, but I would say again that most of the focus of my assessment was on his earlier life. Not, not as much the crime or the time before the crime. But I, I remember him telling me that he was very depressed, that he wanted to take his life. I don't remember him talking about calling his lawyer.

Q Okay. Now, the part of the evidence and the part of information from you sitting in the courtroom that you learned about the case, you are aware, aren't you, of the first thing that the defendant said when the EMS people came upon him at the time of the crime as far as his reason for doing the killing, aren't you?
A I'm, I'm -- from listening to the testimony, yes.
Q Yeah. And that information was because she had a boyfriend, correct?
A Yes. Yes, because she had a boyfriend and---
Q And that was all he said, right?
He didn't say anything to the EMS people about because wouldn't, she wouldn't let me see my children at that time, did he?
A I, I'm trying to remember. Because in addition to the testimony, I also again, looking for history, read a record about, from the EMS and I, I don't recall if he said anything more than that or not.
Q Okay. Now, at the time of the incident itself, wasn't he under an order of protection, and you saw those documentations, didn't you?
A Yes.
Q So, he wasn't suppose to have contact with his wife in any way, shape, or form, correct?
A Yes.

Q How long had that order of protection been out there?
A I don't recall.
Q Had it been out there since Friday before?
A I don't recall. If you want to show it to me I'll be glad to look at the date.
Q Well, again, you gave an opinion that he was a good father and he cared and provided support for his children, correct?
A Yes.
Q Well, after that order of protection, was he able to have contact with his children as a result of the language of that order?
Do you know?
A Well, he would not have been suppose to.
Q Okay.
A But I don't know if he did or not.
Q All right. Now, there was some testimony that he had provided support for his children previously, is that correct?
A Are you talking about---
Q Your own testimony.
A ---child support or are you talking about in kind types of support like buying them things and clothes and food and taking them places, those kind of things?
Q Well, that's what you said he did.

A Yes. Yes.
Q Now, he didn't always provide them food, did he?
A I'm sure that he did not always do that.
Q Okay. And he didn't always provide them clothes, did he?
A No.
Q And he didn't always try to have visitation with the mother, did he, the mother's children, and the children, did he?
A No.
Q In fact, on the records that have been introduced, he was telling people he wasn't providing any child support, isn't that correct?
A That is correct. He said he was providing in kind support. If you're talking about that legal aid record, I think he made reference to in kind support.
Q Okay. And when was that legal aid record made?
If I said May 2004, would that refresh your recollection?
A Yes.
Q So, that was what, four to five months even before this incident?
That's what he was saying, correct?
A Yes.
Q And we have indications, through, through some of the

testimony, that he was having visitation with his children up to roughly that Friday before, isn't that correct?
A I, I think that is correct. I do recall him telling me that he would call her and ask for the children, and the children would say can mom come with us, and they would ask him and he would say, of course. So, I think he was seeing her and the children.
Q So, he wasn't being deprived of visitation until that Court order kicked in, correct?
A Yes.
Q You reviewed the records of, of violence, indications of violence that Mr. Lindsey had both towards Nell, which extended over a period of time, correct?
A I did.
Q And towards other females, correct?
A Yes.
Q And indications of other incidents also involving males?
A Yes.
Q Correct?
So, Mr. Lindsey, not only did he have a, a history of violent confrontations with the ones he asserted he loved, he had violent confrontations with those that he was just having regular dealings with, isn't that correct?
A Yes.

Q Did you talk to Mr. Lindsey about each of those incidents and why they occurred?
A I think at the time I interviewed him I did not have this document you're referring to. However, Mr. Lindsey did talk to me about acts of violence that occurred in the course of dealing drugs. He himself was shot, fighting with others. I don't remember specifically each and every incident. But he did share with me that it was not just with females, that he was involved in other violent acts well.
Q Okay. He was a very controlling individual, wasn't he?
A I don't recall hearing him described that way. Because I have had years of experience with gang members and drug dealers, I remember asking Tim, I believe, if he ever observed Marion scared and he said that, you know, all Marion did was worry, that he was scared he was gonna go out and get shot or end up shooting somebody, that he would pray before he went out that day to do his drug dealing, and this is a common and consistent story among men I have interviewed who have engaged in drug dealings. So, yes, controlling to a, a significant degree. Yes, also I think scared half to death.
Q Okay. But when he didn't get his way with his wife, his girlfriends, or others, he would act in a way of power through the use of violence, correct?

A I would refer to it as extremely overactive behavior using violence, yes.
Q Okay. And this not only occurred in free society, it occurred when he was also in custody in the Department of Corrections between '95 and '96, correct?
A During the Stafford Wilkens -- I saw two disciplinary reports there and only one was fighting. If there were more, I did not see them.
Q Okay. But it occurred in the prisons?
A Yes.
Q It occurred in the South Carolina, excuse me, the Spartanburg County Detention Center?
A Those were not the parts of his records, post-crime, that I reviewed. I was only looking to see if there was prior history.
Q Okay. Were you here yesterday when Mr. Aiken acknowledged that gas had to be used on Mr. Lindsey to stop a disturbance in the detention center?
A I did not hear Mr. Aiken's testimony.
Q Oh, okay. And as I understand it, you've not reviewed any of his more recent Department of Corrections records?
A That's correct.
Q Okay. Now, the fact -- you talked about an accumulation of risk factors, and are those risk factors that would lead to violence?

Is that -- are they just risk factors?
A Well, both. If a child -- the, the way we express it is that if a child is exposed to that accumulating factors overtime and there is not enough positive factors to compensate for that accumulation, the way we express it is that those children are at higher risk to end up in serious circumstances such as taking a life. The -- most of the research expresses it, expresses it that they are, especially with neglect, because so many of these risk factors are the result of neglect, that they are at high risk and end up in juvenile or adult incarceration.
Q Okay. So, essentially you're, you're saying that his environment was an incubator for murder, correct, that it was inevitable that this defendant was going to act violently, that his level of violence was going to gradually increase to the extent that he murdered somebody?
Be it Nell, be it the individual that he was sending his friends out to Nell's mother house to see if he was there, something bad was going to happen because Mr. Lindsey could not control certain situations?
A If I understand your question, I would say no to inevitable. But as I was trying to point out earlier in my testimony, when you look at the mis-socialization of children, when you look at the corruption of children, and you look at the family tree and the intensity overtime of

what Marion was exposed to, it is, it is certainly reasonable to say that he would be at high risk to end up committing the very act he committed because it is so similar to the behaviors, with the exception of, of killing their wives or girlfriends, it is so similar a behavior as what he witnessed the entire time, most of the time that he was growing up.

Q Okay. And you testified at the time he was depressed over the loss of his boys, but you've also acknowledged he hadn't lost his boys, correct?

A I'm not sure I understand what you're asking.

Q You testified---

A I'm, I'm not sure what I said that --.

Q Well, you, you testified on direct he was depressed over the loss of his boys. I think that was a quote.

A And his family, uh-huh. (Affirmative).

Q But he hadn't lost his boy, had he?

A No, and I think I did explain several times that this was a, a man and a family that absolutely could not see or examine options. They could not soothe or calm themselves. They could not see that there were other ways.

Q Okay. And those factors would exist today?

A Without treatment or intervention, absolutely.

Q Okay. Those risk factors, do they treat those risk factors in the Department of Corrections?

A Some departments of corrections do through anger management if there's counseling programs, if those kind of things exist. Sometimes they can---
Q Does the Department -- does the South Carolina Department of Corrections treat those risk factors?
A Well, I think they come up, for example, in alcohol and drug problems in prison. These issues will come up.
Q But he didn't have alcohol and drug problems, did he?
A No, but what I'm saying is if, if you are placed in something like anger management or alcohol and drug or any of the programs that happen to be available, these are the kinds of issues that come up where they're trying to help you gain some insight.

MR. ZELENKA: No further questions, Your Honor.

MR. VIETH: No questions, Your Honor. You can come down.

THE COURT: You may step down.

WITNESS: Thank you.

THE COURT: Let's take about ten minutes.

(Whereupon, a short recess was taken at this time.)

MR. VIETH: Please the Court?

THE COURT: Yes, sir.

MR. VIETH: Doctor Melikian. Doctor Margaret Melikian.

MARGARET MELIKIAN, being first duly sworn, testified as follows:

THE COURT: Make yourself comfortable there.

DIRECT EXAMINATION

BY MR. VIETH:

Q Doctor, please state your name.

A My name is Margaret Melikian. That's M-E-L-I-K-I-A-N.

Q And your profession?

A I'm a forensic psychiatrist.

Q And give us, briefly, your educational background and training.

A I received a Bachelor of science in Electrical Engineering from the University of Tulsa in 1986. After working as an electrical engineer for about six years I attended medical school at Oklahoma State University College of Osteopathic Medicine where I graduated in 1997. From 1997 to 2001 I completed a residency in general psychiatry at the Medical University of South Carolina. I then completed a one year fellowship at the University of South Carolina in Columbia in forensic psychiatry.

Q Okay. What does your private practice entail?

Let me ask you this first.

Where do you work first?

I'm sorry.

A Well, I work part-time. I have a private practice. I'm still on faculty at the Medical University of South Carolina, and I work for the Department of Corrections at

Lieber.
Q Okay. And what does your private practice entail?
A My practice, practice entails courtroom work or legal work in both Civil and General Sessions Courts.
Q Okay. What are your duties at the Medical University?
A Well, at the Medical University when I finished my fellowship, I started the forensic psychiatry department there, and was involved in setting up the fellowship, the training to train other forensic psychiatrists. I have started to work part-time for them starting in 2007. I'm still on faculty. I'm still involved in teaching med students, residents, and forensic psychiatry fellows.
Q All right. What are your duties now at Lieber?
A At Lieber I provide psychiatric care to the inmate population.
Q Okay. Now, are you board certified, certified?
A Yes, I'm board certified in both forensic and general psychiatry.
Q Okay. Have you been qualified as an expert in the past in forensic psychiatry?
A Yes, I have.
Q Matter of fact, you were qualified as an expert in this case?
A Yes, I was.
Q In the Marion Lindsey case?

A Yes, I was.

MR. VIETH: Your Honor, at this time I would offer Doctor Melikian as an expert in forensic psychiatry.

MR. ZELENKA: No objection.

THE COURT: So qualified.

Q Doctor, we've already mentioned that you were involved in the Marion Lindsey case as far as trial, trial preparation and testimony, is that correct?

A Yes, it is.

Q When were you initially contacted for this case?

A Initially Mr. Bartosh called my office on April 6th. I returned his call sometime after that.

Q All right. I'm gonna submit a document. Let me ask you if you can recognize this particular document.

A This is the bill for services my secretary put together and sent to Mr. Bartosh at the conclusion of Mr. Lindsey's original trial.

MR. VIETH: All right. Your Honor, at this time I would move this in as Applicant's exhibit.

MR. ZELENKA: No objection.

THE COURT: Okay.

(Whereupon, the bill was marked as Applicant's Exhibit No. 31 and received into evidence at this time.)

Q Hand you that.

All right. Doctor, you indicated that you initially

were contacted 4/6/04, and then you actually got started on 4/16/04.

A Well, Mr. Bartosh called my office on April 6th.

Q Right.

A And I spoke with him sometime between then and April 16th when my secretary faxed my CV and retainer agreement. On the 20th she called Mr. Bartosh's office asking for medical records, which we didn't get. On the 27th she called his office again, and on the 28th we received medical records and I started reviewing them at that time.

Q All right. That would be April?

A 28th.

Q 28th.

Okay. How many hours did you work on the case before testifying?

A Before showing up in Spartanburg on the 23rd, I had, I think, seven hours and 45 minutes involved in this case.

Q Okay. Now, we're talking about now the 23rd of May?

A Yes.

Q Okay. And how much time did you spend with Mr. Lindsey?

A Of those seven hours and 45 minutes, I spent two hours and 30 minutes on May 4th in my office in Charleston with Mr. Lindsey.

MR. VIETH: Okay. Your Honor, at this time I'd move to introduce, as Applicant's Exhibit No. 32, a ex parte order for transportation of Mr. Lindsey to see Doctor Melikian.

MR. ZELENKA: No objection.

THE COURT: Okay.

(Whereupon, the order was marked as Applicant's Exhibit No. 32 and received into evidence at this time.)

Q Okay. And, Doctor Melikian, does this coincide with your records that indicate that the transport order was issued to take Mr. Lindsey to see you on, on the 4th?

A Yes, it does.

Q All right. How many death penalty times were you involved with, doctor, before the Lindsey case?

A I believe the Lindsey case was my first death penalty trial. If it wasn't my first, it couldn't have been more than my second. I had seen some death penalty work in my training watching my teachers, my attendings work on death penalty cases during my fellowship year from 2001 to 2002.

Q All right. Now, as an exhibit in here, and I'm not gonna look for it right now, but there is a document in, that's in evidence from the solicitor, Public Defender's office. It's got your name, phone number, and a comment sheet, called Friday 4/30/04, Judy Fed Exed lots of docs to doc Monday or Tuesday and has more that she's Fed Exing today. Doc said it's just too much. She can't be ready.

Judy told her -- and gives the number. Doc says she will not be in today, 4:30, and there's a comment on the side, per M.B., which I think Ms. Quimby or Mrs. Hatcher indicated it was Mike Bartosh, saying she knew the time constraints before she started and said she would be okay. He will call her Monday.

Do you, do you recall this time frame?

A I recall receiving the documents and being concerned that we couldn't be prepared for trial. I recall, when Mr. Bartosh first called me about the case, that, that the trial date was coming up quickly, and I was concerned that I wouldn't be able to be prepared for that.

Due to my lack of experience at the time, I accepted the case thinking that, if all of the mitigation was done, I could be prepared in that amount of time. Because of my lack of experience, I didn't really understand how much was gonna be involved in gathering information, and that mitigation had barely just begun at that time, and, and there really wasn't anyway we could be prepared for trial.

Q Okay. Now, how many death penalty cases have you been involved in since the Lindsey case approximately?

A I think somewhere between 15 and 20.

Q Okay. All right. With regards to the record gathering back in that time frame, was your office provided with all the records from the Public Defender's Office?

A I have since learned, during this trial, that no, they were not. As I said, my, my secretary was calling and asking for records, which we didn't get. We did get records on the 28th, which I believe my secretary had to make a copy of and send back to Mr. Bartosh. Luckily she noticed that Mr. Lindsey had been at William S. Hall and had a competency and criminal responsibility evaluation, and she initiated a call on the 28th requesting those records in addition.

Q The records from William S. Hall?

A Yes.

Q Okay. They were not included in the package sent by the P.D., the Public Defender's Office?

A Not on the initial package we got for, on April 28th.

Q Okay. Did you request a opinion letter from Doctor Tora Brawley, who testified earlier in this week, and receive a letter form her dated May 20th, 2004?

It's been introduced in evidence.

A Yes, I did. I knew Doctor Brawley was able to see Mr. Lindsey only because she had a cancellation in her schedule. She and I had a phone conversation on April 29th where we discussed her findings. Looks like, according to the bill, I spoke with her again on the 18th, which was probably when I requested a written report. I recall that I was informed that Doctor Brawley would not be

testifying and that I would be putting her information onto the record in testimony. I didn't feel comfortable doing that. So, I requested a written report from Doctor Brawley, which she gave to me on -- I believe it's dated May 20th.

Q All right. Now, the trial of this case started on the 17th, which I believe -- the trial date was 5/17/04 is when the Lindsey case kicked off.

So, the letter where you're still working to get information is dated May 20th from Doctor Brawley, isn't that correct?

A That's correct. Three days after the trial had already started.

Q Started.

Okay. Okay. Now, given the records that you had then to prepare for the sentencing phase of this case -- and let me backup.

That was what you were basically gonna be testifying about, the sentencing phase of the case, wasn't it?

A Yes, in, in my limited evaluation, due to time, there did not seem to be a mental illness defense in this case. And while I didn't do a formal competency hearing, he appeared to be competent. Since we were under the gun time wise, we went right to mitigation.

Q Okay. And given the records that you had at that time versus the records that you have seen with the PCR

preparation, is there a difference?
A Yes, the records I received at that time, the, the file, as, as I got it back from my office, was three or four inches thick. I've seen six to seven times that amount of information in preparation for PCR.
Q Okay. In your previous testimony at the trial level, you indicated you had received certain materials to review, and I think you've already indicated that some of those records were missing.

Are there things now that you have seen that might have impacted or did impact the way you viewed this case?
A Well, there was lots of information that I didn't have that would of been important. The suicide notes, in looking back at the way the records were given to me, they came in, some in bits and pieces, and when I've seen the complete file, I was given several pages of information, but not a -- not the complete file on any of those things such as mental health records, his medical records, Department of Correction records. I didn't have the incident, complete incident reports, the -- all the rest of the file information, since I got it in my office, I never saw the volume they had. But I now know that I was not given all the information that they had acquired.
Q All right. Well, why do forensic psychiatrist rely heavily on records?

A Well, a general psychiatrist would take what a patient has to say at face value. That's what they believe, and that's your starting point in you're going to be treating them.

A forensic psychiatrist is involved in legal matters. So, you're going to be testifying to this. You need some corroboration to see is the person lying to you, is the person's memory correct whereas in just treatment, what they have, what they have to say and what they believe is the case is fine. In a forensic setting, you're addressing legal matters and you need to know the truth of the matter as much as you can. So, you review lots of records to corroborate what a patient or defendant has told you.

Q Okay. And would the records, and the documents, the tape that was brought in the other day, would, would any of the things that you have seen now, subsequent to that trial but before this one, have changed the way you have, would of testified in the case?

A It would of changed the diagnosis that I made in that I didn't understand the seriousness of Mr. Lindsey's depression at the time around the incident. I didn't understand the level of depression that Mr. Lindsey was showing at the time of my evaluation around the trial. It would have changed the way I looked at his cognitions in terms of he had testing results that were low. I didn't

realize, because I didn't have family history, I didn't have enough time with Mr. Lindsey, to see that he was not functioning at his best level at the time.

Mr. Lindsey is someone who doesn't show a lot of emotion and doesn't show his depression all that much, and in just one meeting with him, I felt that he was functioning pretty well. Now that I have gotten to meet him since then, I realize quickly that, that I had misjudged him and that would of changed my testimony in how much I could have spoken to and the way I would have explained his diagnoses and mental state around the time of the crime.

Q All right. Assuming that we had a jury impaneled now, what would you tell them that would be different?

A I would of explained the severity of his depression. I gave him that diagnosis in my original testimony. It's one thing for someone to say I was depressed and upset. It's another thing to know that he was rarely suicidal in his life, and he was genuinely suicidal at that time. He had lost a significant amount of weight. He had decreased energy. He was not functioning well at all.

His scores and looking at his psychological testing that he had done around the time when he went to William S. Hall, and when he was seen by Doctor Brawley, showed that his level of cognitive ability decreases quite a bit with his depression as it does in anybody. But for him, we

actually had scores that showed that.

By, I don't want to say coincidence, what I saw of Mr. Lindsey at the time when I evaluated him in 2004 fit the overall picture I had because I only had limited information about him. I knew he had problems in school. I knew he had a speech impediment and I knew his scores were low. I felt that because of the other things he'd been able to do in his life that the borderline intellectual functioning diagnosis that others had given him was probably not correct, but he still fell in that range of cognitive ability. Knowing him now and having been able to review records and find other I.Q. scores, I know that a lot of that was most likely due to his depression.

Q All right. With the review of other records such as the assault and battery with intent to kill case, the charges of the CDV's, with any of that -- was any of that information given to you, and if not, would it have mattered to you?

A I had general information about CDV charges and the assault and battery with intent to kill charges. What I didn't know, at the time, was that most of the CDV's he had not been convicted of. I didn't understand the family dynamic of how often the police were called and the severity of the incidents when he got those charges. I also didn't understand that his assault and battery with intent to kill

charge, there was, you know, appeared in a large element of self-defense in that. He only had a one year sentence, which would be unusual for a crime that severe. I didn't have information, at the time, that he attempted four times to turn himself in for that, for that crime, went to the police department waiting on them to have a warrant.

All of those kind of things paint a different picture of the person than just knowing he's been charged and convicted of assault and battery with intent to kill, he has multiple charges of criminal domestic violence. All of those things go to paint a more accurate picture of who this person is as opposed to just a list of he did bad in school, his I.Q. is low, and he's had all these charges in the past.

Q Sure.

Doctor Melikian, did you feel, when you came up here, that you were prepared to testify?

A No, I did not.

Q Okay. And tell us when you got notified to be here and how that was, how that worked.

A Well, on many levels I didn't feel prepared to testify. As we talked about the note previously that I didn't know existed until this trial of calling Mr. Bartosh's office, I told them I didn't feel I could be prepared to trial, to go to trial. They set up a conference call with Judge Few and I had an appointed time to call him. I believe it was on

May 12th. I spent 45 minutes speaking with the judge about my concerns about being ready to testify.

I was told I would be testifying on Monday, which I believe would of been May 24th, and I had planned to spend all day, May 23rd reviewing records. Saturday night, on the 22nd, somewhere around 10:00 p.m., Mr. Bartosh called me and told me to be in Spartanburg tomorrow morning, which would of been Sunday morning at 8:00 a.m. to testify. We spent 30 minutes on the phone that night, and that was my preparation to testify the next day.

Q All right. Let's go back a minute to the phone call with Judge Few.

Was that -- what was the purpose of that phone call?

A As I recall, I had told Mr. Bartosh that I didn't feel I could be ready. I didn't know that the records were being severely limited at the time, but I still didn't feel I had time to know the records with the thoroughness I would of wanted to, to be prepared to testify, and I'm guessing I was asking him to get a continuance. In any case, I was telling him I didn't feel I could be prepared to testify.

Q All right. Did you have a -- were you personally speaking to the judge?

A Yes, I was.

Q Okay. By phone in, in Charleston?

A Yes, I was on the phone in my office.

Q Okay. And was the Public Defender, was Mr. Bartosh on, you say it was a conference call, was he somewhere?

Was it a three way call or was it just you and the judge?

A To my recollection it was -- it's down as a conference call. As I recall, I think I had a time I was suppose to call the judge, but, to my recollection, it was just the judge and I on the phone.

Q Okay. Did the Public Defender's Office put that burden on you to try to get a continuance?

A Yes.

Q Did -- was that---

A Well, I---

Q ---a motion---

A Let me clarify that. They didn't tell me to get a continuance. But they, as I recall, they wanted me to explain to the judge that I was not prepared to testify.

Q Okay. Do you know, of your own knowledge, whether there was any formal motion for continuance made on the record because of your not being prepared?

A I don't know.

Q Okay. So, all you know for sure is that you talked to Judge Few, right before the trial, telling him that and asked for a continuance?

A I had actually forgotten I had, had to have that call

with the judge until this case and reviewing my records and looking back and saw that there was that phone call to the judge.

Q Have you ever done that before?

A No, have not.

Q Have you ever done it since?

A No, have not.

Q All right. All right. With regards to -- let's go back to the William S. Hall diagnosis.

So, there was a competency, stand trial diagnosis back in '03. You were eventually, of course, made aware of that report, correct?

A Yes.

Q Did you agree with the report?

A No, I did not.

Q Okay. Why not?

A Well, in the report they diagnose Mr. Lindsey with malingering and borderline intellectual functioning. Excuse me. They, they gave him the diagnosis of malingering based on atypical symptoms as they described in their report, but by objective testing, he didn't meet the criteria for malingering. Doctor Brawley also gave him tests of malingering, and he did not malinger on those tests.

So, I disagreed with that diagnosis. I also disagreed with the borderline intellectual functioning diagnosis. For

one, he had higher I.Q. scores with Doctor Brawley and I felt that those I.Q. scores were not accurate due to his, for whatever reason I didn't know at the time, he was not functioning, I now know is likely depression, but I didn't feel like, even with the low test scores, he was able to do more things than someone with borderline intellectual functioning could do.

I should clarify that borderline intellectual functioning is an I.Q. between 70 and 80. I.Q.'s below 70 are mental retardation. And, so, that would of placed him close to being mildly mentally retarded. When I saw him he didn't look a whole lot better than that. But he was a little bit better than that, and I would have made that diagnosis. And I had a little bit of history to tell me that he had been able to hold some jobs and do some other things that I thought he probably did function at a higher level.

Q Okay. Now, for a lay person that's looking at the report for William S. Hall, you have the first page as Axis I malingering on there, but then you read the report and it says didn't meet the test criteria to render an opinion on malingering. So, you're looking at two different things and I'm trying to reconcile why do they have one here and doesn't meet the, the test here, and the same with Brawley coming in and say not malingering.

So, help me to understand the malingering diagnosis when the test scores do not get there.

What -- how do you come up with that?

A Well, having more information now, I can explain how that diagnosis got there and, and why they made it. I didn't have that information at the time of trial. To give a diagnosis of malingering in a forensic setting is a very serious diagnosis to make. It's been shown that defendants get harsher sentences if they are diagnosed with malingering. So, you don't want to make that diagnosis unless you're sure, and that's something that there are objective tests for. So, if a defendant says they're hearing voices, and you don't believe that, there are some tests you can give to try to prove whether they are or are not.

And, so, as I read William S. Hall's report, they said he was malingering because lots of his symptoms were atypical and discussing his friend Jimmy. And given that bit of information and test scores that say he's not malingering, I disagreed with that diagnosis.

What I have learned since his original hearing was information about what he did at the evaluation at William s. Hall. I heard Mr. Brannon testify that Mr. Lindsey had been talking about a, a hallucinatory person, Jimmy, who was in the room and he was pulling out chairs for and the rest

of that.

When I saw Mr. Lindsey and when Doctor Brawley saw Mr. Lindsey, he described Jimmy as an imaginary friend that he knew was not a psychotic experience. That, given what I thought was his level of intelligence, wasn't that far out there that you would necessarily not believe that and make a diagnosis of malingering when you had objective testing that said he was not.

Q Okay. When you are in here -- you've been in here since the start of this trial earlier this week, correct?

You, you heard Doctor, Doug Brannon testify?

A Yes, I did.

Q All right. And you heard him testify then that, when he first got involved in the case about 30 to 40 days before the trial, that he was going out to the jail to meet with Mr. Lindsey, and that Mr. Bartosh said you're gonna meet some type of character or something like that.

Do you recall that?

A Yes, I recall that testimony.

Q And then that led Mr. Brannon to say, when he went to the jail, and he saw him pull up a chair and have Jimmy sit with him, and that was the character that, that evolved from, from the meeting with Mr. Lindsey.

Is that fair to say?

A That was the testimony I heard.

Q Did either Mr. Bartosh or Mr. Brannon tell you about Jimmy when they were talking to you about their client?
A No, they did not.
Q Would, would you have wanted to know about this?
A Yes, I would. When I, I knew about Jimmy through the report and questioned Mr. Lindsey about that when I saw him on May 4th. Like I said, he described him as an imaginary friend. Since I considered that to be a---

(Whereupon, a phone begins ringing in the courtroom at this time.)

A I'm sorry. I believe that's my phone.
Q Well, you got a night in jail.

WITNESS: My apologies, judge. I turned that on at lunch.

Just hold the button down and turn it off cause it will keep beeping.

As I was saying, when I, when I talked with Mr. Lindsey on May 4th about the, about Jimmy, he described him to me as an imaginary friend. It did not sound psychotic. It sounded like someone with low intelligence and a, and a way of coping.

He had told Doctor Brawley the same thing. He did tell me that he had done that with Doctor Narayan and pulled a chair out and, and behaved in that manner and lots of that was because that was a rather hostile interview with Doctor

Narayan and that was how he dealt with it.

At the time of the trial, I believed that it, it was one instance when he had behaved in that manner. Had I known that he had done that with Mr. Bartosh and Mr. Brannon, that would of been helpful information. I've since reviewed records that he also was discussing Jimmy while he was incarcerated. He made statements that Jimmy had taken over his body or been responsible for the shooting. Had I seen that, that would of been the focus of my evaluation even in the limited time I had with him because that would of been a mental health defense.

And, so, with that information, I believe, you know, Jimmy would of been the focus of my evaluation on May 4th instead of trying to gather as much information as I could and accepting that as an imaginary friend and going on.

Q Okay. With regards to the pictures that were introduced and at least the incident report from the jail where Mr. Tullis said keep a watch on my client cause he hit his head against the wall and, and there was some bleeding I think in the jail, was, was that information made known to you at the time of your initial investigation?

A No, I, I never saw any pictures in the initial records I reviewed. Mr. Lindsey did tell me those things, but, once again, without other information to corroborate that

information, I didn't give it much weight as I should have now knowing the extent of his suicide---

Q All right. And what -- who provided you with most, most of the history of Marion?

A The only history I had about Mr. Lindsey came from him, and on the day of trial I spent time with Lenora Topp trying to learn his history.

Q Okay. And Mr. Bartosh was, I guess, the only attorney you talked to in the trial preparation?

A Yes, the 30 minutes the night before.

Q And that was it?

A Yes.

Q Okay. Let's go back. In the trial of the case there was some mention about questioning you, that there was a Doctor Crawford in the audience, and you had an occasion to talk to her, and gave some opinion or some inference that you were not willing to talk to someone or trying to avoid this person. At least that's what I take when you read it, but look at it on TV.

Tell us what you remember about Doctor Crawford and that situation.

A Doctor Crawford was at the trial that day, and I knew her from my training. I had trained with her. She was the director when I was a fellow. She had wanted to speak with me about Mr. Lindsey that day.

One of the other things, one of the other many things I didn't know was that she had seen Mr. Lindsey at some point. I was never made aware that she had seen him and she wanted to discuss my testimony.

I already felt unprepared and wanted to use every minute I had to try and, and review records and learn his history. So, I felt speaking with Doctor Crawford would assist her in doing her job. I didn't know that she had seen him, that she had anything to offer me. I felt it was more of a priority to get my job done than to help doctor Crawford to complete hers.

Q Okay. Since the trial began here and Karen Quimby-Hatcher has testified to her documents on Pam Crawford coming to the jail at night one night, and her stopping that communication when it became fact specific, and then she said well, that's okay, I'm just here to interview him and then to critique you and Brawley.

So, is that -- you just now knew why she was here through this trial?

A I knew she was in the courtroom to critique my testimony. That was why the solicitor would have another psychiatrist there. I -- as I said, I felt it was a, more of a priority to get my job done than to assist Doctor Crawford with hers.

Q Okay. Let me go briefly down to Lieber Correctional

Institution right quick.

Have you had an occasion to visit with Mr. Lindsey at Lieber?

A Yes, I've seen Mr. Lindsey I believe three times at Lieber.

Q And what are your observations of him and the environment when you're down there?

A As I said, the, the first time I met Mr. Lindsey I realized that I had misjudged his cognitive ability and his diagnosis at the time. He does not appear to be depressed at this time. He gets along with guards there well. I've had contact visits with him.

In terms of anyone being afraid of Mr. Lindsey or behavioral problems in the prison, the last time I saw Mr. Lindsey we were in a visitation room that had a door that the lock was not operating properly on and they couldn't always unlock it. The -- Mr. Lindsey and I were in that room for quite sometime when the warden walked by and realized that Mr. Lindsey was not in shackles, which is against Department of Corrections policy for death row inmates, and the warden had to stop our evaluation at that time, and they spent several minutes trying to get the door open so that we, they could even put him back in shackles, and they put him back in shackles and we were allowed to continue our, our interview.

But it goes to he got along cordially with the guards. Nobody seemed concerned about my safety, which I hoped they would be. And he seemed to be getting along well there.

Q All right. Now, with regards to the defense team that was put together, you've been in the courtroom the whole week, with -- Doug Brannon indicated, as I recall his testimony, that he was wanting to be on a death penalty case for experience and worked on the guilt phase primarily.

A Yes, I heard that testimony.

Q Karen Quimby had come on board about 30 days before the trial after one death penalty trial, and was mainly a record keeper and compilation of records and so forth and didn't take part in any of the decision making on the penalty phase.

A Yes, I heard that.

Q Lenora Topp was not qualified as any type of clinical social worker or expert to testify to anything accept to be a fact finder in investigations, is that---

A Yes, that's my understanding.

Q And this was your first death penalty trial?

A Yes.

Q Do you feel the defense team was prepared for this case?

MR. ZELENKA: Object. Calls for speculation. Also beyond the area of her expertise.

THE COURT: Sustained.
Q How many death penalty trials have you done since that case?
A Somewhere between 15 and 20.
Q Okay.
A Cases I should say. Not trial.
MR. VIETH: Okay. Your Honor, in light of the objection and sustained, I just want to at least proffer it for the record.
THE COURT: Go ahead.
Q Okay. Was the defense team prepared for this trial?
A In my experience with death penalty cases since then, myself included, it was the least prepared team with the least amount of time I've ever been involved in a death penalty case.
Q All right. If you had this call again for this type of time, would you take the case?
A No, I have had calls since then and I have refused to take cases because I have a better understanding of what's involved. This case has bothered me since that day. I recall, on that day of testimony, wondering if it was my ethical duty to refuse to testify I felt so unprepared.
Q Thank you.
THE COURT: I still sustain the objection. However, she can testify as to her participation.

MR. VIETH: Yes, sir, thank you.

Answer any questions Mr. Zelenka may have.

CROSS-EXAMINATION

BY MR. ZELENKA:

Q Doctor Melikian, you said your diagnoses had changed from the clinical diagnosis you gave Mr. Lindsey in 2002, is that correct?

A In that I didn't understand the severity of his depression.

Q Okay. But still Axis I, Axis II, Axis III, you're saying the same thing, aren't you?

A Yes.

Q And, and what was the opinion you gave the jury in 2002?

A My opinion regarding what?

Q Your opinion regarding the defendant's particular mental state.

A Let me go back to -- I believe I testified that he was depressed at the time. My testimony was not very full in being able to elaborate the degree of distress he was under. He had given me information that he wrote suicide notes, but I didn't have them or knew that anyone else did. I've learned since of the information of the phone call to Mr. Tullis, which would of been very important to me to, to be able to understand his mental state at the time of the

offense.
Q The records that, that you testified, under oath, that you did review where you testified you had his medical records, correct?
A Yes.
Q The records from a psychiatric hospitalization when he was a teenager, correct?
A Yes.
Q The records from the head injury when he was an infant, correct?
A Yes.
Q And that head injury would be the one, the car accident that we talked about earlier today with Jan Vogelsang, isn't that correct?
A Yes, I had limited information from all of those instances. What I didn't realize at the time was that those were not complete records of any of, of his -- well, I shouldn't say any. Those were not complete records of those hospitalizations or the information that was available.
Q Okay. You testified you had his neurological records. What records were those?
A I testified at the original hearing?
Q Yes.
A That would of been Doctor Brawley's testimony.
Q The neurological letter, that would be Doctor Brawley's

or did you get some information from Doctor Absher, the neurologist?

A I spoke with Doctor Absher on the phone. I didn't have any records from him to my recollection.

Q Okay. And you testified, neurologically, the defendant was normal, isn't that correct?

A Well, in reviewing my testimony from the original trial, I had wanted Mr. Lindsey to see a behavioral neurologist. The difference in that from a clinical regular neurologist would be someone who has specialized training to understand the way neurologic deficits affect someone's behavior. That's different than general neurology, do their reflexes work, can they stick out their tongue, blink their eyes, have they had a stroke, do they have Parkinson's or other neurologic diseases. His findings were normal on a regular neurologic exam, but that would of been what I expected.

Q Okay. You also testified you had his school records?

A I had some of his school records, yes.

Q But you testified that you had his school records, correct?

A Yes, I -- as I said, I didn't realize, at the time, there was so much more information we did not have.

Q From the schools?

A Yes.

Q What information didn't you have from the schools that you have now?
A The -- I couldn't tell you exactly. I have a list of his grades was all I had at the time.
Q The school records weren't faxed to you?
A I have some school records, some testing.
Q Did you get about 18 pages of school records on May 4th, 2004, faxed to you from Judy Bogan?
A I have 15 pages on May 20th.
Q No, May 4th.
Does that refresh your recollection?
A I have some of those records and may of had them at the time of trial.
Q Well, that fax---
A Oh, yes, I had---
Q ---says---
A I had them on that date, yes.
Q Yes.
A And I'd also like to make sure and clarify that even though I had, we didn't have complete records, I would not have had time to review the complete records had I had them. I was concerned that I didn't know the records that we did have.
Q Now, the only thing you testified at trial that you didn't have that you wanted to have were the Department of

Corrections records, correct?
A If you can point that out in my testimony. I don't, I don't recall it verbatim, but that sounds correct.
Q I'll provide this. That's your testimony.
Now, Doctor Brawley provided you some information about her review before you ever met with the defendant on May 4th, isn't that correct?
A Yes.
Q And that information included some additional information, different information than she put in her written report also, isn't that correct?
A I'm not sure. I haven't compared those two. I do have my notes from that conversation with Doctor Brawley and her written report.
Q Okay. Well, if you look on the second page of the notes that you're looking at, she's listing the particular tests that she ran, the psycho neurological testing that she did at that particular time, isn't that correct?
A Yes, these are my notes of our conversation.
Q And she's given the particularized results of those tests, correct?
A Yes.
Q And in her report she's making a more general statement that she also gave tests, but she didn't describe the actual results of those tests other than the WAIS test, isn't that

correct?
A I'm not sure I understand the question.
She gave additional tests that aren't listed in my notes?
Q No. In her written report she's merely giving her opinion about the general results of those tests. Not the actual results on the individual test she gave.
A Yes.
Q And you have her opinion on the actual results of the individual tests, correct?
A I have my notes of her giving me the scores of the actual tests and the reason I asked her for a written report is I can't discuss -- I'm not a psychologist. I don't understand the ends and outs of these tests to be able to say exactly what these scores would mean.
Q Okay. But Doctor Brawley indicated to you, in your professional practice, what those scores meant for you to make that assessment in determining the existence or nonexistence of a mental illness, correct?
A Yes, and she told me, you know, what his I.Q. scores were, that he had problems with attention and concentration, and that I -- some of these notes are not complete because I realized, even if I wrote them down, I wouldn't know what they mean. I can't tell you what a Trails A and Trails B test entails other than Doctor Brawley telling me that it

has to do with attention and concentration.

So, the, the important test I took out of this, you know, the information becomes more and more general in my notes. It says verbal learning and it has an arrow pointing down as opposed to she probably told me something very specific, but I realized that information didn't have any meaning to me. The RAY test being borderline, that's the Ray Complex Figure Test. I remember, in my testimony, being questioned extensively about that being a malingering test, and realized later that were -- there's two different RAY test. One is for cognitive ability and one is for malingering.

It occurred to me letter that Doctor Crawford misunderstood my notes to mean the RAY Malingering Test when that wasn't what that was indicating. The SIRS is the malingering test which he did find on, didn't show any malingering, and then I have scores on the TOM because that is one of the tests I understood how it works.

Q Okay. And that's the test of---

A Malingering---

Q ---malingering?

A Malingered memory.

A Malingered memory. Thank you.

Now, at trial, you testified he had a family history of depression, is that correct?

A Yes.
Q You testified that he had an overdose when he was 15 years old, correct?
A Yes.
Q You testified to the jury at that time that he appeared to satisfy the diagnostic criteria for malingering and that he suffered from a major depressive disorder?
A I don't believe I testified that he met the diagnostic criteria for malingering.
Q No, now, excuse me. Diagnostic criteria for depression.
A Yes.
Q And that he suffered from a major depressive disorder. My fault. I apologize.
You did address malingering in your testimony before the Court?
A Yes, I did.
Q You relied upon Doctor Brawley's testing and the fact that she didn't find malingering, correct?
A That was part of my basis for that information, yes.
Q Okay.
A Not solely.
Q And you also sought to address the existence of Jimmy?
A Yes.
Q And what Doctor Brawley saw, correct?

A Yes.
Q And tried to anticipate the fact that the first day that Jimmy appeared in the record was Doctor Freeman Smith's records on the day that he was served with the intent to seek the death penalty, correct?
A That was one of the things I didn't know at trial.
Q You---
A Had I---
Q You confirmed that during your testimony, that that was the day?
A I -- as I recall, they showed me information that that was the day and I had misinformation. One of the reasons that that information would of been so important to me to have is that issue of Jimmy I could have dealt with before trial. As a matter of fact, the first time I met with Mr. Lindsey in preparation, in preparation for this hearing, one of the first things he did was apologize for Jimmy. When I look back and, you know, now with hindsight, I can see that Mr. Lindsey started out malingering Jimmy. He was told to do this by some other inmates is the information he's given me since, and he was feigning these symptoms because they told him to act crazy.

By the time I saw him two years later, he was, really didn't want to continue this and was minimizing it, which, unfortunately, made it more believable because he wasn't

pulling out chairs and doing some of the rest of it. So, an imaginary friend that he understood was not psychotic was much more believable than a hallucinatory person.

I believe, if I had more time to spend with him as opposed to meeting him just once, I probably would of gotten that information before trial and would of been able to give much more effective testimony.

Q Okay. So, the information you've got is he was malingering?

A I have gotten that---.

Q He was---

A I have gotten that information that he malingered with Doctor Narayan and Doctor Freeman. Since that time, had I had more time to spend with him before his original trial, I believe I would of had that information when I testified the first time.

Q So, your testimony would of been he's malingering illness, illness when he's meeting with his lawyers in preparation of his defense, he's malingering mental illness when he's meeting with the Court appointed State Hospital doctors because he thinks it's in his best interest?

A Yes, I wish I had had that information at the time because I could have explained that with his level of depression and cognitive ability, he's believing this is a good idea. It doesn't even go to his end means. He was

suicidal at the time. He was still suicidal when I saw him. He's been suicidal throughout this time.

Malingering mental illness was not going to further his goals. I think it has to do with his lack of cognitive ability and thinking things through very well that he agreed to do something some other inmates told him.

Q Okay. So, you said he was suicidal at the time you saw him on May 4th, 2004?

A He still had a passive suicidal ideation. He didn't -- he actually wanted to get a death penalty.

Q He wanted to get a death penalty. So, that means you're suicidal as opposed to accepting the consequences for your action?

A He wanted to die.

Q Okay.

A I would say that was suicidal regardless of why he wanted to die.

Q Okay. You testified at trial that you would not have made the diagnosis of borderline intellectual functioning, correct?

A Yes.

Q You testified at trial that he had chronic neurological problems, correct?

A Yes.

Q And you testified at trial that you were aware of the

existence of a suicide note, correct?
A Mr. Lindsey had told me that there were suicide notes. That was the only information I had about them.
Q Okay. Did he -- did Mr. Lindsey tell you when those suicide notes were written?
A He said that he wrote, this is on the evaluation on May 4th, that he wrote suicide letters. I don't know what they said. That he planned to shoot himself.
Q That he planned to shoot himself?
A Yes.
Q Okay. On Page 1 of your notes---
A Are these the notes that say with Lindsey at the top?
Q Yes.
A Okay.
Q You've got a notation, tried to commit suicide at 15 years, then 2001, what does that say?
A Had a gun, planned, cousin talked me out of it.
Q Okay. That was in 2001, is that correct?
A That's what he told me.
Q All right. Do you know or have you learned that more precisely when that incident occurred, and if any other witnesses existed to that incident in 2001?
A I don't recall what that incident in particular was. I recall him saying he, at one time, wanted to drive off a cliff but was worried he wouldn't die, and I'm not sure

what, what we were talking about at this time in '04.
Q You also described his weight loss at the time at trial.
A Yes.
Q So, you were aware of the weight loss, discussed it?
A I was only aware in that Mr. Lindsey told me of the weight loss.
Q Okay. But the information that you testified about, under oath, when you gave your opinion, is consistent with that same information, isn't that correct?
A It is. But it is much less effective testimony when you say a defendant told me he had a lot of weight loss than when you can pull out records and say at this time he weighed 200 and some pounds and at this point in his life he was a, down to a hundred and eighty or a hundred and sixty, whatever it was.
Q Okay. Did the State challenge that statement in your---
A No.
Q ---examination?
A No.
Q Okay. Now, this case that you stated you, you're not prepared to testify, you were aware the case was, was on Court TV, isn't that correct?
A Yes.

Q Did that concern you as far as your particular preparation?
A Obviously it concerned me that it was -- as I recall, I didn't feel the case would ever be televised, and I was working so hard and slightly sleep deprived from trying to get here by that morning, by the time I got on the stand I had forgotten about the cameras in the courtroom. I was more worried about what my ethical duty to Mr. Lindsey was due to my lack of preparation.
Q Okay. After Mr. Willingham cross-examined you in open court, did you feel confident about your opinion at that time?
A No.
Q Did you feel confident -- did you feel that you had been destroyed as a witness?
A I don't know that I would say destroyed. I certainly did not feel good about my testimony.
Q Did you fear that your testimony, in the manner that it was presented, may have contributed to the verdict that he had?
A I'm not sure how to answer that.
Q Did you feel responsible for this individual getting sentenced to death?
A No, I did not.
Q Okay. Now, before you testified you spent sometime

with Lenora Topp who had been gathering family information, is that correct?

A Yes.

Q Did she give you background information about Virginia Lindsey, Nell Lindsey, her information about her interviews with Marion Lindsey?

A I recall that we spent lots of the day going through information, but I can't recall what information she gave me or what specifically we talked about. When, when I saw her in Court yesterday or the day before, I would not have been able to recognize her had I met her in any other context and not known who she was.

Q Okay. Did you go through the hospital records from St. Luke's medical records that have been provided to you on April 30th, 2004, or had you already gone through those?

A I had only spent an hour and a half, I'm sorry, two and a half hours reviewing records by the time I got to Spartanburg to testify that day. So, I spent a lot of that day looking through records and talking with Mrs. Topp. So, I couldn't say whether I got to those records or not.

Q Okay. But even before you hit those records, you had expressed an opinion that this defendant suffered from a major depression, isn't that correct?

A Yes, I felt he met the diagnostic criteria for that.

Q Okay. And you still feel that today even with the, the

more records that you've received?
A Yes.
MR. ZELENKA: No further questions, Your Honor.
MR. VIETH: Just a couple real quick ones.
REDIRECT EXAMINATION
BY MR. VIETH:
Q The trial of this case with Lenora and Quimby-Hatcher and Doug Brannon testifying about people they interviewed and so forth before trial, you never were privy to any of those interviews, were you?
A No, I didn't know of any of those interviews. I didn't know much of Mr. Lindsey's family history at all.
Q All right. And the documents that have been put in exhibit by the State, and just three or four on, on people that they interviewed and took statements from and the public defender had them and you didn't, it didn't do you any good, did it?
A If I didn't have the information I couldn't congeal that into any understanding of Mr. Lindsey. So, no.
Q Okay. And obviously credibility in any case has some bearing and whether you put a psychiatrist on the stand or a lay witness on the stand, a jury's got to determine believability?
Is that fair to say?
A Yes, that's correct.

Q And does it help you to come in here where someone may think hey, there's a hired gun or something coming in to testify to have as much corroboration as you can have to verify your voracity?
A Yes, of course, and any, and any -- I believe most anyone would want to see other sources of information backing up what you have to say.
Q And whether you make an accurate diagnoses or non-diagnosis, do you feel that it's more comfortable to you, on your credibility, to be able to show and demonstrate that what you say is not just something you've made up and you have corroboration?
A Oh, yes, very much.
Q That's all I have. Thank you.

RECROSS EXAMINATION

BY MR. ZELENKA:

Q Just -- well, you did have some family history from the defendant, didn't you?
A Yes, I did.
Q You did have the information also about what he said about the earlier crimes he committed and what he said about this crime, isn't that correct?
A I had, as I recall, probably an, an N.C.I.C. on him and his information. Relying solely on the defendant for a history is being out on the limb pretty far. I didn't---

Q Okay. But he did give you a history?
A Yes.
Q Didn't he?
A Yes.
Q And he did---
A And I testified as best I could with that limited information.
Q Okay. Is this a copy of your notes from your interview with Mr. Lindsey?
A Yes, looks likes.
Q And those notes reflect you had discussions with him about his education, is that correct?
A Yes.
Q What schools he went to, correct?
A Yes.
Q The first time he thought about suicides, correct?
A Yes.
Q What was going through his mind concerning those suicides, correct?
A Yes.
Q The fact that when he had his interview with the Department of Mental Health he got in a problem with Doctor Narayan, correct?
A Yes.
Q The fact about him trying to turn himself in on the

Stanford Wilkins incident four times?
A I'm not sure if I learned that this time since then or I knew it at the time.
Q Let me pull it out.
A I may have. Went to the police department four days in a row and they didn't have a warrant, yes.
Q So, that's not new information that you got since then, is it?
A No, what I didn't have was another opportunity to see Mr. Lindsey, go through his history again, see if it changed, review records, go through those records with him, and corroborate what he told me. Most of what he told me was true. I just didn't have time to see him again, review records, and, and spend the amount of time with the defendant I would normally do.

To see a defendant one time only in a death penalty case I would, I would not do again. I can not imagine doing that for any serious case. You know, repeated evaluations with a client and ability to gain some rapport, a chance to review records, see what he had to say, go back with those records, confront him about some of those things, I only spent two and a half hours with Mr. Lindsey total.
Q Okay. From, from May 4th, 2004, when you did your evaluation till the time you testified on May 23rd, 2004, were you denied access to the defendant for another

evaluation?
A Not to my recollection.
Q Okay. Did you do any written report of your results of this evaluation?
A No.
Q Have you done a written report of the revisions to the evaluation that you did in 2004 that you're testifying about today based upon this new information you've received?
A I didn't write an original report. So, I didn't make any revisions, and, no, I did not write a report for this hearing.
Q Okay. So, essentially, the only report we have that you ever prepared in this case are your handwritten notes from May 4th, 2004?
A I wouldn't consider that a report, but, yes, we have my notes from 2004.

MR. ZELENKA: Okay. Your Honor, we would move this information into evidence.

MR. VIETH: Without objection, Your Honor.

THE COURT: All right.

(Whereupon, the notes were marked as Respondent's Exhibit No. 14 and received into evidence at this time.)

MR. ZELENKA: No further questions, Your Honor.

MR. VIETH: Nothing further, Your Honor. You can come down.

THE COURT: Mr. Bailiff, will you approach the bar please. Right there is good.

I'm from Chesterfield County. I'm often told when in Rome, do as the Romans do. In Spartanburg we do as the Spartans do.

What is the normal fine for telephone violations in the courtroom?

BAILIFF: It's according to which judge it is. Judge Cole takes the phone and charges -- I don't know what he charges. Sometimes he gives it back. Judge Hayes let's them give a, something to a cause, money. I think his is a hundred dollars, but I'm not sure. And Judge Couch, he takes the phone. Most of the times they don't get it back.

THE COURT: All right. Doctor, if you'll come around to the bar, please.

Mr. Vieth, you can approach.

(Parties comply.)

THE COURT: Based on the type of proceeding we have going on here and part of the duty of the doctor was to listen carefully to the testimony of other witnesses, along with the fact that she was on the witness stand when the phone started ringing, I see no contempt here. But I have to protect myself on the record.

MR. VIETH: Thank you very much, Your Honor. Appreciate that.

THE COURT: Let it, let it be a lesson.

MR. VIETH: Yes sir.

WITNESS: Thank you, Your Honor. My apology again.

THE COURT: And along with your apology too. Thank you.

MR. VIETH: Thank you, Your Honor.

Your Honor, that concludes the presentation of the witnesses on behalf of the Applicant. There would be a motion to be made at the appropriate time.

MS. NORRIS: Your Honor, we do have a motion to amend the PCR application to conform to the evidence under Civil Rule 15(b). In the application there was listed A through F, six specific examples of ineffective assistance of counsel under the overall heading of ineffective assistance, and we don't have anything other than ineffective assistance, but I wanted to make sure, just to protect our record, that we are specifically asserting, in addition to the specifics already listed, the failure to address the question of malingering raised by the State during the trial, and that, that falls under several different categories.

Number one, defense counsel failed to prepare their client adequately and to spend time with him so that he wasn't listening to a jailhouse lawyer telling him to make up a mental illness. They didn't actually attend the, the

mental health evaluation to make sure he behaved appropriately there, and now, I'm not sure it was in existence at that point, but now William S. Hall even sends out notices saying be sure to prepare your client and have them here.

They also did not address that question of malingering adequately by failing to call Doctor Tora Brawley. Although Doctor Melikian, certainly as a forensic psychiatrist, did the best she could to address that issue, she doesn't actually do the psychological testing or could not review the actual objective testing done by William S. Hall.

The second one is that they failed to present the evidence of the neuropsychological or actual brain deficits and dysfunction that Doctor Brawley could testify to. They failed to adequately prepare and present the lay mitigation witnesses in general, and spending little time with them in preparation and not getting sufficient information, and, of course, the comparison there is what came out at trial versus what came out now.

Specifically, they were also ineffective in failing to address the defense witness ability to request mercy. As, as Mr. Pilgrim stated today, he was, in fact, prohibited from doing that. Initially what was happening with the lay witnesses, Mr. Bartosh was asking them an open ended question at the end of examinations saying is there anything

else you want to tell this jury, which some witnesses did take as an opportunity to ask for mercy. Bill Burton specifically did not although he certainly wanted to ask for mercy as he testified here.

But before, just before Mr. Pilgrim, and that is in the record at 2078, Judge Few stated specifically that was the last closing argument from the witness that I'm going to allow. I'm not going to allow any other witnesses to answer the question is there anything you want to tell the jury. Mr. Bartosh just said yes, sir, and that was the end of it.

We submit, number one, that it was ineffective for asking that broad open ended question as opposed to asking the specific question to focus the witness of something along the lines of are you asking this jury to have mercy on, on Marion Lindsey.

Alternatively, they failed to adequately argue the issue and cite to Judge Few the appropriate law, and I've been before Judge Few, as I'm sure the other lawyers in the courtroom have, and he listens when you actually cite him to the appropriate cases. The -- specifically, at the time of this trial, in 2004, there were at least five cases that specifically stated that defense witnesses were entitled to specifically ask for mercy in their testimony, and there was a book that was actually done by Judge Clary and Walter Bailey that was in existence at the time that specifically

stated that.

Just recently, in Rosemon versus Catoe, the South Carolina Supreme Court, once again, made very clear that not only can witnesses ask for mercy, but the judge can, in fact, even instruct that the jury is allowed to consider mercy. But they just left that issue there so that Mr. Pilgrim could not ask for mercy. The other witnesses after that could not. To the extent it's arguable that, that they did preserve the record on that, it would be appellate ineffective assistance for not raising that on appeal.

Specifically we are asserting that they were ineffective for failing to provide sufficient background information to Doctor Melikian. And while some of the testimony here has made it clear, specifically from Mrs. Hatcher, she referred to reviewing the prior Department of Corrections notes and jail notes. Mrs. Topp, you know, testified extensively about some interview memos she had. None of that was actually provided to Doctor Melikian, and Vondoland versus State, which was decided I believe in 2005, but certainly case law before then made it clear that if you didn't actually provide the information to your experts it was ineffective.

They also sought to, were ineffective in failing to seek a continuance. The ABA guidelines make clear that when

you are denied specific motions that you have to adequately make a record. Well, when you look at the record of Mr. Lindsey's appeal, there is no motion for continuance. They left Doctor Melikian to do that. It was off-the-record. So, no record at all of that.

While Mrs. Hatcher testified about her notes, the specific statutory mitigating circumstances she recognized, the record will reflect that, that Doctor Melikian was not asked about statutory mitigating circumstances. So, we submit specifically ineffective assistance for that, and we also assert ineffective assistance for failure to adequately present the family history of mental illness or impairments or, again, to adequately preserve the record.

While Doctor Melikian did testify, as I believe the, the first mitigation witness, that there was a family history of depression, as Mr. Vieth pointed out in cross-examining or examining Ms. Vogelsang, I believe Viriginia Lindsey was prevented from testifying about her sister's suicide attempt and mental health treatment. Mrs. Smith was prohibited from testifying about her own suicide attempt, and Judge Few ruled on that in the record at Pages 2082 and 2083 essentially stating that there was not sufficient connection in his mind. Defense counsel essentially argued that he wanted to show a string of mental illness in the family, and the judge concluded that the lay

witnesses couldn't diagnose mental health.

We submit that Mr. Bartosh was ineffective in that for, again, not properly citing the judge to the law preserving the record specifically in existence in 2004. Although I'm not sure about the, the dates of the trial, but certainly Kinard versus Dratkey, from the U.S. Supreme Court makes it clear that mitigation evidence does not have, have to have an actual nexus to the crimes. It is under the Eighth and Fourteenth Amendment way back to Skipper versus South Carolina in 1986. Any evidence that would weigh in favor of life, and there are numerous cases recognizing the relevance of the family history, and mental illness. Again, the Vondoland case where our State Supreme Court granted relief on ineffective assistance of counsel in 2004 specifically cites the importance of the history of family depression as it was consistent with the makeup of Mr. Vondoland. Council versus State, within the last year or two, addresses the importance of the family history of mental illness, intellectual deficits, violence, and essentially everything is important.

And, finally, to the extent that Your Honor primarily allowed all of the, the testimony here over Mr. Zelenka's objections, but the, the same argument goes there. All of that case law, in addition to Rules 702 and 703, 703 make it clear that all of that evidence is significant as even if

the, the defendant was not present, it still impacts on the defendant when caretakers have mental health issues on their own and inabilities, and certainly when the defendant was present, there is an actual direct impact of the trauma when you think about a young child on the floor as bullets are flying over the head and things of nature.

So, so, we submit, we submit that all of that is not only appropriate for the Court to consider, but also not to discount that in weighing the evidence.

THE COURT: Thank you.

Anything from the State in regards to the motion?

MR. ZELENKA: No, Your Honor. No objection to the motion. At the time we filed our return to the application we asked for greater specificity. I believe we have it now. So, no, we don't have any objection to, to that motion, which we believe makes it more specific.

THE COURT: Motion to amend is granted.

MR. ZELENKA: Your Honor, in light of, of the motion that has particularized the allegations, in light of the fact that Mr. Brannon has already testified and Mrs. Quimby-Hatcher is already testified, I would assert, just to make sure the Court can take judicial notice that Mr. Bartosh is deceased, that we would rest on the State's case at this time based upon the admission of the five page record on appeal that has already been presented to the

Court. We do not have other witnesses to testify.

THE COURT: All right. I need to pose a question cause I got conflicting documents up here.

This matter is pending before the United States Supreme Court or has that been ended?

MR. ZELENKA: That's been ended.

THE COURT: Okay. Some question about that.

Anything else?

MR. VIETH: No, sir, Your Honor, assuming that with the time of day, Your Honor, you wouldn't care for oral arguments that I don't know we need to give them, we would like some time to brief the Court if you need to or however the Court's pleasure on briefing or proposed orders to hand up.

THE COURT: Tell me how much time that you feel that you need.

MR. VIETH: Well, my understanding is that most people ask for the transcript to be done so they can look at it and prepare the order. I don't want to go against the grain of what I understand is the norm of PCR cases of this nature. So, we would ask that that be allowed and I need maybe 30 days after we get that.

THE COURT: Madam Court Reporter, what do I need to do to help or put you on priority?

MR. ZELENKA: Judge, the -- I believe the statute and

the rules should, should place the death penalty PCR transcript on a priority.

THE COURT: Okay.

MR. ZELENKA: It's up to the court reporter to make it clear that Court Administration understands that this particular request will be done. So, I understand the court reporter probably needs a written request for that. I can work that out with Mr. Vieth as to how, how that's done, and I'm sure that can be done quickly.

THE COURT: Y'all let me know, Madam Court Reporter, of anything I need to do. Let me know. Otherwise I'll let you follow normal procedure and, counsel, y'all back her up on it.

MR. VIETH: Yes, sir, that's fine.

Your Honor, I would like just to give you two cases to review at your convenience, Sears versus Upton, June 29, 2010, Supreme Court of the United States, and, of course, Council case.

MR. ZELENKA: No objection obviously, Your Honor.

THE COURT: Okay. Soon as you can get those or get the transcript, try to get something finalized in 30 days, and certainly welcome any proposed orders. Make sure you exchange your information.

MR. ZELENKA: All right, judge.

MR. VIETH: Thank you, Your Honor. Yes, sir.

THE COURT: All right. Thank y'all very much.

MR. ZELENKA: Thank you, judge.

* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

CERTIFICATE

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 19th, 20th, and 21st day of July, 2010.

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

August 1st, 2010



PAMELA E. GREEN, Court Reporter

DP

DEFENSE OF INDIGENTS VOUCHE

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MAR - 7 2011
SC OFFICE OF APPELLATE DEFENSE

NOTICE: Please complete voucher including FU... NAME and LAST KNOWN NONINCARCERATED ADDRESS OF DEFENI Order of Appointment, and Notice of Intent to Seek Death Penalty, Order allowing expenses, bills for expenses, and, any other support complete package to the trial judge for approval and then to the Clerk of Court for certification. If more than one attorney was appoint ttorneys. IF YOU HAVE A QUESTION AS TO WHETHER AN EXPENSE WILL BE REIMBURSED, PLEASE CONTACT TI 803.734.1343, FAX: 803.734.1345, e-mail: executive@scaid.state.sc.us, BEFORE INCURRING THAT EXPENSE. Once the vouche certified by the Clerk of Court, submit the ORIGINAL VOUCHER along with one copy of the supporting documentation to: South Ca 11433, 1122 Lady Street, Suite 1110, Columbia, SC 29211. Please insure that all supporting documentation is included and that all must be typed or legibly printed to be accepted. Orders submitted for expenses and payments exceeding the maximum allowed by stat copy. YOU MUST SUBMIT THE ORIGINAL SIGNED VOUCHER. INCOMPLETE VOUCHERS AND DOCUMENTATION WI must be received by the Office of Indigent Defense in correct form no later than THIRTY (30) DAYS after services were completed, b services were completed, in order to be paid.

COUNTY: SPARTANBURG	List All Case Numbers (GS, CP, JU or Arrest Warrant Numbers): 02-GS-42-4753
Client's Full Name: Marian A. Lindsey	
Last Known Address (Prior to Incarceration): Inman, SC	List All Charges: Murder

F-4000 RECEIVED JUL 30 2004 INDIGENT DEFENSE

Voucher Submitted Under Seal?	Previous Vouchers Submitted For This Client at this level (Trial or Appeal)? [Mistrial/Retrial are considered new cases]	Type of Cases (Most Serious Charge):
■ YES ☐ NO	☐ YES ■ NO	■ Death Penalty ☐ Felony ☐ Misdemeanor ☐ Juvenile ☐ Status Offense ☐ PCR ☐ Capital PCR ☐ Capital Appeal ☐ Non Capital Appeal ☐ SVP ☐ Other

Pursuant to the most current and applicable S.C. law, claim is hereby made for compensation, reimbursement, or is certified by the Public Defender for representation of the above named as set out below.

ATTORNEY'S FEES

NON DEATH PENALTY CASE FEES		
	Hours at $40.00 per hour for Out-of-Court services	$
	Hours at $60.00 per hour for In-Court services (Restricted to actual hearing times)	$
DEATH PENALTY CASE FEES		
	Hours at $50.00 per hour for Out-of-Court services	$
	Hours at $75.00 per hour for In-Court services (Restricted to actual hearing times)	$
	TOTAL FEES:	$

AXIMUM FEE ALLOWED IS $25,000 per attorney in Death Penalty cases, $3,500 in Felony cases, $1,000 in Misdemeanor and PCR cases, and $1,750 in SVP cases

EXPENSES

Long Distance Telephone Calls	$
Psychiatric Examination* Dr. Tom Brawley, Ph.D. ($1530.00) Dr. Margaret Melikian, D.O. ($5408.50)	$6938.50
Expert Witness(es)* Lenora Topp, Mitigating Expert	$5850.00
Investigative Services*	$
Extraordinary Travel Expenses* Lenora Topp, Mitigating Expert	$ 593.05
Advanced Payment for Expenses*	$
Other Expenses (Explain)* John R. Abshor, M.D. (Medicolegal Consultation)	$1200.00

*REQUIRES PRE APPROVAL FROM THE COURT, ATTACH ORIGINAL OR CERTIFIED COPY OF ORDER GRANTING PRIOR APPROVAL OF COURT. ORDER MUST STATE MAXIMUM EXPENSE ALLOWABLE WITHOUT SUBSEQUENT ORDER. EXPENSES MUST BE APPROVED PRIOR TO BEING INCURRED IN ORDER TO BE PAID. ALL EXPENSES ARE NOT REIMBURSABLE! Please read instructions on what expenses are reimbursable.

TOTAL EXPENSES: (Attach copies of all bills with explanation of expense and Court Orders allowing expenditure where required	$14581.55
MAXIMUM EXPENSES allowed are $20,000 in Death Penalty cases and $500 in all other cases	
Less amount paid by Defendant or by any person on Defendant's behalf	$
TOTAL FEES AND EXPENSES REQUESTED ON THIS VOUCHER:	$14581.55

☐ Advance payment. Date of request for funds (Approval Order attached): _____, 20__

■ Final Submission; no further requests for funds. Date case concluded: May 26, 2004

Method of Disposition: ☐ Plea ■ Trial: ☐ Acquittal ■ Guilty Verdict ☐ Mistrial ☐ Dismissal ☐ Other

This is a true and correct statement of my service to and expenses for the above named Defendant

Attorney's Signature: Michael Brantley

Check Applicable Catetory: ■ Public Defender ☐ Private Attorney

Attorney's Signature

Check Applicable Category: ☐ Public Defender ☐ Private Attorney

CHECK WILL BE MADE PAYABLE AND MAILED TO ONLY ONE ATTORNEY, FIRM OR PUBLIC DEFENDER CORPORATION AS REQUESTED BELOW. SOCIAL SECURITY OR F.E.I. NUMBER MUST BE INCLUDED

Name and Address of Check Payee: Spartanburg County Public Defender, 258 North Church Street, Spartanburg, S.C. 29306 PO Box 5666 29304

SS or F.E.I. Number: —

TELEPHONE NUMBER: 864-596-2561

Trial Judge's Signature: 7/22/04

Court or Circuit: 7th Gen. Sessions

Date Approved: July 28, 2004

Clerk of Court's Signature: Dale Rutherford

Clerk of Court for (County): Spartanburg

Date Certified: July 27, 2004

OID FILE NO.: 02-L-9

AGENCY VOUCHER NO: DV290

CID FORM 100 (10/02) Local Duplication is Authorized — PREVIOUS VERSIONS OF THIS FORM ARE OBSOLETE AFTER 12/31/02

5810-1701

DEFENSE OF INDIGENTS VOUCHER DP L-8

NOTICE TO ASSIGNED COUNSEL OR PUBLIC DEFENDERS: Please complete voucher including FULL NAME and LAST KNOWN NONINCARCERATED ADDRESS OF DEFENDANT, and attach your detailed time sheet, Order of Appointment, and Notice of Intent to Seek Death Penalty, Order allowing expenses, bills for expenses, and any other supporting documentation, if required. Deliver this complete package to the trial judge for approval and then to the Clerk of Court for certification. If more than one attorney was appointed, submit a single voucher signed by both attorneys. IF YOU HAVE A QUESTION AS TO WHETHER AN EXPENSE WILL BE REIMBURSED, PLEASE CONTACT THE OFFICE OF INDIGENT DEFENSE AT (803) 734-1343 BEFORE INCURRING THAT EXPENSE. Once the voucher has been approved by the trial judge and certified by the Clerk of Court, submit the ORIGINAL and two (2) copies along with one copy of the supporting documentation to: South Carolina Office of Indigent Defense, P.O. Box 11433, 1122 Lady Street, Suite 1110, Columbia, SC 29211. Please insure that all supporting documentation is included and that all parts of this voucher are completed. Entries must be typed or legibly printed to be accepted. Orders submitted for expenses and payments exceeding the maximum allowed by statute must be either the original or a certified copy. YOU MUST SUBMIT THE ORIGINAL SIGNED VOUCHER. INCOMPLETE VOUCHERS AND DOCUMENTATION WILL BE RETURNED. NOTE: All vouchers must be received by the Office of Indigent Defense in correct form not later than THIRTY (30) DAYS after services were completed in order to be paid.

County: Spartanburg

List All Criminal Case Numbers: 02-GS-42-4753

Client's Full Name: Marion A. Lindsey

Last Known Address of Client (Prior to Incarceration):

Spartanburg, SC

List All Charges: MURDER F-HOO

Type of Case (Most Serious Charge):
☒ Death Penalty ☐ Felony ☐ Misdemeanor ☐ PCR

Pursuant to §§ 16-3-26 and 17-3-50 of the 1976 S.C. Code of Laws, as amended, claim is hereby made for compensation, reimbursement, or is certified by the Public Defender, for representation of the above named as set out below:

NONDEATH PENALTY CASE FEES

_____ Hours at $40.00 per hour for Out-of-Court services: $ _____

_____ Hours at $60.00 per hour for In-Court services:(Restricted to actual trial or hearing times) $ _____

DEATH PENALTY CASE FEES

107. Hours at $50.00 per hour for Out-of-Court services: $ 5350.00 ~~107.0~~

225 Hours at $75.00 per hour for In-Court services:(Restricted to actual trial or hearing times.) $ ~~62.5~~ 4687.50

MAXIMUM FEE allowed is $25,000 per attorney in Death Penalty cases, $3,500 in Felony cases, and $1,000 in Misdemeanor and PCR cases.

EXPENSES

Long Distance Telephone Calls	$
Psychiatric Examination*	$
Expert Witness(es)*	$
Investigative Services*	$
Extraordinary Travel Expenses*	$
Advanced Payment For Expenses*	$
Other Expenses (explain)*	$

*ATTACH ORIGINAL OR CERTIFIED COPY OF ORDER GRANTING PRIOR APPROVAL OF COURT - ORDER TO STATE MAXIMUM EXPENSE ALLOWABLE WITHOUT SUBSEQUENT ORDER.

TOTAL EXPENSES: (Attach copies of all bills with explanation of expense and Court Orders allowing expenditure where required.). $ _____

MAXIMUM expenses allowed are $20,000 in Death Penalty cases and $600 in all other cases.

I ☐ did ☒ did not seek and obtain part payment from the Defendant in the amount shown below.

Less amount paid by Defendant ..... $ _____

TOTAL $ 10,037.50

☐ Advance payment. Date of request for funds (Approval Order attached): _____, 19__

☒ Final submission; no further requests for funds. Date case concluded: 5/24/04, 2004

Method of Disposition: Trial: ☒ Acquittal ☐ Guilty Verdict ☐ Dismissal ☐ Plea ☐ Mistrial ☐ Other

This is a true and correct statement of my services to and expenses for the above named Defendant.

M. Douglas Brannon
Signature

_____
Signature

Check applicable category:
☐ Public Defender ☒ Private Attorney ☐ Public Defender ☐ Private Attorney

CHECK WILL BE MADE PAYABLE AND MAILED TO ONLY ONE ATTORNEY, FIRM OR PUBLIC DEFENDER CORPORATION AS REQUESTED BELOW. SOCIAL SECURITY OR F.E.I. NUMBER MUST BE INCLUDED.

NAME: M. DOUGLAS BRANNON Brannon Jamieson

ADDRESS: 175 MAGNOLIA St, Suite 101
Spartanburg, SC 29306

SS OR F.E.I. NUMBER: _____ TELEPHONE NUMBER: _____

APPROVED BY: _____
(Trial Judge)

_____
(Court of Circuit)

DATE: 5/24/04

CERTIFIED BY: Marc Rucker
By: Marla B. Meeks D.C.
Clerk of Court for Spartanburg County (County of Appointment)

DATE: June 3, 2004

OID FILE NO.: L-8

AGENCY VOUCHER NO.: IV 3906

CID FORM 100 (11/94) Local Duplication is authorized.

CRIA - 1021

The State,
vs.
MARion A. Lindsey
CASE NUMBER(S):
02-63-42-4753

OFFICE OF INDIGENT DEFENSE
ATTORNEY'S TIME SHEET

PLEASE TYPE OR PRINT LEGIBLY

	DATE	ACTIVITY			
1	3/12/04	1st Meeting w/ Client		2.0	
2	3/15/04	Library		2.0	
3	3/17/04	Case Laws / Rule & Study		3.0	
4	3/22/04	Meeting w/ Client		2.0	
5	3/24/04	Receive initial Discovery & Review		1.0	
6	3/25/04	Create trial Notebook		2.0	
7	4/4/04	Client Meeting		3.0	
8	4/6/04	Client Meeting		3.0	
9	4/9/04	Court Hearing			1.0
10	4/21/04	Client Meeting		3.0	
11	4/22/04	discovery meeting Sol. office		3.5	
	4/29/04	Sort discovery material / statements		7.0	
13	5/2/04	Cont. sort & review discovery		6.0	
14	5/7/04	trial prep		8.0	
15	5/8/04	trial prep / witness list prep.		5.0	
16	5/10/04	trial prep		4.0	
17	5/12/04	trial prep		6.0	
18	5/13/04	trial prep		6.0	
19	5/14/04	trial prep		8.0	
20	5/15/04	trial prep		10.0	
21	5/16/04	trial prep		6.0	
22	5/17/04	Jury Selection		2.0	11.0
23	5/18/04	Jury Selection		1.0	8.5
24	5/19/04	Jury Selection		1.0	8.5
25	5/20/04	Jury Selection		3.5	8.0
		TOTAL FOR THIS PAGE:		95.0	37.0
		TOTAL FOR ALL PAGES:			

I hereby certify to the Court that the information setforth on this time sheet accurately reflects the time and activities performed by me for the above referenced client.

Signature: M. Douglas Brannon Date: 5/26/04

CID FORM 300 (8/94) Local Duplication is authorized.

OFFICE OF INDIGENT DEFENSE
ATTORNEY'S TIME SHEET

VS. Marion A. Lindsey

CASE NUMBER(S): CR-65-42-4753

PLEASE TYPE OR PRINT LEGIBLY

	DATE	ACTIVITY (Please make sufficient detailed enough to determine what service was performed)	Long Distance Telephone Calls	Out-Of-Court TIME	In-Court TIME
1	5/21/04	Trial		4.0	7.5
2	5/22/04	Trial		6.0	4.0
3	5/23/04	Trial		1.0	7.0
4	5/24/04	Trial		1.0	7.0
5					
6					
7					
8					
9					
10					
11					
12					
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14					
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19					
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22					
23					
24					
25					
		TOTAL FOR THIS PAGE:		12.0	25.5
		TOTAL FOR ALL PAGES:		107.0	62.5

I hereby certify to the Court that the information setforth on this time sheet accurately reflects the time and activities performed by me for the above named client.

Signature: M. Douglas Brannon Date: 5/26/04

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2004 MAR -9 AM 11:33
MARC KITCHENS

STATE OF SOUTH CAROLINA	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA,	Indictment No. 02-GS-42-4753
vs.	ORDER
Marion Alexander Lindsey,	
Defendant.	

The State of South Carolina has served a Notice of Intent to seek the Death Penalty in the captioned matter pursuant to S.C. Code of Laws, as amended. The Court, pursuant to 16-3-26(B) of the South Carolina Code of Laws, 1976 as amended, shall appoint two attorneys, where the Defendant is unable financially to retain adequate counsel. I find that it is necessary for counsel to be appointed to represent Defendant, Marion Lindsey. J. Michael Bartosh, Esquire, will be designated as lead counsel, and Douglas Brannon, Esquire as co-counsel. The Court finds that they are eminently qualified and both have substantial criminal trial experience having exceeded the requirements for statutory and felony trials prerequisite for criminal appeals.

I, therefore, find that attorney, J. Michael Bartosh, has demonstrated the necessary proficiency to qualify as lead counsel in this case. Further, I find attorney, Douglas Brannon has demonstrated the necessary proficiency to qualify as co-counsel in this case.

I find that the appointment of these attorneys is in compliance with and in furtherance of 16-3-26(B) of the South Carolina Code of Laws for 1976, as amended, and the Constitution of the United States of America.

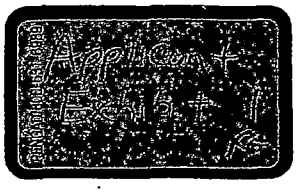
IT IS THEREFORE ORDERED that counsel herein appointed shall continue to serve until relieved by order of this Court.

AND IT IS SO ORDERED.

John C. Few
Presiding Judge

Spartanburg, South Carolina
March 5, 2004

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2004 MAR -9 AM 11:34
MARC KITCHENS


Applicant
Exhibit
No.

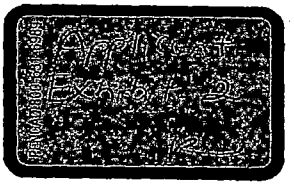
2944

Court

STATE VS MARION A. LINDSEY
02-GS-42-4753

Final RT
~~INTERIM INVOICE~~

04/16/04	7 HRS 120 MILES	TRAVELED TO SPARTANBURG DETENTION CENTER TO INTERVIEW DEFENDANT & OBTAIN MEDICAL RELEASE
04/19/04	6.5 HRS 155 MILES	TRAVELED TO SPARTANBURG CO TO OBTAIN MEDICAL/MENTAL HEALTH RECORDS. PUBLIC DEFENDER'S OFFICE
04/20/02	8 HRS 150 MILES	TRAVEL TO SPARTANBURG CO FOR INTERVIEWS/ PUBLIC DEFENDER'S OFFICE/OBTAIN WORK RECORDS RELEASE
04/22/04	4.5 HRS 149 MILES	TRAVEL TO SPARTANBURG CO TO RETRIEVE RECORDS
4/26/04	7 HRS 150 MILES	TRAVEL TO SPARTANBURG CO TO INTERVIEW DEFENDANT AND TO COLLECT RECORDS
05/04/04	5 HRS	OFFICE DUTIES REGARDING EMPLOYMENT RECORD RETRIVALS
05/14/04	7.5 HRS 125 MILES	TRAVEL TO SPARTANBURG CO FOR RECORDS RETRIVAL AND CONFERENCE AT PD'S OFFICE
05/15/04	7.5 HRS 180 MILES	TRAVEL TO SPARTANBURG OFFICE FOR INTERVIEW W/ATTORNEY BRANNON. ATTEMPTED TO LOCATE WITNESSES
05/18/04	12.5 HRS 135 MILES	TRIAL & WITNESS COORDINATION/INTERVIEW DEFENDANT/ASSIST PUBLICE DEFENDERS
05/19/04	6 HRS 135 MILES	REPORT PREPARATION/TRAVEL TO SPARTANBURG FOR DEFENSE TEAM CONFERENCE/RECORDS RETRIVAL/WITNESS INTERVIES
05/20/04	6 HRS 135 MILES	TRIAL ISSUES/SPARTANBURG CO & RECORDS
05/21/04	9 HRS 145 MILES	TRIAL & WITNESS ISSUES/SPARTANBURG CO



Final

~~INTERIM~~ INVOICE
PAGE 2

05/22/04	14 HRS 140 MILES	TRIAL/WITNESS ISSUES IN SPARTANBURG CO
05/23/04	10.5 HRS 130 MILES	TRIAL/WITNESS ISSUES IN SPARTANBURG CO

EXPENSES

6 HOURS TELEPHONE CONFERENCES WITH WITNESSES/DEFENSE TEAM,

TOTAL HOURS	**117 @ $50**	**$5850**
TOTAL MILES	**1719 @ 34.5**	**$ 593.05**

SUBMITTED BY Lenora Topp **DATE** 5/24/04

LENORA TOPP
MITIGATING EXPERT

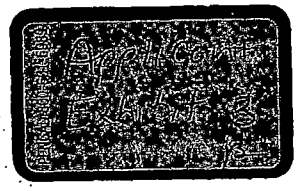
56 CENTRAL AVE., SUITE 204
ASHEVILLE, NC 28801
828/258-0170

2946

Well,

How are you today--yesterday was totally depressing and I know you take these defendants to heart  When does Marion get moved to the state facility and do you know the address?

Today I called Dr. Barry Henderson's office to ask where the records were we requested and the lady in charge was not there, but I left word we still needed them for the file. Then I asked to speak to Dr. Henderson and he came to the phone. You see, Marion never told me he wanted the Dr. as a witness for him until we were in court the other day (Sat?). Marion said he used to play w/ the Dr's children, etc. I was only told about medical records. And damnit--the Dr thinks Marion is a fine person and knew he loved his children--He said everytime he saw Marion out, the kids were with him---Virginia had been to see the Dr a short time ago and she didn't even ask him about speaking for Marion.
Now I really feel like I didn't do enough for him---can the Dr. do anything now? He said just ask.
Tearfully,
Lenora



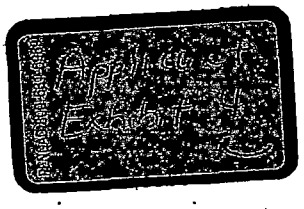
Court

Judy,
1) Have you gotten any hospital records on Nell ref the abortion? Don't know if Social Services would have it or not
2) What about her school records at the technical institute--are they important?

I am only asking because of the interview w/Marion and these would take subpoenas anyway

See ya later,
Lenora

Court



Judy,
I am sending two separate attachments because AOL sometimes doesn't let duplicates get downloaded on other servers.

In addition to this, I am typing Marion's discussion ref Ruby Nell & life w/ her.

Stephanie McCravy works at Camp Care in Inman and her house address is ., Boiling Springs (Belcher tums off 176 near the Palm Harbor manufactured home sales & between two convenience stores near I-26

Tim Sims might be able to tell us that Celeste was mad at Marion because he wouldn't sleep w/ her and Celeste often told Nell things about Marion to make her mad. I'm talking to Tim this afternoon and I try to confirm that.

Also, I'm coming down again today to try to retrieve more medical records!

Later,
Lenora

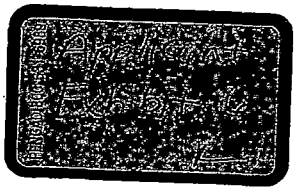
Court



LENORA TOPP

Court

56 CE
ASH
8.



May 10, 2004

TO: School Records Department
Chapman High School

FROM: Lenora Topp Lenora Topp
Mitigating Specialist

REF: MARION A. LINDSEY, DOB , SS#

I am faxing this letter and the signed Release for School Records on behalf of Marion A. Lindsey, who is currently incarcerated at this time.

Mr. Lindsey starts trial in Spartanburg County on May 17, 2004 for Murder. The Public Defender's Office and I have been court appointed on Mr. Lindsey's behalf; therefore, we need these records in a most urgent manner.

I would greatly appreciate your help in retrieving all information you have—either via computer or archives. If you need any assistance w/ the search, i.e., looking through old dusty boxes, then I'll be happy to help dig. ☺

I am sorry about the last minute request, but these records will assist with portraying Mr. Lindsey's life history. Please let me know when they are ready and I'll be happy to pick them up.

I have left a message w/ the Transfer Office and if there are any questions, please don't hesitate to call me. Thank you so much for your help in this crucial matter.

2950

C Court

Coroner of Spartanburg County

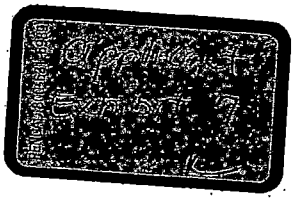
JIM BURNETT
Coroner

County Administrative Offices
Suite 1200
366 North Church Street
Spartanburg, S.C. 29303

INVESTIGATIVE REPORT

NAME:	Barry Branyon Henderson
AGE:	52
RESIDED:	Spartanburg, South Carolina
DATE OF BIRTH:	
DATE OF DEATH:	April 9, 2006
CAUSE OF DEATH:	Carcinomatosis secondary to metastatic adenocarcinoma of the colon. This opinion may be subject to modification if additional pertinent information happens to surface.
MANNER OF DEATH:	Undetermined

JIM BURNETT, CORONER



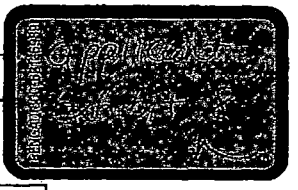
Ann KERR

4603652 2951

MEDICAL RELEASE

Patient Identification
Printed Name: Robin KEITH (middle name) Pilgrim Date of Birth: _____
Address: _____ INMAN S.C
Social Security #: _____ Telephone: _____

Information To Be Released – Covering the Periods of Health Care
From (date) Not Sure 1996 to (date) _____
From (date) Not Sure 2001 to (date) _____



Please check type of information to be released:

☒ Entire medical record	☐ Pathology report	☐ Discharge summary
☐ History and physical exam	☐ Consultation reports	☐ Progress notes
☐ Laboratory test results/reports	☐ X-ray reports	☐ X-ray films/images
☐ Operative report	☐ Emergency room record	☐ Itemized bill

☒ Other, (specify) Patrick B. HARRIS-Anderson S.C. / Spthg Reg. Medical

Purpose of Request

☐ Treatment or consultation	☒ At the request of the patient	☐ Billing or claims payment

☐ Other, (specify) _____

Person Authorized to Receive Information
Name: Lenora Topp, Investigator
Address: Spartanburg County Public Defender Office
258 N. Church Street, Spartanburg, SC 29306 (Phone: 596-2561)

Drug and/or Alcohol Abuse, and/or Psychiatric, and/or HIV/AIDS Records Release
I understand that if my medical or billing record contains information in reference to drug and/or alcohol abuse, psychiatric care, sexually transmitted disease, Hepatitis B or C testing, and/or other sensitive information, I agree to its release. Check One ☑ Yes ☐ No _____ Initials

I understand that if my medical or billing record contains information in reference to HIV/AIDS (Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome) testing and/or treatment, I agree to its release. Check One. Check One ☑ Yes ☐ No _____ Initials

Time Limit & Right to Revoke Authorization
Except to the extent that action has already been taken in reliance on this authorization, at any time I can revoke this authorization by submitting a notice in writing to the facility Privacy Officer at _____. Unless revoked, this authorization will expire on the following date or event _____.

Re-disclosure
I understand the information disclosed by this authorization may be subject to re-disclosure by the recipient and will no longer be protected by the Health Insurance Portability and Accountability Act of 1996. The facility, its employees, officers and physicians are hereby released from any legal responsibility or liability for disclosure of the above information to the extent indicated and authorized herein.

Signature of Patient or Personal Representative Who May Request Disclosure
I understand that _____ may not condition my treatment on whether I sign this authorization form unless specified above under Purpose of Request. I can inspect or copy the protected health information to be used or disclosed. I authorize _____ (Name of Facility or Provider) to use and disclose the protected health information specified above.

Signature: Robin Keith Date: 5/21/04

Authority to Sign if not patient: _____

Identify of Requestor Verified via: ☐ Photo ID ☐ Matching Signature ☐ Other, Specify _____

_____ Verified by: _____

2952 Ann Kerr

MEDICAL RELEASE

Patient Identification
Printed Name: BESSIE SMITH (PILGRIM IS MIDDLE NAME) Date of Birth: _____
Address: _____
Boiling Springs, SC
Social Security #: _____ Telephone: ( )

Information To Be Released – Covering the Periods of Health Care

From (date) _____ to (date) _____

From (date) _____ to (date) _____

Please check type of information to be released:

☒ Entire medical record	☐ Pathology report	☐ Discharge summary
☐ History and physical exam	☑ Consultation reports	☑ Progress notes
☐ Laboratory test results/reports	☐ X-ray reports	☐ X-ray films/images
☐ Operative report	☐ Emergency room record	☐ Itemized bill

☐ Other, (specify) _____

Purpose of Request

☐ Treatment or consultation	☒ At the request of the patient	☐ Billing or claims payment

☒ Other, (specify) MARION LINDSEY TRIAL

Person Authorized to Receive Information

Name: Lenora Topp, Investigator 828/273-8996
Address: Spartanburg County Public Defender Office
258 N. Church Street, Spartanburg, SC 29306 (Phone: 596-2561)

Drug and/or Alcohol Abuse, and/or Psychiatric, and/or HIV/AIDS Records Release

I understand that if my medical or billing record contains information in reference to drug and/or alcohol abuse, psychiatric care, sexually transmitted disease, Hepatitis B or C testing, and/or other sensitive information, I agree to its release. Check One ☐ Yes ☐ No _____ Initials

I understand that if my medical or billing record contains information in reference to HIV/AIDS (Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome) testing and/or treatment, I agree to its release. Check One. Check One ☐ Yes ☐ No _____ Initials

Time Limit & Right to Revoke Authorization

Except to the extent that action has already been taken in reliance on this authorization, at any time I can revoke this authorization by submitting a notice in writing to the facility Privacy Officer at _____. Unless revoked, this authorization will expire on the following date or event _____.

Re-disclosure

I understand the information disclosed by this authorization may be subject to re-disclosure by the recipient and will no longer be protected by the Health Insurance Portability and Accountability Act of 1996. The facility, its employees, officers and physicians are hereby released from any legal responsibility or liability for disclosure of the above information to the extent indicated and authorized herein.

Signature of Patient or Personal Representative Who May Request Disclosure

I understand that _____ may not condition my treatment on whether I sign this authorization form unless specified above under Purpose of Request. I can inspect or copy the protected health information to be used or disclosed. I authorize _____ (Name of Facility or Provider) to use and disclose the protected health information specified above.

Signature: Bessie Smith Date: 5-20-04

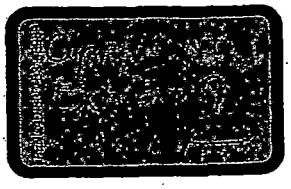
Authority to Sign if not patient: _____

Identify of Requestor Verified via: ☐ Photo ID ☐ Matching Signature ☐ Other, Specify _____

_____ Verified by: _____

CURRICULUM VITAE

TORA L. BRAWLEY



University of South Carolina School of Medicine
Department of Neuropsychiatry and Behavioral Science
3555 Harden St. Extension, Suite 102
Columbia, SC 29203
(803) 434-4229
(803) 434-4351 FAX

EDUCATION:

1986	BA	The University of Texas, Austin, Texas Major: Pre Med/Psychology Minor: Sociology
1988	MA	California School of Professional Psychology Major: Clinical Psychology Proficiency: Neuropsychology (Full APA Accreditation)
1992	PhD	California School of Professional Psychology Major: Clinical Psychology Proficiency: Neuropsychology (Full APA Accreditation)
INTERNSHIP		Baylor College of Medicine, Department of Psychiatry Houston, Texas (Full APA Accreditation)
POSTDOCTORAL FELLOWSHIP		Duke University Medical Center, Department of Psychiatry/Medical Psychology Durham, North Carolina

ACADEMIC HONORS:

1985-1986	Dean's List, University of Texas at Austin
1986-1990	Dean's List, California School of Professional Psychology

LICENSES:

1999-Current	Licensed Clinical Psychologist State of South Carolina (License Number 752)
1997-2000	Licensed Clinical Psychologist and Certified Health Services Provider State of North Carolina (License Number PP2327)
1993-Current	Certified and Licensed Clinical Psychologist State of Texas (License Number 24914 - Inactive)

PROFESSIONAL EXPERIENCE:

1988-1989	Psychological Trainee Fresno Community Hospital, Rehabilitation Psychology Department, Fresno, California.
1988	Intake Counselor Baylor College of Medicine, Sex Offender Treatment Program, Department of Psychology, Houston, Texas.
1987-1989	Neuropsychological Assistant Baylor College of Medicine, Dept. of Neurology, Houston, Texas.
1987-1988	Psychological Trainee United States Air Force Mental Health Clinic, Castle Air Force Base, Atwater, California.
1987	Psychological Trainee Bullard High School, Scandinavian Jr. High and Jackson Elementary Schools, Fresno, California.
1986	Psychological Technician Medical Personnel Pool, Houston, Texas. Placement: Harris County Psychiatric Hospital
1985	Mental Health Worker Deer Park Psychiatric Hospital, Deer Park, Texas.
1985	Mental Health Worker Austin State Hospital, Travis Unit, Austin, Texas.
1984	Volunteer Services Texas Children's Hospital, Houston, Texas.
1984	Mental Health Worker Extend-A-Care Program, Autistic Unit, Austin, Texas.

RESEARCH EXPERIENCE:

1987	Research Assistant California School of Professional Psychology, Fresno, California.
1984	Research Assistant Biopsychology Laboratory, University of Texas, Austin, Texas.

PROFESSIONAL AFFILIATIONS:

National Academy of Neuropsychology

COMMUNITY CONSULTATION EXPERIENCE:

1990-1997 Counselor, Muscular Dystrophy Association ALS Clinic, Houston, Texas.

1989-1990 Psychological Service Provider, Women's Christian Halfway House, Houston, Texas.

1989-1990 Psychology Intern, placed in Mid City Community Mental Health Center, Houston, Texas.

1988 Alzheimer's Disease Association family support group, Fresno, California.

PUBLICATIONS AND INVITED LECTURES:

Brawley, T.L. (2009, April). Forensic Neuropsychology. Presented at USC School of Medicine, Columbia, South Carolina.

Brawley, T.L. (2005, June). Introduction to Forensic Neuropsychology. Presented to Center for Capital Litigation, Columbia, South Carolina.

Brawley, T.L. (2004, March). Forensic Neuropsychology. Presented at William S. Hall Institute as Part of the Forensic Psychiatry Special Topics Seminar, Columbia, South Carolina.

Brawley, T.L. (2003, February). Forensic Neuropsychological Assessment. Presented to Forensic Fellowship Program, William S. Hall Psychiatric Institute, Columbia, South Carolina.

Brawley, T.L. (2003, January). Neuropsychological Assessment: Basic Overview for Psychiatrists. Presented to General Psychiatry Residency Program, University of South Carolina School of Medicine, Columbia, South Carolina.

Buchman, A. L., Sohel, M., Brown, M., Jenden, D., Ahn, C., Roch, M., & Brawley, T. L. (2001). Visual Memory Improves Following Choline Supplementation in Long-Term Total Parenteral Nutrition. JPEN 25: 30-35.

Brawley, T.L. (2000, May). Neuropsychological Evaluation of Traumatic Brain Injury: Forensic Implications. Presented to Forensic Grand Rounds, William S. Hall Psychiatric Institute, Columbia, South Carolina.

Lande, R.G, Crawford, P., Shea S., Tezza, C, Brawley, T. (2000, January). How To Meet Your Duty to Provide Competent Legal Representation to Your Mentally Ill Client. Presented to Midyear Meeting of the South Carolina Bar, Charleston, South Carolina.

Brawley, T.L. & Fowles, G. (1999, April). Functional Neuroanatomy and Brain Injury. Presented to WakeMed Rehab Brain Injury System Training Program, Raleigh, North Carolina.

Brawley, T. L. & Harrison, K. W. (1996, November). Mild Traumatic Brain Injury In the Managed Care Environment. A paper presented to the Brain Injury Association National Symposium, Dallas, Texas.

PUBLICATIONS AND INVITED LECTURES (CONT.):

Brawley, T. L., Cooke, N & Roll, P. (1996, September). The Neuropsychological Evaluation: Utility in a Neurology Setting. Presented to the Neuroscience Conference, Baylor College of Medicine, Department of Neurology, Houston, Texas.

Brawley, T. L. & Harrison, K. W. (1995, November). The Problem of Mild Traumatic Brain Injury. A paper presented to the Texas Psychological Association Annual Conference, San Antonio, Texas.

Brawley, T. L. & Harrison, K. W. (1995, October). The Post-Concussive Patient. Invited lecture to the Family Practice Residency Program, St. Joseph's Hospital, Houston, Texas.

Brawley, T. L. (1995, February). A Basic Overview of Neuropsychology. Invited lecture, Our Lady of the Lake University, Houston, Texas.

Brawley, T. L. & Lai, E. (1993, November). Perspectives of the Patient Evaluation. Paper presented at Alzheimer's Disease: Insights, Research and Decisions Conference, Houston, Texas.

Brawley, T. L. & Cooke, N. (1993, May). Mood Disorders and Memory Loss: Strategies to Remember. Presented to the Depressives and Manic Depressives Association (DMDA) support group, Houston, Texas.

Brawley, T. L. (1992). Alzheimer's disease and multi-infarct dementia: Neuropsychological and magnetic resonance correlates. Dissertation Abstract International, 53/11B, 6029.

Brawley, T. L. (1992, November). Handling Selective Behaviors in Dementia Patients. Paper presented at Harris County Hospital District Community Health Workshop.

Brawley, T. L. (1991, November). Ethical Issues in Alzheimer's Disease. Paper presented at Alzheimer's Disease: Pathways to Discovery Conference, Houston, Texas.

Brawley, T. L. (1991, June). Neuropsychological Testing: Basic Concepts, Ideas and Applications. Presented to Baylor College of Medicine medical students, Alzheimer's Disease Research Center, Department of Neurology.

Pirozzolo, F. J., Bonnefil, V., Brawley, T. (1991). Development of the embryonic, fetal and neonatal nervous system. In J. W. Gray & R. S. Dean (Eds.), Neuropsychology of Perinatal Complications (pp. 22-58). New York: Springer Press.

Brawley, T. L., & Cooke, N. (1991, April). Neuropsychological performance in Alzheimer's disease. Presented to the Neuroscience Conference, Baylor College of Medicine, Department of Neurology, Houston, Texas.

Cooke, N., & Brawley, T. L. (1991, April). Pseudodementia: Pitfalls to the Neurological Diagnosis. Presented to the Neuroscience Conference, Houston, Texas.

REFERENCES: Available Upon Request

June 2, 2004

Mike Bartosh
Spartanburg County Public Defender's Office
258 North Church Street
Spartanburg, SC 29306

Re: Marion Lindsey

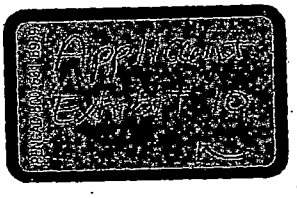
Date of Service	Service Provided	Fee	Hours
4/27/04	Neuropsychological evaluation and clinical interview	$180.00/Hr.	6.0
4/29/04	Consultation with Dr. Melikian	$180.00/Hr.	0.5
5/2/04	Consultation with Attorney	$180.00/Hr.	0.5
5/14/04	Consultation Dr. Abshire	$180.00/Hr.	0.5
5/20/04	Report Preparation	$180.00/Hr.	1.0
			8.5 Hrs

Total: $1530.00

Please remit payment to:

Tora Brawley, Ph.D.

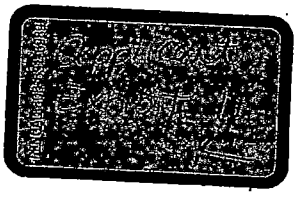
Columbia, SC 29223



X Copy

UNIVERSITY OF SOUTH CAROLINA
SCHOOL OF MEDICINE
UNIVERSITY SPECIALTY CLINICS

May 20, 2004



Dr. Margaret Melikian
Director, Forensic Services
Medical University of South Carolina

RE: Marion Lindsey

Dear Dr. Melikian,

Per your request, I am providing you with a brief summary of findings from the evaluation performed on the above captioned patient April 27, 2004. As you know, I performed an extended clinical interview and neuropsychological evaluation on this patient.

Mr. Lindsey was very cooperative with this evaluation. He was forthcoming with social, medical and psychiatric histories. He was not self-protective and, in fact, wanted to volunteer information regarding the events involved in his charges even though he was not being asked for this information. During the clinical interview, Mr. Lindsey reports that he has noticed difficulties with cognition since childhood, which have persisted to date. He characterizes these difficulties as problems remembering familiar names, forgetting things he has recently done, and occasionally forgetting where he is going when he is driving. He also reports that he does not remember much of his childhood. He rates he current severity of these problems as "mild" and states that he believes they have been stable over the past several months.

Mr. Lindsey reports multiple potential neurological insults beginning at a very early age. These include being hit by a car at age two, a car accident with loss of consciousness in 1987 or 1988, several falls with blows to the head resulting in stitches, three motorcycle accidents with blows to the head, and a self-inflicted gunshot wound to the head in September of 2002. He states that he does not remember all of the events around this last incident and that he still has some residual headaches and ringing in his ears. Mr. Lindsey also reports to have suffered migraine headaches in 2001.

Social history reveals that Mr. Lindsey had a chaotic childhood, and that he did not have much contact with his father. He had a stepfather who was a heavy drinker and his mother was out of the home most of the time working. He reveals that he was responsible for his younger sibling and taking care of the home and meals. At the time of his incarceration he was separated form his wife of seven years and was living with his cousin. He has two children aged four and eight.

Educational history reveals that he had significant difficulty in school. He had to repeat the first grade and the seventh grade. He states that he was in speech therapy and

DEPARTMENT OF NEUROPSYCHIATRY
AND BEHAVIORAL SCIENCE
3555 Harden Street Extension, Columbia, SC 29203
803-434-4250, FAX 434-4277

"learning classes" from the 2nd to the 6th grade. He states that he recalls that he had problems with spelling and that his speech "wasn't good".

Psychiatric history reveals that Mr. Lindsey made his first suicide attempt at age twelve. He has since had four other attempts, the last of which is the above-mentioned gunshot wound to the head. He continues to report suicidal ideation and states that he is seen by mental health in the detention center. He denies current hallucinations or delusions. He does report to have an imaginary friend "Jimmy" whom he has had since childhood.

Family history reveals several relatives diagnosed with depression.

Formal neuropsychological testing revealed severely impaired speed of mental tracking, below average accuracy of mental tracking, severely impaired verbal fluency, severely impaired confrontation naming, below average simple manual speed on the right, severely impaired manual dexterity on the left, below average immediate verbal memory, below average delayed visual memory, severely impaired verbal learning ability, and impaired ability to copy and recall a complex figure. On the WAIS-III, he obtained a Full Scale IQ of 85 (Verbal IQ 80, Performance IQ 92), which places him overall in the Low Average range of intellectual functioning. The 12-point discrepancy between Verbal and Performance IQ's is due to superior performance on the matrix reasoning subtest. All other subtest fell in the average to below average range for both verbal and nonverbal tasks.

Mr. Lindsey was also given tests assessing for malingering of cognitive and psychiatric symptoms. Performance on these measures was completely within normal limits. There was no indication of an attempt to fabricate or exaggerate symptoms.

Overall pattern of test results does yield some scattered neuropsychological deficits. Some of the score that fell in the below average range are likely consistent with educational history and premorbid levels of functioning. The current presence of significant depression is also likely contributing to at least some of his deficits.

It would be beneficial to obtain medical and schools records, as well as speak with collateral sources of information in order to further evaluate to clinical relevance of Mr. Lindsey's current neuropsychological deficits.

Thank you for asking me to participate in the evaluation of this patient. Please do not hesitate to contact me should you have further questions.

Sincerely,

Tora Brawley, Ph.D.

Tora Brawley, Ph.D.
Clinical Psychologist-Neuropsychology

Court Copy

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE FAMILY COURT
THE REPORT OF FINDINGS

THE STATE
vs.
LINDSEY. MARION
CH 1003-0726
Defendant

TO: THE SOLICITOR/ASSISTANT SOLICITOR: BARRY BARNETTE

THE UNDERSIGNED RESPECTFULLY REPORTS TO THE COURT:

1. That the above-named defendant was evaluated on **April 14, 2003 and June 2, 2003**, to determine the defendant's capacity to stand trial pursuant to Section 44-23-410, et sequential, Code of Laws of South Carolina, 1976. Dr. Pratap Narayan was designated by the South Carolina Department of Mental Health to conduct the evaluation ordered by the court.

2. That after study and observation, the hospital staff submits the following report:

   a. That the above-named defendant is diagnosed with **Malingering and Borderline Intellectual Functioning.**

   b. That the above-named defendant is capable of understanding the nature of his charges and is capable of assisting counsel in his defense.

   c. That the above-named defendant **did** have the ability to differentiate right from wrong at the time of the alleged offenses, on or about **September 12, 2002 and September 18, 2002.**

   d. That the above-named defendant **did** have the capacity to conform his conduct to the requirements of the law.

3. Mr. Lindsey returned to the Spartanburg County Detention Center after completion of the interviews.

Columbia, SC
July 18, 2003

Pratap Narayan, M.D.
Forensic Psychiatrist

c J. Michael Bartosh, Attorney at Law, 258 N. Church St., Spartanburg, SC 29306

cbg

EVALUATION SERVICE OF FORENSIC DIVISION

DATES OF INTERVIEW: April 14, 2003 and June 2, 2003

EXAMINERS: Pratap Narayan, M. D.
Jeffrey E. Musick, Ph.D.

DIAGNOSES:
AXIS I: Malingering
AXIS II: Borderline Intellectual Functioning
AXIS III None

MENTAL CAPACITY TO STAND TRIAL: Yes.

CRIMINAL RESPONSIBILITY: Yes.

CAPACITY TO CONFORM: Yes.

DISPOSITION: Mr. Lindsey returned to the Spartanburg County Detention Center after completion of the interviews.

IDENTIFYING DATA: Mr. Marion Lindsey is a 29-year-old, African-American male who was seen at our institution as part of an evaluation pursuant to an order from the Spartanburg County Court of General Sessions. The court order requested an evaluation to determine his mental capacity to stand trial, whether he was criminally responsible pursuant to the McNaughten Test for his actions on or about September 18, 2002 and September 12, 2002, and if found responsible, whether he lacked sufficient capacity to conform his conduct to the requirements of the law because of mental disease or defect. He is currently charged with Murder, Assault With Intent To Kill (four counts), Criminal Domestic Violence, and Petty Larceny, according to the court order.

The evaluation consisted of the following:

1) Review of the order from the Spartanburg County Court of General Sessions dated October 24, 2002.
2) Review of a transcript of a 9-1-1 tape, referencing case #020901218 dated September 18, 2002, numbering two pages.

3) Review of a transcript of a radio transmission dispatching the officers responding to the shooting (case #020901218) on September 18, 2002.
4) Review of a voluntary statement by Dominick A. Baird dated September 18, 2002, numbering two pages.
5) Review of a statement by Marc Finley dated September 18, 2002, numbering two pages.
6) Review of a statement by Guy Carter, Jr. dated September 18, 2002, numbering two pages.
7) Review of a statement by Harvey Godfrey dated September 18, 2002, numbering two pages.
8) Review of a statement by Julia Martin.
9) Review of a statement by Celeste Nesbitt dated September 18, 2002, numbering two pages.
10) Review of a statement by Latresse Smith dated September 10, 2002, numbering two pages.
11) Review of an autopsy report from the Spartanburg Regional Medical Center on Ruby Nell Lindsey done on September 18, 2002, numbering seven pages.
12) Review of an incident report by Officer Carter dated September 18, 2002, numbering three pages.
13) Review of a supplemental incident report by Officer Carter dated September 23, 2002, numbering two pages.
14) Review of arrest warrant #H-252531 on charge of Murder dated September 18, 2002.
15) Review of arrest warrants #H-296699, H-296702, H-296701, and H-296700 all on charges of Assault With Intent to Kill dated September 25, 2002.
16) Review of arrest warrant #H-084948 on charge of Criminal Domestic Violence and #H-084949 on charge of Petty Larceny, both dated September 12, 2002.
7) Review of the second page of a narrative from the Spartanburg Public Safety Department dated September 12, 2002.
18) Review of records from the Spartanburg Regional Health Care System pertaining to Mr. Lindsey's admission there immediately following the alleged events.
19) Review of records from the Chapman High School.
20) Review of outpatient records from the Spartanburg Area Mehtal Health Center.
21) Review of a statement by Officer Kevin Jenkins dated September 18, 2002.
22) Review of a statement by Joseph Stewart, EMT, dated September 18, 2002.
23) Review of a statement by Susan Horton dated September 18, 2002.
24) Review of a statement by Vincent Bell dated September 18, 2002.
25) Review of a statement by Annette Schaper dated October 3, 2002.

(These statements were typewritten and accompanied by handwritten originals.)

26) Review of report of psychological assessment by Dr. Musick dated June 12, 2003.
27) Review of a social history by Ms. Cindy Knott.
28) A 1.75 hour forensic clinical interview on June 2, 2003 and a 3.25 hour forensic clinical interview on April 14, 2003.

PERTINENT STATEMENTS: Mr. Lindsey was reportedly born the only child of his parents. He reportedly has one stepbrother, two stepsisters, and three half brothers, and all but one of them are older than him. He reportedly was raised by his mother along with his two older half brothers and one younger half brother, and reported "pretty good" interpersonal relationships with family.

He reportedly dropped out of school in the 10th grade after having failed two grades (he stated that he failed the 1st and 7th grades although his records indicate he failed the 8th grade twice). He reportedly made C's and D's. He stated that he was in special classes from the 4th to 6th grades and was in regular classes in middle school. He said he had a "speaking...learning disability...stuff like that." He reported having been suspended on about ten occasions, but denied any expulsions. He reported a history of fighting, running away from school, and cruelty to animals, all before the age of 15. He reported a history of occasional truancy and occasionally breaking curfews. He denied a history of stealing, lying, destruction of property, or fire setting. He also denied using weapons, forcibly having sex, deceiving others for profit, or other symptoms indicative of Conduct Disorder before the age of 15.

After quitting school, he reportedly began to work as a winder and a forklift driver at a manufacturing plant in Spartanburg. After about a year there, he reportedly got into an argument with his boss and got fired. He subsequently worked as a forklift driver at another facility for a year and was reportedly laid off. He was then arrested on a charge of Assault and Battery With Intent To Kill and spent a year in jail. On his release, he worked at a body shop for about a year and said that the business closed down. He subsequently reportedly went into business with his uncle and said they "opened up a motorcycle business" and would "fix motorcycles." He said they did this for about two years and subsequently closed down because the business 'wasn't doing too good." He then worked at another body shop for about two or three years and was fired for reasons unknown to him. He was subsequently unemployed for six or seven months prior to his present arrest; however, he had reportedly been accepted at BMW for a job as a fork lift operator, but had not started work yet.

He has been married since 1996 to the alleged victim and said that he and his wife had had arguments on several occasions. He said that his wife had been seeing other men "the whole time we were together" but that he always "took her back" after his wife had left him several times due to arguments about her extramarital relationships. About a month before the alleged incident, he stated that his wife had left him and told him she did not want to return to him and that this caused him to feel very depressed. He reportedly has two sons, ages 7 and 3, by this marriage.

He denied any significant history of mental health hospitalizations or outpatient treatment in the past. He stated that he attempted suicide at the age of 12 by overdosing, after an argument with his mother, and stated

that he has attempted to hurt himself numerous times while at the detention center (staff at the detention c( )r were contacted and said they were unaware of any such attempts). He said that he continued to feel "suicidal and depressed". He also said that since the age of 12 (when he was hospitalized after his 'suicide attempt'), he has had a "friend," whom he calls "Jimmy," and that "Jimmy" has been with him throughout his life and is his "best friend." Although his initial description indicated that Jimmy was possibly an imaginary friend, he later described Jimmy as both a distinct personality and a hallucinatory experience. His description of "Jimmy" was atypical and did not appear to indicate a genuine psychiatric symptom.

He also reported that since he has been in jail, he has been seeing "my wife... she come and talk to me sometime...she wear a white dress and she says everything will be alright... she is ready for me to come and be with her."

Although Mr. Lindsey reported psychiatric "symptoms," and distress due to these symptoms, information from jail staff indicated that his behavior was unremarkable, and not indicative of any distress. He was reported to be euthymic, and participating in activities with peers with no suggestion of psychiatric problems. Reports from the Spartanburg Regional Medical Center, and the Spartanburg Area Mental Health Center also support the absence of a major mental disorder.

He reported a history of using marijuana on one occasion and said he used to drink about a six pack of beer per month. He also reported a history of binge drinking on occasion when "me and my wife were having p' 'ems." He denied a history of withdrawal symptoms, DT's, seizures, or blackouts. He denied any other substance use.

He reported a family history of mental illness in two uncles, an aunt, and his mother, although he was unable to provide any further details. He also noted a history of hypertension and diabetes,.

His medical history is significant for surgeries to his knee and leg, and a history of fracture of his right arm requiring surgery at age 15. He reported a history of head trauma on several occasions that required "stitches." His description indicated that these episodes of head injury were not significant. He reported loss of consciousness on one occasion after a motor vehicle accident and said he was at the Spartanburg Regional Medical Center for two weeks when he was approximately 17 or 18 years old. He denied any seizures or other sequelae.

He reported a history of a conviction on a charge of Assault and Battery With Intent to Kill in 1992 or 1993.

MENTAL STATUS EXAM: He was an adequately groomed, African-American male who appeared his stated age. He appeared to be in no distress and his speech was normal. He was pleasant and his affect was euthymic, with good reactivity during the first interview. During the second interview, he described his mood as "not so good" and his affect appeared to be somewhat flattened; however, staff at the detention center reported that at the detention center, he was animated, laughing, and "happy," and interacted with other inmates and staff normally. He endorsed suicidal ideation on both occasions and also endorsed seeing and hearing "Jimmy" (although his description was not indicative of true hallucinations). During the second interview, his behavior was fairly dramatic--he drew an empty chair up beside his own for "Jimmy" and at times when asked about "Jimmy," turned to the empty chair and made conversation. He was alert and oriented to time, place, person and situation, and his memory functioning generally seemed intact. His attention and concentration were good, and his abstract thinking on tests of similarities and proverb interpretations was satisfactory.

Results from a test of effort suggest that Mr. Lindsey put for a satisfactory effort; as such, results from cognitive testing are thought to be reasonable estimates of his current level of functioning. On the Wechsler Adult Intelligence Scale-III, a widely-used intelligence test, he earned a Full Scale IQ score in the Borderline range (76) with no significant difference between his Verbal (80) and Performance (75) IQ scores. Similarly, on the Repeatable Battery for the Assessment of Neuropsychological Status (a screening device for cognitive deficits), he earned a Total score in the Borderline range (74). Results from a test of malingering of mental health symptoms reveal some variability in his response pattern but did not meet the test criteria for malingering.

CONDUCT OF THE INTERVIEW: During the first interview, Mr. Lindsey was able to read and accurately paraphrase the Miranda Rights, suggesting that he understood them. During the second interview, he read the information sheet provided to him and denied having any questions about it. On both occasions, he signed the forms and voluntarily elected to proceed with the interviews.

OPINION REGARDING MENTAL CAPACITY TO STAND TRIAL: He was aware that his charge was "Murder" and was able to describe what this meant. He stated that he was aware that the solicitor was asking for the death penalty and said that he could ask "my lawyer" for further information. He was aware of the pleas of *guilty* and *not guilty*, and knew their definitions and consequences. He did not know about the pleas of *no contest*, *NGRI*, or *GBMI* but said he could ask "my lawyer" for information.

He knew what a *trial* is and said that the principal participants in a trial would be *the judge*, *the public defender*, *the solicitor*, and *the jury*. He knew what their roles are and was able to correctly describe what *evidence* and *witness* meant. He was aware of what constituted appropriate courtroom conduct and knew of

contempt of court. He understood the principles underlying *plea bargaining* and *probation*.

He stated that he did not know what evidence or witnesses the State had against him. He said he has known his lawyer for at least eight months now, and has talked to Mr. Bartosh on two occasions and to Mr. Tellis on four. He said he felt more comfortable with Mr. Tellis, but "not uncomfortable" with Mr. Bartosh. He said he had no difficulty communicating with them and expressed his willingness to work with them in planning his defense.

It is our opinion, with reasonable clinical certainty, that Mr. Lindsey has a rational and factual understanding of the proceedings against him at the present time and has sufficient present ability to consult rationally with his attorney in planning his defense. Therefore, he appears to have the mental capacity to stand trial.

OPINION REGARDING CRIMINAL RESPONSIBILITY: Mr. Lindsey stated that the alleged incidents occurred about eight months ago and was unsure of the exact date, but agreed with the date on the court order (September 18, 2002). Regarding the charges (CDV and Petty Larceny) that allegedly occurred on September 12, 2002, he stated, "They dropped them."

He stated that for some time before September 18, 2002 "I had a lot of stuff on my mind...I lost my child, my job, my family" and stated that his wife had "another man." He said that he wanted to commit suicide and on one occasion called and told his brother who reportedly came to his house and stopped him. He said h d called his wife to ask her to come back, but she laughed at him.

On the day of the alleged incident, he stated "I was sitting there watching TV at about 4 p.m...then I must have blanked out because I don't remember nothing." He said he woke up on the ground, and the police were shooting at "me...I felt something stinging me." When asked about details, he said he did not remember. After he allegedly "woke up," he said the ambulance personnel took him to the Spartanburg Regional Hospital. His description of what happened conflicts with some of the information that is available and indicates that he reported a rational and non-psychotic motive for the alleged offense to several people including the EMS personnel.

Based on the available information, it is our opinion, with reasonable clinical certainty, that Mr. Lindsey did not lack the ability to distinguish moral or legal right from moral or legal wrong, or to recognize the wrongfulness of the acts charged because of mental disease or defect at the time of the alleged offense. Therefore, he would have been criminally responsible pursuant to the McNaughten test (if the charges are proven as alleged) for his actions on or about September 18, 2002.

OPINION REGARDING CAPACITY TO CONFORM: Based on the available information, although Mr. Lindsey stated that he was suicidal, there is no indication that he was suffering from a major mental illness or mood disorder at the time of the alleged offense. It appears from his statements that he may have been suffering from an Adjustment Disorder with Depressed Mood at that time. Therefore, it is our opinion, with reasonable clinical certainty, that he did not lack sufficient capacity to conform his conduct to the requirement of the law because of mental disease or defect.

RECOMMENDATION: Return to court.

This report is based on information available to us at the present time and is subject to change should new information become available.

Pratap Narayan, M. D.
Forensic Psychiatrist

Jeffrey E. Musick, Ph.D.
Chief Psychologist

PN/cj

I 06/02/03
RT/EM: 06/03/03
F/EM: 07/17/03

TO BE UTILIZED FOR READMISSION WITHIN ONE YEAR AND/OR

ADDENDUM: NARRATIVE ADDITIONAL INFORMATION

5-29-03- Writer called Nurse @ Spartanburg Co. Det. Center. She reported pt. Depakote Accel 250 mg (1) am, (2) afternoon and (2) hs. 40 mg Celexa am 2 Geodon 50 mg - hs. Nurse reported that pt's behavior has been fine. — K. Armstrong, LISW —

7-11-03- Writer got new tel. no. from pt's attorney for pt's mother (Ms. Lindsey) but not knows how to get in touch - Lakeside Smith (old tel. no. has been disconnected). Ms. Lindsey reported that the following occurred approx. 2 weeks before incident. Sister of pt's mother, Ms. @ her home (and rec'd a call from pt. - "Pt. was stating that he had a gun and would put it to his head and wife was cheating on him." Ms. reported she was upset and called her to come home from work. Ms. reported that she did and Ms., mom and two other relatives went to pt's house and stayed there until he was dead. Mom reported aunt prayed for him and the mother knew him a week ago. Mom reported they met with pt. from 3 to 6 o'clock p.m. on 7-9-03. Mom gave writer Ms.'s cell no. Writer called & left message for him to call. —

Gayle M. Armstrong, LISW

OCIAL WORK ASSESSMENT (ADULT)
VI- AM S. HALL PSYCHIATRIC INSTITUTE
IULTI DISCIPLINARY ASSESSMENT
age 9 of 10

I.D.
Lindsey, Marion
1003-0726

SOCIAL WORKER'S SIGNATURE

DATE

SOCIAL WORK ASSESSMENT (ADULT)
WILLIAM S. HALL PSYCHIATRIC INSTITUTE
MULTI DISCIPLINARY ASSESSMENT

I.D.

SCDMH FORM
AUG.95 (REV.NOV 2000) William S. Hall - 130

2970

2: ARRIVAL INFORMATION: Date: Time: AM/PM Escorted by:

☐ Ambulatory ☐ Wheelchair ☐ Stretcher ☐ Car ☐ Van ☐ Ambulance ☐ Other

Condition on Arrival:

Vital Signs T Oral Rectal P R BP

Signature:

3. CONSULTATION: ~~History and Physical~~

Following the interview of 6/2/03, Mr. Lindsey was alert and oriented. His speech was clear, relevant, and coherent as well as within normal limits in rate, quantity, and intensity. He claimed to be experiencing some depressive symptoms. His affect was not inappropriate to the situation or his reported mood. He denied experiencing hallucinations at the time of testing because he left "Jimmy" in the lobby because he was concerned that "Jimmy" would be a distraction during testing.

Results from the TOMM suggest that Mr. Lindsey put forth a satisfactory effort. Given this finding and the absence of other indicators of poor effort, results from cognitive testing are thought to be reasonable estimates of his current level of functioning.

On the WAIS-III, he earned an FSIQ score in the Borderline range (76) with no significant difference between his Verbal (80) and Performance (75) IQ scores. His attention span was assessed to be a relative strength when compared to the Verbal mean.

On the RBANS, his Total score was also in the Borderline range (74), despite under-performing on an attention span task similar to the one on the WAIS-III. His immediate and delayed recall performance was in the Low Average range, as was his verbal fluency.

Results from the SIRS suggest some variability in his response pattern but did not meet the criteria for malingering.

~~Laboratory (time ordered) and Treatment:~~ underwent psychological testing. He was

~~Assessment:~~

~~Recommendations and Instructions:~~

Reviewed by _____ M.D
attending

Consulting ~~Physician~~ Psychologist: Jeffrey E. Musick, Ph.D. (Signature) | JEFFREY E. MUSICK, Ph.D. (Printed name) | 6/12/03 (Date) | Phone: 8-1413 | Beeper: (Circle One) Voice/Digital

4. DISPOSITION: ☐ Admit BMC _____ Floor _____

USE ONLY ☐ Return to Ward ☐ Expired ☐ Other _____

5. NOTIFICATION:

Family Notified? ☐ Yes ☐ No Family Member _____ Relationship: _____

6. FOLLOW-UP:

Site: _____ Date: _____ ☐ Has been scheduled

Time: _____ AM/PM ☐ Call to schedule

7. DEPARTURE INFORMATION: Date: A.M. P.M.

☐ Ambulatory ☐ Wheelchair ☐ Stretcher

☐ Car ☐ Van ☐ Ambulance

☐ Teaching Data Sheet(s) sent with patient.

Specify: _____

LINDSEY, MARION
1003-0706

2971

1. REFERRAL ☐ Transfer ☑ Refer to [illegible] Appt. Date: [illegible]

Referring Facility: Referring Ward: Outpt Date of Referral: 4/1/03

Chief Complaint/ Reason for Referral: R/O Malingering

Vital Signs T Oral Rectal P R BP

Relevant History, Physical Findings, Duration & Clinical Course of Symptoms (including treatment) Diagnostic Impression:

(2) Department changes T hours - (Brain Penalty long in [illegible] description of psychotic Sx atyp. not indicative of [illegible]

DIAGNOSIS(SES):

R/O Malingering

Reports of procedures, tests and results:

Current Medication (List or attach current MAR):

Allergies:

Special Orders/Comments:

Code Status:

Advance Directive: _____ Yes _____ No

(if yes, please attach)

Diet:

Referring Physician:			Phone:	Beeper:
Signature	Printed Name: P VARGHESE	Date: 5/1/03		Circle One: Voice/Digital

COMPLETION: THIS SIDE: To be completed by the referring physician

REVERSE SIDE: Sections 2, 5, & 6 to be completed by [illegible] personnel.

Sections 3 & 4 to be completed by the consulting physician. (Section 4 is for ER patients ONLY)

I.D. LINDSEY, MARION.

DMH Form [illegible]

2972

PROB. NO. | DATE/TIME | SUPPLEMENTAL CIPLINARY PROGRESS NOTES

PROB. NO.	DATE/TIME	SUPPLEMENTAL CIPLINARY PROGRESS NOTES
	11/8/02	NEED AUTOPSY
		Requested by
		Sheila Heideas-J
	11/20/02	Autopsy report JOF
		received by SSI. Off.
		as of date. Will
		send to Atty. upon
		receipt. JOF
	1/8/03	Left mess. SSI. Barnette
		re: need for autopsy
		statements
	1/8/03	Received autopsy; left
		by Leffness that
		shall release shortly
	1/10/03	SSI. conf. to Shea-Dept.
		for statements. Det. Young
		864-596-2616. Req. status
	1/10/03	received statements.
		Ready for schedule. JOF
		to DA's office

Codes:
(SW) Social Worker
(PS) Psychologist
(VR) Vocational Rehab.
(GT) Group Therapy
(DP) Diabetic Education
(TAT) Treatment Team
(HD/GT/INTERD T.
(PT) Patient Education
(ACT) Activity Therapy
(P) Physician
(N) Nursing
(O) Other

Marion Lindsey
1003-0726

PROB. NO: | DATE/TIME | CODE

SUPPLEMENTAL
INTERDISCIPLINARY PROGRESS NOTES

	4/4/03 12:10pm	Informed Officer Pilgrim (Transporting Officer) re. (D)'s statement about wanting to kill himself & trying to get an officer's gun to do so. Also informed medical staff at the Chatham Co. Det. Ctr & (Ms. Angel) re: (D)'s reported SI. Meds: Zyprexa 5mg QHS Valproic Acid 250mg QAM, Qpm & QHS (10000 ? Celexa. Reportedly interactive & "appearing happy" d/c to medical staff (Dr. Narayan)
	6/2/03 3pm	Called det. ctr (864-596-2607). Spoke to Mr. Judy Collins (RN) - informed her re: Mr. Lindsey's continuing to make statements of suicidal intent. She stated that "when the last statements, there is absolutely no indication" of suicidality. She also stated that they were unaware of any "suicide attempts" in the jail.
	7/18/03	Entered by for DB

Codes:
(SW) Social Worker
(PY) Psychologist
(VR) Vocational Rehab Worker
(GT) Group Therapy
(DP) Discharge Education
(TAT) Treatment Team
(HO/GT/INTERD)
(PT) Patient Education
(ACT) Activity Therapy
(P) Physician
(N) Nursing
(O) Other

I.D.

2974

Daryle M Armstrong, LSCSW
SOCIAL WORKER'S SIGNATURE

3-20-03
DATE

SOCIAL WORK ASSESSMENT (ADULT)
WILLIAM S. HALL PSYCHIATRIC INSTITUTE
MULTI DISCIPLINARY ASSESSMENT

I.D.

CDMH FORM
AUG.95 (REV.NOV 2000) William S. Hall - 130

TO BE UTILIZED FOR READMISSION WITHIN ONE YEAR AND/OR

ADDENDUM: NARRATIVE ADDITIONAL INFORMATION

Pt's wife, victim, were married for four years - recently they lost their trailer, she and children moved in w/ her mother's home and pt. moved in w/ a cousin. Pt's mother reported pt. was trying to reunite family when she (victim) told pt. she had a boyfriend + that she was keeping pt from seeing his children. Mother reported pt had threatened suicide several weeks prior to incident. Pt's mother very supportive and visiting pt. @ detention Center.)

I.D.
Lindsay Marie
DOB - 0726

2976

PSYCHIATRIC SOCIAL WORK ADMISSION ASSESSMENT

Social Worker: Haefe M. Armstrong, LISW Assessment Date: 3-18-03 - 3-20-03

IDENTIFYING DATA

Name: Marion Lindsey ID# 1003-0726 WSHPI UNIT: Forensics

Date of Admission/Evaluation 4-14-03 SS# Gender: Male

Race/Ethnicity: African American Age: 28 DOB:

Type Admission: ___ Emergency ___ Voluntary ___ Judicial ✓ Court

Referred By: Spartanburg Gen. Sessions MHC:

Patient's Address/County: Rotenton Carlton

Occupation: none Working Status: Unemployed

Legal Charges (if any see page 7)

INFORMANT #1

Name: Virginia Lindsey Relationship: mother

Address: Phone: (H) (W)

History Taken: ✓ By Telephone ___ In Person Information Reliable ___Yes ___ No

Attitude Toward Patient: worried

INFORMANT

N Relationship:

Address: Phone: (H) (W)

History Taken: ___ By Telephone ___ In Person Information Reliable ___Yes ___ No

Attitude Toward Patient:

Additional Information From: SCDMH Complaint

Attempts to Contact Informants: 3-14-03- called Va Lindsey- no answer - mailed letter

I.D.

Lindsey, Marion
1003-0726

OCIAL WORK ASSESSMENT (ADULT)
V[illegible]AM S. HALL PSYCHIATRIC INSTITUTE
[illegible]ULTI DISCIPLINARY ASSESSMENT
age 1 of 10

CDMH FORM
HG 85 (REV NOV 2000) William S. Hall - 130

2977

REASON FOR ASSESSMENT:

Incidence Precipitating Hospitalization: Pt charged = murder, Assault = 2 cts to kill, 4 cts, Petit Larceny, CDV 2nd

Age When Problem First Appeared 28 History of Problems: threatened to kill himself 3 weeks prior to incident - pt's mother and other family went to stay over night until he was okay.

Description of Any Significant Symptoms, behavioral change Immediately Prior to, Immediately After, and/or at Time of Incident/Arrest/Hospitalization/Evaluation pt's mother reported pt. very distraught over wife having a boyfriend and not allowing them to see kids

Prior Psychiatric Hospitalization: ✓ Yes ___ No If Yes, Where, When, By Whom: mother reported pt. O/D'd on pills in medicine cabinet w/ke 13 y.o. and adm. taken to Spartanburg Reg. Hosp. → HI reported pt. & brother were fighting & he thought mother did not bring him

Outpatient Treatment: ___ Yes ✓ No If Yes, Where, When, By Whom: ___

Psychiatric Medications: Celexa, Depakote & Zyprexa

Patient's Response to Medication/Problems, Side Effects to Medications: ___

Treatment/Medication Compliance: ✓ Good ___ Poor ___ Inconsistent ___ N/A If compliance Has Been Less Than Good, Why? medications administered by jail

Substance Abuse Problem: ___ Yes ✓ No Describe (Substance, Duration, Frequency, Etc.): ___

pt's mother reported pt. did not use alcohol or drugs

History of Treatment for Substance Abuse: NA

Pertinent Medical History: N.O

Other Current Medications: took prescribed medicine

backside not in BDS 4/4

2978

CHILDHOOD: BIRTH HISTORY

Planned Pregnancy: ___ Yes ✓ No Welcomed Pregnancy: ✓ Yes ___ No

Is Patient the Child of a Single Mother ___ Yes ✓ No

Gestation ✓ Normal ___ Abnormal Describe: ___

Birth Defects: ___ Yes ✓ No Describe: ___

Psychomotor Milestone: ___ Early ✓ Normal ___ Late ___ Unknown

Did Patient Interact Well With Other Children Their Age During Their Early Development? ✓ Yes ___ No:

If no, describe problems: Had lots of friends

Comments on Family Functions/Home Environment (History of abuse, neglect, interaction with family members, history of fire setting, running away, cruelty to animals, living conditions, child care arrangements, removed from home, etc.) 0 hx. of fire setting, 0 cruelty to animals, 0 running away. Did go home after school on fri & a friend & mom did not know where he was all weekend - told him she was going to spank him & surf & when he was located & he ran away to grandmothers) No DSS involvement - Grandmother kept & child care.

Is There a History of:

Head Trauma:	✓ Yes	___ No	Describe:	run over by car @ 1yo. - stayed in hospital 2 days		
Seizures:	___ Yes	___ No	Describe	concussion when 16 & 17 - 8 stitches each		
Surgery:	✓ Yes	___ No	Describe	shot in leg @ French stop - 2003 yrs. ago - [illegible]		
Retardation:	___ Yes	___ No	Describe			
Chicken Pox:	___ Yes	✓ No	Describe			
Measles	___ Yes	✓ No	Immunized	___ Yes	___ No	
Mumps	___ Yes	✓ No	Gamma Globulin	___ Yes	___ No	

Initial Adjustment to School: Liked school

General School Performance (Regular classes, special education, grades, attitude toward school, usual interaction with others, participation, in school activities, suspensions, expulsion, history of ADHD and/or medicated, etc.) mother reported pt. was slow in school - repeated 1st grade but was in Regular classes, poor grades - slacked off and started

NO Bach - not in PDS file

FAMILY HISTORY: (Developmental History

Is the Patient: ✓ Natural Child ____ Adopted Child ____ Foster Child

(If the patient is adopted provide information about adoptive parent(s) and place information known about natural parents in the next section provided. If the patient is/was a foster child, provide information about natural or adoptive parent(s) here and place information about foster family in the next section provided.)

Mother's Name: Virginia Age: 52 Current Health: High BP nerves bad

If Deceased, State Cause of Death and Date: ✓

Mother Mentally Ill: ____ Yes ✓ No Diagnosis: ____

In the Mother's Family, Is There a History of Mental Illness/Suicide/Homicide Substance Abuse? ✓ Yes ____ No

If Yes, Describe: Virginia's sister went to mental health – attempted suicide; her brother goes to mental health

Father's Name: Leon McDowell Age: 52 Current Health: good alcfrs

If Deceased, State Cause of Death and Date: ____

Father's Mentally Ill: ____ Yes ✓ No Diagnosis: ____

In the Father's Family, Is There a History of Mental Illness/Suicide/Homicide Substance Abuse? ____ Yes ✓ No

If Yes, Describe: ____

Parent's Marital Status: ____ Single ____ Married ____ Separated ____ Divorced ____ Widowed

Information About Natural/Adoptive/Foster Family as Needed: Ms Lindsey never married pt's father Leon McDowell, mother married to Claude Lindsey 3 years – father figure per pt. was man she lived & named Roger Sims

Mother's Attitude Toward Patient: Concern – does not want son to get death penalty

Father's Attitude Toward Patient: ____

Number of Siblings: 3 Patient's Birth Order: 3 Number Siblings Living in Home: 1

Name:	Claude Lindsey	(M)	F	Age:	35	Name:		M	F	Age:
Name:	Frederick – deceased	(M)	F	Age:	31 (when he died)	Name:		M	F	Age:
Name:	Timothy Sims	(M)	F	Age:	19	Name:		M	F	Age:
Name:		M	F	Age:		Name:		M	F	Age:
Name:		M	F	Age:		Name:		M	F	Age:

Do Any Siblings Have a History of Mental Illness/Suicide/Homicide/Substance Abuse? ____ Yes ✓ No

If yes, Describe

Any Siblings Deceased: ✓ Yes ____ No If yes, whom: Frederick died in '98 – drowned or fell in canal accident – Frederick could not swim

2980

Childhood: (continued)

General School Performance: Learning ont c group 8th grade - repeated 8th grade - dropped out 9th & 10th grade - Did not want to study. Got into trouble one time for fighting white boy who called Her names.

SEXUAL HISTORY:

(FEMALES ONLY) Age at Menarche: _____ Problems: _____

Pregnancies: 0 Deliveries: _____ Miscarriages: _____

Abortions: _____ Onset of Menopause: _____

(ALL PATIENTS) Age at first consented to sexual intercourse: _____

History of Sexual Trauma: ___ Yes ✓ No If Yes, Describe: _____

Currently Sexually Active ___ Yes ✓ No ___ Unknown In jail

History of ✓ Heterosexual Behavior ___ Homosexual Behavior ___ Both

Birth Control/Protection Method: unknown

Does Patient have any history or currently has STD/HIV? ___ Yes ___ No ___ If Yes, describe (tested, treatment, etc.) _____

MARITAL/RELATIONSHIP HISTORY

Has the Patient ever been married or had other significant relationship? ✓ Yes ___ No

If yes, describe: Wife was also victim

Age at First Marriage/Significant Relationship: 18 or 19 Number of Marriages/Significant Relationship: 2

Number of Divorces: 0

Current/Most Recent Spouse/Significant Other: Ruby Nell Lindsey Age: _____

History of Mental Illness, Substance Abuse, Suicide/Homicide in Spouse/Significant Other: ___ Yes ___ No

If yes, Describe: Died from gunshot wounds - age 27 - pt. is suspect and charged c murder

Describe Patient's Current/Most Recent Marriage/Relationship (length, stressors/strengths, compatibility):

Pt. and Nell Lindsey married 5 years - had problems off and on per Inf. #1

Describe Patient's Previous Marriage/Relationships (length, stressors/strengths, compatibility): Had a relationship c Stephanie Petty, Caucasian girl, lived together 4 yrs. - Relationship began when pt. was 18 or 19 - Broke up when pt.'s deceased wife became pregnant.

I.D.

Lindsey, Marvin
1003-0726

MARITAL/RELATIONSHIP HISTORY (Continued)

Children (Names, Ages, Problems. Etc.)

1. Nerion 8 y.o.
2. Travis 3 y.o.
3.
4.
5.
6.

Other Comments: Children living w mothers family

EMPLOYMENT HISTORY

Military Service: ___ Yes ✓ No Describe: ___

Type of Discharge: ___ Benefits: ___

Has Patient Ever Held a Job for Pay? ___ Yes ___ No

Describe Patient's Employment History (Types of jobs, unusual/longest length of employment, periods of employment/reasons for unemployment, attitude toward work etc.): Mideka Company - 2 months Budweiser - 3 mos. - never worked too long on a job likes own motorcycles & cars

CURRENT LIVING SITUATION

Patient Currently Lives With: ___ Parent ___ Spouse/Significant Other ___ Family (who) ___

___ Lives Alone ___ Foster Care ___ Group Home ___ DJJ ✓ Jail/Prison ___ Residential Care

___ Rents home/mobile home/apt. ___ Buying Home/mobile home ___ Other: ___

Patient's Financial Status: ___ Apparently Adequate ___ Apparently Well-Off ___ "Working Poor"

___ Financial Assistance ___ Disability ___ Retired/Fixed Income

___ Family ___ Spouse/Significant Other ___ Other ___

Approximate Month Income: ___ Food Stamps: ___ Yes ___ No

Private Medical Insurance: ___ Yes ___ No Name of Insurance Company: ___

Medicaid: ___ Yes ___ No Medicare: ___ Yes ___ No

If Receiving SSI or Disability, Who is Payee?

2982

CULTURAL ASSESSMENT:

Patient National Origin: U.S.

Family National Origin: U.S.

Language Spoken at Home: ✓ English ___ Other: ___

Ethnic/Cultural Preference: African American

Religious/Spiritual Affiliation: Baptist

Actively Practices Faith: ___ Yes ✓ No

Family Cultural/Religious Values, Beliefs Relating to Illness: no problem

Cultural/Religious values and beliefs relating to illness, medication, counseling, therapy, and activities of daily living: not a barrier

Patient's hobbies, interests, leisure activities: Likes to play basketball in the park.

LEGAL HISTORY

Current Charges ✓ Yes ___ No If yes, Describe: Murder Assault 2nd Det to Kill 4ct Poss CDV 2nd offense Larceny

History of Arrests, Convictions, Amount of Time Served, Name of Jail/Prison, Disposition, Past/Current Probation, Name/Phone # of current probation/parole officer: arrested in 2000 for selling drugs, CDV

CONSIDERATIONS FOR DISCHARGE PLANNING

Are There Legal Considerations in the Hospital's Management of the Patient: (For example, "Patient is here for Forensic examination or DJJ hearing pending") ___ Yes ___ No If Yes, Describe:

MHC/Private Contact Person: ___ Phone #: ___

Tentative Discharge Site:

CONSIDERATIONS FOR DISCHARGE PLANNING (continued)

Does Patient Have Adequate Financial Platform for Placement:	Yes	No
If No, Will Financial Referral be Needed:	Yes	No
Will Referral to CCRS be Required?	Yes	No
Local MHC Intervention Required While Patient is Hospitalized:	Yes	No
Does Patient Have Support System in his Community Other Than family?	Yes	No

If yes, whom/What: _____

Family Willing to Participate in Treatment and Discharge Planning? ✓ Yes ____ No

Family's expectation of Hospitalization: pt's mother feels pt was not right @ the time of incident and hopes he will not get death penalty.

Social Worker Told Family That Hospitalization Will Provide: CST/CR

Patient's STRENGTHS, With Focus on Systems/Support Outside the Hospital: Little support except for mother

Patient's LIABILITIES with the Same Focus: Little support

Treatment Recommendations for this Hospitalization: _____

Recommendation for Community Referral Support: mental health services if needed

ASSESSMENTS SUMMARY (Summarize patient's history of problem, level of function prior to hospitalization/evaluation/arrest/community/family support/patient's strengths and recommendations for treatment, as needed:)

3-20-03 - Marvin Lindsey is a 28 y.o. African American male coming from Spartanburg Co Det Center. Mr. Lindsey is charged w murder, assault = intent to kill, Pet. Larceny and CDV 2nd. According to pt's mother, pt and

Gaylon M Armstrong LISW

SOCIAL WORKER'S SIGNATURE

3-20-03

DATE

SOCIAL WORK ASSESSMENT (ADULT)
WILLIAM S. HALL PSYCHIATRIC INSTITUTE
MULTI DISCIPLINARY ASSESSMENT

I.D.

TO BE UTILIZED FOR READMISSION WITHIN ONE YEAR AND/OR

ADDENDUM: NARRATIVE ADDITIONAL INFORMATION

Pt's wife, victim, were married for four years - recently they lost their trailer, she and children moved in w/ pt's mother's home and pt. moved in w a cousin. Pt's mother reported pt. was trying to reunite family when she (victim) told pt. she had a boyfriend - also she was keeping pt from seeing his children. Mother reported pt had threatened homicide several weeks prior to incident. Pt's mother very supportive and visiting pt. @ detention center.)

I.D.
Lindsay, Marika
1003-0726

Jo Alex, From your
Best Daddy in the world.
Or I always want you take
care of your mother and to do
what she saids always. Son your
have to help your mother with
your brother. No matter what
Son always watch over your
little brother, Because nobody else
will. Son you two have to
stick together, because all your
two will ever have is each
other and your mom. Son daddy
couldn't take this loneliness being
with out you and your brother
and Mom. Your mom fell in
love with someone else. But your
Daddy drove her to this. By cheating
on her too many times. She also
hearted on your daddy to Son,
ut daddy couldn't take it
nymore. It I couldn't be with
ll as a family I don't want to
be here anymore, Love Dad Ronè

2986 Neil, Baby I know you didn
believe I loved you this much +
I never stoped loving you no matter
what you think. It hurt me so
bad to hear you keep calling
another man like you used to
call me. You would never tell
me the truth about yall, But
I could tell you had starting
to fall in love with him when
you wouldn't let me make love
to you anymore, I begged you
to and it hurt you so bad
because you didn't want to cheat
on him. That hurt like hell
but always know I love you
and the boys. Tell them daddy
always will be with them. Show
them my picture everyday. You
owe me that much.

Love you 9/5/02
Neal. (Ron.

Suecide notes. You will Have To Get The other Two Notes To My Wife. And oldest Son Alex. From Trial File. Didn't send To me.

988

Love, Mama and Jim, I know I have always made yall worry about me so much. Now yall don't have to worry anymore. I love yall very much and don't yall forget that ever. Jim your the man of the house now. It's time to get a job and help Mom out. Jim you were my friend and I love you always your big brother Pore,
Jim there big things out there for you don't let them pass you by. Always go after your dreams. Always take care of mom because that all she has in you a Raise your son the best you can Too. Always check on my boys Jim. Love Yall

P.S. ...

Tim & mom

Tim Nell drove me to this by cheating on me. N heard her on the phone with him & he admitted it.

2990 [illegible]
always enjoyed the close relationship
we had. Son you have to carry on
Daddy's mood and dream. I wish that
I could have been here to see it.
But daddy couldn't stand to see
another man raise you and your
mother and that hurt like hell.
Son always remember to take care
of your brother, because nobody
else will. Son he is not so hard
like you. So look out for your
brother always. And don't be
fighting him so much. Always
stay in school and be something.
Make lots of money the honest
way. But I ever have to struggle
like your daddy did. Always take
care of your mom two.
Let nobody hurt her.

Love Dad

"Rose"

01-10-

SUBPOENA IN A CRIMINAL CASE

SOUTH CAROLINA **GENERAL SESSIONS** COURT	COUNTY: SPARTANBURG
THE STATE OF SOUTH CAROLINA **V.** **MARION ALEXANDER LINDSEY**	CASE NO.: 02-42-4753 SUBPOENA FOR: ☒ PERSON ☒ DOCUMENT(S) OR OBJECT(S)

TO: Rod Tullis
Records

☒ **YOU ARE HEREBY COMMANDED** to appear in the above named court at the place, date, and time specified below to testify in the above entitled case.

PLACE	COURTROOM / DATE AND TIME
Spartanburg County Courthouse Second Floor 180 Magnolia Street Spartanburg, SC 29306	Solicitor's Office May 21, 2004

☒ **YOU ARE ALSO COMMANDED** to bring with you the following document(s) or object(s):

Any and all records pertaining to Marion Lindsey while you were representing him.

This subpoena shall remain in effect until you are granted leave to depart by the court or by an office acting on behalf of the court.

CLERK OF COURT

DATE: May 21, 2004

BY DEPUTY CLERK

THIS SUBPOENA IS ISSUED UPON APPLICATION OF THE:

☒ SOLICITOR ☐ DEFENDANT

ATTORNEY'S NAME AND ADDRESS

TREY GOWDY
Solicitor
Seventh Judicial Circuit
Spartanburg County Courthouse
180 Magnolia Street, Third Floor
Spartanburg, SC 29306
(864) 596-2575

SCCA 253 (JULY 1, 1993) Computer Generated

Tim & Mom

Tim Nel drove me to this by cheating on Mrs. N. Reed her on the phone with him she admitted it.

Jo, Mona and Jim, I know I have always made yall worry about me so much. Now yall don have to worry anymore. I love yall very much and don't yall forget that ever. Jim your the man of the house now. It's time to get a job and help Mom out. Jim you were my friend and I love you always your big brotha Pete,
Jim, these big things out there for you don't let them pass you by. Always go after your dreams. Always take care of mom because that all she have is you. Rush, you are the best you can be. Always check on my boys Jim. Love U.

always enjoyed the close relationship we had. Son you have to carry on. Daddy's mould and dream. I wish that I could have been here to see it. But daddy couldn't stand to see another man raise your and your brother and that hurt like hell. Son always remember to take care of your brother, Because nobody else will. For he is not as hard like you. So look out for your brother always. And don't be fighting him so much. Always stay in school and be something. make lots of money the honest way. Don't ever have to struggle like your daddy did. Always take care of your mom too. Let nobody hurt her.

Love Dad

"Rose"

7/21/--

Best Daddy in the world
Son I always want you take
care of your mother and to do
what she says always. Son you
have to help your mother with
your brother. No matter what
Son always watch over your
little brother, Because nobody else
will. Son you two have to
stick together, because all your
two will ever have is each
ther and your mom. Son daddy
ouldn't take this loneliness being
ith out you and your brother
nd Mom. Your mom fell in
ove with someone else. But your
addy drove her to this. By cheating
n her too many times. She also
leaded on your daddy to Son,
ut daddy couldn't take it
nymore. If I couldn't be with
'll as a family I don't want to
'l here anymore, I love D. d 'Ron

X21G

Lyrics of Stevie Wonder

12-year old genius *

FINGERTIPS (PART 2)

Jazz soul of Little Stevie Wonder *

I'M WONDERING *

Uptight *

BLOWIN' IN THE WIND *

CONTRACT ON LOVE

HOLD ME

UPTIGHT (EVERYTHING'S ALRIGHT)

I was made to love her

I WAS MADE TO LOVE HER

Someday at Christmas

SOMEDAY AT CHRISTMAS

THE CHRISTMAS SONG

998
believe I loved you this much.
never stopped loving you no mat-
that you think. At last me co
and for hear you keep calling
another man like you used to
tell me. You would never tell
me the truth about yall, But
could tell you had starting
to fall in love with him when
you wouldn't let me make love
to you anymore, I begged you
to and it hurt you so bad
because you didn't want to cheat
on him. That hurt like hell
but always know I love you
and the boys. Tell them daddy
always will be with them. Show
them my picture everyday. You
owe me that much.

Love you 9/5/02
Hector "Ron"

BEDTIME FOR TOYS

Down to earth

HEY LOVE

SYLVIA

A PLACE IN THE SUN *

MR. TAMBOURIN MAN *

For once in my life

SHOO-BE-DOO-BE-DOO-DA-DAY *

FOR ONCE IN MY LFE *

YOU MET YOUR MATCH

I DON'T KNOW WHY *

My cherie amour *

THE SHADOW OF YOUR SMILE *

MY CHERIE AMOUR *

YESTERME YESTERYOU YESTERDAY *

Signed, sealed and delivered *

3000

Rodman Collins Tullis

ATTORNEY AT LAW
3000 SOUTH. CHURCH STREET
SPARTANBURG, SOUTH CAROLINA 29306
Telephone (864) 583-9335
Fax (864) 583-5390

September 19, 2002

Hon. Bill Coffey
Sheriff, Spartanburg County
366 N. Church Street
Spartanburg, SC 29303

Hand delivered

Re: Marion Alexander Lindsey – Homicide Suspect

Dear Sheriff Coffey:

Please take notice that I am the attorney for the above-referenced individual, and further take notice that **Mr. Lindsey is asserting his Fifth Amendment right to remain silent.** This has not and will not be waived by him in the absence of his counsel.

Sincerely,

Rodman C. Tullis

RCT/cp

Delivered
9/19/2002
11:30 am SRMC ICU 6TH FL.
Sheriff. Jason

11:40 am Sheriff's Office left / Front Desk Officer