

1 the time they put James Jordan's body in  
2 that passenger seat until Larry Demery  
3 tried to wipe it out, until it was  
4 processed on August the 18th, 1993 at the  
5 SBI lab. They couldn't get rid of it.

6 And where do they go? They go to get  
7 rid of this body. Demery leaves. He goes  
8 back to Green's trailer and waits for him.

9 And what happens to be right there  
10 along the side of Bob's Landing Mobile Home  
11 Park? But a canal. A canal as indicated  
12 on State's Exhibit 94. The very canal, if  
13 you follow the diagram, that extends all  
14 the way back, follow the broken line, to  
15 Lumber River that is depicted in the area  
16 of I-95 and U.S. 74. The very location  
17 where the defendant and Larry Demery had  
18 planned to rob somebody. And what runs  
19 beside that canal? A little road. A road  
20 runs the entire length.

21 Who comes driving up in that red  
22 Lexus? He does. They go to Rowland, going  
23 to get rid of this body. They stop in a  
24 cornfield. Pull over, let's find out who  
25 this person is. Find a driver's license.



1 Field was plowed again. What else happened  
2 in 1994 that explains why none of the  
3 things were found in the cornfield off of  
4 301 near Rowland? There was a fire. He  
5 burned the undergrowth in the wooded area.  
6 He burned all the undergrowth off. Last  
7 time I checked, when you set something on  
8 fire, things get burned up. But they argue  
9 to you, oh, the State should have gone out  
10 there and destroyed this man's corn crop to  
11 find that. Reason and common sense say it  
12 wasn't there in May of 1995. Reason and  
13 common sense tell you that when he burned  
14 off the undergrowth, he planted and  
15 harvested two crops. It was destroyed.

16 Go to Pea Bridge. Dump the body.  
17 They go back from there into Laurinburg.  
18 And they end up on the canal bank at 710.  
19 And the boxes beneath the exhibit table are  
20 all the items that were recovered at 710.  
21 That's where Larry Demery put them that  
22 morning. That's where the items were  
23 found. That's another indication that he  
24 was telling the truth.

25 From there they go to the defendant's

1 house and the defendant is playing with the  
2 telephone, making phone calls, because the  
3 testimony is that Larry was driving. And  
4 then the phone calls start coming back.  
5 Marion, Fayetteville, Rowland, Lumberton,  
6 Philadelphia. He's making all the calls.  
7 And it's like Mr. Binder and Mr. Myers told  
8 him during that interview of August the  
9 15th, 1993. There's not enough time for  
10 there to be anybody else. The phone tolls  
11 tell you that.

12 That's the real, that's the credible  
13 evidence. That's the believable evidence  
14 in this case. The gun wasn't found on  
15 August the 14th as Mr. Smith said. They  
16 had been up for three, four straight days.  
17 Working this investigation. Body had been  
18 identified. They get their prime suspect,  
19 and they go there. They were tired.  
20 That's really no excuse. They did not look  
21 in that vacuum cleaner.

22 On August the 16th, there's another  
23 search team. They go in and they find it.  
24 Mr. Bowen says it's one in a million that's  
25 the gun that fired that bullet. How many

1 other .38 caliber revolvers did Daniel  
2 Green have? Zero.

3 The bullet that killed James Jordan  
4 was undersized, and as a result of that,  
5 they could not get a conclusive match  
6 between that bullet and the test bullets  
7 that were fired from this gun. What did  
8 that test bullet that Mr. Marrs talked  
9 about that he had made, that reload he had  
10 made to the same size, the same  
11 specification of the bullet that was taken  
12 from James Jordan's body. Five lands and  
13 grooves with a right-hand twist, similar  
14 striation, similar marks.

15 But because of what? Gas melting and  
16 slippage, is when he fired a regular sized  
17 bullet through that gun, he got the  
18 identification, the identifying marks that  
19 he needed. But when he fired a bullet  
20 similar to the one that was used to kill  
21 James Jordan, he has the same problems with  
22 the test bullet that he does with the  
23 bullet removed from Mr. Jordan. It's too  
24 small. There's slippage, and there's gas  
25 melting.

1           That's the gun that was used to kill  
2 James Jordan. That's the gun that they  
3 stole from Clewis Demory.

4           Fingerprints. Larry Demery drove that  
5 car. Nobody ever argued that he didn't.  
6 What's the significance of the CD's? When  
7 were the CD's thrown out? Along the road.  
8 The day before the police came to the  
9 defendant's house. Where was the red  
10 Lexus? Red Lexus by that time was in  
11 Raleigh. Where did those CD's come from?  
12 James Jordan's Lexus. Who brought those  
13 CD's back from Fayetteville? Larry  
14 Demery? No. The defendant.

15           Whose fingerprints were on those CD's  
16 that were thrown out along Dunn Road? 13  
17 of them belong to the defendant. Positive  
18 matches. What was it that Mr. Richardson  
19 said, what was it the agent from South  
20 Carolina said? No two people in the  
21 history of the world have the same  
22 fingerprint. And the defense says, why  
23 didn't you bring a picture in here and show  
24 us that.

25           If no two people in the history of the

1 world have two of the same fingerprints,  
2 that's strong evidence in and of itself.  
3 His fingerprints, his known fingerprints  
4 were compared with fingerprints that were  
5 lifted from those CD's. And what car were  
6 they driving? Were they driving the  
7 Tempo? Nope. Driving the blue Cougar.  
8 Who was it that started calling people and  
9 telling them forget you saw me in that car,  
10 forget everything I told you about that  
11 car. You don't know me. Larry Demery?  
12 No. Daniel Green. He's covering his  
13 tracks. Why? He's got a guilty  
14 conscious. Why? Because he shot and  
15 killed a man, and he knows it's going to  
16 come back, and it's going to come right  
17 back to him. And he's got to hide his  
18 tracks.

19 Problem is, he can't erase the phone  
20 records. He can't erase the ring. He  
21 can't erase the watch, and he can't erase  
22 the gun, and he can't erase the fact that  
23 he was up in Fayetteville bragging about  
24 this Lexus sitting here. You can crank it  
25 with this remote control. Not only did he

1 lie to Captain Binder and Randy Myers, he  
2 lied to every single person who asked him  
3 about that car.

4 Melinda Moore, Dee Sullivan, oh, man,  
5 I brought that car from Philadelphia. Been  
6 up there in the shop. Ms. Thomas from  
7 Laurinburg, July the 24th, 1993, I'm in the  
8 recording business in New York. I've made  
9 it big. And what was it Ms. Thomas said  
10 that is so so appropriate? What is it that  
11 they say about boys and their toys? Daniel  
12 Green was out playing with his toy, his red  
13 Lexus. It came back to haunt him. Too  
14 many people saw him. Too many people  
15 talked to him. And he showed too many  
16 people that ring, that watch, and told too  
17 many lies. Too many lies.

18 They argued to you yesterday the State  
19 had shown you beyond a reasonable doubt  
20 that James Jordan was killed at the time  
21 that he was -- that he actually died as a  
22 result of being shot with that gun. Did  
23 they offer any evidence other than arguing  
24 that he died any other way? They are  
25 asking you to speculate.

1           The real, the credible and the  
2           believable evidence is that James Jordan  
3           was shot with a .38 caliber bullet, and he  
4           died as a result of the internal bleeding.  
5           Internal bleeding, the blood filled his  
6           chest cavity. Mr. Bowen wants you to  
7           believe that because that heart would have  
8           continued to beat for another minute, that  
9           every bit of the blood in his body should  
10          have been in that chest cavity. What  
11          happens when the heart beats? Where does  
12          the blood go? Does it go to one place?  
13          You have hundreds, thousands, if not  
14          millions of arteries, veins, and  
15          capillaries running through your body at  
16          this minute. At no single second, at no  
17          single minute is every bit of the blood in  
18          your body in your heart at one time. It's  
19          being pumped, it's being sent out through  
20          the body. So to argue that there should  
21          have been ten pints of blood in his chest  
22          cavity, it's just not so.

23                   THE COURT: Mr. Britt, I  
24           apologize for the interruption. It's now  
25           five after 1:00. We can continue with your

1 argument --

2 MR. BRITT: That will be fine.

3 THE COURT: We're going to stop  
4 at this point and take the lunch recess  
5 until 2:15. Does that pose any problem for  
6 any members of the jury? 2:15. Ladies and  
7 gentlemen, again, do not allow your minds  
8 to be made up about this matter in any  
9 respect. I instruct you that you're not to  
10 talk about this matter among yourselves or  
11 with anyone else. You're not to allow  
12 anyone to say anything to you or about the  
13 case in your presence. If anyone attempts  
14 to do so or if anyone says anything about  
15 the case in your presence, it remains your  
16 duty to inform the Court of that  
17 immediately.

18 Don't form or express any opinions  
19 about this matter. Don't have any contact  
20 or communication of any kind with anyone  
21 involved in the case. Avoid any exposure  
22 to any media accounts which might exist in  
23 connection with this matter. And again, do  
24 not conduct any independent inquiry or  
25 investigation or research of any kind.

1 Everyone else please remain seated, the  
2 members of the jury are excused until  
3 2:15.

4 (Jury out at 1:06 p.m.)

5 THE COURT: Anything from either  
6 counsel before we recess for lunch?

7 MR. BRITT: No, sir.

8 THE COURT: If you'll recess us  
9 until 2:15.

10 (Lunch recess).

11 (Jury in at 2:16 p.m.)

12 THE COURT: Good afternoon,  
13 ladies and gentlemen. Mr. Britt, the jury  
14 remains with the State for final arguments.

15 MR. BRITT: Thank you. May it  
16 please the Court, ladies and gentlemen,  
17 I've got a few areas to cover, and I'm  
18 going to be finished.

19 One area that we spent a week on  
20 presenting evidence to you is the  
21 identification of the body that was pulled  
22 from that swamp in South Carolina. Why was  
23 that? Because the defense contends that  
24 that was not James Jordan that was pulled  
25 from the Gum Swamp in Marlboro, South

1 Carolina on August the 3rd, 1993. They  
2 can't, they would not, if you recall the  
3 evidence yesterday, would not even  
4 acknowledge that was James Jordan's body.

5 What was it that James Jordan was  
6 wearing when Carolyn Robinson last saw him  
7 on July 22nd, 1993, the morning of July  
8 23rd, 1993, when he left Wilmington on his  
9 way back to Charlotte? Golf shirt, gray  
10 slacks. She even took a picture. State's  
11 Exhibit Number 9. James Jordan, alive and  
12 well, on the afternoon of July 22nd, 1993,  
13 standing by what? The red Lexus. Wearing  
14 what? Golf shirt and burgundy stripes and  
15 black stripes, gray Docker's pants and  
16 wearing his glasses. The body that was  
17 recovered from the Gum Swamp, what did it  
18 have on? State's Exhibit Number 17. Golf  
19 shirt, white burgundy and black stripes,  
20 gray Docker pants.

21 Is it a coincidence this is what James  
22 Jordan looked like before being shot in  
23 that red Lexus, and the body that was found  
24 in the Gum Swamp South Carolina? No, not a  
25 coincidence. Fact. Same clothes on the

1 body James Jordan wore when he was last  
2 seen alive.

3 Mr. Bowen asked why did they get rid  
4 of that body so quick. What were they  
5 trying to hide? What was the testimony?  
6 The body went into the water on July the  
7 3rd, 1993. August the 3rd, 1993, 11 days  
8 later that body was uncovered, was found.  
9 People who found that body, Hal Locklear,  
10 he couldn't tell you if it was a white man,  
11 couldn't tell you if it was a black man,  
12 couldn't tell you if it was an Indian man.  
13 He couldn't even tell you it was a man. He  
14 thought it was a manikin, a dummy,  
15 stretched out on the water on that limb.  
16 Why? Because the body was so badly  
17 decomposed. Maggot infested, maggots  
18 covering that body from its head to its  
19 toes. So decomposed that the skin, it was  
20 starting to come off. The color in the  
21 skin was gone, the skin was starting to  
22 split open. And they asked why did they  
23 get rid of that body, why was that body  
24 cremated. There was no place to store that  
25 body. You sat here, you smelled the stench

1 that came from that box when those clothes  
2 were opened. And they want to know why the  
3 body was cremated.

4 State's Exhibit Number 17, the body  
5 after it was placed in the body bag. You  
6 can look at the arm and you can see the  
7 skin slippage, you can look at the arm, the  
8 back of the head, and you can see the  
9 discoloration. You can see the state of  
10 decomposition this body was in.

11 State's Exhibit Number 28, the skin on  
12 the back of this man's head had busted  
13 open. And they ask why. State's Exhibit  
14 30, and State's Exhibit 32, the maggot  
15 infestation, the condition that body was  
16 in. And they want to know why. They say,  
17 oh, that's not James Jordan. That wasn't  
18 James Jordan. State's Exhibit 48. The  
19 known fingerprints of James Jordan that  
20 were on file at the SBI lab in Raleigh.  
21 What did they do with those known prints?  
22 What did they do in that autopsy to try to  
23 identify this body? What was it Dr. Sexton  
24 said, three conclusive ways of identifying  
25 a body. Fingerprints, dental records and

1 x-rays.

2 So what did they do to try to identify  
3 this body? They cut off the man's hands.  
4 Took the skin tissue that was remaining on  
5 those fingertips and carefully and  
6 surgically removed that skin tissue so that  
7 they could get those ridges that are on  
8 each person's fingers. To do what? To  
9 compare the known fingerprints of someone.  
10 They didn't know who they had when they  
11 found that body. It was eight days later  
12 before an identification was made.

13 Took that skin tissue from his thumb.  
14 Remember how they said it was done, they  
15 started over here and they sliced, sliced  
16 around, came down, and they pulled it off.  
17 Then the SLED agent said he was wearing  
18 rubber gloves, that skin tissue was placed  
19 across that glove to ensure that his  
20 fingerprint was not superimposed. And they  
21 rolled it. And what do we have? James  
22 Jordan's fingerprint. That fingerprint  
23 that was taken after that autopsy matched  
24 James Jordan's known fingerprints. And  
25 what was the testimony? No two people in

1 the world have the same fingerprint.

2 Not only that, but they noticed during  
3 the course of this autopsy that this person  
4 that had been recovered in that swamp had  
5 very extensive dental work. So much so  
6 that they removed the jaws from that body  
7 to preserve those dental records, to  
8 preserve those teeth, so that they could do  
9 what? Identify the body by the second  
10 conclusive means of identification. Dental  
11 records.

12 And what do they do, they save them,  
13 they charted them. Dr. Brown, dentist in  
14 South Carolina, was asked to chart the  
15 teeth. State's Exhibit 35-B. Dental  
16 charting that Dr. Brown did after the jaws  
17 were removed from that body. Photographs  
18 were taken of those teeth. X-rays were  
19 made of those teeth. State's Exhibit 35,  
20 the x-rays that were made from the jaws  
21 that were removed from the body in South  
22 Carolina after the autopsy. Held on to  
23 them.

24 August the 11th, 1993, when the car is  
25 identified in Cumberland County as

1 belonging to James Raymond Jordan, of  
2 Charlotte, North Carolina, the wheels go in  
3 motion. They found his car and there's a  
4 John Doe in Marlboro County, South  
5 Carolina.

6 They took those dental records from  
7 Marlboro County, they take those dental  
8 records from Charlotte, the known dental  
9 records of James Jordan, and they go to  
10 South Carolina. What do they do? They  
11 match them up. Dr. Brown in South  
12 Carolina, after looking at the known dental  
13 records of James Jordan, looking at the  
14 known dental x-rays of James Jordan,  
15 State's Exhibit 37, charting, the known  
16 charting, State's Exhibit 37-K, Dr. Brown  
17 tells you that based upon his training, his  
18 experience, his observation of those  
19 charting and those x-rays that he made,  
20 that body in South Carolina is James  
21 Jordan. Does it stop there? No.

22 To further the identification, they  
23 asked the one person in the entire world  
24 who knows what the inside of James Jordan's  
25 mouth looks like. Dr. Lawrence Seitlin.

1 James Jordan's dentist. The man who has  
2 performed extensive dental procedures on  
3 him, has recommended him to oral surgeons  
4 to have other work done. Dr. Seitlin, we  
5 would like you to examine these x-rays that  
6 you know to be yours, and these dental  
7 records that you know to be yours of James  
8 Jordan, and compare them please with these  
9 dental records that we obtained as a result  
10 of the autopsy, and tell us if you are able  
11 to identify that body.

12 Dr. Seitlin, his training, his  
13 experience, his familiarity with James  
14 Jordan, yes, that's James Jordan that you  
15 found in that swamp.

16 Take it one step further there. They  
17 go to Chapel Hill, Dr. Burkes, a forensic  
18 odontologist, someone who is specifically  
19 trained in this area of identification.  
20 Dr. Burkes examined these records. Tell us  
21 your opinion, Dr. Burkes, who is it. It's  
22 James Raymond Jordan. Two of the three  
23 means of conclusively identifying someone  
24 were utilized in this investigation to  
25 identify that body. And that evidence has

1 not and cannot be refuted. That body was  
2 James Jordan. That body got put in that  
3 swamp by two people. Larry Demery and  
4 Daniel Green. Was it James Jordan?  
5 Absolutely. There's no other evidence to  
6 suggest otherwise.

7 Let's talk about Larry Demery.  
8 Because at this point, I really haven't  
9 incorporated Larry Demery into the  
10 argument. We went through jury selection,  
11 I talked to you about circumstantial  
12 evidence, and I talked to you about real  
13 evidence. Direct evidence. Circumstantial  
14 evidence being defined as a group or a  
15 chain of evidence that links a person not  
16 only to the commission of a crime, that  
17 proves beyond a reasonable doubt that that  
18 person is guilty of that crime.

19 And everything that I have talked  
20 about with you this afternoon, this  
21 morning, up to this point, deals with  
22 circumstantial evidence. And each one of  
23 you during jury selection said yes, I can  
24 sit on a case involving circumstantial  
25 evidence. I can follow the law when the

1 Judge defines circumstantial evidence to  
2 me. Because in the law there is no  
3 distinction between the weight that you  
4 give to circumstantial evidence and the  
5 weight that you give to direct evidence.  
6 And the circumstantial evidence in this  
7 case points to him. Points to the  
8 defendant. In more ways than one.

9 Direct evidence. Testimony of a  
10 person who asserts actual knowledge of a  
11 fact. An eye witness. A combination. If  
12 you'll recall back in jury selection, I  
13 asked you, you understand some cases are  
14 made up of entirely circumstantial  
15 evidence. Some cases are made up entirely  
16 of direct evidence. Some cases are made up  
17 of a combination of the two. This case is  
18 made up of a combination of the two.

19 A combination of direct eye witness  
20 testimony from Larry Demery as he knew the  
21 facts to be on that night. Strong, strong  
22 circumstantial evidence. Gathered from  
23 whom? Other people. Not police officers  
24 who came in here and testified to you. But  
25 other people who saw the defendant, who

1 talked to the defendant and saw the things  
2 that the defendant had. His Honor is going  
3 to charge you on something called the  
4 doctrine of recent possession.

5 Let me read that for you: In order to  
6 establish the doctrine of recent  
7 possession, the State's got to prove three  
8 things beyond a reasonable doubt. First  
9 that the property was stolen. Is that in  
10 conflict? Was the Lexus stolen? Yes. Was  
11 the watch stolen? Yes, was the ring  
12 stolen? Yes.

13 Second, that the defendant had  
14 possession of that property. No question  
15 about it. No question about it. They even  
16 concede that he had it.

17 And third, that the defendant had  
18 possession of this property so soon after  
19 it was stolen and under such circumstances  
20 as to make it unlikely that he obtained  
21 it. Honestly. That's a presumption that  
22 arises in the law. That's a presumption  
23 that his Honor, a doctrine that his Honor  
24 is going to instruct you on. Not only did  
25 he have the car, because the phone records

1 establish that. The girls in South  
2 Carolina establish that. His brother in  
3 Fayetteville establishes that. But he had  
4 everything else.

5 Direct evidence. The testimony of an  
6 eye witness. They argue to you that Larry  
7 Demery has changed his story three times.  
8 You go back and you look at the different  
9 statements that he made. And he did make  
10 three statements. There's no doubt in  
11 that. But what is it that remains  
12 consistent in that statement? And what is  
13 it that changes? Because the thing that  
14 changes in Larry Demery's statement doesn't  
15 make it worse on the defendant, because in  
16 each of those three statements he says or  
17 he infers that the defendant is the one  
18 that killed him. What changes is that  
19 Larry Demery puts himself present at the  
20 time James Jordan was murdered, and that  
21 has legal consequences. He puts himself  
22 there, he said he was going to tell us the  
23 truth. The first statement, the statement  
24 of August the 15th, 1993 was that I left to  
25 go to my car and drove off and I saw Daniel

1 getting into that car. He came to my --  
2 his house, and there was a man in the car,  
3 and I knew the man was dead.

4 May the 2nd. Daniel and I were there,  
5 we planned on robbing this man just like he  
6 said in August of 1993, except he says I  
7 was 60 feet away, I was running back to the  
8 car. His agreement with the State was to  
9 tell the truth. He changes it because he  
10 had not be truthful at that point. And he  
11 puts himself present, and as I said that  
12 has legal consequences.

13 They argue to you that he's made a  
14 sweet deal. And I told you in jury  
15 selection that there was an agreement. I  
16 told you in opening statements that there  
17 was an agreement. The record shows that  
18 there's an agreement. He's now 20 years  
19 old. He's going to prison for 40 years on  
20 everything that he's pled guilty to with  
21 the exception of the murder. The murder,  
22 there is no agreement. There is no  
23 agreement as to what will happen to Larry  
24 Demery when it comes time for a jury to  
25 decide his fate.

1           He faces life or he faces death. The  
2 maximum and minimum punishments in North  
3 Carolina. Nobody has guaranteed him a life  
4 sentence. Nobody guaranteed him that this  
5 40 years is going to run together with any  
6 life sentence that he receives.

7           They bring Richard Locklear in to this  
8 courtroom. And they say Richard Locklear  
9 told you the truth. How many people work  
10 at the Robeson County jail? I would submit  
11 to you there are in excess of a hundred.  
12 How many of those one hundred people in  
13 that Robeson County jail came into this  
14 courtroom and said I had a conversation  
15 with Larry Demery and guess what, he's said  
16 Johnson Britt has made a secret deal with  
17 him. None. One person. And who is  
18 represented by the same attorney that  
19 Daniel Green is? Richard Locklear.  
20 Coincidence?

21           Who came up here as he testified and  
22 went through the pretrial proceedings in  
23 this case? Who knew that the defendant was  
24 represented by the same lawyer who  
25 represents him? Who has an axe to grind

1 with anybody? Richard Locklear tells you  
2 he feels sorry for me? I did my job.  
3 Richard Locklear says the powers that be  
4 caused him his problems in Whiteville.  
5 Richard Locklear is the source of his own  
6 problems. Richard Locklear lied when he  
7 applied for his job in Whiteville. He lied  
8 when he applied for this job at the Robeson  
9 County Sheriff's Department.

10 And Mr. Bowen argues that Richard  
11 Locklear was Whiteville's finest police  
12 officer. But he lied about getting the  
13 job. Didn't tell about those criminal  
14 offenses that he had been involved in.  
15 Didn't tell them about the fact that he had  
16 been fired from working in the job in New  
17 Jersey prison, because he was fooling  
18 around with an inmate's relative or wife.  
19 Why? Because he's a liar.

20 MR. THOMPSON: Object.

21 THE COURT: Sustained.

22 MR. THOMPSON: Request  
23 instruction.

24 THE COURT: Members of the jury,  
25 disregard counsel's personal expression of

1 belief as to the credibility or lack of  
2 credibility as to any witness. That matter  
3 is not to take any part in your  
4 deliberations in this case in any respect.

5 MR. BRITT: He told you yes, I  
6 received notice from the Police Chief  
7 Association Training and Standards  
8 Commission that they were seeking to take  
9 away my certification because I lied, I  
10 misrepresented matters in my application.  
11 When was that? August of 1994. When did  
12 he apply for his job at the Robeson County  
13 Sheriff's Department? December of 1994.

14 And oh, I forgot about those criminal  
15 offenses when I applied for the job at the  
16 Sheriff's Department. He had just been put  
17 on notice four months earlier that they  
18 were going to take the certification that  
19 enabled him to get the job, and he just  
20 simply forgot? Was he being truthful? And  
21 then in January, 1995, he gets another  
22 notice that they are going to take his  
23 certification? Why? Because he falsified  
24 his application to go to work for the  
25 Sheriff of this County. And they wanted

1 you to believe him.

2 On top of that, he says this  
3 conversation occurred sometime in the  
4 summer after Larry Demery had entered his  
5 plea. After Larry Demery had entered his  
6 plea. There was a safekeeping order  
7 entered, and Larry Demery went to the North  
8 Carolina Department of Corrections, on  
9 April the 27th of 1995.

10 MR. THOMPSON: Object.

11 THE COURT: Overruled.

12 MR. BRITT: That safekeeping  
13 order remained in effect until September  
14 the 27th of 1995. Never during the period  
15 between April and September of 1995 was  
16 Larry Demery in the Robeson County jail.

17 He never returned to the Robeson  
18 County jail to go home to visit with his  
19 family and see his baby. And see his  
20 brother.

21 MR. THOMPSON: Object.

22 THE COURT: As phrased,  
23 sustained.

24 MR. BRITT: If you recall the  
25 testimony of Larry Demery, he told you he

1 did get to go home one time. But that was  
2 in 1994. That a deputy took him out  
3 there --

4 MR. THOMPSON: Object.

5 THE COURT: Members of the jury,  
6 it's your duty as I previously instructed  
7 you to recall the evidence as it was  
8 presented in this case, and if your  
9 recollection of the evidence differs from  
10 that of counsel for the State or counsel  
11 for the defendant, you are to disregard  
12 what they say the evidence is and rely only  
13 on your recollection of the evidence during  
14 your deliberations. Mr. Britt, you may  
15 continue.

16 MR. BRITT: Yes, sir. He  
17 testified that a deputy by the name of  
18 Bobby Deese drove him to his parents' house  
19 in 1994, that he was shackled and he got to  
20 stay there for a couple of hours and visit  
21 with his parents, see his baby, and see his  
22 brother. The conversation Richard Locklear  
23 alleges happened didn't happen in the time  
24 frame that he said it did, and I argue to  
25 you never happened.

1           Richard Locklear interjected himself  
2           into this trial. Because he's got an axe  
3           to grind. He's got an axe to grind with  
4           me. He's got an axe to grind with the City  
5           of Whiteville. But on top of it all, he  
6           was not truthful when he applied to either  
7           of those jobs. And it's up to you to  
8           determine the credibility of the witnesses  
9           that have testified, who are you going to  
10          believe, how much are you going to believe  
11          and what you believe that they have to  
12          say.

13                 The truth remains constant, the truth  
14                 doesn't change, because when you tell the  
15                 truth, it's easy to tell the truth again  
16                 and again and again. And that's what Larry  
17                 Demery, I argue to you, has done. He has  
18                 told the truth. Since August the 15th when  
19                 he gave up on telling the story about Rick,  
20                 he came forward and said what happened.

21                 He didn't tell somebody he got a car  
22                 or had a car from Philadelphia. He didn't  
23                 tell somebody that he was in the music  
24                 business up in New York, that he made it  
25                 big. He didn't tell anybody that he got it

1 from an Arab looking guy as he walked up  
2 301. He didn't tell anybody he got it from  
3 somebody dressed in a suit for two rocks of  
4 cocaine. Because the truth remains  
5 constant.

6 The truth has a certain ring. It's a  
7 ring of consistency. And that's what Larry  
8 Demery has done. How many times did they  
9 try to trip him up? How many times did he  
10 walk over to this jury box and tell you in  
11 sections, to the four of you, to the four  
12 of you, to the five of you? How many  
13 times? I lost count at 18. Every time he  
14 came to this jury box, his testimony rang  
15 loud and it rang true. It's up to you to  
16 determine who you're going to believe.  
17 It's up to you to determine the weight that  
18 you give to the evidence. That's your  
19 job. It's your job to apply the facts that  
20 you find from the evidence to the Judge's  
21 instruction on what the law is. And when  
22 you do that, if all 12 of you come to the  
23 same conclusion, that the State has proven  
24 beyond a reasonable doubt that Daniel Andre  
25 Green did unlawfully and intentionally,

1 with premeditation and deliberation and  
2 with malice, kill James Raymond Jordan,  
3 then it's your duty to find him guilty of  
4 first degree murder.

5 If you find from the evidence that the  
6 State has proven beyond a reasonable doubt  
7 that Daniel Andre Green, during the course  
8 of an armed robbery, did commit that armed  
9 robbery or attempted to commit that armed  
10 robbery, and as a result killed someone  
11 during the commission or the attempt to  
12 commit that crime, it's your duty to find  
13 him guilty of first degree murder. If you  
14 find that the State's proven both theories,  
15 it's your duty to find him guilty under  
16 both theories.

17 You're going to get verdict sheets in  
18 this case. There are three lines on it.  
19 One is for the murder case, one for the  
20 robbery case, and the other one is for  
21 conspiracy. What's a conspiracy? It's an  
22 agreement between two people to commit an  
23 unlawful act, and that he intends to act  
24 upon it. Plain and simple.

25 What was a conspiracy? The conspiracy

1 was to commit armed robbery or robbery with  
2 a dangerous weapon. Who were the  
3 participants? Larry Demery and Daniel  
4 Green. Who intended that it be carried  
5 out? Larry Demery and Daniel Green. And  
6 you know what? Mr. Thompson hit it on his  
7 argument yesterday. If there's a  
8 conspiracy, and if you believe that Daniel  
9 Green wasn't there, guess what? He's still  
10 guilty of conspiracy to commit armed  
11 robbery. And he's still guilty of a  
12 robbery, and he's still guilty of murder  
13 under the felony murder rule even though he  
14 may not have been present, if you buy his  
15 argument.

16 MR. THOMPSON: Well, I object.

17 THE COURT: Well, members of the  
18 jury, disregard what counsel contends the  
19 law is in this case. I will instruct you  
20 on the law. And you are to rely only on  
21 the Court's instruction of the law in your  
22 deliberations. The objection is  
23 sustained.

24 MR. BRITT: What is armed  
25 robbery? Armed robbery requires the State

1 to prove seven things. And I would argue  
2 to you that the State not only has proven  
3 those seven things, the State has proven it  
4 beyond a reasonable doubt.

5 First, the defendant took and carried  
6 away property from the person or his  
7 presence. Two, that the defendant carried  
8 away that property. Third, that the  
9 defendant did not -- excuse me, that the  
10 person did not voluntarily consent to the  
11 taking and carrying away of his property.  
12 Fourth, that the defendant knew he was not  
13 entitled to take the property. Five, that  
14 at the time of the taking, the defendant  
15 intended to deprive that person of its use  
16 personally. And six that the defendant  
17 used a firearm or had in his possession a  
18 firearm at the time of the taking of the  
19 property. And seventh, that he obtained  
20 the property by endangering or threatening  
21 the life of the person with that firearm.

22 Well, in this case the defendant  
23 killed the man to get his property.

24 Three verdicts. Three verdict forms.  
25 Larry Demery told you the truth. The

1 defendant on August the 15th, 1993 told the  
2 truth when he told the officers, I know  
3 Larry, Larry will tell the truth about what  
4 happened. The defendant foreshadowed, gave  
5 a projection on August the 15th, that Larry  
6 Demery would tell the truth. And I would  
7 argue to you Larry Demery did tell the  
8 truth.

9 But unlike what has been argued to  
10 you, this case does not hinge solely upon  
11 Larry Demery. There is overwhelming  
12 evidence, I would argue to you, that not  
13 only points to this defendant's guilt but  
14 proves that beyond a reasonable doubt that  
15 Daniel Andre Green murdered James Raymond  
16 Jordan on the morning of July the 23rd,  
17 1993.

18 Mr. Thompson in his argument yesterday  
19 talked to you about the tools, the tools  
20 that lawyers use to getting at the truth.  
21 The truth. The truth. Judge may give you  
22 an instruction, the highest aim of every  
23 legal contest is the ascertainment of the  
24 truth. Truth. The tools.

25 This is the tool of the killer

1 (indicating). I would argue to you guns  
2 are made for one purpose and one purpose  
3 only, and that's to kill people. This gun  
4 was used in the trade of killing, in the  
5 trade of robbery, by that defendant, on  
6 July the 23rd. The evidence, the real, the  
7 credible, the believable evidence screams  
8 the truth. And the truth is, and I ask you  
9 to so find, that Daniel Andre Green is  
10 guilty of first degree murder under both  
11 theories, that he's guilty of armed  
12 robbery, and that he's guilty of conspiracy  
13 to commit armed robbery.

14 And your verdict must speak to truth,  
15 and your verdict must be based on the  
16 evidence, the fact and the law, and you can  
17 reconsider this evidence and you apply  
18 those facts to the judge's instructions on  
19 the law, you'll come up with the true  
20 verdict, that is he's guilty.

21 On January the 3rd, I told you I would  
22 have an opportunity to speak to you again  
23 after all the evidence had been presented,  
24 to ask you to find that the defendant was  
25 guilty, that he committed these crimes.

1 It's now your duty, and I ask you to so  
2 find.

3 THE COURT: Mr. Huseby, are you  
4 ready, sir?

5 THE COURT REPORTER: Yes, sir.

6 THE COURT: Members of the jury,  
7 all of the evidence has been presented. It  
8 is now your duty to decide from this  
9 evidence what the facts are. You must then  
10 apply the law which I'm about to give you  
11 to those facts.

12 Folks, it's absolutely necessary that  
13 you understand and apply the law as I give  
14 it to you and not as you think the law is  
15 or as you might like the law to be. And  
16 this is of absolute importance, because  
17 justice requires that everyone tried for  
18 the same crime or crimes be treated in the  
19 same way and have the same law applied in  
20 everybody's such case.

21 Now, members of the jury, I instruct  
22 you that as to State's Exhibit Number 10,  
23 the parties in this case have entered into  
24 a stipulation as to certain matters  
25 involved in this case. And in entering

1           into that stipulation, the parties in this  
2           case have agreed for the purposes of this  
3           case that the facts set out in that  
4           stipulation are to be accepted by you as  
5           true for the purposes of this case. And I  
6           instruct you now that you are to accept as  
7           true for purposes of this case the facts or  
8           matters as set out in the stipulation  
9           marked and admitted as evidence in this  
10          case as State's Exhibit Number 10.

11                 Now, members of the jury, the  
12           defendant in this action, Mr. Daniel Andre  
13           Green, also known as U'Allah, has entered  
14           pleas of not guilty. And I instruct you  
15           that the fact that he has been charged is  
16           no evidence of guilt. Under our system of  
17           justice, when a defendant pleads not  
18           guilty, he is not required to prove his  
19           innocence. As I have previously instructed  
20           you, that person, and in this case the  
21           defendant, is presumed to be innocent.

22                 Now, the State of North Carolina must  
23           prove to you that the defendant is guilty  
24           beyond a reasonable doubt. And I instruct  
25           you that a reasonable doubt is not a vain

1 or an imaginary or a fanciful doubt. A  
2 reasonable doubt is a doubt based on reason  
3 and common sense. Such a doubt may arise  
4 out of the evidence that is present or such  
5 a doubt may arise out of the lack or the  
6 insufficiency of the evidence as the case  
7 may be. And I instruct you that proof  
8 beyond a reasonable doubt is proof that  
9 fully satisfies or entirely convinces you  
10 of the defendant's guilt.

11 Now, members of the jury, you are the  
12 sole judges of the credibility of each  
13 witness called to testify before you. You  
14 must decide for yourself whether to believe  
15 the testimony of any witness. You may  
16 believe all or any part or none of what a  
17 witness has said on the stand.

18 In determining whether to believe any  
19 witness, you should apply the same tests of  
20 truthfulness which you apply in your  
21 everyday affairs and as applied to this  
22 trial. These tests may include the  
23 opportunity of the witness to see, hear,  
24 know, or remember the facts or occurrences  
25 about which the witness testified, the

1 manner and appearance of the witness, any  
2 interest, bias or prejudice that you find  
3 that the witness may have, the apparent  
4 understanding and fairness of the witness,  
5 whether the testimony of the witness is  
6 reasonable and whether the testimony of the  
7 witness is consistent with other believable  
8 evidence in the case.

9 Now, you are also the sole judges of  
10 the weight to be given any evidence. And  
11 by this I mean that if you decide that  
12 certain evidence is believable, you must  
13 then determine the importance of that  
14 evidence in light of all other believable  
15 evidence in the case.

16 Now, in this case, you have heard  
17 evidence from witnesses who have testified  
18 as expert witnesses. And I instruct you  
19 that an expert witness is permitted to  
20 testify in the form of an opinion in a  
21 field where the witness purports to have  
22 specialized skill or knowledge.

23 Now, as I have just instructed you,  
24 you are the sole judges of the credibility  
25 of each witness and the weight to be given

1 to the testimony of each witness called  
2 before you. In making this determination  
3 as to the testimony of an expert witness,  
4 you should consider in addition to the  
5 other tests of credibility and weight, the  
6 witness's training, qualifications and  
7 experience, or lack thereof, the reasons,  
8 if any, given for the opinion, whether the  
9 opinion is supported by facts that you find  
10 from the evidence in this case, whether the  
11 opinion is reasonable, and whether it is  
12 consistent with other believable evidence  
13 in the case.

14 Now, members of the jury, I instruct  
15 you that you should consider the opinion of  
16 an expert witness, but you are not bound by  
17 it. In other words, you are not required  
18 to accept an expert witness's opinion to  
19 the exclusion of the facts and  
20 circumstances disclosed by other testimony  
21 in this case.

22 Now, members of the jury, I instruct  
23 you that the defendant in this case, Daniel  
24 Andre Green, also known as U'Allah, has not  
25 testified. Now, that is to say that he did

1 not go upon the witness stand and offer  
2 evidence on his own behalf.

3 Now, in this connection, I  
4 emphatically instruct you that the law of  
5 North Carolina gives him this privilege.  
6 And I further instruct you that the law  
7 provides that he has the right to decide  
8 whether he will testify or whether he will  
9 remain off the witness stand. Now, this is  
10 the right of every defendant in every  
11 criminal prosecution, and the law which  
12 gives him this right to make this choice  
13 also assures him that his decision not to  
14 testify will not be used against him.

15 Therefore, I instruct you that you  
16 must be very careful in the course of your  
17 deliberations in this case not to allow the  
18 defendant's silence or the defendant's  
19 decision not to offer testimony in his own  
20 behalf to influence your decision in any  
21 way. For to do so would be to penalize him  
22 for exercising a right which our law says  
23 that he has, and in which our law  
24 recognizes and assures him that he will not  
25 be prejudiced or penalized in any way for

1 electing to do what the law says he has a  
2 perfect right to do.

3 Now, members of the jury, there are  
4 two types of evidence from which you may  
5 find the truth as to the facts of a case:  
6 Direct and circumstantial evidence. Direct  
7 evidence is the testimony of one who  
8 asserts actual knowledge of a fact such as  
9 an eye witness. Circumstantial evidence is  
10 proof of a chain or a group of facts and  
11 circumstances indicating the guilt or the  
12 innocence of a defendant.

13 Now, the law makes no distinction  
14 between the weight to be given to either  
15 direct or circumstantial evidence. Nor is  
16 a greater degree of certainty required of  
17 circumstantial evidence than of direct  
18 evidence. I instruct you that you should  
19 weigh all of the evidence in this case, and  
20 after weighing all the evidence, if you are  
21 not convinced of the guilt of the defendant  
22 beyond a reasonable doubt, then you must  
23 find him not guilty. I instruct you that  
24 proof of motive for a crime or crimes is  
25 permissible and often valuable, but never

1 essential for a conviction.

2 If you are convinced beyond a  
3 reasonable doubt that the defendant  
4 committed the crime or crimes which are now  
5 before this Court and this jury, I instruct  
6 you that the presence or absence of motive  
7 is immaterial. Motive may be shown by  
8 facts surrounding the act if they support a  
9 reasonable inference of motive. When thus  
10 proved, motive becomes a circumstance to be  
11 considered by you, and I instruct you that  
12 the absence of motive is equally a  
13 circumstance to be considered on the side  
14 of innocence.

15 Now, ladies and gentlemen of the jury,  
16 as you will recall, evidence was received  
17 in this case tending to show, and again I  
18 instruct you that what the evidence in this  
19 case does show is for you the members of  
20 the jury to determine, but evidence has  
21 been received tending to show that the  
22 defendant in this case, Daniel Andre Green,  
23 also known as U'Allah, and the witness  
24 Larry Martin Demery, committed a robbery  
25 with a dangerous weapon in the parking

1 lot -- in or about the parking lot of the  
2 Family Inn in the Rowland area, of four  
3 individuals as described in the testimony  
4 of Larry Martin Demery.

5 And again, I instruct you that this  
6 evidence was received solely for the  
7 purpose of showing that the defendant  
8 Daniel Andre Green, also known as U'Allah,  
9 had the intent necessary, which is a  
10 necessary element of the crime or crimes  
11 charged in this case, specifically, the  
12 offense of first degree murder of James  
13 Raymond Jordan, robbery with a dangerous  
14 weapon or firearm of James Raymond Jordan,  
15 and conspiracy to commit robbery with a  
16 firearm of James Raymond Jordan.

17 Members of the jury, I further  
18 instruct you that this evidence may be  
19 considered by you to the extent that you  
20 believe this evidence as to the purported  
21 events of July 4th, 1993, only for the  
22 limited purpose for which it was received.  
23 But you may not consider this evidence for  
24 any other purpose in this case.

25 Now, also as you will recall, evidence

1 was received during this trial tending to  
2 show, and again I instruct you that what  
3 the evidence in this case does show is for  
4 you the members of the jury to determine,  
5 that Daniel Andre Green, also known as  
6 U'Allah, acting together with Larry Martin  
7 Demery, committed a robbery with a  
8 dangerous weapon on July 15th, 1993, and  
9 that during the course of that robbery, the  
10 defendant Daniel Andre Green, also known as  
11 U'Allah, took or stole a .38 caliber Smith  
12 & Wesson revolver, which the State contends  
13 and the defendant denies the defendant  
14 Daniel Andre Green used in the commission  
15 of the offenses for which he is now being  
16 tried. Specifically, first degree murder  
17 of James Raymond Jordan, robbery with a  
18 firearm of James Raymond Jordan, and  
19 conspiracy to commit robbery with a  
20 dangerous weapon or firearm of James  
21 Raymond Jordan.

22 And again I instruct you that this  
23 evidence was received solely for the  
24 purpose of showing the identity of the  
25 person who committed the crime or crimes

1 charged in this case, if it was committed,  
2 and that this evidence was also received,  
3 if believed, to show that the defendant had  
4 the intent, which is a necessary element of  
5 a crime or crimes charged in this case.

6 Now, members of the jury, I again  
7 instruct you that if you believe this  
8 evidence, then you may consider it, but  
9 only for the limited purpose for which it  
10 was received. And I further instruct you  
11 as to the events as testified to regarding  
12 July 15th, 1993, and the events as  
13 testified to regarding July 4th, 1993, that  
14 you may not use this evidence as general  
15 character evidence. Rather, you may use  
16 this evidence, if you believe it, only in  
17 deciding the existence of the fact or facts  
18 for which it was offered and received,  
19 specifically, again, as to the matters  
20 related to July 15th, 1993, insofar as you  
21 may find that it bears on the issue of the  
22 identity of the defendant as the  
23 perpetrator of the crime or crimes charged  
24 in this matter, which are now before this  
25 Court and jury, and as you may find that it

1           may bear on the intent of the defendant  
2           Daniel Andre Green, again, if you find that  
3           this evidence is believable.

4           Now, members of the jury, I instruct  
5           you that you may find that one or more  
6           witnesses who have testified in this case  
7           is interested in the outcome of this  
8           trial. In deciding whether or not to  
9           believe such a witness, you may take any  
10          interest that you find to exist into  
11          account. Now, if after doing so, you  
12          believe the testimony of a witness, in  
13          whole or in part, then you should treat  
14          what you believe the same as any other  
15          believable evidence in this case.

16          Now, I instruct you that there is  
17          evidence which tends to show, and again it  
18          is for you the members of the jury to  
19          determine what the evidence in this case  
20          does show, but there is evidence which  
21          tends to show that a witness, specifically  
22          Larry Martin Demery, was testifying under  
23          an agreement with the State of North  
24          Carolina, that Larry Martin Demery would  
25          not be prosecuted for the commission of any

1 crimes in which he participated that were  
2 not known to the State and which would  
3 otherwise have remained unknown except for  
4 his cooperation and disclosure, and under  
5 an agreement with the State of North  
6 Carolina for a recommendation for sentence  
7 concession in exchange for his testimony.

8 Now, if you find that he testified in  
9 whole or in part for either or both of  
10 these reasons, I instruct you that you  
11 should examine his testimony with great  
12 care and caution in deciding whether or not  
13 to believe him. Now, if after doing so,  
14 you believe his testimony in whole or in  
15 part, then I instruct you that you should  
16 treat what you believe the same as any  
17 other believable evidence in this case.

18 Now, there is evidence in this case  
19 which the State contends and the defendant  
20 denies tends to show that a witness,  
21 specifically Larry Martin Demery, was an  
22 accomplice in the commission of one or more  
23 of the crimes alleged in this case. And I  
24 instruct you that an accomplice is a person  
25 who joins with another in the commission of

1 a crime. The accomplice may actually take  
2 part in acts necessary to accomplish the  
3 crime, or he may knowingly help or  
4 encourage another in the crime either  
5 before or during its commission.

6 Now, ladies and gentlemen, I instruct  
7 you that an accomplice is considered by the  
8 law to have an interest in the outcome of  
9 the case, and I instruct you further that  
10 you should examine every part of the  
11 testimony of such witness with the greatest  
12 care and caution, and again I instruct you  
13 that if after doing so you believe his  
14 testimony in whole or in part, you should  
15 treat what you believe the same as any  
16 other believable evidence in the case.

17 Now, the State of North Carolina seeks  
18 to establish the defendant Daniel Andre  
19 Green's guilt as to the charge of robbery  
20 by the doctrine of recent possession, and I  
21 instruct you that for this doctrine to  
22 apply, the State must prove three things  
23 each beyond a reasonable doubt.

24 First, the State of North Carolina  
25 must prove beyond a reasonable doubt that

1 property was stolen. Second, the State of  
2 North Carolina must prove beyond a  
3 reasonable doubt that the defendant had  
4 possession of this same property. Now, a  
5 person possesses property when he is aware  
6 of its presence and has either by himself  
7 or together with others, both the power and  
8 intent to control its disposition or use.

9 And third, the State of North Carolina  
10 must prove beyond a reasonable doubt that  
11 the defendant had possession of this  
12 property so soon after it was stolen and  
13 under such circumstances as to make it  
14 unlikely that he obtained possession  
15 honestly.

16 Now, members of the jury, if you find  
17 these things from the evidence and beyond a  
18 reasonable doubt, you may consider them  
19 together with all other facts and  
20 circumstances in deciding whether or not  
21 the defendant Daniel Andre Green, also  
22 known as U'Allah, is guilty of robbery with  
23 a firearm.

24 Now, you will recall that during the  
25 course of this trial, photographs and

1 diagrams were introduced into evidence in  
2 this case for the purpose of illustrating  
3 and explaining the testimony of one or more  
4 witnesses.

5 I instruct you that the Court's  
6 instructions as given at the time those  
7 matters were introduced are binding upon  
8 you at this time. And those photographs or  
9 diagrams may not be considered by you for  
10 any other purpose than for the limited  
11 purpose for which they were received in  
12 this case.

13 Now, you will also recall that other  
14 photographs, videotapes, x-rays, and other  
15 photographic representations were  
16 introduced into evidence in this case  
17 without limitation. That is as substantive  
18 evidence in this case. And you will recall  
19 that instructions were given to you at the  
20 time those matters were introduced into  
21 evidence. And I instruct you that as to  
22 those matters, those photographs,  
23 videotapes, motion pictures or other  
24 photographic representations, they may be  
25 considered by you as evidence of the fact

1 or facts illustrated or shown by those  
2 exhibits.

3 Now, there's evidence in this case  
4 which tends to show, and again it is for  
5 you the members of the jury to determine  
6 what the evidence in this case does show,  
7 that the defendant Daniel Andre Green, has  
8 admitted a fact relating to the crime  
9 charged in this case. Now, if you find  
10 that the defendant made that admission,  
11 then you should consider all the  
12 circumstances under which it was made in  
13 determining whether it was a truthful  
14 admission and the weight that you will give  
15 to it.

16 Now, ladies and gentlemen, I instruct  
17 you that when evidence has been received  
18 tending to show that at an earlier time a  
19 witness or witnesses made an earlier  
20 statement which may be consistent with or  
21 may conflict with the testimony of that  
22 witness at this trial, that you must not  
23 consider such earlier statement as evidence  
24 of the truth of what was said at that  
25 earlier time, because such statement was

1 not made under oath at this trial.

2 However, I instruct you that if you  
3 believe that such earlier statement was  
4 made, and that it is consistent with or  
5 doesn't conflict with the testimony of the  
6 witness at this trial, then you may  
7 consider this together with all other facts  
8 and circumstances bearing upon the  
9 witness's truthfulness in deciding whether  
10 you will believe or disbelieve the  
11 testimony of that witness at this trial.

12 When evidence has been received  
13 tending to show that the witness has been  
14 convicted of a criminal charge or charges,  
15 I instruct you that you may consider this  
16 evidence for one purpose only. If in  
17 considering the nature of the crime or  
18 crimes involved, you believe that this  
19 bears on truthfulness, then you may  
20 consider it together with all other facts  
21 and circumstances bearing upon the  
22 witness's truthfulness in deciding whether  
23 you will believe or disbelieve the  
24 testimony of that witness at this trial.

25 Now, folks, except as it may bear on

1           this decision, I instruct you that this  
2           evidence may not be considered by you in  
3           your determination of any fact in this  
4           case. I instruct you that the State of  
5           North Carolina has the burden of proofing  
6           the identity of the defendant as the  
7           perpetrator of the crime or crimes charged  
8           in this matter beyond a reasonable doubt.

9                       Now, this means that you the jury must  
10           be satisfied beyond a reasonable doubt that  
11           the defendant was the perpetrator of the  
12           crime or crimes charged before you may  
13           return a verdict of guilty as to any

1 present at and participated in the crime or  
2 crimes charged. The defendant's contention  
3 that he was not present and did not  
4 participate is simply a denial of facts  
5 essential to the State's case. Therefore,  
6 I instruct you that if upon considering all  
7 of the evidence in this case, including the  
8 evidence with respect to an alibi, you have  
9 a reasonable doubt as to the defendant's  
10 presence at or participation in the crime  
11 or crimes charged, then you must find him  
12 not guilty.

13 Now, ladies and gentlemen, I instruct  
14 you that the highest aim of every legal  
15 contest is the ascertainment of the truth.  
16 Somewhere within the facts of every case,  
17 the truth abides. And where truth is,  
18 justice steps in garbed in its robes and  
19 tips the scales. Now, in this case you  
20 have no friend to award, you have no enemy  
21 to punish. You have no anger to appease or  
22 sorrow to assuage. Yours is a solemn duty  
23 to let your verdict speak the everlasting  
24 truth.

25 The defendant Daniel Andre Green has

1           been accused of first degree murder. And  
2           under the law and the evidence in this  
3           case, I instruct you that it is your duty  
4           to return one of the following verdicts:  
5           One, guilty of first degree murder. Or  
6           two, not guilty. And I instruct you  
7           further that you may find the defendant  
8           guilty of first degree murder on either or  
9           both of two theories, that is, on the basis  
10          of malice, premeditation and deliberation,  
11          or under the first degree felony murder  
12          rule.

13                 Now, first degree murder on the basis  
14          of malice, premeditation and deliberation  
15          is the intentional and unlawful killing of  
16          a human being with malice and with  
17          premeditation and deliberation. First  
18          degree murder under the first degree felony  
19          murder rule is the killing of a human being  
20          in the perpetration of or the attempt to  
21          perpetrate robbery. And I instruct you  
22          that for you to find the defendant guilty  
23          of first degree murder on the basis of  
24          malice, premeditation and deliberation, the  
25          State of North Carolina must prove five

1 things each beyond a reasonable doubt.

2 First, the State of North Carolina  
3 must prove beyond a reasonable doubt that  
4 the defendant intentionally and with malice  
5 killed the victim with a deadly weapon.  
6 Now, folks, malice means not only hatred,  
7 ill will or spite as it is ordinarily  
8 understood to be sure that is malice, but  
9 also means that condition of mind that  
10 prompts a person to take the life of  
11 another intentionally or to intentionally  
12 inflict a wound with a deadly weapon which  
13 proximately results in his death without  
14 just cause, excuse or justification.

15 Now, if the State proves beyond a  
16 reasonable doubt that the defendant  
17 intentionally killed the victim with a  
18 deadly weapon, or intentionally inflicted a  
19 wound upon the victim with a deadly weapon  
20 that proximately caused his death, you may  
21 infer first that the killing was unlawful,  
22 and second that it was done with malice,  
23 but you are not compelled to do so. You  
24 may consider the inference along with all  
25 other facts and circumstances in

1           determining whether the killing was  
2           unlawful and whether it was done with  
3           malice.

4           Now, members of the jury, I instruct  
5           you that under the law of the State of  
6           North Carolina, a firearm is a deadly  
7           weapon. Now, second, the State must prove  
8           beyond a reasonable doubt that the  
9           defendant's act was a proximate cause of  
10          the victim's death. A proximate cause is a  
11          real cause, a cause without which the  
12          victim's death would not have occurred.

13          And third, the State must prove beyond  
14          a reasonable doubt that the defendant  
15          intended to kill the victim. Now, intent  
16          is a mental attitude which is seldom  
17          provable by direct evidence. It must  
18          ordinarily be proved by circumstances from  
19          which it may be inferred, an intent to kill  
20          may be inferred from the nature of the  
21          assault, the manner in which it was made,  
22          the conduct of the parties and other  
23          relevant circumstances.

24          And fourth, the State must prove  
25          beyond a reasonable doubt that the

1 defendant acted after premeditation, that  
2 is, that he formed the intent to kill the  
3 victim over some period of time, however  
4 short, before he acted.

5 And fifth, the State must prove beyond  
6 a reasonable doubt that the defendant acted  
7 with deliberation, which means that he  
8 acted while he was in a cruel state of  
9 mind. Now, this does not mean that there  
10 had to be a total absence of passion or  
11 emotion if the intent to kill was formed  
12 with a fixed purpose, not under the  
13 influence of some suddenly aroused or  
14 violent passion. It is immaterial that the  
15 defendant was in a state of passion or  
16 excitement when the intent was carried into  
17 effect.

18 Neither premeditation nor deliberation  
19 is usually susceptible of direct proof.  
20 They may be proved by proof of  
21 circumstances from which they may be  
22 inferred, such as the lack of provocation  
23 by the victim, conduct of the defendant  
24 before, during, and after the killing, the  
25 brutal or vicious circumstances of the

1 killing, the manner in which or means by  
2 which the killing was done.

3 Now, I instruct you that for you to  
4 find the defendant guilty of first degree  
5 murder under the first degree felony murder  
6 rule, the State must prove three things  
7 each beyond a reasonable doubt. First, the  
8 State must prove beyond a reasonable doubt  
9 that the defendant committed or attempted  
10 to commit robbery with a firearm, which is  
11 the taking and carrying away the personal  
12 property of another from his person or in  
13 his presence without his consent by  
14 endangering or threatening his life with a  
15 firearm, the taker knowing that he was not  
16 entitled to take the property, and  
17 intending to deprive another of the use of  
18 that property permanently.

19 And in that regard as to that offense,  
20 the State must prove seven things each  
21 beyond a reasonable doubt. First, the  
22 State of North Carolina must prove beyond a  
23 reasonable doubt that the defendant took  
24 property from the person of another or in  
25 his presence. Second, that the defendant

1 carried away the property. Third, that the  
2 person did not voluntarily consent to the  
3 taking and carrying away of the property.  
4 Fourth, that the defendant knew that he was  
5 not entitled to take the property. Fifth,  
6 that at the time of the taking, the  
7 defendant intended to deprive that person  
8 of the use of the property permanently.  
9 Sixth, that the defendant had a firearm in  
10 his possession at the time he obtained the  
11 property. And seventh, that the defendant  
12 obtained the property by endangering or  
13 threatening the life of that person with  
14 the firearm.

15 Now, as to robbery with a firearm, the  
16 second thing that the State must prove  
17 beyond a reasonable doubt is that while  
18 committing or attempting to commit robbery  
19 with a firearm, the defendant killed the  
20 victim with a deadly weapon. And third,  
21 the State must prove beyond a reasonable  
22 doubt that the defendant's act was a  
23 proximate cause of the victim's death.

24 Again, I instruct you that a proximate  
25 cause is a real cause, a cause without

1           which the victim's death would not have  
2           occurred. So I charge that if you find  
3           from the evidence and beyond a reasonable  
4           doubt that on or about the alleged date,  
5           the defendant in this case Daniel Andre  
6           Green, also known as U'Allah, intentionally  
7           killed the victim with a deadly weapon, and  
8           that this proximately caused the victim's  
9           death, and that the defendant intended to  
10          kill the victim, and that he acted with  
11          malice after premeditation and  
12          deliberation, it would be your duty to  
13          return a verdict of guilty of first degree  
14          murder on the basis of malice,  
15          premeditation and deliberation.

16                 However, if you do not so find or if  
17                 you have a reasonable doubt as to any one  
18                 or more of these things, you would not  
19                 return a verdict of guilty of first degree  
20                 murder on the basis of malice,  
21                 premeditation and deliberation.

22                 Now, whether or not you find the  
23                 defendant guilty of first degree murder on  
24                 the basis of malice, premeditation and  
25                 deliberation, you will also consider



1 charge it would be your duty to return a  
2 verdict of not guilty.

3 Now, members of the jury, the verdict  
4 form in this case sets out first degree  
5 murder both on the basis of malice,  
6 premeditation and deliberation, and first  
7 degree murder under the felony murder  
8 rule. In the event that you should find  
9 the defendant guilty of first degree  
10 murder, please have your foreperson  
11 indicate whether you did so on the basis of  
12 malice, premeditation and deliberation, or  
13 under the felony murder rule, or both, and  
14 I will have more to say about that  
15 momentarily.

16 Now, the defendant in this case,  
17 Daniel Andre Green, has also been accused  
18 of robbery with a firearm, which is the  
19 taking and carrying away the personal  
20 property of another from his person or in  
21 his presence without his consent, by  
22 endangering or threatening a person's life  
23 with a firearm, the taker knowing that he  
24 was not entitled to take the property, and  
25 intending to deprive another of its use

1 permanently.

2 And I charge that for you to find the  
3 defendant guilty of robbery with a firearm,  
4 the State must prove seven things beyond a  
5 reasonable doubt. First, that the  
6 defendant took property from the person of  
7 another or in his presence. Second, that  
8 the defendant carried away the property.  
9 Third, that the person did not voluntarily  
10 consent to the taking and carrying away of  
11 the property. Fourth, that the defendant  
12 knew that he was not entitled to take the  
13 property. And fifth, that at the time of  
14 the taking the defendant intended to  
15 deprive that person of its use  
16 permanently. Sixth, that the defendant had  
17 a firearm in his possession at the time  
18 that he obtained the property. And  
19 seventh, that the defendant obtained the  
20 property by endangering or threatening the  
21 life of the person with a firearm.

22 So I charge that if you find from the  
23 evidence and beyond a reasonable doubt that  
24 on or about the alleged date the defendant  
25 had in his possession a firearm, and took

1 and carried away property from the person  
2 or in the presence of a person without that  
3 person's voluntary consent, by endangering  
4 or threatening his life with the use or  
5 threatened use of a firearm, the defendant  
6 knowing that he was not entitled to take  
7 the property and intending to deprive the  
8 owner of the use of the property  
9 permanently, it would be your duty to  
10 return a verdict of guilty of robbery with  
11 a firearm.

12 However, if you do not so find or if  
13 you have a reasonable doubt as to any one  
14 or more of these things, then as to this  
15 charge it would be your duty to return a  
16 verdict of not guilty. Now, ladies and  
17 gentlemen of the jury, the defendant Daniel  
18 Andre Green, also known as U'Allah, has  
19 also been accused of feloniously conspiring  
20 to commit robbery with a firearm. And I  
21 charge that for you to find the defendant  
22 guilty of feloniously conspiring to commit  
23 a robbery with a firearm, the State must  
24 prove three things each beyond a reasonable  
25 doubt.

1           First, the State of North Carolina  
2           must prove beyond a reasonable doubt that  
3           the defendant Daniel Andre Green and Larry  
4           Martin Demery entered into an agreement.  
5           Second, the State must prove beyond a  
6           reasonable doubt that the agreement was to  
7           commit robbery with a firearm as I have  
8           previously defined that offense for you.  
9           And I instruct you that you are to apply  
10          all prior instructions of the Court  
11          concerning that offense to the incident  
12          allegations. And third the State of North  
13          Carolina must prove beyond a reasonable  
14          doubt that the defendant and Larry Martin  
15          Demery intended that the agreement be  
16          carried out at the time that it was made.

17                So I charge that if you find from the  
18          evidence and beyond a reasonable doubt that  
19          on or about the alleged date the defendant  
20          agreed with Larry Martin Demery to commit  
21          robbery with a firearm, and that the  
22          defendant and Larry Martin Demery intended  
23          at the time the agreement was made that it  
24          would be carried out, it would be your duty  
25          to return a verdict of guilty as charged.

1           However, if you do not so find or if  
2 you have a reasonable doubt as to any one  
3 or more of these things, then as to this  
4 charge it would be your duty to return a  
5 verdict of not guilty.

6           Now, ladies and gentlemen, you have  
7 heard the evidence in this case, you have  
8 heard the arguments of counsel for the  
9 State and counsel for the defendant. The  
10 Court has not summarized the evidence in  
11 this case. However, I instruct you that it  
12 is your duty to remember the evidence  
13 whether it has been called to your  
14 attention or not by the attorneys in their  
15 arguments to you. And as I have previously  
16 instructed you, if your recollection of the  
17 evidence differs from that of the District  
18 Attorney's or that of counsel for the  
19 defendant, you are to rely solely upon your  
20 recollection of the evidence during your  
21 deliberations.

22           I have not reviewed the contentions of  
23 counsel for the State or counsel for the  
24 defendant, but again, I instruct you that  
25 it is your duty not only to consider all

1 the evidence presented in this case, but  
2 also to consider all of the arguments, the  
3 contentions, and the positions urged by the  
4 State's attorney and the defendant's  
5 attorneys in their speeches to you, and to  
6 consider any other contention that you find  
7 arises from the evidence presented in this  
8 case, and to weigh these matters in light  
9 of your common sense and the best you can  
10 to determine the truth in this case.

11 Now, folks, the law as indeed it  
12 should, requires the presiding judge to be  
13 impartial. Therefore, I instruct you that  
14 you are not to draw any inference from any  
15 ruling that I may have made. You are not  
16 to draw any inference from any inflection  
17 in my voice, any expression on my face, or  
18 any question that I may have asked the  
19 witness during the course of these  
20 proceedings, or anything else that I may  
21 have said or done as to whether or not I  
22 have any opinion of any kind or as to  
23 whether or not I have intimated any opinion  
24 of any kind, as to whether any of the  
25 evidence in this case should be believed or

1           disbelieved, or as to whether any fact in  
2           this case has or has not been proved, or as  
3           to what your findings ought to be. It is  
4           your exclusive province to find the true  
5           facts of this case and to render a verdict  
6           reflecting the truth as you find it to be.

7           Now, folks, I instruct you that a  
8           verdict is not a verdict until all 12  
9           members of the jury agree unanimously as to  
10          what the decision shall be. And I  
11          specifically instruct you that you may not  
12          render a verdict by majority vote. Now,  
13          each of you has the duty to consult with  
14          one another and to deliberate with a view  
15          to reaching an agreement if it can be done  
16          without violence to individual judgement.

17          Each of you must decide the case for  
18          yourself, but only after an impartial  
19          consideration of the evidence with your  
20          fellow jurors, and I instruct you that in  
21          the course of your deliberations each of  
22          you should not hesitate to reexamine your  
23          own views and to change your opinion if you  
24          find it to be erroneous. But none of you  
25          should surrender your honest conviction as

1 to the weight or the effect of the evidence  
2 solely because of the opinion of your  
3 fellow jurors or for the mere purpose of  
4 returning a verdict in this case.

5 Now, when you have reached your  
6 unanimous verdicts in each of the cases, if  
7 you will mark the verdict form accordingly,  
8 if you will have your foreperson date and  
9 sign the verdict form, and if you will  
10 knock on the door to the jury room and  
11 inform the bailiff that you have reached  
12 unanimous verdicts, you will be brought  
13 back into the courtroom for the purpose of  
14 pronouncing your verdict.

15 Now, appearing that all 12 members of  
16 the original panel are able to participate  
17 in the deliberations, Ms. Odum, at this  
18 time I'm going to ask you to step down, and  
19 if you will follow Sergeant Meares'  
20 instructions, I'm going to ask that you be  
21 seated in the room immediately adjoining  
22 the courtroom.

23 Ladies and gentlemen, as I indicated  
24 to you the verdict forms in this case have  
25 been reduced to writing, and there are

1 three separate verdict forms for your  
2 consideration. In file number 93 CRS  
3 15291, State of North Carolina versus  
4 Daniel Andre Green, also known as As-Saddiq  
5 Al-Amin Sallam U'Allah, defendant, the  
6 verdict form reads as follows: We the jury  
7 return the unanimous verdict as follows:  
8 One, guilty of first degree murder. Below  
9 that possible verdict is provision for the  
10 answer of the jury. The jury's answer is  
11 to be either yes or no. And instructions  
12 are also on the form, which read as  
13 follows: If you answer yes, is it: A, on  
14 the basis of malice, premeditation and  
15 deliberation? Again, there is provision  
16 for an answer. B, under the first degree  
17 felony murder rule? Again, there is  
18 provision for the answer.

19 If the verdict of the jury, unanimous  
20 verdict of the jury is yes as to this first  
21 possible verdict in this case, it would be  
22 the duty of your foreperson to write in  
23 yes. And if the jury's verdict is based on  
24 a finding of malice, premeditation and  
25 deliberation, it would be the foreperson's

1 duty to write in yes. And/or if the  
2 verdict of the jury is based under the  
3 first degree felony murder rule, it would  
4 be the duty of the foreperson to mark the  
5 verdict form accordingly by, again,  
6 answering yes in the space provided.

7 The second possible verdict in this  
8 case is not guilty. If the unanimous  
9 verdict of this jury as to this charge is  
10 that the defendant Daniel Andre Green, also  
11 known as U'Allah, is not guilty, then it  
12 would be the duty of the foreperson to  
13 indicate accordingly in the space by  
14 placing yes in the form provided.

15 And regardless of which verdict is  
16 reached by the jury, once a unanimous  
17 verdict has been reached, it would be the  
18 duty of the foreperson to date and sign the  
19 verdict form.

20 93 CRS 15292, the verdict form reads  
21 as follows: We the jury return the  
22 unanimous verdict as follows. And the  
23 possible verdicts listed are, one, guilty  
24 of robbery with a firearm, with provision  
25 for an answer; or two, not guilty. Again,

1 the unanimous verdict of the jury is to be  
2 reflected by either a yes or no in the  
3 appropriate space provided. The form is to  
4 be dated and signed by the foreperson of  
5 the jury.

6 And as to file number 93 CRS 15293,  
7 the verdict form reads as follows: We the  
8 jury return the unanimous verdict as  
9 follows. Possible verdicts listed are,  
10 one, guilty of felonious conspiracy, or,  
11 two, not guilty. Again, there is provision  
12 for an answer. Unanimous verdict of the  
13 jury is to be reflected on the form either  
14 by yes or no. The form is to be dated and  
15 signed once the jury has reached a  
16 unanimous verdict as to this case number.

17 Now, ladies and gentlemen, I'm going  
18 to excuse you to the jury room in just a  
19 minute, only for the purposes of selecting  
20 a foreperson. If you accomplish that task  
21 before you hear from us, if you simply wait  
22 patiently. Proceed only with the selection  
23 of a foreperson. Do not begin your  
24 deliberations at this time. In a few  
25 moments, the bailiff will knock on the door

1 to the jury room, and he'll hand the  
2 envelope to the first juror responding to  
3 his knock. Once you have received the  
4 verdict forms, you may then proceed with  
5 your deliberation in this case. But  
6 proceed only at this time with the  
7 selection of a foreperson.

8 Thank you for your attention to my  
9 instructions, and at this time, the members  
10 of the jury may retire to the jury room for  
11 the purpose of selecting a foreperson.

12 THE BAILIFF: Ms. Odum wishes to  
13 know if she can get her stuff out of the  
14 jury room.

15 THE COURT: Yes, sir. If you'll  
16 bear with us, ladies and gentlemen, and if  
17 you'll allow her to do that, please.

18 Ladies and gentlemen, again, at this  
19 time if all members of the jury would  
20 retire to the jury room for the purpose of  
21 selecting a foreperson.

22 (Jury out at 3:32 p.m.)

23 THE COURT: In the absence of the  
24 jury, on behalf of the State are there any  
25 objections, requested corrections,

1 additions, modifications to the Court's  
2 instruction of the jury?

3 MR. BRITT: None that weren't  
4 previously noted at the charge conference.

5 THE COURT: Other than those  
6 matters already noted, the Court deems  
7 those matters timely raised and State  
8 excepts for purposes of the record.

9 On behalf of the defendant, any  
10 objections, requested corrections,  
11 additions, modifications or any other  
12 matters with reference to the Court's  
13 instruction to the jury, other than those  
14 previously noted?

15 MR. THOMPSON: That's correct,  
16 Your Honor.

17 THE COURT: Those matters are  
18 preserved for the purposes of the record.  
19 Have you had an opportunity to examine the  
20 verdict forms? I read them into the record  
21 but --

22 MR. THOMPSON: I saw them.

23 MR. BRITT: I saw them.

24 THE COURT: With consent of all  
25 counsel, with the consent of the defendant,

1 Mr. Horn, if you'll knock on the door to  
2 the jury room, give the forms to the first  
3 juror responding to your knock.

4 Folks, it's my intent to allow some  
5 time for deliberations. Depending on what  
6 if anything develops, I'm going to give  
7 them a break or at least inquire as to  
8 whether or not they want a break. Is that  
9 satisfactory with all counsel?

10 MR. BRITT: That's fine.

11 THE COURT: We're at ease.

12 MR. BRITT: Oh, Your Honor, for  
13 the purposes of the record, the charge was  
14 in accord with the Court's stated  
15 intentions at the charge conference. I  
16 would also like to inquire if the hallway  
17 door to the room that Ms. Odum is in is  
18 secured.

19 THE COURT: Is that secured to  
20 the jury assembly room?

21 THE BAILIFF: I'll check.

22 THE COURT: Let's put that on the  
23 record now.

24 THE BAILIFF: Yes, sir, it's  
25 locked.

1 THE COURT: Okay. Let the record  
2 so show. Anything further from either  
3 counsel? We're at ease.

4 THE BAILIFF: Court stands at  
5 ease.

6 (Brief recess.)

7 THE COURT: Let the record  
8 reflect all counsel are present, the  
9 defendant is present in open court. Mr.  
10 Horne, one of the bailiffs assigned to this  
11 case has passed me a writing, paper writing  
12 from the jury. The following language is  
13 contained on the paper writing: Picture  
14 number 9, Jordan at car. Jordan on tree,  
15 Jordan in body bag.

16 I think they were referring to  
17 exhibits that were used by counsel for the  
18 State. 9, according to my notes, there  
19 were two photographs introduced through Ms.  
20 Robinson, 8 and 9, one was a close-up of  
21 the alleged victim standing beside the  
22 Lexus in the driveway. The other one was  
23 another shot but not as close up. If  
24 you'll get 8, 9. They are also asking for  
25 Jordan on tree --

1 MR. BRITT: That's 16.

2 THE COURT: My notes indicate  
3 that it's 16. And Jordan in body bag, it's  
4 not real clear. That could possibly  
5 include 17, 27 and 28. Which was used by  
6 the State, do you recall?

7 MR. BRITT: No, sir. I would  
8 have to look at the photograph. I don't  
9 recall right off. Or maybe Mr. --

10 THE COURT: They are down the  
11 hall. Folks, in order to clarify while Ms.  
12 Gaines is getting those exhibits, I'm going  
13 to bring the jurors in, ask them for  
14 clarification. Defendant want to be  
15 heard? Counsel for the State want to be  
16 heard?

17 MR. BRITT: No, sir.

18 THE COURT: Mr. Horne, if you'll  
19 bring the jury in.

20 (Jury in at 4:19 p.m.)

21 THE COURT: Members of the jury,  
22 the Court has received a paper writing from  
23 the jury which contains the following  
24 language: Picture number 9, Jordan at  
25 car. Jordan on tree. Jordan in body bag.

1 Now as to those two latter requests, am I  
2 correct in assuming you're asking for  
3 photographs depicting things reflected in  
4 the writing?

5 JUROR: Photographs.

6 THE COURT: We're attempting to  
7 get those items but we needed to clarify  
8 for the purposes of the record exactly what  
9 was being asked for. You will recall that  
10 a number of photos were introduced  
11 allegedly depicting the alleged victim in a  
12 body bag, in a vehicle and on the ground.

13 Would the foreperson of the jury  
14 please stand and identify himself or  
15 herself? I apologize, Ms. Manuel. Can you  
16 be specific about what photograph is being  
17 specifically requested with regard to  
18 Jordan in body bag?

19 JUROR: The one where he is  
20 hanging over the limb in the river, that  
21 specific one.

22 THE COURT: Okay. For the  
23 record, that would be State's Number 16.  
24 Is that correct?

25 JUROR: That's the one.

1 THE COURT: And the other one --

2 JUROR: The one in the back of  
3 the truck.

4 THE COURT: That would be either  
5 27 or 28. With the consent of all counsel,  
6 you folks want to examine these exhibits?

7 MR. THOMPSON: No, sir.

8 THE COURT: I've got 27, 28 and  
9 16 in addition to 9. Thank you for the  
10 clarification. If you'll bear with me -- I  
11 see a hand raised.

12 JUROR: She has one more.

13 THE COURT: Yes, ma'am.

14 JUROR: The aerial photograph of  
15 74 and 95.

16 MR. BRITT: That's the blowup.

17 JUROR: The enlargement.

18 THE COURT: We'll have to get  
19 that. If you would like to take a seat or  
20 you can stand, either way, ma'am.

21 So that the record reflects that we  
22 are giving you exactly what you're asking  
23 for I'm holding at this time State's  
24 Exhibit 91. Is that what is being  
25 requested?

1 JUROR: Yes.

2 THE COURT: May I see all counsel  
3 at the bench with the court reporter and  
4 the defendant, please

5 (Whereupon a bench conference ensued  
6 as follows.)

7 THE COURT: Let the record  
8 reflect this is a bench conference at which  
9 all counsel are present, the defendant is  
10 present, with the presiding Judge and the  
11 court reporter. There was an indication in  
12 argument that the defendant did not object  
13 to any exhibits going to the jury.

14 MR. BOWEN: That's correct,  
15 absolutely.

16 THE COURT: Is that your position  
17 as well?

18 MR. GREEN: Yes, sir.

19 THE COURT: Is that the position  
20 of counsel for the State?

21 MR. BRITT: No objection.

22 THE COURT: Let the reflect  
23 reflect I'm going to send them back out  
24 with the exhibits in Major Watson's hands  
25 at this time.

1 (Bench conference concluded.)

2 THE COURT: Ladies and gentlemen,  
3 thank you for your clarification. Major  
4 Watson, if you would take them these  
5 exhibits, please. You folks may retire to  
6 the jury room at this time. Major Watson,  
7 if you would hand -- sir?

8 JUROR: I have a question. Is  
9 there a list that we can look at so we can  
10 get specific numbers?

11 THE COURT: We may be able to  
12 provide you with that list. It certainly  
13 is a reasonable request and I'll certainly  
14 respond to you as quickly as I can. Ladies  
15 and gentlemen, if at this time you will  
16 retire to the jury room to continue with  
17 your deliberations. Let the record reflect  
18 Major Watson has handed the requested  
19 exhibits to a member of the jury.

20 (Jury out at 4:24 p.m.)

21 THE COURT: In the absence of any  
22 members of the jury, the record reflects  
23 the request of Juror Number 12, Mr. Phillip  
24 Burnette, that they be provided with a list  
25 of all the exhibits introduced in this

1 case. It's a reasonable request. I've got  
2 a list but it's in my handwriting and those  
3 folks will never be able to decipher it.  
4 Does anybody have a typewritten list?

5 MR. BRITT: No, sir. I have a  
6 copy of the Clerk's list.

7 THE COURT: Is that on a  
8 standardized form in handwriting?

9 MR. BRITT: It's on a form  
10 entitled Clerk's record of State's evidence  
11 introduced. The only problem is there are  
12 exhibits here that were excluded from  
13 evidence that are represented here.

14 THE COURT: Let me designate  
15 somebody to prepare a list. Ma'am Clerk,  
16 if you will type out a list of all exhibits  
17 introduced. It now being approximately  
18 4:25, I don't think there's any need for us  
19 to have that until tomorrow morning at  
20 9:30.

21 THE CLERK: I pretty much already  
22 have the State's.

23 THE COURT: On computer? We need  
24 to add all defendant's exhibits in a  
25 separate category to that list and submit

1 that list to the jury tomorrow morning.

2 THE CLERK: And court's  
3 exhibits?

4 THE COURT: No, ma'am, unless  
5 they were introduced. It would only  
6 pertain to matters that were offered and  
7 received in evidence in this case.

8 MR. THOMPSON: Yes, sir.

9 THE COURT: As I indicated to the  
10 jury, I instructed certain exhibits were  
11 received for limited purposes. Anybody  
12 want to be heard as to those matters?

13 MR. BRITT: No, sir.

14 THE COURT: There was some  
15 allusion in argument or statements in  
16 argument that as to the defendant there was  
17 no objection to anything going back.

18 MR. BOWEN: That's correct.

19 THE COURT: Is that still your  
20 position?

21 MR. BOWEN: Yes, sir.

22 MR. THOMPSON: Yes, sir.

23 THE COURT: What's the State's  
24 position?

25 MR. BRITT: State has no

1 objection to the jury looking at the  
2 evidence.

3 THE COURT: If you'll prepare a  
4 list including all items entered into  
5 evidence in this case, breaking them down  
6 into State's exhibits and defendant's  
7 exhibits.

8 MR. THOMPSON: Your Honor, as  
9 soon as we can get the list from the Clerk,  
10 we would like it, at least to review it.

11 THE COURT: Sure. Copies will be  
12 made available to all counsel. I will  
13 inform the jury at 5:00 that that is being  
14 done.

15 We're at ease.

16 THE BAILIFF: Court stands at  
17 ease.

18 (Court at ease.)

19 THE COURT: Let the record  
20 reflect all counsel are present, the  
21 defendant is present in open court. All  
22 members of the jury are secured in the jury  
23 room. Have all counsel had an opportunity  
24 to receive and to examine the list of all  
25 the exhibits?

1 MR. THOMPSON: No, sir, I  
2 haven't.

3 THE COURT: What I've got are the  
4 State's exhibits. We're working on the  
5 defendant's exhibits now. Is that correct,  
6 ma'am?

7 THE CLERK: Yes, sir.

8 MR. BOWEN: I might suggest --

9 MR. THOMPSON: Your Honor, we  
10 may -- there may be, and this is the reason  
11 why I want the exhibit list, because of the  
12 language and the way that some of these  
13 items have been identified, that may be  
14 some concern -- not if it's going back into  
15 the jury room. And I've just actually  
16 received it and would like to have some  
17 time to go over it, and so would our  
18 client.

19 THE COURT: What I'm going to do,  
20 it's now 5:00. I'm going to ask that the  
21 jurors be brought in, ask that the verdict  
22 forms be placed in the envelope, the  
23 envelope be brought in with the jury, we're  
24 going to stop deliberations at this point.  
25 This will give you folks an opportunity to

1 examine this list. Hopefully by 9:30 at  
2 the latest we will have the defendant's  
3 list tomorrow morning so we can meet.

4 I'm going to ask all counsel, we need  
5 the defendant here at 9:00. If all counsel  
6 will be here 9:00 as well, that will give  
7 us an opportunity to go over this list.  
8 Note any objections as to any matters  
9 before the list is given to the jury.

10 Mr. Horne, if you will bring the  
11 members of the jury in. If you'll inform  
12 them that they are to place the verdict  
13 forms in the envelope and bring the  
14 envelope in.

15 THE BAILIFF: They also have a  
16 question, Your Honor, and they are putting  
17 it on paper.

18 THE COURT: Okay. Let's hold up  
19 and let's do that at one time. Let's take  
20 the question up first, ask them to hand the  
21 question to you and if you'll bring that  
22 in, please.

23 The Court has been handed a paper  
24 writing which reads as follows:  
25 Stipulations of each charge, parents, steps,

1 close parents. I'm going to bring them in  
2 and clarify, but I'm assuming they are  
3 asking to be re-instructed as to the  
4 substantive offenses. We'll clarify that  
5 for the purposes of the record.

6 Ask all members of the jury to come  
7 in, ask them to put the verdict forms in  
8 the envelope, bring them in to the Court  
9 with them.

10 (Jury in at 5:04 p.m.)

11 THE COURT: Members of the jury,  
12 the Court again has been provided with a  
13 writing from the jury which reads as  
14 follows: Stipulations of each charge, and  
15 then in parentheses the word steps. Am I  
16 correct in understanding from this written  
17 request the jury is asking to be  
18 re-instructed as to the --

19 JUROR: Yes.

20 THE COURT: -- allegations before  
21 the jury? Specifically, the allegations  
22 relating to first degree murder, robbery  
23 with a firearm, and conspiracy to commit  
24 robbery with a firearm, is that accurate?

25 JUROR: That's accurate.

1 THE COURT: So that the record is  
2 clear, and it's my obligation to make sure  
3 the record reflects accurately what is  
4 occurring, if that is the request of the  
5 jury, please so indicate by raising your  
6 right hands.

7 Seem to have --

8 JUROR: We would like to have it  
9 in writing so we can go through it  
10 individually.

11 THE COURT: So you're not asking  
12 for oral re-instruction?

13 JUROR: No.

14 THE COURT: Asking for it in  
15 writing? If that is the request of the  
16 jury, please so indicate by raising your  
17 right hands.

18 Folks, it's a little after 5:00. I  
19 will respond to your request tomorrow  
20 morning at 9:30. Yes, sir.

21 JUROR: Is it okay to ask for a  
22 transcript from any part of the testimony?

23 THE COURT: I'll have to take  
24 individual requests. As you folks are  
25 aware, everything that occurs in connection

1 with any matter before the Court has to be  
2 of record. Anything that is done has to be  
3 done in open court and made a matter of  
4 record with all parties present. So I will  
5 have to take specific requests as they come  
6 in.

7 If you're asking for an entire  
8 transcript, I can tell you that the  
9 transcript in this case probably runs near  
10 7000 pages.

11 You understand why I'm responding the  
12 way I am?

13 JUROR: Yes, sir.

14 JUROR: Can we request one of it  
15 now?

16 THE COURT: The entire  
17 transcript?

18 JUROR: No, for in the morning,  
19 can we request opening statements from  
20 each, defense and the State?

21 THE COURT: Is that a request of  
22 the jury? If so, please indicate by  
23 raising your right hands.

24 (Discussion among jurors.)

25 JUROR: We withdraw the

1 request --

2 THE COURT: As to opening  
3 statements?

4 JUROR: -- at this time.

5 THE COURT: Okay. Folks, again  
6 I'll respond to your request as to written  
7 instructions -- again, those matters have  
8 to be taken up in open court on the record  
9 with all parties present -- tomorrow  
10 morning at 9:30. Ms. Manuel, at this time  
11 you have the envelope containing the  
12 verdict forms?

13 JUROR: Yes, I do.

14 THE COURT: Am I correct there  
15 are no markings on the verdict forms at  
16 this time?

17 JUROR: None.

18 THE COURT: If you will hand the  
19 envelope containing the verdict form to Mr.  
20 Horne, please. You can remain where you  
21 are. And if you will hand that to Ms.  
22 Gaines, please.

23 Ladies and gentlemen, I'm going to  
24 release you at this point until tomorrow  
25 morning at 9:30. I'm going to instruct you

1           that all further deliberations are to be  
2           suspended. You are not to deliberate about  
3           this matter until all of you are reassemble  
4           in the courtroom and the Court has  
5           specifically instructed the jury to  
6           continue with deliberation in this matter.

7           During the overnight recess, you're  
8           not to talk about this matter among  
9           yourselves or with anyone else, you're not  
10          to allow anyone to say anything to you or  
11          in your presence about this case. If  
12          anyone communicates with you about this  
13          matter or attempts to do so, or if anyone  
14          says anything about the case in your  
15          presence, it remains your duty to inform us  
16          of that immediately through one of the  
17          bailiffs assigned to the courtroom. Don't  
18          form or express any opinions about this  
19          matter until the jury has specifically been  
20          instructed to begin deliberations tomorrow.

21          Don't have any contact or  
22          communication of any kind with anyone  
23          involved in this case. Continue to avoid  
24          any exposure to my media accounts which may  
25          exist in connection with this matter, and

1 don't conduct any independent inquiry,  
2 investigation or research of any kind.

3 As I have said on numerous occasions,  
4 the verdict of a jury in any case must be  
5 based exclusively on evidence brought out  
6 in the courtroom, subject to  
7 cross-examination, and presented under  
8 oath. Everyone else please remain seated,  
9 the members of the jury are excused until  
10 9:30 tomorrow morning.

11 (Jury out at 5:10 p.m.)

12 THE COURT: Ask Ms. Odum to come  
13 in if you will, please.

14 Ms. Odum, you may remain where you are  
15 for the moment. I'm going to release you  
16 at this time until 9:30 tomorrow morning.  
17 When you return at 9:30 tomorrow morning,  
18 please do not go to the jury room. If you  
19 will report directly to the room from which  
20 you've just come at 9:30, I will need to  
21 make a determination on the record that you  
22 are present and that you remain  
23 sequestered. I'll do that as quickly as  
24 possible.

25 During the overnight recess, you're

1 not to have any contact or communication of  
2 any kind with any of the other members of  
3 the jury. You're not to talk with anyone,  
4 including other members of the panel about  
5 this matter. You're not to allow anyone to  
6 say anything to you or in your presence  
7 about the case. If anyone communicates  
8 with you about the matter, attempts to do  
9 so, or says anything about the case in your  
10 presence, it's your duty to inform us of  
11 that immediately through one of the  
12 bailiffs assigned to the courtroom.

13 Don't form or express any opinions  
14 about this matter. Don't have any contact  
15 or communication with anyone involved in  
16 the case. Avoid any exposure to any media  
17 accounts which might exist in connection  
18 with this matter, and don't conduct any  
19 independent inquiry or investigation or  
20 research of any kind. Have a good evening,  
21 ma'am, we'll see you tomorrow morning at  
22 9:30. Again, if you'll report directly to  
23 this courtroom, not to the jury room, and  
24 directly to the room from which you've just  
25 come at that time. Thank you, you're free

1 to go at this time.

2 Let the record reflect all exhibits  
3 previously submitted to the jury are now  
4 back in the possession of the Clerk.  
5 Folks, you both have the same computer  
6 capabilities that I have. Court directs  
7 counsel for the State and counsel for the  
8 defendant to print out the Court's  
9 instructions as given and as noticed to all  
10 counsel on the record. I will hear from  
11 counsel for the State and counsel for the  
12 defendant tomorrow morning as to any  
13 objection you folks have.

14 The Court intends to print out its own  
15 version of the instructions. As the folks  
16 are aware, the instructions that are given  
17 are instructions that have been modified to  
18 some extent by the Court.

19 I'm going to ask Mr. Huseby to print  
20 out a copy as well of the Court's  
21 instructions. We will examine all possible  
22 copies of the instructions. You folks are  
23 aware of what I instructed on based on our  
24 charge conference.

25 MR. BRITT: Yes.

1 THE COURT: You've got the  
2 capability of printing the instruction  
3 out. You've got the capability of printing  
4 them out.

5 MR. THOMPSON: Yes, sir. But now  
6 we have dirty copies at the end of the  
7 day. We won't have a clean copy until the  
8 morning.

9 THE COURT: Tomorrow morning is  
10 what I mean.

11 MR. THOMPSON: Once we get the  
12 clean copy, first thing in the morning  
13 we'll print it out.

14 THE COURT: I've given you -- I  
15 apologize, I didn't make that clear. I'm  
16 giving you the option of printing from your  
17 point of view what you contend the Court  
18 instructed on. I'm directing the court  
19 reporter to print to the Court the  
20 certified version of the Court's  
21 instructions. If you don't want to do  
22 that, that's up to you. If you're content  
23 to rely on the court reporter's certified  
24 version, that's fine with me. Any  
25 objection that you folks want to make as to

1 the court's submission to the Court's  
2 written charge, I'll take up at 9:00  
3 tomorrow morning. Is that agreeable?

4 MR. THOMPSON: Yes, sir.

5 THE COURT: And specifically, it  
6 is discretionary with the Court whether or  
7 not a copy of the written charge is  
8 provided to the jury. If you folks want to  
9 note any objection or present any  
10 authority, you can do so tomorrow morning.

11 Yes, sir, Mr. Huseby, can you have  
12 that done tomorrow morning? We'll need a  
13 verbatim clean copy of the instruction as  
14 given, and from that copy we can make 13 --  
15 12 others, or 11 others.

16 THE COURT REPORTER: Yes, sir.

17 THE COURT: It's my intent,  
18 absent objection or in the exercise of my  
19 discretion to provide a copy for each  
20 member of the jury. Is that agreeable?

21 MR. BRITT: Yes, sir.

22 THE COURT: You folks have any  
23 objection you want to note at this time, or  
24 is it a matter that we can take up  
25 tomorrow?

1 MR. THOMPSON: We can take it up  
2 tomorrow morning.

3 THE COURT: All right. Ms.  
4 Gaines has just given me a list of defense  
5 exhibits. You folks have a copy of that?  
6 We'll take that up tomorrow morning at  
7 9:00, too. Any other matters before we  
8 recess for our purpose until 9:00, for the  
9 jury's purpose 9:30?

10 MR. BRITT: No, sir.

11 MR. THOMPSON: No, sir.

12 THE BAILIFF: All rise, please.

13 (Court adjourned.)

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## 1 APPEARANCES OF COUNSEL:

2 On Behalf of the State of North Carolina:

3

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8

9 On Behalf of the Defendant:

10

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15

16 and

17

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22

23 - - -

24

25 (February 29, 1996. Proceedings in open court.)

26

27

28 THE COURT: Good morning, folks.

29

30 Let the record show that all counsel are  
31 present, the defendant is present in open

32

33

34 court. Folks, I have conferred with

35

36 Mr. Huseby, the court reporter. Mr. Huseby

37

38 has prepared a transcript of the Court's

39

40 instructions to the jury. I understand

41

42 that copies are going to be made of those

43

44 instructions for your consideration first

1 and foremost.

2 I've asked that 16 copies be prepared,  
3 12 to the jury, one for counsel for the  
4 State, one each for the attorneys  
5 representing the defendant, and a copy for  
6 the purpose of the record. While we're  
7 waiting for those copies, let's go into the  
8 matter relating to the exhibits list  
9 requested by the jury. Both sides have had  
10 the opportunity I believe to examine the  
11 list of State's exhibits and the list of  
12 defense exhibits, is that correct,  
13 Mr. Britt?

14 MR. BRITT: Yes, sir.

15 THE COURT: Mr. Thompson, Mr.  
16 Bowen?

17 MR. THOMPSON: Yes, sir.

18 THE COURT: You folks want to be  
19 heard as to the State's exhibits.

20 MR. THOMPSON: Yes, sir.

21 THE COURT: Yes, sir.

22 MR. THOMPSON: Your Honor,  
23 there's several items that we feel should  
24 be changed or are inappropriate as stated.  
25 Realizing that this document was prepared

1 by the Clerk --

2 THE COURT: For the purposes of  
3 her records.

4 MR. THOMPSON: For purposes of  
5 her records. I think whatever we send back  
6 there, there ought to be some instruction  
7 to the jury to let them know that this is  
8 only for identification --

9 THE COURT: What I propose to do  
10 in that regard is to instruct the jury that  
11 any language, any identifying language  
12 appearing on either the list of State's  
13 exhibits or defense exhibits, first and  
14 foremost, are prepared for the purposes of  
15 the Clerk's records. Secondly, any  
16 identifying language, for example, take  
17 number two and number three by way of  
18 example. Number two is denominated "photo  
19 of James Jordan." Number three is  
20 denominated "photo of watch of James  
21 Jordan." As to those matters, it's a  
22 simple thing to tell the jury this is what  
23 the State contends the evidence showed. It  
24 is for the jury to decide what the evidence  
25 in the case showed.

1 MR. THOMPSON: Well, yes, sir,  
2 and may I now suggest what --

3 THE COURT: Yes, sir.

4 MR. THOMPSON: -- make a  
5 suggestion. First of all, the defendant  
6 requests that instead of using the name  
7 alias -- a/k/a, that's in the title.

8 THE COURT: Yes.

9 MR. THOMPSON: Use a/k/a as  
10 opposed to alias. He feels like while it  
11 means the same, the connotation of the word  
12 "alias" is negative, and that's a request  
13 specifically from the defendant. And that  
14 is -- well, it's his legal name now.

15 THE COURT: So you want "a/k/a"  
16 instead of "alias."

17 MR. THOMPSON: Yes.

18 THE COURT: State want to be  
19 heard to that?

20 MR. BRITT: Means the same thing.

21 THE COURT: It does. How much of  
22 a problem is that, Ms. Gaines?

23 THE CLERK: At least six more  
24 copies.

25 MR. THOMPSON: Your Honor, there

1 are several changes that we're going to be  
2 requesting.

3 THE COURT: Let's go through  
4 them.

5 MR. THOMPSON: That's why I  
6 thought before any copies were going to be  
7 made we were going to have this discussion  
8 this morning. But State's Exhibit Number 3  
9 is a photo of a replica of the watch.

10 THE COURT: Photo of a replica of  
11 a watch.

12 MR. THOMPSON: Yes. You know,  
13 the photo number three, four, five, and six  
14 were only replicas. They were not the  
15 actual watches. And that language ought to  
16 be in there. These -- it's written as  
17 "photo of watch owned by James Jordan."  
18 These are replicas according to the  
19 evidence. And then, you know, these were  
20 things that were taken, pictures taken,  
21 provided by someplace up in Chicago. We  
22 would request those changes be made.

23 THE COURT: As to which specific  
24 items?

25 MR. THOMPSON: Number three,

1 photo of replica of watch owned by James  
2 Jordan. As to number four, photo of  
3 replica of -- and actually, that's the  
4 championship ring. If she wants to put  
5 that, that's fine, championship ring.  
6 Number 5, photo of replica -- of replica of  
7 championship ring. Number 6 photo of  
8 replica of championship ring.

9 THE COURT: Okay.

10 MR. THOMPSON: As to number  
11 seven, plastic bag containing ring, that's  
12 fine, but it -- if you want to put -- that  
13 was the All-Star ring. If you want -- if  
14 you want to -- that's okay.

15 THE COURT: Number seven, do you  
16 have any specific objection?

17 MR. THOMPSON: No, sir, just the  
18 All-Star ring -- number 12, that's photo  
19 of -- actually it's Pea Bridge, P E A.

20 THE COURT: Yes.

21 MR. THOMPSON: As well as 13, 14,  
22 15, it's P E A.

23 THE COURT: Okay. Anything  
24 else?

25 MR. THOMPSON: Yes, sir. On the

1 following page, well, actually at the  
2 bottom of that following page on number 39,  
3 maybe that's just the computer, I don't  
4 know why it didn't put more on that line,  
5 but it appears on the top of the next  
6 page. That may be something that the Clerk  
7 didn't do. But on State's Exhibit Number  
8 40, photo of bullet removed from "body."  
9 We would request the language "body" in  
10 lieu of --

11 THE COURT: You want the words  
12 "James Jordan" omitted?

13 MR. THOMPSON: Yes, sir. That's  
14 an issue in this case.

15 THE COURT: It's been made an  
16 issue in this case. Whether or not it is  
17 an issue in this case is for the jury to  
18 decide, but it's been made.

19 MR. THOMPSON: I'm not trying  
20 to -- I think we're saying the same thing.  
21 If I didn't say it the way that you want  
22 it, that's what I mean.

23 THE COURT: Let's move on,  
24 Mr. Thompson.

25 MR. THOMPSON: And that's a

1 request that we're making. "Body" in lieu  
2 of "James Jordan".

3 THE COURT: All right.

4 MR. THOMPSON: Number --

5 THE COURT: Let me look at this  
6 language. Photo of bullet removed from  
7 alleged body of James Jordan.

8 MR. THOMPSON: Yes, sir. On the  
9 following page --

10 THE COURT: Yes, sir.

11 MR. THOMPSON: -- State's Exhibit  
12 Number 86 --

13 THE COURT: Yes, sir.

14 MR. THOMPSON: -- and the photo  
15 depicting the area near 74 and Interstate  
16 95, and I think it should be proper --  
17 would be more proper language, because,  
18 again, while there's testimony, you know,  
19 there is evidence that that's where the  
20 Lexus was parked through -- and Larry  
21 Demery, that is also an issue in this  
22 case. And however, when I say issue in  
23 this case, I mean it's an issue that would  
24 be for the jury to determine or to decide  
25 in Your Honor's ruling. But as to 86 and

1 87, we feel that the language should be of  
2 the area near intersection of 74 and I 95.

3 THE COURT: How about photo  
4 depicting area where Lexus was allegedly  
5 park? How about photo of the area where  
6 Lexus was allegedly parked?

7 MR. THOMPSON: That's acceptable  
8 in lieu of what I just mentioned. Number  
9 91, that's the one they have already taken  
10 back there, they know what that is.

11 THE COURT: Yes, sir.

12 MR. THOMPSON: That is just --  
13 number 99, that document was not  
14 introduced, it should come out according to  
15 my notes.

16 THE COURT: 99, have you got it  
17 introduced, ma'am? The infamous "thou  
18 shall not kill."

19 THE COURT: Yes, sir. I have got  
20 it introduced.

21 MR. BRITT: My recollection is  
22 Mr. Smith read the document on redirect  
23 examination.

24 MR. THOMPSON: I know it was  
25 read, but there was a question. We request

1           that the document, the title -- I mean that  
2           the document be identified, Exhibit 99 be  
3           identified as the document -- homicide  
4           language, and strike out the language thou  
5           shall not kill.

6                         THE COURT:   That's denied.  
7           That's in evidence.  Note the defendant's  
8           exception to that.

9                         MR. THOMPSON:  State's Exhibit  
10          Number 140 and 142 and 143, according to  
11          this document itself, it was excluded and  
12          it should not be --

13                        THE COURT:  I'm sorry, 140.  
14          Still photo from video.

15                        MR. THOMPSON:  140.

16                        THE COURT:  142 and 143, it  
17          should not be referred to.  They should be  
18          omitted.

19                        MR. THOMPSON:  Yes, sir.

20                        THE COURT:  Anything else?

21                        MR. THOMPSON:  That's it as to the  
22          State's exhibits.  Request those changes.

23                        THE COURT:  Any matters as to the  
24          Defendant's Exhibits, Mr. Britt?

25                        MR. BRITT:  No, sir.

1                   MR. THOMPSON: Are you waiting  
2 for me or Mr. Britt?

3                   THE COURT: Mr. Britt indicated  
4 he had no objection to any of the  
5 Defendant's Exhibits.

6                   MR. THOMPSON: As to Number 24,  
7 we --

8                   THE COURT: 24 on defense?

9                   MR. THOMPSON: We're dealing with  
10 Defendant's Exhibits, Your Honor. To  
11 Exhibit Number 24, that's a copy of a photo  
12 of intersection of 95 and 75. That's what  
13 it's more -- that's what it is. In fact,  
14 it's a blowup of State's Exhibit 88.

15                   MR. BRITT: Actually what that  
16 is, is an exhibit that the defense used for  
17 illustrating Larry Demery's testimony. Had  
18 him draw on it where the car was located.

19                   THE COURT: Yes, sure did.

20                   MR. THOMPSON: Yes.

21                   THE COURT: But you want the  
22 language copy of photo of intersection of  
23 74 and I-95?

24                   MR. THOMPSON: Yes.

25                   THE COURT: Okay.

1                   MR. THOMPSON: You can place on  
2 there in addition, drawn on by Larry Demery  
3 if --

4                   THE COURT: I would like to get  
5 these matters to the jury sometime today.

6                   MR. THOMPSON: Number 25, diagram  
7 drawn by Larry Demery, makes it consistent  
8 with the Clerk's description of number 26,  
9 drawing of document of Lexus drawn by Larry  
10 Demery. Number 25, diagram drawn by Larry  
11 Demery of a spot of blood, and that's  
12 actually what's on the exhibit. He wrote  
13 on the exhibit, just like "thou shall not  
14 kill" was on the State's Exhibit Number --

15                   THE COURT: Let the record  
16 reflect the Court just smiled in the  
17 absence of the jury. Yes, sir.

18                   MR. THOMPSON: And pulled his  
19 ear.

20                   THE COURT: And pulled his left  
21 ear. Yes, sir.

22                   MR. THOMPSON: Defendant's  
23 Exhibit Number 39, I think that was a  
24 drawing, that's actually a drawing of Kay  
25 Hernandez' home.

1                   THE COURT:  So you want the words  
2                   "drawing by Sebette Leones of Kay  
3                   Hernandez home"?

4                   MR. THOMPSON:  It wasn't a  
5                   drawing by Sebette Leones, she just  
6                   identified it.

7                   MR. BRITT:  Diagram.

8                   MR. THOMPSON:  We showed it to  
9                   her --

10                  THE COURT:  What language do you  
11                  want?

12                  MR. THOMPSON:  Drawing of Kay  
13                  Hernandez' home.

14                  THE COURT:  Okay.

15                  THE CLERK:  Kay Hernandez what?

16                  MR. THOMPSON:  Home.

17                  THE COURT:  Home.

18                  MR. THOMPSON:  And number 41,  
19                  that should come off, we feel.  I mean, it  
20                  was, you know, it was an instruction we  
21                  actually gave the Court.

22                  THE COURT:  Yes, the proposed  
23                  language that you wanted.  Yes.  Omit 41.  
24                  Anything else?

25                  MR. THOMPSON:  That's all, Your

1 Honor.

2 THE COURT: Anything further on  
3 behalf of the State?

4 MR. BRITT: No, sir. I was  
5 just -- I noticed people started coming in  
6 and Ms. Odum was told to report directly to  
7 this courtroom.

8 THE COURT: That's my next matter  
9 of inquiry. I want to make sure we're  
10 squared away before she reports. It's now  
11 9:30.

12 MR. BRITT: I just wanted to make  
13 sure she wasn't in the courtroom.

14 THE COURT: She's not here.  
15 Ma'am, order of business, we need the  
16 copies of the instruction, 16.

17 THE CLERK: Yes, sir.

18 THE COURT: I'm going to hand  
19 you -- so the record is complete,  
20 defendant's requests are as follows.  
21 Number 3, 4, 5 and 6, insert the word after  
22 photo of "replica." 12, 13, 14, and 15, Pea  
23 Bridge Road, being spelled P E A.

24 40, photograph of bullet removed from,  
25 add word "alleged" body of James Jordan.

1           86, and 87, insert the word  
2           "allegedly" after "was," and a before the  
3           word "parked." The request as to State's  
4           Exhibit 99 is denied by the Court. Again,  
5           the Court notes the defendant's objection  
6           and exception. Items 140 through 143  
7           should be omitted from the list. Anything  
8           further as to the State's Exhibits?

9           MR. THOMPSON: Yes, sir. The --  
10          in the title, you indicated that you --

11          THE COURT: A/k/a.

12          MR. THOMPSON: -- change from  
13          alias to a/k/a.

14          THE COURT: All right. As to the  
15          defense exhibits, defense has the following  
16          request. As to item 24, following words  
17          after "copy of photo." "Of intersection of  
18          74 and 95." 25 should read "diagram drawn  
19          by Larry Demery of blood spot." 39 should  
20          be "drawing of Kay Hernandez's home."  
21          Omitting the words "of Sebette Leones." 41  
22          should be omitted. Any other matters as to  
23          defense exhibits.

24          MR. THOMPSON: No, sir.

25          THE COURT: Take my list, ma'am.

1 All right. We'll need to do that. I'm  
2 going to make sure our jury is secured with  
3 our alternate secured in the room adjoining  
4 the courtroom. Once we have the matters  
5 requested by the jury and the list revised  
6 as requested by counsel for the defendant,  
7 we'll go forward. Anything further from  
8 either counsel?

9 MR. BRITT: No, sir.

10 THE COURT: All right. We're at  
11 ease. Well, we need to remain in place  
12 until Ms. Odum arrives.

13 THE BAILIFF: Ms. Odum is here.

14 THE COURT: Where is she?

15 THE BAILIFF: She's in the room  
16 here.

17 THE COURT: When did she arrive?

18 THE BAILIFF: Ten minutes ago.

19 THE COURT: How was she escorted  
20 into there?

21 THE BAILIFF: Deputies, through  
22 the outside door, unlocked it and locked it  
23 back.

24 THE COURT: Let the record  
25 reflect Ms. Odum was not present at any

1 time during these hearings. Is that  
2 accurate?

3 THE BAILIFF: Yes, sir.

4 THE COURT: Counsel for the State  
5 have anything to add to that?

6 MR. BRITT: No, sir.

7 THE COURT: Counsel for the  
8 defendant?

9 MR. THOMPSON: No, sir.

10 THE COURT: Let the record so  
11 show. We're at ease until 9:30 or we get  
12 the matters for the jury, whichever comes  
13 first.

14 (Brief recess.)

15 THE COURT: Let the record  
16 reflect that all counsel are present, the  
17 defendant is present in open court. All  
18 members of the deliberating jury are  
19 secured, the alternate juror is sequestered  
20 and secured in a room separate and apart  
21 from the members of the deliberating jury.

22 Both counsel for the State and counsel  
23 for the defendant have had an opportunity  
24 to review the transcript of the Court's  
25 instructions to the jury as given to the

1 jury yesterday. Both counsel have had the  
2 opportunity to examine the revised list of  
3 State's Exhibits and Defendant's Exhibits.  
4 Anything further on behalf of counsel for  
5 the State?

6 MR. BRITT: No, sir, the  
7 transcript appears to be in order with the  
8 Court's verbal instructions yesterday.

9 THE COURT: Anything on behalf of  
10 counsel for the defendant?

11 MR. THOMPSON: We have no  
12 objection, Your Honor, to the transcript as  
13 depicted from 7105 through page 7143, and  
14 of course no objection to the State's  
15 Exhibits and defense exhibits documents  
16 going to the jury room.

17 THE COURT: Okay. Folks, in  
18 connection with the request of the jury,  
19 it's my intent to bring them in, inform  
20 them that each member of the jury will be  
21 provided with a transcript of the Court's  
22 instructions, that one copy of the State's  
23 exhibits be entered into evidence in this  
24 case, and one copy of the defense exhibits  
25 entered into evidence in this case be

1 provided to the jury, that as to the  
2 language contained on the list of exhibits,  
3 that they are not to attach any  
4 significance to that language because these  
5 lists were prepared primarily for the  
6 purpose of the Clerk's recordkeeping, that  
7 it remains their duty to determine from the  
8 evidence presented in this case what the  
9 facts are, and then to apply those facts to  
10 the law as I have instructed them on the  
11 law.

12 Anything further in that regard on  
13 behalf of counsel for the State?

14 MR. BRITT: No, sir.

15 THE COURT: Anything in that  
16 regard on behalf of counsel for the  
17 defendant?

18 MR. THOMPSON: No, sir.

19 THE COURT: Ready to go forward,  
20 folks?

21 MR. THOMPSON: Yes, sir.

22 THE COURT: Bring the jury in,  
23 please, Mr. Horne.

24 (Jury in at 9:58 a.m.)

25 THE COURT: Good morning, ladies

1 and gentlemen.

2 Let me apologize to you for the delay,  
3 and by way of explanation, you folks will  
4 recall that yesterday you requested a  
5 transcript of the Court's instructions as  
6 given to you yesterday. And that  
7 transcript has been prepared. Mr. Horne,  
8 at this time, if you will pass out to each  
9 member of the jury a copy of the Court's  
10 instructions.

11 (Instructions passed to jurors.)

12 THE COURT: Thank you, sir.  
13 Members of the jury, you also have  
14 requested a list of the exhibits entered  
15 into evidence in this case, specifically a  
16 list of the State's exhibits and a list of  
17 the Defendant's exhibits. That list has  
18 also been prepared for you. We will have  
19 one copy of the list of the State's  
20 exhibits, one copy of a list of the  
21 defendant's exhibits.

22 Now, in that regard you will notice  
23 when these exhibits are given to you or  
24 when this list of exhibits are given to  
25 you, that they contain certain language.

1 For example, they are captioned as  
2 follows: Exhibit Number, when introduced,  
3 a description of the exhibit, and the fact  
4 that that exhibit has been admitted in  
5 evidence in this case.

6 Now, I instruct you that this list was  
7 prepared by the Clerk assigned to this  
8 courtroom primarily for the Clerk's  
9 records. And that any language regarding  
10 any description of the exhibit is not to be  
11 given any significance by you. I instruct  
12 you that it remains your duty to decide  
13 from the evidence presented in this case  
14 what the facts are in this matter, and then  
15 to apply those facts to the law as I have  
16 instructed you on the law in rendering any  
17 verdict that you may reach in this case.

18 Do each of you understand that  
19 instruction? If so, please indicate that  
20 by raising your right hands.

21 Let the record reflect that all 12  
22 members of the deliberating jury have  
23 responded affirmatively. Mr. Horne, at  
24 this time if you will hand the list of  
25 State's exhibits, the list of defense

1 exhibits, and the envelope containing the  
2 verdict forms to the foreperson of the  
3 jury.

4 (Bailiff complies.)

5 THE COURT: Members of the jury,  
6 in just a moment I'm going to excuse you to  
7 continue with your deliberations in this  
8 matter. Ordinarily, as you will remember,  
9 we would take the mid-morning recess  
10 somewhere in the neighborhood of 11:20 to  
11 11:40. We would ordinarily take a lunch  
12 recess from 1:00 to 2:30, and ordinarily we  
13 would take an afternoon recess somewhere in  
14 the neighborhood of 3:30 to 3:45.

15 Now, I intend to keep to that  
16 schedule, but if you folks wish to take a  
17 break at any time in your deliberations  
18 separate and apart from those time period  
19 that I've just indicated to you, please  
20 don't hesitate to let us know that. Simply  
21 knock on the door and indicate to Mr. Horne  
22 or whoever may be assigned to the jury that  
23 you wish to take a break and we will bring  
24 you into court.

25 In that regard, as I have already

1 explained to you, it is necessary that  
2 everything occurring in this case be on the  
3 open record and in open court. So that  
4 necessarily means that if a break is taken,  
5 I'll have to bring all members of the  
6 Court -- the jury, pardon me, into the  
7 courtroom, make a determination for the  
8 purpose of the record that all members of  
9 the jury are present at the time that a  
10 break is taken, and at the time that the  
11 break is concluded, before I can allow you  
12 to continue with your deliberations in this  
13 matter. And we'll appreciate your  
14 cooperation in that regard. Anything  
15 further from counsel for the State?

16 MR. BRITT: No, sir.

17 THE COURT: Anything further from  
18 counsel for the defendant?

19 MR. THOMPSON: No, sir.

20 THE COURT: Ladies and gentlemen  
21 of the jury, at this time the members of  
22 the jury may retire to the jury room for  
23 the purposes of continuing with your  
24 deliberations in this matter. Thank you,  
25 and you may do so at this time.

1 (Jury out at 10:03 a.m.)

2 THE COURT: Let the record  
3 reflect that the jury was sent out for  
4 continued deliberations, my watch has  
5 10:03. We're at ease.

6 (Court at ease.)

7 THE COURT: Mr. Green, if you'll  
8 have a seat please. Let the record reflect  
9 all counsel are present, the defendant is  
10 present in open court. The jury has passed  
11 a written request to the Court through the  
12 bailiff assigned to the courtroom  
13 Mr. Horne. That request reads as follows:  
14 One, phone records for July 23rd.  
15 Immediately below, the following language  
16 appears, 56-A through 56-E, enlarged  
17 posters. Counsel for state want to be  
18 heard?

19 MR. BRITT: No, sir.

20 THE COURT: Counsel for the  
21 defendant?

22 MR. BOWEN: No, sir.

23 THE COURT: Then without  
24 objection, if we could assemble items 56-A  
25 through 56-E please. Folks, is there

1           any -- what I propose to do, rather than  
2           bringing them all into the courtroom, is  
3           simply have those items brought into the  
4           courtroom and in open court to have the  
5           Clerk hand 56-A through 56-E to Mr. Horne,  
6           the bailiff assigned to the jury. Is there  
7           any objection to that process on behalf of  
8           the State?

9                         MR. BRITT: No, sir.

10                        THE COURT: Any objection to that  
11           process on behalf of the defendant?

12                        MR. THOMPSON: No, sir.

13                        THE COURT: Let the record so  
14           show.

15                        Ms. Gaines, in open court, so that  
16           there's no confusion in the record, if  
17           you'll withdraw from the box containing  
18           those exhibits 56-A through 56-E. Let the  
19           record reflect that's being done at this  
20           time. And if you will verify for purposes  
21           of the record, Mr. Horne, do we do now have  
22           our 56-A through 56-E?

23                        THE BAILIFF: Yes, sir.

24                        THE COURT: Okay. Let the record  
25           so show. Anything further from either

1           counsel?

2                   MR. BRITT:   No, sir.

3                   THE COURT:   Mr. Horne --

4                   MR. BRITT:   I'm sorry, do we  
5           need -- I apologize, do we need to inquire  
6           if they need the use of an easel?

7                   THE COURT:   You folks want to be  
8           heard?

9                   MR. THOMPSON:   He can take the  
10          easel in there.

11                   THE COURT:   We'll need some  
12          assistance, if we can get the easel.

13                   Sir, in open court on the record, if  
14          you'll examine the pad on the easel, make  
15          sure there's no writing contained on that  
16          pad.   Anybody want to be heard further?  
17          Yes, sir.

18                   With the consent of all counsel in  
19          addition to the requested Exhibits 56-A  
20          through 56-E, the Court with the consent of  
21          all counsel is permitting the easel to be  
22          taken to the jury room as well.   And if you  
23          will hand those items to the members of the  
24          jury without comment.

25                   For the record, ma'am, if you'll mark

1           this as whatever the next numbered Court's  
2           exhibit is. Each of the written requests  
3           by the jury is being made a part of the  
4           record for purpose of potential appellate  
5           review. Anything from either counsel?  
6           We're at ease.

7                         (Court at ease.)

8                         THE COURT: All counsel are  
9           present, the defendant is present in open  
10          court. The jury has asked to take a  
11          break. I'm going to allow them to do so.  
12          I'm going to ask the foreperson of the jury  
13          to place all verdict forms in the envelope,  
14          bring the envelope into court, leaving all  
15          other items in the jury deliberation room.  
16          Anything on behalf of the State?

17                        MR. BRITT: No, sir.

18                        THE COURT: Anything on behalf of  
19          the defendant?

20                        MR. BOWEN: No, sir.

21                        THE COURT: Mr. Horne, if you'll  
22          direct the foreperson of the jury to place  
23          all verdict forms in the envelope, bring  
24          the envelope containing the verdict forms  
25          into the courtroom, leaving all other items

1 in the jury deliberation room.

2 THE BAILIFF: Yes, sir.

3 (Jury in at 11:20 a.m.)

4 THE COURT: All members of the  
5 deliberating jury are now present in the  
6 courtroom. Mr. Horne, if you will retrieve  
7 the envelope containing the verdict forms  
8 from the foreperson, please. Folks, I'm  
9 going to give you until 20 until. Is that  
10 sufficient time for your break?

11 During this recess, I again instruct  
12 you that you are to suspend all further  
13 deliberations. You're not to talk about  
14 the matter among yourselves or with anyone  
15 else, not allowed to have anyone say  
16 anything to you or in your presence about  
17 the case. If anyone communicates with you  
18 about this matter or attempts to do so, it  
19 remains your duty to inform the Court of  
20 that immediately through one of the  
21 bailiffs assigned to the courtroom.

22 Don't form or express any opinions  
23 about this matter. Don't have any contact  
24 or communication of any kind with anyone  
25 involved in the case. Avoid any exposure

1 to any media accounts, and don't conduct  
2 any independent inquiry or investigation or  
3 research of any kind.

4 Now, as I indicated to you earlier,  
5 it's my duty to determine that all members  
6 of the deliberating jury are present. If  
7 you will reassemble in the jury room at 20  
8 until, I am required to bring you back into  
9 the courtroom to make that determination on  
10 the record. Once I've done that, you will  
11 be allowed to continue with your  
12 deliberations. All members of the jury are  
13 excused until 11 -- let me give you until  
14 11:45. 11:45. Please report to the jury  
15 room at that time.

16 (Jury out at 11:22 a.m.)

17 THE COURT: If you'll bring  
18 Ms. Odum in, please.

19 (Ms. Odum comes in the courtroom.)

20 THE COURT: You can remain right  
21 where you are, Ms. Odum. I'm going to give  
22 you a break at this time until 11:45.  
23 Please use the same entrance that you did  
24 earlier. We will have someone outside at  
25 the door in the hallway. If you'll go

1 directly to that entrance to the room that  
2 you've just come from. Once I determine  
3 that all members of the deliberating jury  
4 are present, I will need to make a  
5 determination on the record that you are  
6 also present and remain under  
7 sequestration.

8 During this recess, please recall all  
9 prior instructions of the Court, and please  
10 recall that it is your duty to abide by  
11 those instructions. I'm obligated at this  
12 point to instruct you that you're not to  
13 have any contact or communication of any  
14 kind with any member of the deliberating  
15 jury. You're not to have and contact or  
16 communication with anyone involved in the  
17 case. You're not to talk about this matter  
18 with anyone at all. You're to avoid any  
19 exposure with any media accounts, not to  
20 form or express any opinions about this  
21 matter, not to conduct any independent  
22 inquiry or investigation or research of any  
23 kind.

24 Again, please report directly to the  
25 entrance that you used earlier this

1 morning, and once we've determined that all  
2 members of the deliberating jury are  
3 present, and that you are in the  
4 sequestration room, I'll indicate to you  
5 what matters we need to take up, if any,  
6 with you at that time. You understand  
7 those instructions?

8 JUROR: (Nods head  
9 affirmatively.)

10 THE COURT: You're free to go  
11 until 11:45. Report directly to that room  
12 at that time. Yes, ma'am, you're free to  
13 go.

14 THE COURT: Folks, rather than  
15 inconveniencing the juror, alternate juror,  
16 is it satisfactory with all counsel, once I  
17 make a determination on the record that all  
18 members of the deliberating jury are  
19 present, that we simply determine that  
20 Ms. Odum is present in the jury  
21 sequestration room? Is that satisfactory  
22 with counsel for the defendant?

23 MR. THOMPSON: Yes, sir.

24 THE COURT: Satisfactory with  
25 counsel for the State?

1 MR. BRITT: Yes.

2 THE COURT: That's one step we  
3 can take to minimize some of the awkward  
4 things involved in this process that is  
5 otherwise obligatory in the Court's view.  
6 We're at ease until 11:45.

7 THE BAILIFF: Court stands at  
8 ease until 11:45.

9 (Court at ease.)

10 THE COURT: We have to have all  
11 parties present for the record before we  
12 can do anything.

13 All counsel are present, the defendant  
14 is present in open court. Mr. Horne, do we  
15 have all members of the jury in the jury  
16 room?

17 THE BAILIFF: Yes, we do.

18 THE COURT: For the record, if  
19 you'll ask all members of the deliberating  
20 jury to come in, please. While we're doing  
21 that, Major Watson, do we have the  
22 alternate juror sequestered in the room?

23 THE BAILIFF: Yes, sir, we do.

24 THE COURT: Let the record so  
25 show that.

1 (Jury in at 11:47 a.m.)

2 THE COURT: The Court having  
3 determined that all members of the  
4 deliberating jury are now present, folks,  
5 you may retire to the jury room to continue  
6 with your deliberations. Mr. Horne, if  
7 you'll hand the envelope containing the  
8 verdict forms to the foreperson in the  
9 jury. Thank you, folks.

10 (Jury out at 11:48 a.m.)

11 THE COURT: We're at ease,  
12 folks.

13 (Court at ease.)

14 THE COURT: We need  
15 Mr. Thompson.

16 Let the record show that all counsel  
17 are present, the defendant is present in  
18 open court. The Court has been informed by  
19 Mr. Horne, the bailiff assigned to the  
20 deliberating jury that they are asking to  
21 take their lunch break at this time. They  
22 initially requested, as I understand it Mr.  
23 Horne, and correct this if this is  
24 inaccurate in any respect, that the lunch  
25 break be from 1:00 until 2:15. Is that

1 correct?

2 THE BAILIFF: Yes, that's  
3 correct.

4 THE COURT: State want to be  
5 heard?

6 MR. BRITT: No, sir.

7 THE COURT: Counsel for the  
8 defendant?

9 MR. THOMPSON: No, sir.

10 THE COURT: If you'll direct the  
11 foreperson of the jury to put all verdict  
12 forms in the envelope, bring the envelope  
13 containing all verdict forms into the court  
14 room, leaving all matters in the jury  
15 deliberation room.

16 THE BAILIFF: Yes, sir.

17 THE COURT: We have a couple of  
18 other matters we need to take up on the  
19 record after the jurors have been excused,  
20 so if you folks would bear with me.

21 (Jury in at 12:55 p.m.)

22 THE COURT: Let the record show  
23 that all members of the deliberating jury  
24 are now present in the courtroom. My  
25 understanding, folks, is that you are

1            requesting to take a lunch recess from 1:00  
2            until 2:15, is that correct? Ma'am  
3            foreperson, if you will hand the envelope  
4            containing the verdict forms to Mr. Horne,  
5            and Mr. Horne, if you'll hand that to Ms.  
6            Gaines.

7            Folks, consistent with your request,  
8            we're going to take the lunch recess until  
9            2:15. I'm obligated again at this point to  
10           instruct you that during this lunch recess  
11           you're to suspend all further  
12           deliberations, you're not to talk about  
13           this matter among yourselves or with anyone  
14           else, you're not allowed to have anyone say  
15           anything to you or in your presence about  
16           this case.

17           If anyone communicates with you about  
18           this matter or attempts to do so, it's your  
19           duty to inform us of that immediately.  
20           Don't form or express any opinions about  
21           this matter during the recess, don't have  
22           any contact or communication of any kind  
23           with anyone involved in the case. Avoid  
24           any exposure to any media accounts which  
25           might exist in connection with this matter,

1 and don't conduct any independent inquiry  
2 or investigation or research of any kind.

3 Again, folks, please report directly  
4 to the jury deliberation room at 2:15.  
5 I'll need to make a determination on the  
6 record that all of you are present. Once  
7 that has been done, the jury will be  
8 permitted to continue with deliberations.  
9 Everyone else please remain seated, the  
10 members of the jury are excused until  
11 2:15.

12 (Jury out at 12:57 p.m.)

13 THE COURT: If you'll ask  
14 Ms. Odum to come in, please.

15 Ms. Odum, we're going to take the  
16 lunch recess until 2:15. Again, I instruct  
17 you that you're not to have any contact or  
18 communication of any kind with any member  
19 of the deliberating jury. You're not to  
20 talk with anyone about this matter. If  
21 anyone communicates with you about this  
22 matter or attempts to do so or if anyone  
23 says anything about the case in your  
24 presence, it's your duty to inform us of  
25 that immediately.

1           Don't form or express any opinions at  
2 all about this case, avoid any exposure to  
3 any media accounts which may exist in  
4 connection with this matter. Don't have  
5 any contact with anyone involved in the  
6 case, and don't conduct any independent  
7 inquiry or research or investigation of any  
8 kind.

9           If you'll again report directly back  
10 to the sequestration room from which you've  
11 just come no later than 2:15, again, using  
12 the same entrance that you used earlier,  
13 we'll make a determination that you're  
14 present in that room for the purpose of the  
15 record. We'll see you at 2:15.

16           In the absence of any member of the  
17 deliberating jury and in the absence of the  
18 sequestered alternate juror, some  
19 procedural matters. The Court has a  
20 request addressed to Sue Gaines, Assistant  
21 Clerk of Court of Robeson County, that  
22 request made by Mr. Craig M. Whitlock,  
23 staff writer for the News And Observer in  
24 Raleigh, requesting pursuant to General  
25 Statute 132 to be provided access to any

1 public records submitted in this case,  
2 specifically requesting copies of any juror  
3 questionnaires.

4 Case law under the First Amendment  
5 indicates that members of the press are  
6 entitled to this information. Anybody want  
7 to be heard?

8 MR. BRITT: No, sir.

9 MR. THOMPSON: No, sir.

10 THE COURT: Court is going to  
11 direct the Clerk's office to prepare copies  
12 and for our purpose, folks, what I propose  
13 to do is to make a complete copy of all  
14 questionnaires involving jurors involved in  
15 this case available to you through the  
16 Clerk's office downstairs, and you folks  
17 will have to make a request through the  
18 Clerk's office downstairs, as has  
19 previously been the case. I understand  
20 that there was another request from  
21 Mr. Barnes, WRAL --

22 MR. BARNES: WTBD.

23 THE COURT: Wrong station.

24 MR. BARNES: Exception noted,  
25 Your Honor.

1                   THE COURT:   And well taken, too,  
2                   I might add.

3                   Is your request similar, sir?

4                   MR. BARNES:   Mine was just, I was  
5                   asking Ms. Gaines if the names of the  
6                   jurors were public record.  I just wanted  
7                   to get a name from her.

8                   THE COURT:   There's cases decided  
9                   under the constitutional provisions of the  
10                  United States Constitution indicating you  
11                  folks are entitled to that information.  
12                  That information will be made available to  
13                  you.

14                  MR. BARNES:   Your Honor, through  
15                  Ms. Gaines or downstairs?

16                  THE COURT:   Downstairs in the  
17                  Clerk's office.  Ms. Gaines will facilitate  
18                  it.  Any other matters?

19                  THE BAILIFF:   Several of the  
20                  jurors are asking that their parking places  
21                  be held for them.

22                  THE COURT:   Can we accommodate  
23                  them in that respect?  If you'll coordinate  
24                  with whomever you have to to make sure  
25                  their spaces are secured.  If you'll recess

1 us until 2:15.

2 THE BAILIFF: All rise, please.

3 (Lunch recess.)

4 THE COURT: Good afternoon,  
5 folks. All counsel are present, the  
6 defendant is present in open court. Do we  
7 have our alternate juror sequestered in the  
8 sequestration room?

9 THE BAILIFF: Yes, sir.

10 THE COURT: Do we have all  
11 members of the deliberating jury in the  
12 deliberation room?

13 THE BAILIFF: Yes, sir.

14 THE COURT: Any matters before we  
15 bring the jury in to continue with  
16 deliberation?

17 MR. THOMPSON: No, sir.

18 THE COURT: If you'll bring them  
19 in, please.

20 (Jury in at 2:14 p.m.)

21 THE COURT: Good afternoon,  
22 ladies and gentlemen.

23 Court having determined that all  
24 members of the deliberating jury are  
25 present, Mr. Horne, if you'll hand the

1 envelope containing the verdict forms to  
2 the foreperson of the jury, please. Thank  
3 you, sir. Folks, at this time you may  
4 retire to continue with your  
5 deliberations.

6 (Jury out at 2:15 p.m.)

7 THE COURT: We're at ease.

8 (Court at ease.)

9 THE COURT: Let the record show  
10 all counsel are present. Folks, the Court  
11 has been informed that the jury has reached  
12 a unanimous verdict. Before I bring the  
13 jury in to pronounce their verdicts in this  
14 case, I'm going to give folks who would  
15 like to be in the courtroom an opportunity  
16 to come in, and then I'm going to have some  
17 announcements to make.

18 Ladies and gentlemen, in just a moment  
19 or so, the Court is going to bring in the  
20 jury for the purpose of pronouncing their  
21 verdicts in these cases. Before doing so,  
22 the Court directs the bailiffs assigned to  
23 this courtroom to remove anybody who makes  
24 any outcry or creates any disturbance of  
25 any kind.

1 All right. Mr. Horne, if you'll bring  
2 in the jury, please.

3 (Jury in at 2:38 p.m.)

4 THE COURT: Would the foreperson  
5 in the jury please stand. Are you able to,  
6 Ms. Manuel?

7 JUROR: Yes.

8 THE COURT: If you will answer my  
9 questions yes or no only, please. Has the  
10 jury reached a unanimous verdict in each of  
11 the cases submitted for the consideration  
12 of the jury?

13 JUROR: Yes.

14 THE COURT: Have you as the  
15 foreperson of the jury marked the verdict  
16 forms accordingly and dated and signed the  
17 verdict forms?

18 JUROR: Yes.

19 THE COURT: Thank you, ma'am. If  
20 you'll hand the envelope containing the  
21 verdict forms to Mr. Horne, you may return  
22 to your seat.

23 Let the record reflect this Court has  
24 examined the verdict forms. Ms. Gaines, if  
25 you will take the verdicts of the jury,

1 please.

2 THE CLERK: Would the foreperson  
3 please stand.

4 You have returned for the jury a  
5 unanimous verdict that the defendant Daniel  
6 Andre Green, also known as As-Saddiq  
7 Al-Amin Sallam U'Allah, is guilty of first  
8 degree murder on the basis -- excuse me,  
9 under the first degree felony murder rule.

10 JUROR: Yes.

11 THE CLERK: Is this your  
12 verdict?

13 JUROR: Yes.

14 THE CLERK: So say you all by  
15 raising your right hand.

16 You have returned for the jury a  
17 unanimous verdict that the defendant Daniel  
18 Andre Green, also known as As-Saddiq  
19 Al-Amin Sallam U'Allah, is guilty of  
20 robbery with a firearm. Is this your  
21 verdict?

22 JUROR: Yes.

23 THE CLERK: So say you all by  
24 raising your right hand.

25 You have returned for the jury that

1 the defendant Daniel Andre Green, also  
2 known as As-Saddiq Al-Amin Sallam U'Allah,  
3 is guilty of felonious conspiracy. Is this  
4 your verdict?

5 JUROR: Yes.

6 THE CLERK: So say you all by  
7 raising your right hand.

8 THE COURT: If you'll hand the  
9 verdict forms, please, ma'am. Anything on  
10 behalf of the State as to the verdicts of  
11 the jury? I'm sorry, Ms. Manuel, you may  
12 return to your seat.

13 MR. BRITT: No, sir.

14 THE COURT: Anything on behalf of  
15 the defendant as to the verdicts?

16 MR. THOMPSON: Yes. May it  
17 please the Court, we desire to have the  
18 jury polled.

19 THE COURT: Yes, sir. Members of  
20 the jury, the Clerk at this time is going  
21 to call each of you by name beginning with  
22 the foreperson of the jury and then  
23 proceeding numerically through the  
24 remainder of the members of the jury. She  
25 will ask you two questions. She will ask

1           you whether the verdict as returned by your  
2           foreperson in open court is the unanimous  
3           verdict of the jury, and whether you  
4           individually still agree or assent  
5           thereto. If you will answer her questions  
6           yes or no only, please.

7           Ma'am, if you'll poll the jury  
8           beginning with the foreperson and then  
9           proceeding numerically.

10           THE CLERK: Would the foreperson,  
11           Ms. Paula Locklear, please stand. You as  
12           foreperson of the jury have returned for  
13           the jury's unanimous verdict that the  
14           defendant Daniel Andre Green, also known as  
15           As-Saddiq Al-Amin Sallam U'Allah, is guilty  
16           of first degree murder under the first  
17           degree felony murder rule. Is this your  
18           verdict and do you still assent thereto?

19           JUROR: Yes.

20           THE CLERK: You have returned for  
21           the jury's unanimous verdict that the  
22           defendant is guilty of robbery with a  
23           firearm. Is this your verdict?

24           JUROR: Yes.

25           THE CLERK: And do you still

1           assent thereto?

2                         JUROR:   Yes.

3                         THE CLERK:  You have returned for  
4           the jury's unanimous verdict that the  
5           defendant is guilty of felonious  
6           conspiracy.  Is this your verdict?

7                         JUROR:   Yes.

8                         THE CLERK:  And do you assent  
9           thereto?

10                        JUROR:   Yes.

11                        THE CLERK:  Juror Number One,  
12           Patricia Haley, the foreperson has returned  
13           a unanimous verdict that the defendant  
14           Daniel Andre Green, known as As-Saddiq  
15           Al-Amin Sallam U'Allah, is guilty of first  
16           degree murder under the first degree felony  
17           murder rule.  Is this your verdict?

18                        JUROR:   Yes.

19                        THE CLERK:  Do you still assent  
20           thereto?

21                        JUROR:   Yes.

22                        THE COURT:  Thank you, ma'am.  
23           I'm sorry, we have two more verdict forms.  
24           I apologize.

25                        THE CLERK:  She has returned for

1 the jury's unanimous verdict that the  
2 defendant is guilty of robbery with a  
3 firearm. Is this your verdict?

4 JUROR: Yes.

5 THE CLERK: Do you still assent  
6 thereto?

7 JUROR: Yes.

8 THE CLERK: She has returned for  
9 the jury's unanimous verdict that the  
10 defendant is guilty of felonious  
11 conspiracy. Is this your verdict?

12 JUROR: Yes.

13 THE CLERK: And do you still  
14 assent thereto?

15 JUROR: Yes.

16 THE COURT: Thank you, Ms. Haley.

17 THE CLERK: Juror Number Two,  
18 Carla Woodell, the foreperson has returned  
19 for the jury's unanimous verdict that the  
20 defendant Daniel Andre Green, also known as  
21 As-Saddiq Al-Amin Sallam U'Allah, is guilty  
22 of first degree murder under the first  
23 degree felony murder rule. Is this your  
24 verdict?

25 JUROR: Yes.

1 THE CLERK: Do you still assent  
2 thereto?

3 JUROR: Yes.

4 THE CLERK: She has returned for  
5 the jury's unanimous verdict that the  
6 defendant is guilty of robbery with a  
7 firearm. Is this your verdict?

8 JUROR: Yes.

9 THE CLERK: And do you still  
10 assent thereto?

11 JUROR: Yes.

12 THE CLERK: She has returned for  
13 the jury's unanimous verdict that the  
14 defendant is guilty of felonious  
15 conspiracy. Is this your verdict?

16 JUROR: Yes.

17 THE CLERK: Do you still assent  
18 thereto?

19 JUROR: Yes.

20 THE COURT: Thank you, ma'am.

21 THE CLERK: Juror Number Three  
22 Oliver Chavis, your foreperson has returned  
23 for the jury's unanimous verdict that the  
24 defendant Daniel Andre Green, known as  
25 As-Saddiq Al-Amin Sallam U'Allah, is guilty

1 of first degree murder under the first  
2 degree felony murder rule. Is this your  
3 verdict?

4 JUROR: Yes.

5 THE CLERK: Do you still assent  
6 thereto?

7 JUROR: Yes.

8 THE CLERK: She as returned for  
9 the jury's unanimous verdict that the  
10 defendant is guilty of robbery with a  
11 firearm. Is this your verdict?

12 JUROR: Yes.

13 THE CLERK: And do you still  
14 assent thereto?

15 JUROR: Yes.

16 THE CLERK: She has returned for  
17 the jury's unanimous verdict that the  
18 defendant is guilty of felonious  
19 conspiracy. Is this your verdict?

20 JUROR: Yes.

21 THE CLERK: Do you still assent  
22 thereto?

23 JUROR: Yes.

24 THE CLERK: Thank you, ma'am.

25 THE CLERK: Jury Number five,

1 Joseph Kotai, your foreperson has returned  
2 for the jury's unanimous verdict that the  
3 defendant Daniel Andre Green, known as  
4 As-Saddiq Al-Amin Sallam U'Allah, is guilty  
5 of first degree murder under the first  
6 degree felony murder rule. Is this your  
7 verdict?

8 JUROR: Yes.

9 THE CLERK: Do you still assent  
10 thereto?

11 JUROR: Yes.

12 THE CLERK: She has returned for  
13 the jury's unanimous verdict that the  
14 defendant is guilty of robbery with a  
15 firearm. Is this your verdict?

16 JUROR: Yes.

17 THE CLERK: Do you still assent  
18 thereto?

19 JUROR: Yes.

20 THE CLERK: She has returned for  
21 the jury's unanimous verdict that the  
22 defendant is guilty of felonious  
23 conspiracy. Is this your verdict?

24 JUROR: Yes.

25 THE CLERK: And do you still

1           assent thereto?

2                       JUROR:   Yes.

3                       THE COURT:  Thank you, sir.

4                       THE CLERK:  Juror Number Six,  
5           Angela Coverdale, your foreperson has  
6           returned for the jury's unanimous verdict  
7           that the defendant Daniel Andre Green,  
8           known as As-Saddiq Al-Amin Sallam U'Allah,  
9           is guilty of first degree murder under the  
10          first degree felony murder rule.  Is this  
11          your verdict?

12                      JUROR:   Yes.

13                      THE CLERK:  Do you still assent  
14          thereto?

15                      JUROR:   Yes.

16                      THE CLERK:  She has returned for  
17          the jury's unanimous verdict that the  
18          defendant is guilty of robbery with a  
19          firearm.

20                      JUROR:   Yes.

21                      THE CLERK:  Is this your verdict?

22                      JUROR:   Yes.

23                      THE CLERK:  And do you still  
24          assent thereto?

25                      JUROR:   Yes.

1                   THE CLERK:  She has returned for  
2                   the jury's unanimous verdict that the  
3                   defendant is guilty of felonious  
4                   conspiracy.  Is this your verdict?

5                   JUROR:  Yes.

6                   THE CLERK:  Do you still assent  
7                   thereto?

8                   JUROR:  Yes.

9                   THE COURT:  Thank you, ma'am.

10                  THE CLERK:  Juror Number Seven,  
11                  Raymond Evans, if you'll stand.  The  
12                  foreperson has returned for the unanimous  
13                  verdict that the defendant Daniel Andre  
14                  Green, known as As-Saddiq Al-Amin Sallam  
15                  U'Allah, is guilty of first degree murder  
16                  under the first degree felony murder rule.  
17                  Is this your verdict?

18                  JUROR:  Yes.

19                  THE CLERK:  Do you still assent  
20                  thereto?

21                  JUROR:  Yes.

22                  THE CLERK:  She has returned for  
23                  the jury's unanimous verdict that the  
24                  defendant is guilty of robbery with a  
25                  firearm.  Is this your verdict?

1 JUROR: Yes.

2 THE CLERK: Do you still assent  
3 thereto?

4 JUROR: Yes.

5 THE CLERK: She has returned for  
6 the jury's unanimous verdict that the  
7 defendant is guilty of felonious  
8 conspiracy. Is this your verdict?

9 JUROR: Yes.

10 THE CLERK: Do you still assent  
11 thereto?

12 JUROR: Yes.

13 THE COURT: Thank you, sir.

14 THE CLERK: Juror Number Eight,  
15 Michael Campbell, your foreperson has  
16 returned for the jury's unanimous verdict  
17 that the defendant Daniel Andre Green,  
18 known as As-Saddiq Al-Amin Sallam U'Allah,  
19 is guilty of first degree murder under the  
20 first degree felony murder rule. Is this  
21 your verdict?

22 JUROR: Yes.

23 THE CLERK: Do you still assent  
24 thereto?

25 JUROR: Yes.

1                   THE CLERK: She has returned for  
2 the jury's unanimous verdict that the  
3 defendant is guilty of robbery with a  
4 firearm. Is this your verdict?

5                   JUROR: Yes.

6                   THE CLERK: Do you still assent  
7 thereto?

8                   JUROR: Yes.

9                   THE CLERK: She has returned for  
10 the jury's unanimous verdict that the  
11 defendant is guilty of felonious  
12 conspiracy. Is this your verdict?

13                   JUROR: Yes.

14                   THE CLERK: Do you still assent  
15 thereto?

16                   JUROR: Yes.

17                   THE COURT: Thank you, sir.

18                   THE CLERK: Juror Number Nine,  
19 Lea McGirt, your foreperson has returned  
20 for the jury's unanimous verdict that the  
21 defendant Daniel Andre Green, known as  
22 As-Saddiq Al-Amin Sallam U'Allah, is guilty  
23 of first degree murder under the first  
24 degree felony murder rule. Is this your  
25 verdict?

1 JUROR: Yes.

2 THE CLERK: Do you still assent  
3 thereto?

4 JUROR: Yes.

5 THE CLERK: She has returned for  
6 the jury's unanimous verdict that the  
7 defendant is guilty of robbery with a  
8 firearm. Is this your verdict?

9 JUROR: Yes.

10 THE CLERK: Do you still assent  
11 thereto?

12 JUROR: Yes.

13 THE CLERK: She has returned for  
14 the jury's unanimous verdict that the  
15 defendant is guilty of felonious  
16 conspiracy. Is this your verdict?

17 JUROR: Yes.

18 THE CLERK: Do you still assent  
19 thereto?

20 JUROR: Yes.

21 THE COURT: Thank you, sir.

22 THE CLERK: Juror Number Ten,  
23 James Cassidy, your foreperson has returned  
24 for the jury's unanimous verdict that the  
25 defendant Daniel Andre Green, known as

1 As-Saddiq Al-Amin Sallam U'Allah, is guilty  
2 of first degree murder under the first  
3 degree felony murder rule. Is this your  
4 verdict?

5 JUROR: Yes.

6 THE CLERK: Do you still assent  
7 thereto?

8 JUROR: Yes.

9 THE CLERK: She has returned for  
10 the jury's unanimous verdict that the  
11 defendant is guilty of robbery with a  
12 firearm. Is this your verdict?

13 JUROR: Yes.

14 THE CLERK: And do you assent  
15 thereto?

16 JUROR: Yes.

17 THE CLERK: She has returned for  
18 the jury's unanimous verdict that the  
19 defendant is guilty of felonious  
20 conspiracy. Is this your verdict?

21 JUROR: Yes.

22 THE CLERK: And do you still  
23 assent thereto?

24 JUROR: Yes.

25 THE COURT: Thank you, sir.

1                   THE CLERK: Juror Number 11,  
2 Linda Dial, the foreperson has returned for  
3 the jury's unanimous verdict that the  
4 defendant Daniel Andre Green, known as  
5 As-Saddiq Al-Amin Sallam U'Allah, is guilty  
6 of first degree murder under the first  
7 degree felony murder rule. Is this your  
8 verdict?

9                   JUROR: Yes.

10                  THE CLERK: Do you still assent  
11 thereto?

12                  JUROR: Yes.

13                  THE CLERK: She has returned for  
14 the jury's unanimous verdict that the  
15 defendant is guilty of robbery with a  
16 firearm. Is this your verdict?

17                  JUROR: Yes.

18                  THE CLERK: And do you still  
19 assent thereto?

20                  JUROR: Yes.

21                  THE CLERK: She has returned for  
22 the jury's unanimous verdict that the  
23 defendant is guilty of felonious  
24 conspiracy. Is this your verdict?

25                  JUROR: Yes.

1 THE CLERK: Do you still assent  
2 thereto?

3 JUROR: Yes.

4 THE COURT: Thank you, ma'am.

5 THE CLERK: Juror Number 12,  
6 Phillip Burnette, the foreperson has  
7 returned for the jury's unanimous verdict  
8 that the defendant Daniel Andre Green,  
9 known as As-Saddiq Al-Amin Sallam U'Allah,  
10 is guilty of first degree murder under the  
11 first degree felony murder rule. Is this  
12 your verdict?

13 JUROR: Yes.

14 THE CLERK: Do you still assent  
15 thereto?

16 JUROR: Yes.

17 THE CLERK: She has returned for  
18 the jury's unanimous verdict that the  
19 defendant is guilty of robbery with a  
20 firearm. Is this your verdict?

21 JUROR: Yes.

22 THE CLERK: And do you still  
23 assent thereto?

24 JUROR: Yes.

25 THE CLERK: She has returned for

1 the jury's unanimous verdict that the  
2 defendant is guilty of felonious  
3 conspiracy. Is this your verdict?

4 JUROR: Yes.

5 THE CLERK: And do you still  
6 assent thereto?

7 JUROR: Yes.

8 THE COURT: Thank you, sir.

9 Any other matters related to the  
10 verdict of the jury on behalf of the  
11 defendant?

12 MR. THOMPSON: Nothing else in  
13 the presence of the jury.

14 THE COURT: Members of the jury,  
15 I have a duty at this point to confer with  
16 counsel for the State and counsel for the  
17 defendant. I'm going to ask that all  
18 members of the deliberating jury step to  
19 the jury room while the Court conducts that  
20 conference. I will have further  
21 instructions for you momentarily. Thank  
22 you, and at this time all members of the  
23 jury may step to the jury room.

24 (Jury out at 2:50 p.m.)

25 THE COURT: The jury in this case

1           having returned verdicts of guilty as to  
2           the charges of first degree murder based on  
3           the first degree felony murder rule,  
4           verdict of guilty as to the charge of  
5           robbery with a firearm, and a verdict of  
6           guilty as to the charge of felonious  
7           conspiracy, based on the finding of the  
8           jury of guilt as to first degree murder,  
9           our law requires that a separate sentencing  
10          phase be conducted.

11                        Is the State prepared to go forward at  
12          this time with the penalty phase required  
13          by law?

14                        MR. BRITT: Your Honor, at this  
15          time the State is not prepared. There are  
16          some witnesses from out of state that the  
17          State intends to offer in sentencing as it  
18          relates to the July 4th, 1993 robbery that  
19          this jury has heard previous evidence  
20          from. That would be the only additional  
21          evidence the State would offer in any  
22          punishment phase and would rely upon the  
23          evidence that has been submitted in the  
24          guilt portion as it relates to aggravating  
25          circumstances that the State would contend

1           exist under the evidence.

2                   THE COURT:   When will the State  
3           be ready, Mr. Britt?

4                   MR. BRITT:   Your Honor, I would  
5           think we could be ready Monday morning.

6                   THE COURT:   Is counsel for the  
7           defendant ready to proceed with the  
8           sentencing or penalty phase in this matter  
9           at this time?

10                   MR. THOMPSON:   No, sir, Your  
11           Honor.  We would -- in fact, we have some  
12           witnesses who, one of which will not be  
13           available until Monday.  And --

14                   THE COURT:   Am I correct in  
15           understanding that since the State has the  
16           burden of going forward first, you will be  
17           prepared to go forward Monday morning?

18                   MR. THOMPSON:   Yes, sir.

19                   THE COURT:   Okay.  State is  
20           essentially putting all of us on notice  
21           that the State intends to rely on evidence  
22           adduced during the guilt or innocence phase  
23           and additionally will offer evidence as to  
24           matters relating to the allegations of July  
25           4th, 1993.  In essence, the State is

1           telling all of us on the record that the  
2           State's evidence may be fairly short, is  
3           that accurate?

4                   MR. BRITT:  Yes, sir.  And let me  
5           remind the Court and defense counsel, there  
6           is an order in place where the Court  
7           ordered that they provide me seven days  
8           prior notice of any expert witness's  
9           reports.

10                   THE COURT:  Yes, sir.  That order  
11           was modified by the Court in open court.

12                   MR. BRITT:  Yes, sir.

13                   THE COURT:  Are you folks in a  
14           position to provide counsel for the State  
15           at this time with any reports required  
16           pursuant to North Carolina General Statute  
17           15-A --

18                   MR. THOMPSON:  Your Honor, at the  
19           end of -- by the end of today, we will be  
20           able to provide him with some of that  
21           information, not all of it.  And quite  
22           frankly, Your Honor, there has been an  
23           impasse between counsel and the defendant  
24           concerning the use of particularly one  
25           expert, and we have to resolve that.  But

1 with regards to other experts, we expect  
2 that we'll be able to provide the  
3 information by the end of the day. But  
4 quite frankly, it will not all be in  
5 today. We'll get it as soon as -- they are  
6 Fed Ex'ing it from as far as California and  
7 some coming from Chapel Hill, and we still  
8 have to deal with the impasse between the  
9 defendant and counsel.

10 THE COURT: Folks, let me state  
11 this for the record. All of us know what  
12 is required under our discovery statutes  
13 with regard to reciprocal discovery. If  
14 the State contends that it has not been  
15 provided with timely discovery regarding  
16 the reports of any experts the defendant  
17 intends to call, the Court will exercise  
18 its discretion and give the State latitude  
19 with regard to preparation for  
20 cross-examination of any such experts.

21 MR. BRITT: Thank you, Your  
22 Honor.

23 THE COURT: Folks, it's my intent  
24 to bring all members of the deliberating  
25 jury in at this time, ask the alternate

1 juror to join them, I'm going to inform  
2 them that since the jury in this case has  
3 returned a verdict of guilty as to the  
4 charge of first degree murder, under our  
5 law a separate sentencing or penalty phase  
6 is required, and that we will commence that  
7 separate sentencing or penalty phase  
8 beginning on Monday morning. Counsel for  
9 the State want to be heard?

10 MR. BRITT: No, sir, that's fine.

11 THE COURT: Counsel for  
12 defendant?

13 MR. THOMPSON: Your Honor, we do  
14 have certain motions we can do that after  
15 the jury is released, or advise the Court  
16 of that.

17 THE COURT: Yes, sir. Mr. Horne,  
18 if you'll bring our deliberating jury in.

19 Folks, if we could have it quiet in  
20 the courtroom, please.

21 (Jury in at 2:56 p.m.)

22 THE COURT: At this time, sir, if  
23 you'll ask the alternate juror to join the  
24 members of the jury in the jury box.

25 (Alternate juror is seated in jury box.)

1           Ladies and gentlemen of the jury, the  
2 jury in this case having returned a verdict  
3 of guilty as to the charge of first degree  
4 murder, our law requires that a separate  
5 sentencing or penalty phase be conducted  
6 immediately after such a verdict is  
7 returned. Having conferred with counsel  
8 for the State and counsel for the  
9 defendant, I am informed that both sides in  
10 this matter will be prepared to go forward  
11 with that sentencing phase Monday morning.  
12 I'm going to release you at this time. I'm  
13 going to ask that all of you return to the  
14 jury room at 9:30 on Monday morning.

15           Now, folks, it's absolutely imperative  
16 that all of you follow the instructions  
17 that I'm about to give you. It will be the  
18 duty of the jury in this case -- well, let  
19 me back up and offer additional  
20 explanation.

21           During this separate penalty phase,  
22 you may hear additional evidence. You will  
23 hear further arguments from counsel and you  
24 will receive further instructions from the  
25 Court on the law as the law applies to

1 recommendation as to punishment. Now,  
2 because you have not yet heard any evidence  
3 that may be offered in that regard, and  
4 because you have not yet heard the  
5 arguments of the attorneys in this case,  
6 and because you have not yet heard the  
7 Court's instructions on the law, it is  
8 absolutely vital that you remain  
9 open-minded on the issue of punishment.

10 And I instruct you that you are not to  
11 talk about this case among yourselves, you  
12 are not to discuss it with anyone else,  
13 including members of your own families.  
14 You're not to allow anyone to say anything  
15 to you or in your presence about this  
16 case. If anyone communicates with you  
17 about this matter or attempts to do so or  
18 if anyone says anything about the case in  
19 your presence, it remains your duty to  
20 inform the Court of that immediately  
21 through one of the bailiffs assigned to  
22 this courtroom.

23 Don't form or express any opinions on  
24 the issue of recommendation as to  
25 punishment. Don't have any contact or

1 communication of any kind with anyone  
2 involved in this case. Don't allow  
3 yourselves to be exposed to any media  
4 accounts which may exist in connection with  
5 this matter, and don't conduct any  
6 independent inquiry or investigation or  
7 research of any kind.

8 Ladies and gentlemen, I'm going to  
9 release you again until 9:30 Monday  
10 morning. Have a good weekend, and we'll  
11 see you at that time. You folks are free  
12 to go at this time.

13 (Jury out at 2:59 p.m.)

14 THE COURT: Mr. Thompson,  
15 Mr. Bowen, you folks want to be heard with  
16 regard to motion, I understand.

17 MR. THOMPSON: Yes, sir. Your  
18 Honor, we move to dismiss as to the offense  
19 of first degree murder, robbery with a  
20 firearm, and the felonious conspiracy on  
21 the grounds --

22 THE COURT: Those are  
23 essentially, and I don't mean to cut you  
24 off, but these are essentially preservation  
25 motions that can be made within ten days.

1 MR. THOMPSON: Yes, sir.

2 THE COURT: You're absolutely  
3 free to make those motions at this time if  
4 you wish to do so for the purposes of the  
5 record, or you're absolutely free to make  
6 those motions within the time period  
7 allowed by law. Whatever your preference  
8 is.

9 MR. THOMPSON: Prefer to make  
10 them now.

11 THE COURT: Yes, sir, go ahead.

12 MR. THOMPSON: As to the three  
13 offenses as just mentioned, the defendant  
14 would move to dismiss on the grounds of  
15 insufficiency of the evidence to sustain a  
16 conviction.

17 THE COURT: Motion is denied to  
18 which the defendant objects and excepts for  
19 the record.

20 MR. THOMPSON: And move to set  
21 aside the verdict on the grounds that it is  
22 contrary to law as to each of the three  
23 offenses.

24 THE COURT: Motion is denied to  
25 which the defendant objects and excepts for

1 the record.

2 MR. THOMPSON: And the defendant  
3 would move, as to each charge, for a new  
4 trial on the grounds of errors committed at  
5 trial and to be assigned -- and more  
6 specifically, the grounds assigned to our  
7 previous motion, for a mistrial.

8 THE COURT: All motions  
9 previously made are deemed made in a timely  
10 fashion. The motion now being made before  
11 the Court is denied, to which the defendant  
12 objects and excepts for the record.

13 Any other matters at this time,  
14 folks?

15 MR. THOMPSON: That's all.

16 THE COURT: Any further matters  
17 from the State?

18 MR. BRITT: No, sir.

19 THE BAILIFF: They want to know  
20 do we need to pass them the documents that  
21 they have in the jury room.

22 THE COURT: If you will  
23 reassemble all exhibits passed with the  
24 consent of all counsel to the jury. Those  
25 items remain in the custody of the Clerk.

1 And if you will bring them in to open court  
2 at this time.

3 As to -- folks, rather than -- this  
4 record is fairly voluminous. What I would  
5 propose to do, unless you folks want to be  
6 heard otherwise, is direct that one copy of  
7 the transcript of the Court's instructions  
8 be made a part of the record in this case.  
9 You folks have had the opportunity to  
10 examine all copies. There's no need in my  
11 view to submit all 12 copies unless you  
12 folks feel otherwise.

13 MR. BOWEN: No request for all of  
14 them.

15 THE COURT: Mr. Britt?

16 MR. BRITT: No, sir, that's fine.

17 THE COURT: Then if you will at  
18 random pick one of the 12 copies, mark that  
19 as a Court's exhibit, and -- we will need  
20 the following language. Mark it as a  
21 court's exhibit, copy of transcript of  
22 Court's instructions provided to the  
23 members of the jury with the consent of all  
24 counsel. One copy is placed into the  
25 record in lieu of all 12.

1                   MR. BOWEN: That would be  
2                   assuming, Your Honor, there's no writings  
3                   on any of them. That would change if --

4                   THE COURT: Ms. Gaines, if you'll  
5                   check that now to see if there is any  
6                   writing on any of them.

7                   (Clerk complies).

8                   THE COURT: Folks, rather than  
9                   put them through that onerous task, seven  
10                  thousand pages more or less, that this is  
11                  not going to hurt, put them all in the  
12                  record. That way there's no issue.

13                  Anything further by the State or  
14                  counsel for the defendant?

15                  MR. BRITT: No, sir, from the  
16                  State.

17                  THE COURT: Court directs that  
18                  all copies of the matters submitted to the  
19                  jury by way of the Court's instructions be  
20                  a part of the record in this case.

21                  If you'll recess us until 9:30 Monday  
22                  morning, sir.

23                  THE BAILIFF: All rise, please.



## 1 APPEARANCES OF COUNSEL:

2 On Behalf of the State of North Carolina:

3

4 LUTHER JOHNSON BRITT, III, Esq.  
5 District Attorney  
16-B Prosecutorial District  
Lumberton, North Carolina 28358

6

7 On Behalf of the Defendant:

8

9 ANGUS B. THOMPSON, Esq.  
Public Defender  
16-B Prosecutorial District  
Lumberton, North Carolina 28358

10

and

11

12 WOODBERRY A. BOWEN, Esq.  
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13

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14

15 (March 4, 1996. Proceedings in open court.)

16

17 (Whereupon an in camera proceeding ensued  
18 as follows.)

19

20 THE COURT: We're on the record.  
21 Present at this time at the in camera  
22 hearing, in-chambers, is the presiding  
23 Judge, the court reporter, counsel for the  
24 State, Johnson Britt, counsel for the  
25 defendant, Mr. Angus Thompson,  
Mr. Woodberry Bowen. The defendant is not

1 present but I'm going to have him brought  
2 in as soon as he's brought up. I need to  
3 tell Mr. Horne that.

4 This is the note, or one of the notes.  
5 The note just passed to Mr. Thompson is  
6 from Ms. Odum and reads as follows:

7 "Judge Weeks, I need to spek (sic) to  
8 you in chambers ASAP. It is verry (sic)  
9 important. Ellen L. Odum."

10 She needs to speak to us in chambers,  
11 it's very important.

12 Second note is from Mr. Kotai and  
13 reads as follows: "I have a scheduled  
14 appointment with the urologist Wednesday,  
15 March 6th." That's fine, we can  
16 accommodate that. Ms. Odum, I have no  
17 idea. Says she wants to speak to us in  
18 chambers. I think it's important to deal  
19 with that first.

20 It's open. Come on in. Present at  
21 this time is the defendant, Mr. Daniel  
22 Green -- Mr. Green, have a seat -- also  
23 known as U'Allah. I've indicated to  
24 Mr. Horne as soon as Mr. Green arrives,  
25 bring Ms. Odum in.



1 to speak to us about?

2 JUROR: My fiancée had gotten in  
3 an accident Friday. He's up there in Duke  
4 Hospital. I've been up there with him all  
5 weekend. And I have two kids, and both of  
6 them have doctors' appointments today. And  
7 he's been the one carrying for them and  
8 everything,. And by him being up there --

9 THE COURT: You've got no one to  
10 accommodate you in that respect. You need  
11 to take your children to the doctor today,  
12 that's the bottom line?

13 JUROR: Yes.

14 THE COURT: When are they?

15 JUROR: One is 11:00, the other  
16 one is at 3:15.

17 THE COURT: We've got a couple of  
18 options available to us, folks. One option  
19 is to go forward until about 10:30, let  
20 Ms. Odum attend to her -- where is your  
21 child's appointment at 11:00?

22 JUROR: Children's Clinic.

23 THE COURT: Here in Lumberton?

24 JUROR: Uh-huh.

25 THE COURT: Do you know how long

1           that might take? I know it's difficult  
2           when you're talking about going to the  
3           doctors.

4                         JUROR: No, because one day last  
5           week he had to go, some medicine had  
6           reacted on him, and he's been throwing up  
7           and --

8                         THE COURT: So medication is  
9           affecting him?

10                        JUROR: (Witness nods head  
11           affirmatively.)

12                        THE COURT: The other option,  
13           which is probably the more viable option,  
14           is to start tomorrow. Because I don't know  
15           how much we're going to be able to get done  
16           today. I would like to go forward today  
17           some --

18                        MR. THOMPSON: To be --

19                        THE COURT: Do you want to talk  
20           now?

21                        MR. THOMPSON: Well, no, but in  
22           light of what was said earlier about the  
23           stuff coming in at 10:30 and all, and  
24           Mr. Britt having time to look at it --

25                        MR. BRITT: Well, just for -- as

1 I said in court the other day, two  
2 additional witnesses, they are both from  
3 out of state and they flew in last night.  
4 They are scheduled to fly out later this  
5 afternoon. I don't anticipate my  
6 additional evidence being long.

7 THE COURT: Okay. Ms. Odum,,  
8 would it present -- I recognize that you've  
9 told us you've been up pretty much all  
10 weekend.

11 JUROR: About seven hours of  
12 sleep since I got up Friday morning.

13 THE COURT: Would it be  
14 appropriate for us to go forward with some  
15 of our evidence, allow you to make the  
16 first appointment, and then pretty much  
17 play it by ear as to whether or not we can  
18 go forward with additional evidence today?  
19 Would that cause a problem for you?

20 JUROR: (Shakes head negatively.)

21 THE COURT: We recognize that if  
22 you get caught up at the doctors, there is  
23 nothing that can be done about that.

24 JUROR: I don't know how he is  
25 going to be about that, because he's in the

1 day care, and they -- I had to find  
2 somebody to watch him because they weren't  
3 going to let him go back to the day care  
4 where he is.

5 THE COURT: You've got nobody to  
6 take care of him between the first  
7 appointment and the second appointment?

8 JUROR: Right.

9 THE COURT: Is it the same child  
10 that has the second appointment this  
11 afternoon or --

12 JUROR: No, there's two different  
13 ones.

14 THE COURT: Where is that child  
15 going to be while you're taking the first  
16 child to the first --

17 JUROR: My oldest one, he's in  
18 school. He's got to go today. He had to  
19 go last Monday for his hearing test and  
20 everything. He's got to have tubes put in  
21 his ears, and had to go for a checkup. So  
22 next scheduled appointment is to go have  
23 tubes put in his ears.

24 MR. THOMPSON: I just wanted to  
25 say this, I suspect we're going to have to

1           have a voir dire anyway --

2                   THE COURT:   Okay.

3                   MR. THOMPSON:  -- I mean, you  
4           know, this morning, which would be this  
5           morning.

6                   THE COURT:  Your folks' travel  
7           plans can be changed.

8                   MR. BRITT:  I think so.

9                   THE COURT:  Because those folks  
10          are scheduled to fly out this afternoon.

11                   MR. BRITT:  Right.

12                   THE COURT:  Now, it appears that  
13          we're going to have to deal with it  
14          tomorrow.

15                   MR. BRITT:  Uh-huh.

16                   JUROR:  Usually he takes care of  
17          this.  He's up there in Duke, and he's  
18          bleeding inside of his head and they don't  
19          know right now if they are going to have to  
20          do surgery on him now or what, and I got  
21          all that on my mind and this here and  
22          everything.

23                   THE COURT:  I certainly  
24          understand, we all do, and I don't mean to  
25          suggest otherwise.  We appreciate you

1           letting us know about that. I need to  
2           confer with the lawyers, Ms. Odum.  
3           Anything you want to ask?

4                     MR. BRITT: No, sir.

5                     THE COURT: Mr. Bowen?

6                     MR. BOWEN: No, sir.

7                     THE COURT: Mr. Thompson?

8                     MR. THOMPSON: No, sir.

9                     THE COURT: Again, thank you very  
10           much. We'll do the best we can to  
11           accommodate you. We'll get you to both of  
12           those appointments. If you'll step out.

13                     JUROR: Do I need to go back over  
14           here?

15                     THE COURT: You can go with the  
16           other members of the jury, ma'am.

17                     (Ms. Odum leaves chambers.)

18                     THE COURT: Anybody want to be  
19           heard?

20                     MR. BRITT: No, sir.

21                     THE COURT: You mentioned a voir  
22           dire. What would be the nature of the voir  
23           dire?

24                     MR. THOMPSON: I assume there's  
25           going to be some identification.

1 THE COURT: Well --

2 MR. THOMPSON: It won't take  
3 long.

4 THE COURT: Case law says that  
5 really it's a factual issue for the jury to  
6 decide in terms of whether or not they're  
7 willing to believe identification  
8 testimony. We'll go forward.

9 Folks, it appears based on what she  
10 said that, one, she's tired; two, she's  
11 concerned about her boyfriend and her  
12 children. But I think being tired  
13 contributes to that, or aggravates that  
14 situation. It doesn't appear she's going  
15 to be available today. State want to be  
16 heard further?

17 MR. BRITT: No, sir.

18 THE COURT: Mr. Bowen or  
19 Mr. Thompson?

20 MR. THOMPSON: (Shakes head  
21 negatively.)

22 THE COURT: What I propose is  
23 bring them in, let them know what the  
24 situation is, we can plan on starting the  
25 evidence tomorrow morning at 9:00. And I

1 apologize to your folks. We'll go forward  
2 with whatever we can go forward with today,  
3 start the evidentiary showing tomorrow, if  
4 that's agreeable with all counsel.

5 MR. BRITT: Fine.

6 THE COURT: Anything further?

7 MR. THOMPSON: No, sir.

8 THE COURT: All right.

9 MR. THOMPSON: Not at this time.

10 THE COURT: Okay. Let's go in  
11 court.

12 (End of in camera proceeding.)

13 THE COURT: Good morning, folks.

14 Let the record show that all counsel  
15 are present, the defendant is present in  
16 open court.

17 Mr. Horne, for the purpose of the  
18 record, do we have all members of the jury  
19 secured in the jury room?

20 THE BAILIFF: Yes, sir, we do.

21 THE COURT: Before we bring the  
22 jury in, two matters for the record.

23 The first deals with Mr. Kotai.

24 Mr. Kotai has written a note, passed to Mr.  
25 Horne, and then passed to the Court that

1 reads as follows, "I have a scheduled  
2 appointment with a healthcare provider on  
3 Wednesday March 6th at 4:00."

4 It's my intent to accommodate  
5 Mr. Kotai. I will need to make further  
6 inquiry of him as to when he needs to leave  
7 in order to make that scheduled appointment  
8 which may affect our schedule for tomorrow.

9 Second note, as all counsel are aware,  
10 was written by Ms. Odum. She has two  
11 children who have medical appointments  
12 today, one at 11:00 and one at  
13 approximately 3:00. After conferring with  
14 all counsel and the defendant during an  
15 in-chambers, incamera hearing, it's the  
16 Court's intent to release Ms. Odum for the  
17 purposes of meeting those medical  
18 appointments. That will necessarily mean  
19 that we will not be able to go forward with  
20 any evidentiary showing today.

21 I apologize to all counsel for that,  
22 but given our situation, I don't see where  
23 we have any other recourse. Counsel for  
24 the State want to be heard as to that?

25 MR. BRITT: No, sir.

1                   THE COURT: Counsel for defendant  
2                   want to be heard as to that?

3                   MR. THOMPSON: No, sir.

4                   MR. BOWEN: No, sir.

5                   THE COURT: And my intent is to  
6                   bring the jury in, inquire further of  
7                   Mr. Kotai as to when he needs to leave to  
8                   make his appointment, inform them that  
9                   simply there is a member of the jury who  
10                  has medical appointments that he or she  
11                  needs to meet today; release them until  
12                  9:00 tomorrow morning. We're going to  
13                  start the evidentiary showing at 9:00 a.m.  
14                  tomorrow. Is that agreeable with all  
15                  counsel?

16                  MR. BRITT: Yes, sir.

17                  THE COURT: And that, of course,  
18                  depends on Mr. Kotai's schedule. If his  
19                  appointment is local, I anticipate that we  
20                  will go until perhaps 2:00 tomorrow,  
21                  straight through, with no lunch break. If  
22                  that will accommodate the State's  
23                  witnesses.

24                  MR. BRITT: We're okay.

25                  THE COURT: 2:00 or 2:30.

1 MR. BRITT: We're okay.

2 THE COURT: My intent, my  
3 understanding, the State intends to present  
4 minimal evidence at the sentencing  
5 hearing.

6 MR. BRITT: That's correct.

7 THE COURT: Bring the jury in,  
8 please. Folks, I'm also going to inform  
9 them procedurally as to what they might  
10 expect during this phase of the proceedings.

11 (Jury in at 9:45 a.m.)

12 THE COURT: Good morning, ladies  
13 and gentlemen.

14 Before we do anything else, Mr. Kotai,  
15 I understand you've got a medical  
16 appointment at 4:00, that's on Wednesday, I  
17 apologize, March 6th. Is that local, sir?

18 JUROR: (Nods head  
19 affirmatively.)

20 THE COURT: When would you need  
21 to leave in order to make that  
22 appointment?

23 THE COURT: 3:45.

24 THE COURT: Will 3:30 accommodate  
25 you? Make sure you get there.

1 JUROR: Yes.

2 THE COURT: We'll accommodate you  
3 in that respect. Let me also inform all  
4 other members of the panel that we have  
5 another member of the panel who has medical  
6 appointments scheduled for today at 11:00  
7 and at 3:00 or thereabouts. Because of  
8 that situation, it appears that we will not  
9 be in a position to go forward with any  
10 evidentiary showing today.

11 However, let me give -- I'm going to  
12 release you folks in a few moments. Let me  
13 also inform you that Ms. Gaines says your  
14 checks will be ready in approximately five  
15 or ten minutes, so I'm going to ask that  
16 you remain long enough for her to get the  
17 checks up and distribute them to you, then  
18 I will release you for today.

19 Folks, the defendant in this case,  
20 having been found guilty by the jury of  
21 murder, the parties in this case are  
22 entitled to rely on evidence that was  
23 presented during the first phase of the  
24 proceedings, and the parties have the  
25 right, in addition, to offer other evidence

1           during the second phase of this proceeding  
2           if they wish to do so.

3           Now, as I indicated to you last week,  
4           you may hear additional evidence from  
5           either or both State of North Carolina  
6           and/or the defendant. You will hear  
7           further arguments from counsel on the issue  
8           of your recommendation as to punishment,  
9           and you will receive additional  
10          instructions or further instructions from  
11          the Court on the additional -- on the  
12          issue, pardon me, of your recommendation as  
13          to punishment.

14          Now, during this phase of the process,  
15          again, it is absolutely imperative that you  
16          folks remain open-minded about the issue of  
17          your recommendation as to punishment until  
18          you've heard any additional evidence that  
19          might be presented, until you've heard the  
20          arguments of counsel, and until you've  
21          received further instructions on the law  
22          from the Court on the issue of punishment.

23          Don't discuss this matter among  
24          yourselves, don't discuss it with anyone  
25          else, including members of your own

1 families, don't allow anyone to say  
2 anything to you or in your presence about  
3 this case. If anyone does communicate with  
4 you, attempts to do so, or says anything  
5 about this case in your presence, it  
6 remains your duty to inform the Court of  
7 that immediately through one of the  
8 bailiffs assigned to the courtroom.

9 Don't form or express any opinions at  
10 all on the issue of recommendation as to  
11 punishment, don't allow yourselves to be  
12 exposed to any media accounts which may  
13 exist in connection with this matter,  
14 regardless of what form those accounts  
15 might take. Don't conduct any independent  
16 inquiry or investigation or research of any  
17 kind, and don't have any contact or  
18 communication with anyone who's involved in  
19 the case throughout your involvement in  
20 this matter.

21 Have we got the checks up here now,  
22 ma'am?

23 THE CLERK: Yes.

24 THE COURT: Folks I'm going to  
25 ask -- well, let me back up. It's my

1           intent at this time to begin the  
2           presentation of evidence in this matter.  
3           There are some matters of law that I need  
4           to address with counsel today, and we can  
5           take care of that. But it's my intent to  
6           go forth with any evidentiary showing in  
7           this matter beginning at 9:00 a.m. tomorrow  
8           as opposed to 9:30. Would that create any  
9           problem for anyone? If so, please let me  
10          know.

11                       Folks, we'll start at 9:00 tomorrow  
12          morning. Please report no later than 9:00  
13          tomorrow morning to the jury room and we  
14          anticipate we will be in a position to go  
15          forward immediately. If you'll step down  
16          at this time, receive your checks. Once  
17          you folks have received your checks, you're  
18          free to go. Anything further from either  
19          counsel?

20                       MR. BRITT: No, sir.

21                       THE COURT: Mr. Bowen,  
22          Mr. Thompson? Anything further from either  
23          counsel.

24                       MR. THOMPSON: No, sir.

25                       THE COURT: If you folks will

1 step down, once you receive your checks  
2 you're free to go.

3 (Jury steps down to receive checks,  
4 then exits the courtroom at 9:50 a.m.)

5 THE COURT: Let the record  
6 reflect the following is being heard in the  
7 absence of the jury. Counsel for defendant  
8 indicated during the in camera in-chambers  
9 proceeding that counsel would be requesting  
10 a voir dire as to any identification  
11 matters regarding any evidence that might  
12 be offered by the State during the  
13 sentencing phase of this process. Is that  
14 accurate, sir?

15 MR. THOMPSON: Yes, sir.

16 THE COURT: You folks prepared to  
17 go forward with any voir dire hearing at  
18 this time?

19 MR. THOMPSON: Yes, sir. And  
20 Your Honor --

21 THE COURT: Yes, sir.

22 MR. THOMPSON: And there is a --  
23 Your Honor, a matter that we need to,  
24 before court adjourns, needs to be heard in  
25 camera with the defendant and the State

1 present also.

2 THE COURT: Okay. Is that  
3 something you need to attend to now before  
4 we go forward?

5 MR. THOMPSON: We can deal with  
6 it later.

7 THE COURT: State ready to go  
8 forward with any voir dire showing?

9 MR. BRITT: Yes, sir. Let me  
10 bring something to the Court's attention  
11 that I just recalled. On Friday, one of my  
12 assistants walked into the jury room and  
13 there was a notebook on the table. It  
14 apparently was a notebook of the -- one of  
15 the juror's notes, brought that to my  
16 attention. One of my other assistants was  
17 in contact with the Clerk's office and  
18 Ms. Cocola, who is -- I think she's a  
19 deputy clerk or assistant clerk, came  
20 upstairs and removed that notebook from the  
21 jury room --

22 THE COURT: Mr. Horne mentioned  
23 this morning that there was a member of the  
24 jury that was looking for a notebook.

25 MR. BRITT: It was placed in a

1 sealed envelope.

2 THE COURT: We had that present.  
3 I wish I had known that.

4 MR. BRITT: I apologize.

5 THE COURT: Have all the jurors  
6 left --

7 THE BAILIFF: Let me see, she may  
8 be walking through.

9 THE COURT: Okay.  
10 There she is.

11 MR. BRITT: Just as a matter of  
12 caution, we removed it from the jury room,  
13 and no one read --

14 THE COURT: We'll put that in the  
15 record in just a moment.

16 Ms. Haley, if you'll come up. We have  
17 just unsealed an envelope containing your  
18 notebook which was apparently left in the  
19 jury room. That's okay.

20 JUROR: Thanks.

21 THE COURT: Yes, ma'am.

22 Ms. Haley has now left. In the  
23 absence of all members of the jury, if  
24 you'll state the name of the Assistant  
25 District Attorney who went into the jury

1 room and the purpose for which he or she --  
2 I suspect it has something to do with  
3 vending machines?

4 MR. BRITT: No, sir, it was Henry  
5 Ward Oxendine, for purposes of using the  
6 restroom facilities, and it was Stan Todd  
7 who contacted the offices.

8 THE COURT: All right. They did  
9 the appropriate thing.

10 Ready to go forward with any  
11 evidentiary showing? Specifically on what  
12 evidentiary matter is the defendant  
13 requesting a voir dire?

14 MR. THOMPSON: On the  
15 identification issue, that's all.

16 THE COURT: State ready to go  
17 forward on any voir dire?

18 MR. BRITT: Yes, sir. At this  
19 time we would call Joseph Tedeschi.

20 THE COURT: For the record,  
21 ma'am, if you'll mark these notes as  
22 whatever number Court's exhibit is  
23 applicable.

24 Mr. Tedeschi, if you'll come up to the  
25 witness stand, please place your left hand

1 on the Bible, unless you prefer being  
2 affirmed or sworn?

3 THE WITNESS: Sworn.

4 THE COURT: If you'll place your  
5 left hand on the Bible and raise your  
6 right, please.

7 JOSEPH TEDESCHI,  
8 being first duly sworn was examined and testified as  
9 follows:

10 DIRECT EXAMINATION

11 THE COURT: If you'll take the  
12 witness stand, please, sir. And if you'll  
13 state your full name for the record.

14 THE WITNESS: Joseph Tedeschi.

15 THE COURT: For the benefit of  
16 the court reporter, will you spell your  
17 last name?

18 THE WITNESS: T E D E S C H I.

19 THE COURT: Thank you, sir.

20 Mr. Britt.

21 BY MR. BRITT:

22 Q Mr. Tedeschi, where do you live, sir?

23 A West Warwick, Rhode Island.

24 Q How old are you?

25 A 70.

1 Q Are you employed or retired?

2 A I'm retired.

3 Q What type of work did you do?

4 A Punch operator.

5 Q Are you married or single? Married?

6 A Yes, sir.

7 Q Your wife's name?

8 A Dorothy.

9 Q In July of 1993, Mr. Tedeschi, did you have  
10 an occasion to travel through Robeson County, North  
11 Carolina?

12 A Yes, sir.

13 Q What date in July did you travel through  
14 Robeson County, North Carolina?

15 A We landed at the 3rd of July, '93.

16 Q And where did you stop on the evening of  
17 July the 3rd, 1993?

18 A Family Inn's in Rowland.

19 Q Who was traveling with you?

20 A My wife, my brother-in-law, and my  
21 sister-in-law.

22 Q By what means were you traveling?

23 A What was that?

24 Q How were you traveling?

25 A By car.

1 Q Where was your destination?

2 A Florida, Lakeland, Florida.

3 Q And when you stopped at the Family Inn in  
4 Rowland, North Carolina, did you check into one or  
5 more rooms there?

6 A Yes.

7 Q How many rooms did you check into?

8 A One.

9 Q And after checking into the Family Inns  
10 Motel, did you, your wife, your brother and  
11 sister-in-law stay overnight?

12 A Yes, sir.

13 Q Until the morning of July 4th, 1993?

14 A Yes, sir.

15 Q Approximately what time -- what if anything  
16 occurred during the early morning hours of July the  
17 4th, 1993?

18 A We started to load the car about 4:30. And  
19 my brother-in-law and I came down first, went up to  
20 make another trip down. My wife and my sister-in-law  
21 came with us. At that time we were approached by two  
22 persons.

23 Q For the record, what are your brother and  
24 sister-in-law's names?

25 A Ernest Rezendes and Loretta Rezendes.

1 Q And had you intended, when you went to bed  
2 the night before, to get up and leave at 4:30?

3 A No, we usually leave later than that.

4 Q Why were you preparing to leave at 4:30 in  
5 the morning?

6 A My brother was restless because he never  
7 been to Florida, and wanted to get on the road a  
8 little earlier than usual.

9 Q What type of automobile were you traveling  
10 in?

11 A '90 Oldsmobile.

12 Q And you said that you and your  
13 brother-in-law went to the car to place items in it?

14 A Put some of the luggage in the trunk.

15 Q Where were your wife and sister-in-law at  
16 that time?

17 A Still in the room.

18 Q How many trips did you make from the room  
19 to the car?

20 A Two.

21 Q And at what point did your wife and  
22 sister-in-law join you in the parking lot at the car?

23 A Second trip down.

24 Q What if anything occurred after your wife  
25 and sister-in-law arrived?

1           A       We were approached by two gentlemen, one  
2       wielding a gun.

3           Q       Was anything said to you at that time?

4           A       Told us to be quiet and give us their  
5       money, or money.

6           Q       Who if anyone spoke to you?

7           A       What was that, sir?

8           Q       Who spoke to you?

9           A       Demery.

10          Q       Can you describe for us the individuals  
11       that approached you in the parking lot?

12          A       One was a light complected, and the other  
13       was black. And they were about five-four, maybe a  
14       140, 45, 50 pounds, somewhere around there.

15          Q       Do you recall how they were dressed?

16          A       One had a hood on, like a sweat hood, and  
17       the other one had a baseball cap.

18          Q       Do you recall which one, which of the two  
19       was wearing a hooded sweat shirt?

20          A       Yes, Green.

21          Q       And do you recall which one was wearing the  
22       baseball cap?

23          A       Yes. Well, like a baseball cap.

24          Q       Can you describe for us the gun?

25          A       It was a silver plated, more or less like a

1 46 -- a .45.

2 Q And did the light skinned or the darker  
3 skinned man have possession of the gun?

4 A The light one.

5 Q And did either of them say anything to you  
6 or what the -- or did they ask you for anything?

7 A He wanted our money.

8 Q Who if anyone asked you for your money?

9 A Demery did.

10 Q Where were you standing in relationship to  
11 the car when you were first approached?

12 A I was on the driver's side because I was  
13 the one that was going to be driving.

14 Q When you were approached by these  
15 individuals, what if anything did you do?

16 A I gave them some of the money that he  
17 wanted.

18 Q And do you recall approximately how much  
19 money you gave them?

20 A Probably about 30, 40 dollars that I had.

21 Q Did you have any additional money on you?

22 A Yes.

23 Q At any time did you give either of these  
24 individuals the additional money that you had?

25 A Did I what, sir?

1           Q       Did you give them any of the additional  
2 money that you had?

3           A       When he came back, he came back the second  
4 time, I gave him others that I had because I usually  
5 carried some stacks of ones and whatever.

6           Q       When you say he came back for the second  
7 time, was one on the side of the car where you were?

8           A       He had gone around to the other side and  
9 then he came back. I guess he was getting some stuff  
10 out of the trunk.

11          Q       Which of the individuals was on the side of  
12 the car where you were?

13          A       What was that?

14          Q       Which of the individuals was on the side of  
15 the car where you were?

16          A       Demery.

17          Q       And were there any lights there in the  
18 parking lot?

19          A       Yes, the lights were all on back there.

20          Q       Were you wearing your glasses at that time?

21          A       Yes, I wear glasses all the time.

22          Q       Was there anything to obstruct your view of  
23 either of the individuals that approached you in the  
24 parking lot?

25          A       No.

1 Q Did anyone else give these individuals any  
2 items?

3 A Took my sister-in-law's pocketbook and went  
4 through it to see what was, any money or whatever, I  
5 imagine.

6 Q When you say he took your sister-in-law's  
7 pocketbook, which of the two individuals are you  
8 referring to?

9 A Demery.

10 Q Did you and your wife own a video camera?

11 A Yes.

12 Q And was that video camera taken, camcorder,  
13 taken during this robbery?

14 A Yes, it was.

15 Q From whom was it taken?

16 A It was on the front seat of the car.

17 Q Was there any other money taken other than  
18 the 30 or 40 dollars that you had given him?

19 A From myself?

20 Q Yes.

21 A No.

22 Q Did you see anyone else give them money?

23 A No, didn't see them, because they were on  
24 the other side of the car from my wife and my  
25 brother-in-law.

1           Q       And after the money and other items were  
2 taken, what did you see these individuals do?

3           A       Took some other stuff out of the trunk,  
4 camera case, and battery chargers. They go through  
5 the camera and some batteries, some film, and I had a  
6 bag with some maps and whatever, they took that also.

7           Q       Now, prior to these individuals approaching  
8 you, did you see them as they approached?

9           A       No.

10          Q       And after your property had been taken,  
11 what did you see the two of them do?

12          A       They took it and ran off to the other end  
13 of the building.

14          Q       And after they ran off to the other end of  
15 the building, what did you do?

16          A       We got in our car, going around, get in the  
17 front of the building.

18          Q       Where did you go?

19          A       What was that?

20          Q       Where did you go?

21          A       We went to the office, the front office.

22          Q       And when you went to the office, was there  
23 anyone there?

24          A       It was only a dim light on there, so we  
25 went to the Day's Inn next door, because we figured

1 there was somebody there, and they made a phone call  
2 to the police department.

3 Q And after the phone call was made to the  
4 police department, did the police come to that  
5 location?

6 A Yes.

7 Q And did you talk with the police?

8 A Yes.

9 Q Did you give the police a description of  
10 the individuals that had --

11 A Yes.

12 Q -- confronted you in the parking lot?

13 A What was that, sir?

14 Q Did you give the police a description of  
15 the individuals that had confronted you in the  
16 parking lot?

17 A Yes.

18 Q Mr. Tedeschi, after you had spoken with the  
19 police, did you continue with your trip?

20 A Yes, sir.

21 Q After returning from your trip in August of  
22 1993, did you have an occasion to contact the police  
23 about the robbery --

24 A Yes, sir.

25 Q -- that had occurred on July the 4th, 1993?

1 A Yes, sir.

2 Q Why did you contact the police in August?

3 A We had seen the TV was on with the two  
4 gentlemen that had shot Michael Jordan's father.

5 Q And the photographs of the individuals that  
6 you saw on television, did you recognize those  
7 individuals?

8 A Yes, sir.

9 THE COURT: Mr. Britt, if you'll  
10 back up -- I apologize for the interruption  
11 -- and elicit any description that may  
12 have been given to the police at the time  
13 in question.

14 MR. BRITT: Yes, sir, I  
15 apologize.

16 BY MR. BRITT:

17 Q What if any description did you give to the  
18 police on the morning of July the 4th, 1993?

19 A A description of the two?

20 Q Yes.

21 A Yes, that they were like 145, weight, about  
22 five-four, five, somewhere around that, and one was  
23 light complected, and that's about it, I guess.

24 THE COURT: Was any clothing  
25 described by you at the time that you spoke

1 to the police?

2 THE WITNESS: Yes, sir.

3 THE COURT: What description did  
4 you give of the clothing?

5 THE WITNESS: He had a hood on,  
6 other one had a baseball cap with a jacket,  
7 and I think he had white shorts.

8 THE COURT: Okay.

9 BY MR. BRITT:

10 Q You said one was light complected?

11 A Yes, sir.

12 Q Did you give a description of the other  
13 individual's complexion?

14 A Yes.

15 Q And what description?

16 A He was black and he had a hood on, and  
17 there was like a sweat shirt.

18 Q Now, in August of 1993, you contacted the  
19 police based upon something you had viewed on  
20 television?

21 A Right, yes, sir.

22 Q And when you contacted the police in August  
23 of 1993, what did you tell them?

24 A That they were the two that held and robbed  
25 us.

1 Q And after you contacted the police and told  
2 them that you had seen the two individuals that had  
3 robbed you on television, were you then contacted by  
4 any law enforcement agency?

5 A The FBI came to my house.

6 Q And when the -- how many times did the FBI  
7 come to see you?

8 A I believe it was two times.

9 Q The first time that the FBI came to see  
10 you, were you shown any photographs?

11 A Was I what, sir?

12 Q Were you shown any types of photographs or  
13 photographic lineup?

14 A Yes, they did.

15 Q And when you were shown this photographic  
16 lineup, were you given any instructions as to -- by  
17 the FBI agents?

18 A Was I given instructions?

19 Q Yes, sir.

20 A To pick them out, if I knew who was in the  
21 pictures.

22 MR. BRITT: May I approach?

23 THE COURT: Yes, sir.

24 MR. BRITT: Mr. Thompson,

25 Mr. Bowen, these are State's Exhibit

1           Numbers 68 and 69.

2       BY MR. BRITT:

3           Q       Mr. Tedeschi, let me show you what's  
4       previously been marked and introduced as State's  
5       Exhibit Number 68, ask you to look at this, and  
6       answer me if you have ever seen this before?

7           A       Yes, sir.

8           Q       When have you seen this previously?

9           A       The FBI brought it to my hone.

10          Q       Is it in the same condition today as it was  
11       when the FBI brought it to your home?

12          A       Yes.

13          Q       I'll show you what has been marked as  
14       State's Exhibit 59, tell me if you have ever seen it  
15       before?

16          A       Yes, sir.

17          Q       When did you see it previously?

18          A       When did I see it?

19          Q       Yes, sir.

20          A       This --

21          Q       State's Exhibit 68 and 69, were they both  
22       brought to you by the FBI?

23          A       Yes, sir.

24          Q       Are they in the same condition today?

25          A       Yes, I'll say they were.

1           Q       And when the FBI brought State's Exhibit 68  
2           and 69 to you and showed them to you, did you take an  
3           opportunity to look at the photographs contained in  
4           State's Exhibit 68 and 69?

5           A       Yes, sir.

6           Q       And based upon your remembrance or your  
7           memory of the robbery of August the 4th -- excuse me,  
8           July the 4th, 1993, were you able to identify anyone  
9           in either State's Exhibit 68 or State's Exhibit  
10          Number 69?

11          A       Yes, sir.

12          Q       Who in State's Exhibit Number 68 did you  
13          point out to the FBI agents?

14          A       Number three.

15          Q       Number three?

16          A       Uh-huh.

17          Q       In State's Exhibit Number 69, were you able  
18          to point out anyone to the FBI agents?

19          A       Number eight.

20          Q       For the record, State's Exhibit Number 68,  
21          the individual pictured in slot number three is the  
22          photograph of the defendant, Daniel Green.

23                   THE COURT:   Yes, sir.

24                   MR. BRITT:   For the record,

25                   State's Exhibit Number 69, the photograph

1 in slot number eight is known photograph of  
2 Larry Martin Demery.

3 THE COURT: Yes, sir.

4 Feel free to help yourself, sir.

5 THE WITNESS: Yes, sir

6 BY MR. BRITT:

7 Q Mr. Tedeschi, at the time you looked at the  
8 photographic lineups, was anyone other than the FBI  
9 present?

10 A There was two FBI's that came.

11 Q Was your wife present?

12 A Yes.

13 Q And the identification that you made of the  
14 two individuals pictured in State's Exhibit 68 and  
15 State's Exhibit 69, was that based upon your memory  
16 of the events as they occurred on July the 4th, 1993?

17 A Yes, sir.

18 Q Mr. Tedeschi, are you able to identify  
19 anyone in court that robbed you on July 4th, 1993?

20 A Yes, sir.

21 Q And can you identify that person for us?

22 A Yes, sir, it would be that first gentleman  
23 at the table there with the glasses on.

24 MR. BRITT: If the record will  
25 reflect he's referring to the defendant.

1 THE COURT: You indicated the  
2 first gentleman at the table with the  
3 grasses. Which table, Mr. Tedeschi?

4 THE WITNESS: This one right  
5 there, sir.

6 THE COURT: I'll ask you to  
7 describe the clothing that individual is  
8 wearing.

9 THE WITNESS: Black.

10 THE COURT: Yes, sir. The record  
11 may so show.

12 BY MR. BRITT:

13 Q Mr. Tedeschi, was any of the property that  
14 was taken from you on July the 4th, 1993 --

15 A What was it what, sir?

16 Q Was any of the property that was taken from  
17 you on July the 4th, 1993 ever returned to you?

18 A No, sir.

19 MR. BRITT: I don't have any  
20 other questions.

21 THE WITNESS: No, that --

22 THE COURT: Mr. Thompson or Mr.  
23 Bowen.

24 MR. THOMPSON: Good morning,  
25 Mr. Tedeschi.

## 1 CROSS-EXAMINATION

2 BY MR. THOMPSON:

3 Q Mr. Tedeschi, do you have a problem hearing  
4 me?5 A A little bit, yes. I was just going to  
6 tell you that. I'm a little hard of hearing.

7 Q Do you wear a hearing aid?

8 A No.

9 Q Or a device?

10 A No.

11 Q Mr. Tedeschi, how much did you weigh back  
12 on July the 4th of 1990 --

13 A How much did I weigh, sir?

14 Q Yes, sir.

15 A About the same as I am right now, probably  
16 around 135, 37, 38 or so.

17 Q About how tall are you?

18 A About five-five, five-six.

19 Q And Mr. Tedeschi, the glasses that you're  
20 wearing now, are those the same glasses that you were  
21 wearing back on July the 4th of 1993?

22 A Yes, sir.

23 Q Mr. Tedeschi, when you made an  
24 identification as to -- or described the individuals  
25 who you say robbed you back on July the 4th of 1993,

1 do you know which law enforcement people you were  
2 talking to --

3 A The chief was the one that -- Bradshaw. I  
4 believe his name was.

5 Q Now, Mr. Tedeschi, with regard to the  
6 identification that you made, you indicated that  
7 after the James Jordan matter hit the airways or  
8 media, you saw the individuals on TV who you  
9 identified as robbing you, is that correct?

10 A Yes, sir.

11 Q And how many times had you watched the  
12 television media before giving, before contacting the  
13 police with regard to the individuals?

14 A That was, there was the one time.

15 Q And who were you with when you --

16 A My wife and I and my daughter.

17 Q And did you see both Mr. Demery and  
18 Mr. Green on the television?

19 A Yes, sir.

20 Q Was -- was it a news account?

21 A Yes, sir.

22 Q Did you, prior to seeing that news account,  
23 have any conversation with anybody?

24 A No.

25 Q Concerning any of the individuals who

1 robbed you back on July the 4th of 1993?

2 A No, sir.

3 Q How tall is your wife, Mr. Tedeschi?

4 A About five-four.

5 Q And both the -- do you recall earlier  
6 describing individuals who robbed you as being black  
7 males, one being a light skinned black male, and a  
8 dark skinned black male?

9 A Yes, sir.

10 Q Now, you were on the driver's side of the  
11 car when you were approached?

12 A Yes, sir.

13 Q And was it the light skinned male who held  
14 the gun on you?

15 A Yes, it was.

16 Q Who else was on your side of the car?

17 A My sister-in-law Loretta Rezendes.

18 Q And how long did the light skinned male  
19 hold the gun on you there while you were on the  
20 driver's side of the car?

21 A Probably about five minutes or so.

22 Q And where was the dark skinned male?

23 A On the other side of the car where my  
24 brother-in-law and wife was at.

25 THE COURT: Mr. Thompson, if

1           you'll bear with me. At the time you  
2           indicated in your testimony, sir, the light  
3           skinned male approached you, how far away  
4           was he from you.

5                         THE WITNESS: When he came with  
6           the gun?

7                         THE COURT: Yes, sir.

8                         THE WITNESS: When I saw him?

9                         THE COURT: Yes, sir.

10                        THE WITNESS: Probably 15, 20,  
11           feet, somewhere in there.

12                        THE COURT: Did he ever get any  
13           closer than that?

14                        THE WITNESS: Yes, it he was right  
15           up close.

16                        THE COURT: At the point when he  
17           was closest to you?

18                        THE WITNESS: I gave him my money  
19           when he was right to me.

20                        THE COURT: Couple of feet or  
21           so?

22                        THE WITNESS: Say 15 or 20 feet  
23           when he first approached me.

24                        THE COURT: Yes, sir, 15 or 20  
25           feet. What about at the point when he was

1           closest to you?

2                       THE WITNESS: Probably a couple of  
3           feet maybe.

4                       THE COURT: The other individual,  
5           the one you've described as the dark  
6           skinned person, what was the distance  
7           between you and him at the point he was  
8           closest to you?

9                       THE WITNESS: Yeah, the other side  
10          of the car, actually the whole distance of  
11          the car.

12                      THE COURT: Approximately how  
13          many, in feet or inches?

14                      THE WITNESS: Probably eight feet  
15          maybe.

16                      THE COURT: Mr. Thompson.

17   BY MR. THOMPSON:

18           Q        Meaning on the other side of the car, eight  
19          feet from you?

20           A        Yes, sir from the driver's side to --

21           Q        Yes, sir. And the light skinned male, do  
22          you recall telling an FBI Agent Griffiths in this  
23          case early on during the interview that the white  
24          skinned male seemed to be gritting his teeth?

25           A        The light skinned one?

1 Q Yes, sir?

2 A Yes, sir.

3 Q It was the light skinned male who demanded  
4 the money from you?

5 A Yes, sir.

6 Q It was the light skinned male who held the  
7 gun?

8 A Yes, sir.

9 Q How did he hold the gun?

10 A Had -- in his right hand this way.

11 Q In his right hand?

12 A Yes, sir.

13 Q And what was he doing with his other hand?

14 A He was telling us to keep quiet, not to  
15 make any noise.

16 Q Do you recall the light-skinned male saying  
17 anything to your sister-in-law?

18 A That he wanted what was in the pocketbook,  
19 grabbed her pocketbook and went through it.

20 Q You don't recall any specific --

21 A Not really, no.

22 Q -- thing that he said?

23 A No, outside of saying that he wanted their  
24 pocketbook.

25 Q Do you recall telling Agent Griffin that

1 the light skinned male seemed -- strike that.

2 Now, how many -- Mr. Tedeschi, have you  
3 been following the proceedings in this case since the  
4 beginning of this trial, sir, on television media?

5 A We don't get that much news back home from  
6 here. Maybe like a special on one of the channels,  
7 but there's nothing really on what's going on.

8 Q Have you read about it in the print media?

9 A We don't get that much media on it either.

10 Q All right. But the time that you say you  
11 did hear about it or read about it, when was that?

12 A When we read about it?

13 Q Yes. Concerning these proceedings, within  
14 the last three months or so?

15 A Probably a month ago, maybe.

16 Q About how many accounts, Mr. Tedeschi,  
17 would you say that you have read about Mr. Green or  
18 Mr. Demery since August of 1993?

19 A How many accounts?

20 Q Yes.

21 A I don't understand that.

22 Q How many news stories have you actually  
23 read concerning Mr. Demery or Mr. Green since August  
24 of 1993?

25 A I don't believe -- I read one, maybe one,

1 but -- not any more than that.

2 Q Then how many electronic media or  
3 television accounts have you seen since August of  
4 1993 concerning Mr. Demery or Mr. Green?

5 A Probably a couple of times, three times.  
6 That usually comes on late at night or the channel  
7 that it comes on.

8 Q And with regard to radio, do you listen to  
9 radio?

10 A Not too much, no.

11 Q Have you heard any radio accounts since  
12 August of 1993 concerning either Mr. Green or  
13 Mr. Demery?

14 A No, sir.

15 Q Do you recall telling Mr. Griffin,  
16 Mr. Tedeschi, that you did not get a very good look  
17 at the dark skinned male because he was wearing a  
18 hood?

19 A Because of what?

20 Q Do you recall telling Mr. Griffin, the FBI  
21 agent, during an earlier interview that you did not  
22 get a very good look at the dark skinned male because  
23 he was wearing a hood?

24 A He had a hood on, right.

25 Q And do you recall telling him that you did

1 not get a very good look at the dark skinned male?

2 A No, I did not say that.

3 Q Now, Mr. Tedeschi, have you seen -- at the  
4 time you were interviewed by the FBI agent, was a  
5 tape recording made of that interview?

6 A No.

7 Q That you know of?

8 A No, sir.

9 Q Was the agent writing down things as you  
10 told them about this incident?

11 A Yes.

12 Q Have you seen a copy of the statement that  
13 you gave to the FBI agent?

14 A The one that I made to him?

15 Q Yes, sir.

16 A Yes, sir.

17 Q When did you see a copy of it?

18 A I believe I -- I can't recall the date of  
19 it.

20 Q Mr. Tedeschi, have you seen a copy of any  
21 statement other than the -- well, let me strike that.

22 The date that you saw the copy of the  
23 statement that you gave to the FBI agent, was it this  
24 year or last year?

25 A Talking about the Rhode Island FBI or from

1 here? I gave statement to FBI in Rhode Island.

2 Q And then you gave a statement to SBI from  
3 North Carolina?

4 A Yes, sir.

5 Q An that would be these two gentlemen here?

6 A Yes, sir.

7 Q Now, the statement that I'm talking about  
8 is a statement that you gave to the FBI back on  
9 August the -- of 1993?

10 A The Rhode Island FBI you're talking about,  
11 that's the first statement?

12 Q Yes, sir.

13 THE COURT: We've got, I think,  
14 some confusion here. You gave a statement  
15 to Federal Bureau of Investigation agents.

16 THE WITNESS: Yes, sir, in Rhode  
17 Island.

18 THE COURT: I understand you  
19 also, based on your response to  
20 Mr. Thompson's questions, you gave a  
21 statement to State Bureau in North  
22 Carolina?

23 THE WITNESS: Yes, sir.

24 THE COURT: These two gentlemen  
25 right here?

1 THE WITNESS: Yes, sir.

2 THE COURT: Mr. Thompson.

3 BY MR. THOMPSON:

4 Q And I'm talking about the statement that  
5 you gave to the Federal Bureau of Investigation  
6 agent, did you ever see a copy of that statement?

7 A Yes, sir.

8 Q And when did you see a copy of that  
9 statement?

10 A They came and gave me one, I don't remember  
11 how -- a while after made the statements.

12 Q Which year was it?

13 A 1993.

14 Q 1993?

15 A Yes, sir.

16 Q About how many -- was it -- about how many  
17 weeks or months was it after the initial interview?

18 A Within a matter of week, maybe or two.

19 Q And did you have an opportunity to read  
20 that statement?

21 A Yes, sir.

22 Q When he gave it to you?

23 A Yes, sir.

24 Q Did you make any corrections?

25 A No, I don't think so.

1 MR. THOMPSON: May I approach,  
2 Your Honor?

3 THE COURT: Yes, sir.

4 (Defense Exhibit 45 was  
5 marked for identification.)

6 BY MR. THOMPSON:

7 Q I hand you what's been previously marked  
8 Defendant's Exhibit Number 45. Would you read  
9 that -- which is a -- it's the statement, purported  
10 statement that you gave to FBI agent back in August  
11 of 1993?

12 A Yes, sir.

13 Q Would you look at Defendant's Exhibit  
14 Number 45 and tell me if that is the statement that  
15 was given to you by the FBI after you were  
16 interviewed.

17 (Witness reviews document.)

18 THE COURT: Mr. Thompson.

19 MR. THOMPSON: I'm sorry.

20 BY MR. THOMPSON:

21 Q Yes, sir. Mr. Tedeschi, is Defendant's  
22 Exhibit Number 45 a copy of the statement that you  
23 gave to Agent Griffin?

24 A Yes, sir.

25 Q Is that a copy of the statement that he in

1 return brought back to you?

2 A Yes, sir.

3 Q Okay. And Defendant's Exhibit Number 45 is  
4 dated, the date of transcription is August 20th,  
5 1993?

6 A Yes, sir.

7 Q And --

8 THE COURT: I'm sorry, how do you  
9 pronounce your last name?

10 THE WITNESS: Tedeschi. They are  
11 saying it right.

12 THE COURT: Yes, sir.

13 BY MR. THOMPSON:

14 Q Tedeschi?

15 A Yes, sir.

16 Q Yes. And Mr. Tedeschi, you were allowed or  
17 given an opportunity to read this statement when  
18 Agent Griffin gave it to you?

19 A Yes, sir.

20 Q And did you not make any corrections, is  
21 that right?

22 A No.

23 Q All right. One more question.

24 Mr. Tedeschi, on page two of Defendant's Exhibit  
25 Number 45, in the statement, it indicates that

1 Tedeschi did not -- that you did not get a very good  
2 look at the dark skinned male because he was wearing  
3 a hood. Now, do you recall now making that  
4 statement?

5 A Yes, I did.

6 Q You did make the statement?

7 A Yes, sir.

8 Q Okay, sir. And do you recall making the  
9 statement to the agent that -- strike that. That's  
10 all, Your Honor.

11 THE COURT: Any additional  
12 questions, Mr. Britt?

13 MR. BRITT: No, sir.

14 THE COURT: Thank you,  
15 Mr. Tedeschi. You may step down.

16 MR. BRITT: Your Honor, we would  
17 call Dorothy Tedeschi.

18 THE COURT: If you'll come up and  
19 be sworn, please, ma'am.

20 THE COURT: If you'll place your  
21 left hand on the Bible and raise your  
22 right. Thank you.

23 DOROTHY TEDESCHI,  
24 being first duly sworn was examined and testified as  
25 follows:

1 DIRECT EXAMINATION

2 THE COURT: If you'll take the  
3 witness chair, please, ma'am. Thank you.  
4 Would you like some water.

5 THE WITNESS: No, thank you.

6 BY MR. BRITT:

7 Q Mrs. Tedeschi, in July of 1993, did you  
8 accompany your husband, your brother, and his wife on  
9 a trip to Florida?

10 A Yes, sir, I did, sir.

11 Q Does that trip take you through Robeson  
12 County, North Carolina?

13 A Yes, sir.

14 Q On July the 3rd, 1993, did your party check  
15 into the Family Inn Motel in Rowland, North Carolina?

16 A Yes, sir, we did.

17 Q On the morning of July the 4th, 1993, do  
18 you recall the events that occurred that day?

19 A Yes, I do.

20 Q If you will, please tell us what you recall  
21 happening on July the 4th, 1993.

22 A Well, the boys made a few trips up the  
23 stairs to bring the stuff down to the car, pack it in  
24 the trunk. I and -- my sister-in-law went down  
25 ahead of me. I followed her, and I was carrying my

1 camcorder, because we wanted to take pictures of the  
2 scenery. And as I approached the car, saw these two  
3 gentlemen, two boys were on the end of the trunk, saw  
4 the two gentlemen approach them. And when they  
5 turned to look at them, you know, and they approached  
6 them with the finger like this (indicating). And  
7 Demery had the gun in his hand like this  
8 (indicating), and Mr. Green was on the left-hand side  
9 of -- names I'm not good with. Mr. Demery was on  
10 this side, and Mr. Green was on his left.

11 So the man said, what do you want? And the  
12 men were backing up, and they were following the men  
13 to the trunk. And wanted their money. And they kept  
14 saying money, that's what they were most interested  
15 in, but then they saw the camcorder case in the trunk  
16 with film with batteries and all that, and the  
17 smaller cameras. And they -- Mr. Green took that and  
18 the shaving kit and a few other things, I don't  
19 recall my sister-in-law, just my own. And then I had  
20 a camcorder, and I stuck it in the car. And  
21 Mr. Green came over and he took the camcorder out of  
22 the car. And then I looked to see what else I had in  
23 there that he might open. He says, what are you  
24 looking for? I said, nothing. And --

25 THE COURT: Ms. Tedeschi, pardon

1 me for the interruption, but at the time  
2 the matters occurred which you just  
3 testified to, which side of the car were  
4 you on?

5 THE WITNESS: I was on the  
6 passenger side, the -- Mr. Green -- Demery  
7 followed the men on that side, wanted the  
8 money. Now, I'm a little confused where  
9 Loretta was during -- in front of me when  
10 Mr. Demery came to the passenger side  
11 around the front of the car, and he held  
12 his gun like this. And he was -- I wasn't  
13 frightened, I was mad. And I just was in  
14 disbelief that this was happening. And  
15 Mr. Green, he had on the sweat shirt, navy  
16 blue, and he had the hood over his head,  
17 but I looked right into his face, I saw his  
18 eyes staring at me, no feeling, no  
19 sympathy, no meanness, no nothing. It was  
20 like an unfeeling stab.

21 MR. BOWEN: Objection to the  
22 characterization.

23 THE COURT: Overruled for the  
24 purposes of the voir dire.

25 THE WITNESS: And he just -- I

1           want your -- he wanted my pocketbook, and I  
2           knew that they were going to take it, but I  
3           was still hoping that somebody would come  
4           out and see this or overhear us. So when  
5           Demery was just helping himself to  
6           everything, and this kid was over here with  
7           the gun, I mean, Green was helping himself,  
8           he had all the equipment. Mr. Demery had  
9           the money. And he says, he told the three  
10          -- all of us to get in the car. So they  
11          all got in the car. And I was going to --

12                         MR. BOWEN:  Objection to he.

13                         THE WITNESS:  Excuse me?

14                         THE COURT:  When you say he said  
15          get in the car, who are you referring to,  
16          Demery or Green?

17                         THE WITNESS:  Demery, the one with  
18          the gun.

19                         THE COURT:  Yes, ma'am.

20                         THE WITNESS:  And he said, get in  
21          did car. So they all got in the car, and  
22          they were calling me to get in car. And I  
23          said, no, I'm not getting in the car.

24                         Oh, excuse me, before that, Mr. Green  
25          wanted my pocketbook. And I go, no, I'm

1 not giving it to you. And I was raising my  
2 voice so people could hear me. But  
3 eventually he took it. And I hesitated, I  
4 didn't get in car right away. Three times  
5 he told me get in the car. Just about  
6 then, Mr. Green took off, and Mr. Demery  
7 said -- excuse me. Mr. Demery said, get in  
8 the car or I'll blow your head off.

9 So I went, you know, like I put one  
10 foot in the car, and as he took off fast  
11 behind Mr. Green, I took off down the  
12 driveway to see where they were going.

13 Now, I thought they were getting in  
14 this car because I saw Mr. Green go  
15 around -- I didn't go all the way down, but  
16 I saw him go around, and went into the car  
17 on the passenger side. And when Demery got  
18 up to where he was on the passenger side,  
19 then apparently they didn't get in the  
20 car. But I saw the brake lights in the  
21 back of the car go on, and that's all I  
22 know. I got in the car, I was mad they  
23 wouldn't chase them. They said, no, they  
24 weren't going to do it, because the kid had  
25 the gun.

1           So we went around to the office at the  
2           Family Inn. It was very dim. Then we saw  
3           these -- what do you call -- cruisers, and  
4           we -- oh, you know, we're glad to see  
5           somebody. Nobody there, so we went to the  
6           Days Inn. And on their way, there was  
7           another cruiser, and there was nobody  
8           there, so we assumed they were in there  
9           having coffee in the Days Inn. They said  
10          no, they were decoys, so we didn't want  
11          decoys. What did you expect?

12       BY MR. BRITT:

13           Q       And was the police contacted?

14           A       Pardon?

15           Q       Did you contact the police?

16           A       Yes, Days Inn called a few areas before  
17          they could locate somebody to come to us.

18           Q       And when any officer arrived did you give  
19          him a description of the individuals that you had  
20          seen in the parking lot?

21           A       Yes, I did, sir.

22           Q       What if any description did you give the  
23          officer?

24           A       Well, I had my shaded glasses on, and you  
25          got to understand, I don't mean black, I mean white

1 but the mannerism, the way he spoke to me, mad -- I  
2 don't know if I'm saying the right thing or not, but  
3 I'm saying what is in my mind. And he was saying, I  
4 was giving him a hard time, what he was doing to  
5 himself, his family, all that. He kept telling me I  
6 didn't understand. Stamped his feet and stamped his  
7 fist. That was Demery. And he kept stamping his  
8 feet, telling me that I did not understand. I told  
9 him I understood.

10 And what else? Oh, they -- when we got to  
11 the Days Inn, they were very good, they helped us,  
12 they called different locations, or the operator did,  
13 before we could get anybody to come down to the  
14 hotel. Then they went to the Family Inn, they looked  
15 around, they said they didn't see anything or  
16 anybody, you know.

17 Q Did you give them, the police, the  
18 description of the two people that had robbed you?

19 A Yes, I did.

20 Q What description did you give?

21 A I said one was black, and the other one was  
22 light-skinned, and I thought he had like black  
23 mannerisms, you know, the way they talk, the way they  
24 say, man, and everything, but he had on navy blue  
25 sweat shirt with a hood attached, had it on his

1 head. The other one had sort of, this is what I saw,  
2 it looked like a large jacket that looked too big for  
3 him, beige, and had a cap, black cap on.

4 Q How far away were these two individuals  
5 standing from you during this time?

6 A Don't ask me feet, yards, or what, but I  
7 was standing here and just about to the end of that  
8 table is where Green was standing. We were looking  
9 straight at each other, face to face.

10 Q And were there lights in the parking lot  
11 that allowed you to see his face?

12 A Well, I was like under the -- you know, it  
13 was like dim, it wasn't like a bright light, it was  
14 dim.

15 Q And was there anything that obstructed your  
16 view of this individual's face?

17 A No, we were face to face, like I'm face to  
18 face with you, only closer.

19 Q Now, after you had spoken with the police  
20 on the morning of July 4th, 1993, did there come a  
21 time, Ms. Tedeschi, when you or your husband  
22 contacted the police based upon a television news  
23 account that you had seen?

24 A I did.

25 Q And do you recall when that was?

1           A       No, I didn't take the date or anything, I  
2 just -- I'm a soap opera fan, so that day, I just  
3 decided I'm going to take a break with a cup of  
4 coffee earlier, and I happened to switch on CNN, and  
5 I -- they were talking about the Jordan case, and I  
6 saw them.

7           Q       And did you recognize anyone?

8           A       His face I could never forget.

9                   THE COURT:  By "his face," I'm  
10 sorry, who do you mean, ma'am?

11                  THE WITNESS:  Both of them.

12           Mr. Green.

13                  THE COURT:  Thank you, ma'am.

14 BY MR. BRITT:

15           Q       And based on that television news account,  
16 you --

17           A       I called.

18           Q       You called?

19           A       I did.

20           Q       And after you made that telephone call,  
21 were you visited by agents from the Federal Bureau of  
22 Investigation?

23           A       Yes, I was.

24           Q       Did you give them a statement?

25           A       Yes, I did.

1 Q Did you give them a description of the  
2 individuals that had robbed you in the parking lot of  
3 July the 4th, 1993?

4 A Yes, I did.

5 Q What if any description did you give the  
6 FBI agent?

7 A Well, I gave him the description the same  
8 as I did here. I only can say what I feel, and  
9 what's in my mind, and a picture that you can't  
10 erase.

11 Q And were you later shown a series of  
12 photographs?

13 A Yes, I did.

14 Q And asked if you were able to identify  
15 anyone in those photographs?

16 A Yes, I did.

17 Q Back up. After you saw this first  
18 television news account?

19 A Uh-huh.

20 Q -- did you see any other television  
21 accounts?

22 A No, because I was disappointed because we  
23 weren't being kept up on what was going on. I mean,  
24 I'm just as curious as the next guy, and our paper  
25 don't carry that, and neither did -- all they carried

1 was the -- how do you say it? When they informed  
2 everybody that they found Mr. Jordan and whatnot,  
3 that's the first time I read it in the paper. And  
4 then because it was my local paper, and I read it  
5 every day, I wasn't looking for it. And since then,  
6 we haven't got any paper or anything, because our  
7 paper don't carry it.

8 MR. BRITT: May I approach the  
9 witness?

10 THE COURT: Yes, sir.

11 BY MR. BRITT:

12 Q Mrs. Tedeschi, I'm going to show you  
13 State's Exhibit Number 68 and ask you if you've ever  
14 seen that before.

15 A Yes, I have.

16 Q And who showed you that when you first saw  
17 it?

18 A The FBI.

19 Q Is it in the same condition today --

20 A Yes, it is.

21 Q -- when you first saw it? I'll show you  
22 what has been marked as State's Exhibit Number 69,  
23 ask you to look at that and tell me if you've ever  
24 seen it before, and when was the first time you saw  
25 it?

1           A       Same time, Mr. Demery.

2           Q       And is State's Exhibit Number 69 in the  
3 same condition today as it was when you saw it?

4           A       Yes, it is.

5           Q       And when the FBI showed you State's Exhibit  
6 68 and 69, did they ask you if you were able to  
7 identify any person that was pictured in either  
8 State's Exhibit 68 or 69?

9           A       Yes.

10          Q       Were you able to identify anyone?

11          A       Yes. I always -- what did I say? Those  
12 eyes.

13          Q       And for the record, State's Exhibit Number  
14 68, you've pointed to a photograph, which photograph  
15 did you point to by number?

16          A       Three.

17          Q       State's Exhibit Number 69, were you able to  
18 identify anyone --

19          A       Yes.

20          Q       -- in that?

21          A       Number eight.

22          Q       And for the record, State's Exhibit Number  
23 68, photograph in the third slot is that of the  
24 defendant, Daniel Green. And State's Exhibit Number  
25 69, the photograph of number eight is that of Larry

1 Martin Demery.

2 THE COURT: Let the record so  
3 show.

4 BY MR. BRITT:

5 Q Mrs. Tedeschi, when they asked you if you  
6 could identify anyone in those photographic lineups,  
7 were you identifying them based upon your memory of  
8 the events of July the 4th, 1993?

9 A When -- I'm as close to you now as I was to  
10 him, how could I forgot?

11 Q And do you see anyone in this courtroom,  
12 can you identify anyone in this courtroom who  
13 participated in the robbery on July the 4th, 1993 in  
14 the parking lot of the motel?

15 A Yes, I do.

16 Q Can you point that person out to us?

17 A Mr. Green.

18 Q And where is he seated in the courtroom?

19 A First one at the table.

20 Q And for the record, what if anything is he  
21 wearing?

22 A He's wearing black and glasses.

23 MR. BRITT: I don't have any  
24 other questions.

25 THE COURT: Mr. Bowen and Mr.

1 Thompson.

2 CROSS-EXAMINATION

3 BY MR. BOWEN:

4 Q Ms. Tedeschi, could you describe the way in  
5 which the navy blue hood came around --

6 A Yes, he had a hood up -- yes, sir, he had a  
7 hood, hood was just like -- all it had was the lining  
8 of his head, and it was tied here.

9 Q So you did not see his hairline at all, did  
10 you?

11 A Does it matter? No, I didn't --

12 THE COURT: If you feel an  
13 explanation is necessary, you may explain,  
14 ma'am.

15 THE WITNESS: The hood came this  
16 way, it didn't come down here. It came  
17 like this (indicating). And I saw that  
18 young face in front of me, and those eyes,  
19 and he was a very quiet, just, you know,  
20 telling me that -- he had his eyes on  
21 Mr. Demery when Mr. Demery was walking  
22 around with the gun, and he said, give me  
23 your -- give me that, give me this, and  
24 give me your pocketbook. And I said no. I  
25 mean, I had pictures of family in there.

1           Take the money, but I have pictures. He  
2           said I'll mail them to you. And I said  
3           unlady words to him.

4   BY MR. BOWEN:

5           Q       You say he said what he said to you in a  
6           quiet manner, is that correct?

7           A       Yes, he was quiet.

8           Q       And did I understand the way you've  
9           described the hood is that it did cover up the  
10          hairline, is that correct?

11          A       It covered up just like that. I could see  
12          his face like this.

13          Q       Covered up his ears?

14          A       His ears, yeah, but I could see his face.

15          Q       And do you know whether or not this  
16          individual had face hair at all, the person that you  
17          described as Green, did he have face hair?

18          A       Not the hairs that he has on his face now.  
19          He didn't have those hairs then.

20          Q       Did the person that you saw in the  
21          photographic array, does that person have face hairs,  
22          the one that you've identified as Green in the  
23          photograph?

24          A       In the photograph?

25          Q       Yes, ma'am, did he have face hairs or not?

1           A       No.

2           Q       Did you explain to the agent that showed  
3 you the photographic array that the individual you  
4 saw did not had have face hairs, that is, the person  
5 that you described as Green did not have the faces  
6 hairs at the scene?

7           A       No, he didn't have face hairs, and all I  
8 could do was look into his eyes.

9           Q       Did you tell the officer that the person  
10 that was out at the motel that early morning that he  
11 did not have face hairs?

12          A       Who, at the hotel, sir?

13          Q       Yes, ma'am. Did you tell the police  
14 officers that you talked to that the individual, the  
15 darker individual that you saw at the hotel that you  
16 identified as Green did not have any face hairs?

17          A       I'll say this, I didn't mention face hairs,  
18 whether he did or didn't, I did not say. All I was  
19 nervous an upset, because my husband has emphysema  
20 very bad. My brother had a very bad heart attack,  
21 and if I could get their attention away from them, I  
22 thought I was doing something, you know. You don't  
23 think right when you're in this position.

24          Q       Now, the dark -- the darker individual, the  
25 one that you described as Green, he had no gun or no

1     weapon of any sort?

2           A       No, he did not. He was very quiet, and I  
3     didn't even know what he was doing with this other  
4     kid, but he was standing there. Do you realize what  
5     you're doing to your family, your parents, and us?  
6     And he said, just give it to me, just give it to me.  
7     And his eyes were following Demery around like, I  
8     guess he didn't want to draw his attention or  
9     something. That's the impression I got. And I said,  
10    well, yeah, you know, and he said oh, we'll mail it  
11    to you. And I said, you will mail -- and on and on.  
12    I can't say what I said. I mean, I shouldn't have  
13    said that either then.

14           Q       Ms. Tedeschi, you said that you had -- you  
15    yourself had your tinted glasses on at this time?

16           A       Yeah, they are tinted, but they are -- you  
17    can see, I mean, they only get dark in the sunlight.

18           Q       And what was the source of light out there  
19    at the hotel in that early morning hour?

20           A       It was dim, but bright enough to see.

21           Q       Do you know where the light was coming  
22    from?

23           A       Well, it was getting light out, but then --  
24    the motels had lights, too, but where I was standing,  
25    I could almost touch him, like -- I shouldn't say

1 this, but I said if he had the gun, I probably would  
2 have tried to take it away from him, because that's  
3 how close he was to me.

4 Q Do you know what a Jamaican or Caribbean  
5 accent sounds like?

6 A A little.

7 Q Did you hear either of the men on the  
8 morning in question speak with what could be  
9 described as a Jamaican or Caribbean accent?

10 A No, I didn't mean Caribbean or -- it's the  
11 mannerism. Now, I've got educated on this, it's a  
12 lot of white boys talk like this. But then I have --  
13 we have -- I don't want to say anything against  
14 anybody. But we have black individuals who are light  
15 skinned where I come from, from Providence, and at  
16 first when I saw Demery, I -- Demery, I never got  
17 that close to him. I mean, he went around and he  
18 stood like from me to these gentlemen at the table,  
19 and he had the gun, and that's when he kept telling  
20 us to get in the car. And then when I said, I  
21 wouldn't three times, I said I would not get in the  
22 car. And when this gentleman took off, well, I guess  
23 he didn't want to waste any more time, he said, get  
24 in the car. And he put his -- like this, he didn't  
25 go like that, like this. And I said, oh, well, let

1 me just put one foot. So I put one foot in the car,  
2 he took off after this kid, and that's when I ran  
3 down, half way down the drive to see where they were  
4 going. But when I got down there it was a little  
5 darker, but when you're close and under a light and  
6 you're altogether, it's -- you know.

7 Q Did you ever make a statement to officers  
8 that one of the individuals, the darker individual  
9 spoke with a Jamaican accent?

10 A I didn't say he spoke with a Jamaican  
11 accent. The black boy?

12 Q Well, either one, for that matter?

13 A The other one was talking like in the  
14 mannerism, you know how they say, oh, man, and all  
15 these other things? I didn't say Jamaican, because  
16 they -- I really never heard a Jamaican.

17 Q Now, you indicate that Mr. Demery, the  
18 person you described as Mr. Demery, was the last to  
19 leave the scene?

20 A Yes.

21 Q All right. However, the person you  
22 described as Mr. Green, who never raised his voice,  
23 he left first, is that right?

24 A Yes, he had all those things on him, and he  
25 -- just as soon as I gave him my bag, he took off.

1 And I didn't think this other one wanted to waste too  
2 much time trying to catch up to him, so that's why he  
3 just said, get in the car, and this and that. But  
4 you don't understand, and he gave me all this kind of  
5 stuff. And I put one foot in the car, like I said,  
6 Demery took off after him, he was already half way  
7 down the driveway by the time this other kid went  
8 after him. So I went down half way down the driveway  
9 to see where they were going. One went in one side  
10 of the car, the other one went on this side of the  
11 car, the last one. I saw taillights go on, so I got  
12 the impression that they got in the car, apparently  
13 they didn't.

14 Q Did you ever see a cornfield around that  
15 motel in the back?

16 A To tell you the truth, when I got there, it  
17 was -- we were tired and too late, we didn't go  
18 sight-seeing, so I don't know what kind of field it  
19 was.

20 Q Now, the blacker individual whom you've  
21 described as -- whom you've identified as Mr. Green,  
22 he never threatened you in any way, did he?

23 A He just kept asking me, demanding, he  
24 wanted this and that, but he wasn't violent. I was  
25 more afraid of the other kid.

1           Q       Okay. The person you described as  
2 Mr. Green never said that he would hurt you in any  
3 way, did he?

4           A       No, he just said -- he just wanted my  
5 pocketbook so badly, and then after he -- he said,  
6 oh, give it to me, he says, we'll mail it to you.  
7 You know, I wanted my pictures. Just give it to me,  
8 we'll mail it to you, that's all he said to me.

9           Q       Ms. Tedeschi, as I understand it, your  
10 identification is primarily based upon seeing the  
11 individual whom you've identified as Mr. Green,  
12 seeing his eyes, is that correct?

13          A       No, I know his face, look at that face.

14          Q       All right. Now, was Mr. Green wearing a  
15 cap at all?

16          A       Mr. Green?

17          Q       Yes, ma'am.

18          A       He had on a hood, you know, Mr. Green.  
19 Mr. Demery, every time people say Mr. Green,  
20 Mr. Demery, I get confused. If they say black or  
21 white, then I know what I'm talking about. But I  
22 know, you know --

23          Q       The dark skinned individual, he was the one  
24 wearing a cap or not wearing a cap?

25          A       This fellow here was wearing a hood, Navy

1 blue sweatshirt and a hood.

2 Q Can you describe anything about his  
3 clothing below the sweat shirt?

4 A All right. No. I never looked below the  
5 jacket or sweat shirts. When I talk to people, I  
6 talk to them and I look in their face, I don't size  
7 them up and down to see what they got. And when he  
8 took off, I couldn't see what he had on his legs,  
9 because now my attention was drawn to Mr. Demery.  
10 No, because they were like this, the other one was  
11 over there, and the driveway was over there.

12 Q How long --

13 A Am I talking too fast?

14 THE COURT: No, ma'am.

15 BY MR. BOWEN:

16 Q How long, Ms. Tedeschi, would you say that  
17 Mr. Demery stayed around after the dark individual  
18 left?

19 A Well, like I said, I'm not good with time  
20 and feet this and that. But he was here, he took  
21 off, this kid wanted me to get in the car before he  
22 could go, and his attention was on him, he wanted to  
23 hurry up and get to me. When I got my foot in the  
24 car, that's when he decided to take down after  
25 Mr. Green. When I ran down the highway, Mr. Green

1 was just going around one side of the car, and I  
2 watched to see if I could see, because these people  
3 didn't want to help me. This is sad. And Mr. Demery  
4 went down after him, so he already disappeared around  
5 the car, by the time Mr. Demery got down there, and  
6 he went on the driver's side of the car. That is why  
7 I thought they were getting in the car, then I saw  
8 taillights go on.

9 MR. BOWEN: That's all.

10 THE COURT: Anything further?

11 MR. BRITT: No, sir.

12 THE COURT: Thank you, ma'am.

13 You may step down.

14 THE WITNESS: You're welcome.

15 MR. BRITT: Your Honor, that  
16 would be the State's showing for purposes  
17 of voir dire.

18 THE WITNESS: You people got me  
19 so nervous, I don't know --

20 THE COURT: Any showing on behalf  
21 of the defendant on voir dire?

22 MR. BOWEN: No, sir, Your Honor.

23 MR. THOMPSON: No, sir.

24 THE COURT: This concludes the  
25 evidentiary showing on the defendant's

1 request for voir dire regarding  
2 identification. You folks want to be heard  
3 in argument for the record?

4 MR. THOMPSON: No, sir.

5 THE COURT: The affidavit filed  
6 on behalf of the defendant bearing a filing  
7 date of -- I think this is September  
8 29, '95, entitled motion to suppress  
9 identification relating to any in-court  
10 and/or out-of-court identification of the  
11 defendant made by either Mr. or  
12 Mrs. Tedeschi, or anyone else, be  
13 suppressed on the grounds that the  
14 identification procedures utilized were  
15 unnecessarily suggestive and gave rise to a  
16 substantial risk of irreparable  
17 misidentification. That's the only basis  
18 that the defendant has relied on, is that  
19 correct? That's what I read from the  
20 motion and from your affidavit.

21 MR. THOMPSON: Yes, sir.

22 THE COURT: You folks want to be  
23 heard in argument?

24 MR. BOWEN: No, sir.

25 THE COURT: Motion to suppress is

1 denied, to which the defendant objects and  
2 excepts for the record.

3 As I indicated to you folks during the  
4 in camera proceedings, my understanding of  
5 the case law, this is essentially a factual  
6 determination to be made by the jury. Out  
7 of an abundance of caution, the Court will  
8 file findings of fact, conclusions of law.

9 Mr. Huseby, if you'll prepare a  
10 transcript of the evidentiary showing made  
11 on behalf of the State. With consent of  
12 all counsel, if anybody wants to object  
13 please say so now, those findings of fact  
14 and conclusions of law, if necessary, will  
15 be filed out of term, out of county, out of  
16 session. I don't anticipate that that will  
17 be the case, but is there consent from all  
18 counsel in that regard?

19 MR. THOMPSON: Yes, sir.

20 THE COURT: Let the record so  
21 show.

22 MR. THOMPSON: Your Honor, may we  
23 have a moment regarding this matter?

24 THE COURT: Yes, sir.

25 MR. BRITT: May I approach the

1 exhibit table?

2 THE COURT: Yes, sir. I will  
3 need copies of that for the purposes of  
4 findings of facts and conclusions of law.  
5 If you'll make me copies of that, please,  
6 ma'am.

7 MR. THOMPSON: Your Honor, with  
8 regard to a previous motion that we had  
9 filed in this case, it was filed ex parte,  
10 but however, the Court dealt with it in  
11 open court also for the identification  
12 expert. We would renew that motion  
13 requesting the Court to allow us funds to  
14 employ that individual or use that  
15 individual.

16 THE COURT: Specifically, are you  
17 referring to the ex parte motion made under  
18 Ake versus Oklahoma asking the Court to  
19 appoint a person in the field of  
20 identification?

21 MR. THOMPSON: Yes, sir.

22 THE COURT: That motion being  
23 renewed again, it's a matter in the  
24 discretion of the Court, based upon the  
25 showing now before the Court, again that

1 motion is denied, to which the defendant  
2 objects and excepts for the record, so your  
3 issues are preserved in that regard.

4 MR. THOMPSON: And Your Honor, we  
5 need to go in camera concerning another  
6 matter.

7 THE COURT: For the record,  
8 folks, I don't know whether I indicated  
9 this on the record or not, but in my view,  
10 an eyewitness identification expert is  
11 primarily used in a case where the case is  
12 premised entirely on eyewitness  
13 identification and nothing else. In this  
14 case, in addition to eyewitness  
15 identification, we've got the testimony of  
16 Larry Martin Demery. And if I didn't  
17 indicate that as to your prior motion, that  
18 ground was a basis in part upon which the  
19 Court relied in exercising its discretion  
20 to deny that motion at that earlier time,  
21 as well as at this time.

22 Yes, sir, this concludes the voir dire  
23 hearing?

24 MR. BRITT: Yes, sir.

25 THE COURT: Any other matters

1           that we need to address, matters of law  
2           other than the in camera, in-chambers  
3           matter before we can contemplate  
4           presentation of evidence tomorrow?

5                         MR. BRITT:  Nothing that I know  
6           of.

7                         THE COURT:  Then if you'll recess  
8           us until 9:00 tomorrow morning.

9                         THE BAILIFF:  All rise, please.

10                        (Court adjourned.)

11                        (Whereupon an in camera proceeding ensued  
12                        as follows.)

13                        THE COURT:  Let the record show  
14           this is in camera, in-chambers.  Present at  
15           the time are the presiding Judge, the court  
16           reporter, counsel for the State Mr. Johnson  
17           Britt, counsel for the defendant Mr. Angus  
18           Thompson, Mr. Woodberry Bowen.  Also  
19           present is the defendant Daniel Green, also  
20           known as U'Allah.  Yes, sir.

21                        MR. THOMPSON:  Your Honor,  
22           U'Allah has brought to our attention some  
23           matters which we wanted to have an in  
24           camera proceeding.  There's certain  
25           comments, certain things that he wanted to

1 put in the record that -- and I told him,  
2 and he wanted it, we wanted to do this  
3 without the -- in camera, without the State  
4 being present. However --

5 MR. GREEN: State or the defense.

6 MR. THOMPSON: For that matter,  
7 State or the defense.

8 THE COURT: I'm sorry, so we can  
9 clarify for the record, by "State or  
10 defense," are you referring to Mr. Johnson  
11 Britt, Mr. Angus Thompson, and  
12 Mr. Woodberry Bowen?

13 MR. GREEN: Yes, sir.

14 THE COURT: So if I understand  
15 correctly, you wanted to put matters in the  
16 record with the Court -- with the judge  
17 being present?

18 MR. GREEN: Yes, sir.

19 THE COURT: And with the court  
20 reporter?

21 MR. THOMPSON: And I --

22 THE COURT: Yes, sir.

23 MR. THOMPSON: I didn't realize  
24 that he didn't want the defense present  
25 either. But in any event, he's discussed

1 at least with the defense the nature of the  
2 matter. I think it's perhaps one that  
3 maybe ought to be entered into the record,  
4 and I told him if the Court were to grant  
5 that, his request, that a copy of the in  
6 camera proceedings transcript would  
7 probably -- the Court would require that be  
8 put in the record, along with any exhibits,  
9 all be sealed for appellate review.

10 THE COURT: Well, let me -- any  
11 other matters in that regard?

12 MR. THOMPSON: No, sir.

13 THE COURT: Mr. Green, for the  
14 purposes of the record, our case law  
15 requires that any proceeding in a case  
16 where the death penalty is a possible  
17 penalty is a proceeding where all parties  
18 and all counsel are to be present. And  
19 because that's my understanding of the case  
20 law, I understand your wishes in that  
21 regard, but I feel compelled to have  
22 counsel for the State and counsel for the  
23 defendant present. You understand that?

24 MR. GREEN: Yes, sir.

25 THE COURT: Yes, sir. Do you

1 want to put some matters in the record?

2 MR. THOMPSON: Do you need to  
3 consult?

4 MR. GREEN: Do I need to open  
5 this now?

6 THE COURT: Do you want those  
7 matters viewed by the Court only?

8 MR. GREEN: Yeah.

9 THE COURT: Okay. Again, I feel  
10 compelled to inform you that --

11 MR. GREEN: It's not necessary.

12 THE COURT: I will review them by  
13 myself, if that's what you want, but I will  
14 need to put something in the record  
15 regarding that. What, I'm not sure yet  
16 because I haven't read them.

17 MR. GREEN: Yes, sir.

18 MR. THOMPSON: Well, first of  
19 all, I haven't seen it, and I want an  
20 opportunity to --

21 THE COURT: That's between you  
22 and Mr. Bowen and Mr. U'Allah.

23 MR. THOMPSON: Yes, sir. We need  
24 to consult.

25 THE COURT: Do you want your

1           counsel to view them prior to your  
2           introducing them?

3                   MR. GREEN:   That's cool.

4                   THE COURT:   Do you want an  
5           opportunity to consult with your lawyers at  
6           the time they review it?

7                   MR. GREEN:   Yes, sir.

8                   THE COURT:   I think that's  
9           appropriate.  Let me give you an  
10          opportunity now.  I'm going to ask  
11          Mr. Horne to step in, ask him to let you  
12          folks use the room at the far -- the grand  
13          jury room, give your counsel the  
14          opportunity to -- how many items --

15                   MR. THOMPSON:  Two.

16                   THE COURT:   Two sealed  
17          envelopes.  One business sized envelope,  
18          dated 3-1-96, and one smaller envelope  
19          marked 3-3-96.  Okay.  I'll give you folks  
20          an opportunity to do that.  Let me get  
21          Mr. Horne to get you folks situated in this  
22          room.

23                   Mr. U'Allah needs the opportunity to  
24          confer with his lawyers in that grand jury  
25          room if it's available.

1 All right, folks, you can use that.  
2 Let the record show that Mr. Green, also  
3 known as U'Allah, Mr. Bowen,  
4 Mr. Thompson --

5 MR. THOMPSON: Do you need --

6 THE COURT: That's fine. That's  
7 fine.

8 (Brief recess.)

9 THE COURT: You folks had the  
10 opportunity to confer?

11 MR. THOMPSON: Yes, sir. We've  
12 read the enclosed documents and the  
13 envelopes, envelope date 3-3-96 and the  
14 envelope dated 3-1-96. And it's the desire  
15 of the defendant to have those placed in  
16 the record under seal.

17 THE COURT: I don't know what it  
18 contains yet and I'm saying okay because I  
19 am indicating that's Mr. U'Allah's desire.

20 MR. THOMPSON: At this time, yes,  
21 sir.

22 THE COURT: Any other matters?

23 MR. THOMPSON: No, sir.

24 THE COURT: Let the record  
25 reflect the Court is looking at the

1 envelope dated 3-1-96 and the contents  
2 of -- it bears a date 3-1st-96. And I'm  
3 going to read it first before I indicate  
4 anything.

5 (Court reads document.)

6 THE COURT: This is a letter  
7 apparently written by Kay Hernandez, is  
8 that accurate?

9 MR. THOMPSON: Yes, sir.

10 THE COURT: And apparently  
11 provided by Kay Hernandez to the  
12 defendant. Is that accurate?

13 MR. GREEN: Yes, sir.

14 MR. THOMPSON: Yes, sir.

15 THE COURT: Was that through a  
16 personal visit of Ms. Hernandez or provided  
17 through someone else?

18 MR. THOMPSON: For the record,  
19 Your Honor, Ms. Green delivered that to me.

20 THE COURT: So it was provided by  
21 Ms. Kay Hernandez to Ms. Green?

22 MR. THOMPSON: I assume it was  
23 given to Ms. Green, I don't know.  
24 Ms. Green gave it to me, together with the  
25 other envelope, to give to the defendant.

1 I indicated Ms. Green could not give it to  
2 the defendant without the bailiff or the  
3 person who's in charge of Mr. Green opening  
4 it, a possibility of them opening it. And  
5 she said, well, no, by no means, they can't  
6 open it. And then that resulted in us  
7 asking for the in camera hearing.

8 We had not seen the contents of it  
9 until the Court allowed us to leave just  
10 recently to go back there and open it and  
11 review it, and neither had Mr. Green seen  
12 the contents.

13 THE COURT: The other envelope,  
14 the smaller envelope, is dated 3-3-96.  
15 Contents bear that same date, 3-3-96. The  
16 Court is reading the contents now.

17 (Court reads document.)

18 THE COURT: All right. The  
19 second document is a letter purportedly or  
20 apparently written by Nellie Montes, again,  
21 bearing the date 3-3-96. The gist of both  
22 letters is that Ms. Montes and Ms.  
23 Hernandez indicated they know a member of  
24 the jury, a Mr. Capp, or someone they  
25 identified as Capp, C-A-P-P.

1                   MR. THOMPSON: Cassidy. That's  
2 James Cassidy.

3                   THE COURT: Anything you folks  
4 want to add to the comments?

5                   MR. GREEN: I just found this  
6 information out Thursday when I was in --  
7 when I was in court. They wouldn't let me  
8 talk to anybody. So if they -- I mean,  
9 that's why I didn't know about it until  
10 Thursday, until after the conviction, and I  
11 think that Ronald Fletcher, the State's  
12 witness --

13                   THE COURT: I'm sorry?

14                   MR. GREEN: Ronald Fletcher was a  
15 potential State's witness.

16                   MR. THOMPSON: Well, became a  
17 witness. We were served with a statement  
18 of Ronald Fletcher about, what, four weeks  
19 ago or so?

20                   MR. BRITT: Yes.

21                   MR. THOMPSON: In that additional  
22 discovery. And quite frankly, we did not  
23 know, meaning Mr. Bowen and I found out  
24 that these individuals, that Nellie and Kay  
25 knew Mr. Cassidy the Saturday before they

1           took the stand, the Saturday before we  
2           introduced our evidence.

3                         THE COURT:   At the meeting,  
4           referring to --

5                         MR. THOMPSON:  Yes, sir, and we  
6           referred to it, it was also talked about in  
7           examination -- from Mr. Britt's  
8           cross-examination when she met with us.

9                         THE COURT:  All right.  Anything  
10          anybody want to say?

11                        MR. THOMPSON:  Not at this  
12          point.  That's all for the record.

13                        THE COURT:  All right.  The  
14          upshot of it, as I understand it, is there  
15          is some concern that Mr. Capp knew  
16          Ms. Montes and knew Ms. Hernandez.

17                        MR. THOMPSON:  (Nods head  
18          affirmatively.)

19                        THE COURT:  Is that accurate?

20                        MR. THOMPSON:  Well, more --  
21          yeah, but more, the more of a concern to  
22          the defendant is the relationship of --

23                        THE COURT:  That he, according to  
24          them --

25                        MR. THOMPSON:  That Ronald

1 Fletcher and Mr. James Cassidy has.

2 THE COURT: Are you going to put  
3 anything specific in the record in that  
4 regard?

5 MR. THOMPSON: I know that James  
6 Cassidy and Ronald Fletcher are very good  
7 friends. And it came out during jury  
8 selection that -- no, it didn't come out in  
9 jury selection, but I know that Ronald  
10 Fletcher -- for the record, Ronald Fletcher  
11 and James Cassidy and my assistant were  
12 classmates. I know all of them. It came  
13 out during the record that they knew me, in  
14 fact, that we attend the same church.  
15 Didn't know that Ronald Fletcher was going  
16 to be involved in this case, obviously,  
17 until we got the statement from the State,  
18 which was served on us about four weeks  
19 ago.

20 There was no reason at that point  
21 either for Mr. Britt to even know, I  
22 suspect, in light of what happened. It  
23 appears that he just came forward.

24 MR. BRITT: For the record,  
25 Mr. Fletcher works at the Department of

1 Social Services, and the statement that  
2 Mr. Thompson is referring to is the  
3 statement that he gave -- Mr. Fletcher gave  
4 to Kim Heffney and Anthony Thompson after  
5 Mr. Fletcher -- during one of the days when  
6 we were out of court, came to my office and  
7 requested to speak to me specifically about  
8 Kay Hernandez. He knows her and has known  
9 her for a number of years, and he was  
10 concerned that she may perjure herself if  
11 called as a witness, and that resulted in  
12 the statement that was provided to them on  
13 discovery.

14 THE COURT: Well, what is it you  
15 folks are asking at this point other than  
16 to have the matter sealed for the record?

17 MR. THOMPSON: Nothing at this  
18 point.

19 THE COURT: Court is going to  
20 direct that these two documents -- the  
21 Court has placed them in an envelope which  
22 is marked "seen and sealed 3-4-96." Court  
23 directs that this be made a part of the  
24 record.

25 MR. THOMPSON: Yeah. And for the

1 record, the first time that Mr. -- that  
2 U'Allah, our client, brought it to my  
3 attention was Thursday, Thursday night.

4 THE COURT: Of last week?

5 MR. THOMPSON: Of last week,  
6 about this, because apparently he had  
7 received a call from Kay Hernandez or --  
8 concerning this, about the matters  
9 contained therein, but that was when he  
10 first brought it to my attention.

11 THE COURT: Folks, if I'm  
12 understanding the upshot, the upshot  
13 appears to be that because there is a  
14 contention by Ms. Montes and Ms. Hernandez  
15 that Mr. Cassidy does not like them, that  
16 that somehow affected his perception of the  
17 evidence in this case, or may have led in  
18 some way to his individual verdict in this  
19 case. Is that essentially it?

20 MR. GREEN: (Shakes head  
21 negatively.)

22 THE COURT: That's not it?  
23 Mr. Green, you're shaking your head no?

24 MR. GREEN: That's partially it.  
25 My -- I'm going to be honest with you. My

1 thing is that, like I said, if I would have  
2 known that him and Ronald Fletcher, after  
3 Ronald Fletcher pops up with this statement  
4 three or four weeks ago, him and Ronald  
5 Fletcher are like best friends, and that's  
6 how they know them, is through Ronald  
7 Fletcher, that's my concern.

8 THE COURT: I understand your  
9 concern. But at this point, there's  
10 nothing before me which would indicate any  
11 juror misconduct. Do you understand what  
12 I'm saying?

13 MR. THOMPSON: We explained that.

14 THE COURT: And I just want to  
15 say that on the record to you. I'm  
16 confident your lawyers have explained that  
17 to you, but there's nothing before me at  
18 this point that indicates, except by way of  
19 speculation, that there's been any juror  
20 misconduct. But I am going to mark, as  
21 I've indicated, these documents as "seen  
22 and sealed." The Court directs that the  
23 transcript of this in camera, in-chambers  
24 hearing be made a part of the record in  
25 this case, sealed, for potential appellate

1 review.

2 If you'll prepare the transcript and  
3 if you will provide that transcript in open  
4 court to the Court so that the Court can  
5 direct in open court that it be sealed for  
6 the purposes of appellate review.

7 THE COURT REPORTER: Yes, sir.

8 THE COURT: Anything else folks?

9 MR. THOMPSON: That's all.

10 THE COURT: See you folks at 9:00  
11 tomorrow morning. This concludes the in  
12 camera, in-chambers proceedings.

13 (End of in camera proceeding.)

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NORTH CAROLINA                    IN THE GENERAL COURT OF JUSTICE  
   SUPERIOR COURT DIVISION  
ROBESON COUNTY                    FILE NO. 93 CRS 15291-93

STATE OF NORTH CAROLINA            )  
  )  
  )  
  ) vs.                                    ) VOLUME 43  
  )  
DANIEL GREEN, aka AS-SADDIQ        )  
AL-AMIN SALLAM U'ALLAH,            )  
  )  
  ) DEFENDANT.                        )  
  ) - - -

Transcript of Proceedings before the  
Honorable GREGORY A. WEEKS, Judge Presiding,  
before Steve S. Huseby, Registered Professional  
Reporter and Notary Public, Robeson County  
Courthouse, Lumberton, North Carolina, on  
the 5th day of March, 1996.

- - -



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10 and

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13 - - -

14

15 (March 5, 1996. Proceedings in open court.)

16

17 (Jury in at 9:00 a.m.)

18 THE CLERK: The Judge has called  
19 this morning and he is sick. He doesn't  
20 know if he has the flu or sinus infection  
21 or what. He's running a fever and he plans  
22 to go to the doctor. His instructions were  
23 for us to be back here in the morning at  
24 9:30. So you all can go for the day.

25 (Jury out at 9:01 a.m.)

1 THE BAILIFF: Court recessed.  
2 (Court adjourned.)  
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14

15 (March 6, 1996. Proceedings in open court.)

16

17 THE COURT: Good morning, folks.

18 I apologize about yesterday. Hopefully we  
19 can move forward. I especially apologize  
20 to you folks who had to stay here. I  
21 apologize.22 Let the record show all counsel are  
23 present, the defendant is present in open  
24 court. Do we have all members of the jury  
25 secured in the jury room?

1 MR. BRITT: Point of inquiry,  
2 Mr. Kotai had handed up the note the other  
3 day about the doctor's appointment.

4 THE COURT: Two notes came in  
5 this morning, one is Mr. Kotai, took care  
6 of his appointment Monday. So we don't  
7 have to worry about him. Mr. Cassidy  
8 indicated he has an appointment Monday.

9 MR. BRITT: So we're following  
10 the regular schedule today.

11 THE COURT: Regular schedule  
12 today.

13 Counsel for the defendant ready to go  
14 forward?

15 MR. THOMPSON: Yes, sir.

16 THE COURT: If you'll bring the  
17 jury in, please, Mr. Horne.

18 (Jury in at 9:39 a.m.)

19 THE COURT: Good morning, ladies  
20 and gentlemen. Folks, I apologize to you  
21 about yesterday's delay as well. Hopefully  
22 we can move forward.

23 Mr. Kotai, I understand that you were  
24 kind enough to schedule your matter Monday  
25 since we had that day available to us. And

1 we are free to go forward with a full day  
2 today as far as you're concerned?

3 Mr. Cassidy, I understand you've got an  
4 appointment next Monday.

5 JUROR: Yes, sir.

6 THE COURT: What time is it.

7 JUROR: 3:00.

8 THE COURT: In the event that we  
9 are still presenting evidence Monday, we  
10 may or may not be -- we'll accommodate  
11 you.

12 State ready to go forward.

13 MR. BRITT: Yes, sir Your Honor,  
14 at this time we call Joseph Tedeschi.

15 THE COURT: If you'll come up and  
16 be sworn, please, Mr. Tedeschi.

17 If you'll place your left hand on the  
18 Bible and raise your right, please.

19 JOSEPH TEDESCHI,

20 being first duly sworn was examined and testified as  
21 follows:

22 DIRECT EXAMINATION

23 THE COURT: If you'll take the  
24 witness stand. Mr. Tedeschi, it's going to  
25 be necessary that you speak loudly and

1 clearly enough for all members of the jury  
2 to hear you and all counsel to hear you.

3 THE WITNESS: Yes, sir.

4 THE COURT: For the record your  
5 name is Joseph Tedeschi.

6 THE WITNESS: Yes, sir.

7 THE COURT: And your name has  
8 been spelled?

9 THE WITNESS: Yes, sir.

10 BY MR. BRITT:

11 Q Mr. Tedeschi, where do you live?

12 A West Warwick, Rhode Island.

13 Q And Mr. Tedeschi, how old are you, sir?

14 A 70.

15 Q Are you employed at this time or are you  
16 retired?

17 A I'm retired.

18 Q What type of work did you do?

19 A Punch press operator.

20 Q Are you married?

21 A Yes, sir.

22 Q In July of 1993, did you have an occasion  
23 to traveling through Robeson County North Carolina?

24 A Yes, sir.

25 Q And who was traveling with you?

1           A       My wife, my brother-in-law, and my  
2       sister-in-law.

3           Q       How were you traveling through Robeson  
4       County in July of 1993?

5           A       By car.

6           Q       What is your destination?

7           A       Florida, Lakeland, Florida.

8           Q       And where in Robeson County, North Carolina  
9       did you stop and on what date?

10          A       At the Family Inns, July the 3rd.

11          Q       And when you stopped at the Family Inn on  
12       July the 3rd of 1993, did you check into a room at  
13       that motel?

14          A       Yes, sir.

15          Q       How many rooms did your party --

16          A       One room.

17          Q       And what time of the day or evening was it  
18       when you stopped at the Family Inn?

19          A       Somewhere around 5:00, 5:20, something like  
20       that.

21          Q       After checking into the Family Inn, did you  
22       stay there overnight?

23          A       Yes, sir.

24          Q       How many nights did you stay at the Family  
25       Inn?

1 A Just one night.

2 Q What day were you scheduled to depart?

3 A The next morning, July the 4th.

4 Q And did there come a time during the  
5 morning of July the 4th, 1993, when you prepared to  
6 leave and check out of the motel?

7 A Yes, sir.

8 Q And when was that?

9 A About 4:30, quarter to 5:00 in the morning.

10 Q Was that the scheduled time, the time that  
11 you had scheduled to leave?

12 A We usually leave a little later than that,  
13 but that morning we left a little earlier.

14 Q Why did you prepare to leave earlier that  
15 are morning?

16 A My brother had never been to Florida so he  
17 was more anxious to get on the road, get on down to  
18 Florida.

19 Q What type of car were you driving?

20 A '90 Oldsmobile.

21 Q Who did that car belong to?

22 A My brother-in-law.

23 Q And where was the car parked in  
24 relationship to the room?

25 A Right -- the landing was on the second deck

1 of the motel, right on the landing that's going down.

2 Q And were there lights in that parking lot?

3 A Yes, sir.

4 Q On the morning of July 4th, 1993, were the  
5 lights in that parking lot operating?

6 A Yes, sir.

7 Q Who loaded the car?

8 A Who drove the car.

9 Q Who loaded the car?

10 A My brother-in-law and myself.

11 Q And when you first went to the car on the  
12 morning of July 4th, 1993, who went to the car with  
13 you?

14 A The first trip, just me and my  
15 brother-in-law.

16 Q What items did you place in the car?

17 A The luggage mostly and a cooler that we  
18 had.

19 Q Where were those items placed in?

20 A In the trunk.

21 Q After placing those items in the trunk, did  
22 you return to your room?

23 A Yes, sir.

24 Q After returning to the room, did you bring  
25 other items placed in the car and anyone else

1 accompany you?

2 A Yes, sir.

3 Q Who?

4 A My wife and my sister-in-law brought the  
5 rest of the stuff down.

6 Q What if anything happened when you returned  
7 to the car the second time?

8 A We were approached by two males, one  
9 wielding a gun, told us to keep quiet so there  
10 wouldn't be any noise or whatever.

11 Q Can you describe the two people that  
12 approached you?

13 A One was black or dark-complected, one was  
14 light-skinned.

15 Q Do you recall how they were dressed?

16 A One of them had a hood on, a sweat shirt  
17 with a hood on it. And the other had a gray, I  
18 believe, jacket or sweat shirt with a dark colored  
19 hat.

20 Q Which one of the individuals was wearing  
21 the sweat shirt with the hood on it?

22 A The dark-complected.

23 Q And which one of the individuals had a gun?

24 A The light-complected one.

25 Q Can you describe the color of the gun that

1 you saw?

2 A Silver plated.

3 Q And what if anything caused you to turn  
4 your attention to these individuals?

5 A We saw them as they were coming towards us  
6 over there.

7 Q How far away from you were they the first  
8 time you saw them?

9 A Probably about 20 feet.

10 Q Were you on one side of the car?

11 A Yes, sir.

12 Q What side of the car?

13 A The driver's side.

14 Q What if anyone else was on that side of the  
15 car with you?

16 A My sister-in-law was sitting in the seat  
17 over there, the driver's side.

18 Q Where was your wife?

19 A Opposite side of the car.

20 Q And brother-in-law?

21 A My brother-in-law also.

22 Q Did either of the two individuals that  
23 approached you come to the side of the car where you  
24 were?

25 A Yes, sir.

1 Q Which one of the two?

2 A The one that had the gun.

3 Q What if anything was said to you?

4 A That he wanted my money, my wallet and my  
5 money.

6 Q And approximately how far away was that  
7 individual from you at the time --

8 A Probably two or three feet in front of me.

9 Q The darker-complected individual with the  
10 sweat shirt with the hood on it, where was he?

11 A He was on the opposite side of the car from  
12 where my wife and my brother-in-law were.

13 Q Approximately how far away from him were  
14 you?

15 A Probably seven or eight feet.

16 Q And after the individual with the gun asked  
17 for your wallet, what happened?

18 A They grabbed stuff in the car that they  
19 were -- camera, camera casing and whatever.

20 Q Did you have a camcorder or a video?

21 A Yes, sir.

22 Q Recorder?

23 A Camcorder.

24 Q And where was the camcorder?

25 A On the front seat of the car.

1 Q Was it inside the case?

2 A No.

3 Q Do you know who had placed the camcorder  
4 inside the front seat of the car?

5 A I believe it was my wife.

6 Q Was that camcorder taken during this  
7 incident?

8 A Yes, sir.

9 Q How much money did you have in your wallet?

10 A My wallet, they didn't get my wallet, they  
11 got some pocket money that I had.

12 Q How much --

13 A Probably about \$40.00, \$50.00, somewhere  
14 around there.

15 Q Did you have other money on you?

16 A Yes, sir.

17 Q Did you give them that money?

18 A No, sir.

19 Q Did you see either your wife, your  
20 brother-in-law or your sister-in-law give them money  
21 or pocketbooks or wallets?

22 A No, I couldn't see them give it to them,  
23 but I could hear what they were talking about getting  
24 the money off of them.

25 Q And after you gave them this money, what

1 did the two individuals do?

2 A They grabbed the camcorder and some other  
3 stuff in the trunk, and then they took it and ran off  
4 to the other side of the motel.

5 Q Now, in the area where your car was parked,  
6 was there a light?

7 A Lights?

8 Q Yes, sir.

9 A Yes, sir.

10 Q And did those lights illuminate the parking  
11 lot?

12 A Yes, they were more or less like  
13 spotlights.

14 Q And were you able to see the facial  
15 features of these individuals?

16 A Yes, sir.

17 Q As they approached?

18 A Yes, sir.

19 Q Were you wearing your glasses at the time?

20 A Yes, sir.

21 Q Was there anything that obstructed your  
22 view of the individuals that approached you in the  
23 parking lot?

24 A No, sir.

25 Q After these individuals left, by what means

1 did they leave?

2 A They ran around, I believe it was the north  
3 side of the motel, which was, like, say to the right  
4 of the car.

5 Q After they left, what did you do?

6 A We got in our car and went around to the  
7 front of the motel to try to get -- to get -- to call  
8 the police.

9 Q And when you went to the front of the  
10 motel, were you going to the office?

11 A There was very light dim, dim lights in  
12 there, and seemed like there was nobody in there. So  
13 we took and went over to the Day's Inn that was next  
14 door. And they made the call for us to the police  
15 department.

16 Q After you went to the Day's Inn, did the  
17 police arrive shortly after that?

18 A Yes, sir.

19 Q Did you talk with the police when they  
20 arrived?

21 A Yes, sir.

22 Q Did you give them a description of the  
23 individuals that approached you in the parking lot?

24 A Yes, sir.

25 Q What if any description did you give to the

1 police that arrived there?

2 A What was that, sir?

3 Q What if any description did you give of  
4 these individuals once the police arrived?

5 A What they wore, and what they done.

6 Q Did you describe them in terms of height or  
7 weight?

8 A What is that.

9 Q Did you give the police a height or weight  
10 of either of the individuals?

11 A I didn't understand that.

12 Q Did you tell the police how tall and how  
13 heavy?

14 A Yes, sir.

15 Q How tall did you --

16 A Say five-four, five-five, somewhere. About  
17 145 pounds, 150 pound, somewhere like that.

18 Q Were both of the individuals similar in  
19 size?

20 A Yes, about the same.

21 Q Now, after you talked with the police, did  
22 you continue with your trip to Florida?

23 A Yes, sir.

24 Q And after you completed your trip to  
25 Florida, did you return home to West Warwick, Rhode

1 Island?

2 A Yes, sir.

3 Q After returning from Florida, did there  
4 come a time, Mr. Tedeschi, when you saw a TV story  
5 about individuals that you recognized?

6 A At home on the TV, yes, sir.

7 Q And what if any TV report, news report, did  
8 you see that involved the individuals that you  
9 recognized?

10 A That they were the ones that had shot  
11 Mr. Jordan.

12 Q And after seeing that report on television,  
13 what if anything did you do?

14 A We contacted the police department in North  
15 Carolina.

16 Q And after contacting the police department  
17 in North Carolina, were you visited by agents from  
18 the FBI?

19 A Yes, sir.

20 Q And where did these FBI agents come to see  
21 you?

22 A When?

23 Q Where?

24 A At my home.

25 Q And when they came to see you at your home,

1 did you give a statement to the FBI agents?

2 A Yes, sir.

3 Q Did that statement include a description of  
4 the individuals --

5 A Yes, sir.

6 Q -- that had robbed you in the parking lot  
7 at the motel in Rowland?

8 A Yes, sir.

9 Q What if any description did you give the  
10 FBI?

11 A The same descriptions I give the police in  
12 North Carolina.

13 Q And while the FBI was there, were you asked  
14 to look at a series of photographs?

15 A Yes, sir.

16 Q Were you asked by the FBI if you could  
17 identify anyone in those series of photographs?

18 A Yes, I did.

19 MR. BRITT: May I approach?

20 THE COURT: Yes, sir.

21 BY MR. BRITT:

22 Q Mr. Tedeschi, I'm going to show you what's  
23 been previously marked as State's Exhibit Number 68,  
24 ask you if you've ever seen that before?

25 A Yes, sir.

1 Q And ask you -- show you what's been marked  
2 as State's Exhibit Number 69, ask you to look at that  
3 and tell me if you've ever seen it before?

4 A Yes, sir.

5 Q When was the first time you saw State's  
6 Exhibit 68 and 69?

7 A When they brought them to my home.

8 Q When you say "they," are you referring to  
9 the FBI?

10 A Yes, sir.

11 Q When the FBI brought State's Exhibit 68 and  
12 69 to your home, were you asked to examine State's  
13 Exhibits 68 and 69 to determine if you could identify  
14 anyone pictured there?

15 A Yes, sir.

16 Q And after -- were you given an opportunity  
17 to do that?

18 A Yes, sir.

19 Q And after you had an opportunity to look at  
20 State's Exhibits 68 and 69, were you able to identify  
21 anyone pictured in either State's Exhibit 68 or  
22 State's Exhibit 69?

23 A Yes, sir.

24 Q Who in State's Exhibit 68 were you able to  
25 identify?

1           A       Number three.

2           Q       The record will reflect State's Exhibit  
3       Number 68 is a photographic lineup, and the picture  
4       in the third slot is that of the defendant Daniel  
5       Green?

6                   THE COURT:   Yes, sir.

7       BY MR. BRITT:

8           Q       State's Exhibit Number 69, were you able to  
9       identify anyone?

10          A       Yes, sir.

11          Q       And who in State's Exhibit Number 69 were  
12       you able to identify?

13          A       Number eight.

14                   MR. BRITT:   Please the Court,  
15       State's Exhibit Number 69 is a photographic  
16       lineup, and that the photograph in slot  
17       number eight is a photograph of Larry  
18       Martin Demery.

19                   THE COURT:   Yes, sir.

20       BY MR. BRITT:

21          Q       Mr. Tedeschi, when you identified the  
22       defendant and Larry Martin Demery to the FBI were you  
23       doing that based upon your memory of the events of  
24       July the 4th, 1993?

25          A       Yes, sir.

1 Q And is there anyone in this courtroom that  
2 you can identify as one of the individuals that  
3 robbed you on July the 4th, 1993?

4 A Yes, I can.

5 Q Who is that and where is he seated?

6 A This gentleman sitting at the first seat  
7 her with the black clothes on and the glasses.

8 Q Is there any difference in Mr. Green --

9 MR. BRITT: Let the record  
10 reflect he's indicated the defendant.

11 THE COURT: Yes, sir.

12 BY MR. BRITT:

13 Q Is there any difference in Mr. Green's  
14 appearance today than the way he appeared July the  
15 4th?

16 THE COURT: Yes, it is. He has  
17 glasses and sort of a beard.

18 MR. BRITT: I don't have any  
19 other questions.

20 THE COURT: Any  
21 cross-examination?

22 CROSS-EXAMINATION

23 BY MR. THOMPSON:

24 Q Good morning.

25 A Good morning.

1           Q       You were shown State's Exhibit Number 68  
2 and 69 after seeing a picture of the defendant on  
3 television, is that right?

4           A       From the FBI, yes.

5           Q       Yes, sir. Now, back on July the 4th of  
6 1993, when you were out there in the parking lot, it  
7 was the light-skinned individual who you've  
8 identified as Mr. Demery that was holding the gun?

9           A       I didn't understand the question.

10          Q       Was it Mr. Demery, the light-skinned  
11 individual, that you identified who was holding the  
12 gun?

13          A       Was he the light-skinned gentleman, is that  
14 what you're saying?

15          Q       Yes, sir.

16          A       No, he wasn't, Mr. Demery was  
17 light-skinned.

18          Q       The light-skinned individual was holding  
19 the gun?

20          A       Was Mr. Demery.

21          Q       Mr. Demery demanded that you give him  
22 money?

23          A       Yes, wanted our money, right.

24          Q       He demanded that you give him your watch  
25 and your wallet?

1 A Right.

2 Q It was Mr. Demery who demanded, told you  
3 and your sister-in-law to get into the vehicle?

4 A Yes, sir.

5 Q Now, you gave an interview to FBI, meaning  
6 Federal Bureau of Investigation Agent Russell  
7 Griffin, is that right?

8 A What was the name, sir?

9 Q Russell Griffin?

10 A There was Pitcavage, the first gentleman  
11 that came. There was two different ones that came.

12 Q The interview that you gave was back in  
13 August of -- around August 18th of 1993?

14 A Was the 18th, yes, sir.

15 Q Yes, sir. And you were later given a copy  
16 of the statement that you had given in that early  
17 interview?

18 A I believe it was two days after.

19 Q And you read that statement?

20 A Yes, sir.

21 Q And you were given an opportunity to make  
22 any changes?

23 A Yes.

24 Q And you made no changes?

25 A The only changes we did is we added the

1 value of the stuff that was taken that we didn't know  
2 when we were down at the police station in North  
3 Carolina.

4 Q Yes, sir. Now, Mr. Tedeschi, you told the  
5 FBI agents during the earlier interview that it was  
6 Mr. Demery who gritted his teeth as he spoke to you?

7 A Did what?

8 Q Gritted his teeth?

9 A It was Demery, yes, sir.

10 Q Yes, sir. Again, you told the FBI agent  
11 during the earlier interview back on August the 18th  
12 of 1993, that Mr. Demery who seemed to be the one in  
13 charge?

14 A I believe that's a statement that my wife  
15 made.

16 Q You deny telling that to FBI agent?

17 A I say I believe it was.

18 Q All right. Now, you told the FBI agent  
19 back on August 18th of 1993 that you did not get a  
20 very good look at the dark-skinned male, did you not,  
21 because he was wearing a hood?

22 A I got a look at him, but I still -- not a  
23 good look, but I said I got a look at him, because  
24 had wasn't that far away from when he first  
25 approached us.

1 Q Yes, sir. You told the FBI agent you did  
2 not get a very good look at the dark-skinned male  
3 because he was wearing a hood?

4 A He had a hood, yes, he had a hood.

5 Q And that you did not get a very good look  
6 at him?

7 A Yes, but I had got a look at him.

8 Q You told Agent Griffin that you recognized  
9 the light-skinned male after seeing his picture on  
10 television?

11 A Recognized them both together when we saw  
12 them on TV.

13 Q You did not tell the FBI agent back in your  
14 interview of August 18th of 1993 that you recognized  
15 the dark-skinned male, did you?

16 A That we recognized the both of them.

17 MR. THOMPSON: May I --

18 THE COURT: Yes, sir.

19 MR. THOMPSON: May I approach?

20 THE COURT: Yes, sir.

21 BY MR. THOMPSON:

22 Q Mr. Tedeschi, I hand you what's been marked  
23 as Defendant's Exhibit Number 45. Can you identify  
24 Defendant's Exhibit Number 45?

25 A The signature?

1 Q What is Defendant's Exhibit Number 45?

2 A 45, I don't understand.

3 Q Strike that. Let me ask you, Defendant's  
4 Exhibit Number 45 is a copy of the statement that you  
5 gave to Agent Griffin, is that right?

6 A Uh-huh, yes.

7 Q And that is Defendant's Exhibit Number 45  
8 was given to you, as you've testified, about two  
9 weeks after --

10 THE COURT: Two days.

11 BY MR. THOMPSON:

12 Q Two days, excuse me, after you gave the  
13 interview, is that right?

14 A Yes, sir.

15 Q And you had an opportunity to read that  
16 statement?

17 A Yes, sir.

18 Q And you indicated that the only changes  
19 that you made after reading that statement was with  
20 respect to the value of the materials taken from the  
21 car?

22 A Yes, sir.

23 Q And in Defendant's Exhibit Number 45,  
24 Mr. Tedeschi, you told agent Griffin that you  
25 recognized the light-skinned male, did you not?

1           A       Yes, sir.

2           Q       You did not tell the FBI agent that you  
3 recognized the dark-skinned male, did you?

4           A       The statement I gave says these individuals  
5 were -- I think there was more than one, the way I  
6 read it. I did not say that it was Green, but I also  
7 said it was these individuals.

8           Q       You told the FBI agent that you did not get  
9 a very good look at the dark-skinned male because he  
10 was wearing a hood, isn't that right?

11          A       Yes.

12          Q       You told the FBI agent that you might  
13 recognize him if you saw him again?

14          A       That's what I said.

15          Q       But you did not tell the FBI agent that you  
16 recognized the dark-skinned male when you gave your  
17 interview back on August the 18th?

18          A       Not the way that you're putting, but I  
19 associated these individuals. To me, it was like the  
20 two people that we were associated with that was in  
21 there.

22          Q       You told the FBI agent that you associated  
23 these individuals --

24          A       Yes.

25          Q       -- with the individuals who killed James

1 Jordan?

2 A Yes, sir.

3 Q When you saw the individuals on television,  
4 Mr. Tedeschi, was your wife present?

5 A Yes.

6 Q And it was your wife who first identified  
7 the individuals as being the ones --

8 A I believe we both had come in from out, we  
9 had gone somewhere and we came in both at the same  
10 time, and my daughter was at home with the TV on, and  
11 she told us that they were showing the thing on TV or  
12 something, and that's when we recognized them.

13 Q And you and your wife had a conversation  
14 about the individuals?

15 A We both said at the same time that we  
16 recognized who it was.

17 Q And how tall are you, Mr. Tedeschi?

18 A Probably about five-five.

19 Q Did you have a hearing problem back on  
20 August the --

21 THE COURT: July.

22 BY MR. THOMPSON:

23 Q Excuse me, July the 4th of --

24 A Did I have a hearing problem?

25 Q Yes.

1           A       I worked in a shop that had a lot of noise,  
2       so that's why my hearing is a little bit gone, work  
3       in a noisy shop.

4           Q       Yes, sir. You described to Officer  
5       Bradshaw of the Rowland Police Department that the  
6       dark-skinned male who robbed you was about five-four  
7       or five-five?

8           A       Yes, sir.

9           Q       And that's as you've testified to today?

10          A       Yes, sir.

11          Q       And you also described that individual as  
12       about five-four or five-five?

13          A       Yes, sir.

14          Q       To the FBI Agent Griffin?

15          A       Yes, sir.

16          Q       You also described the light-skinned male  
17       as being about five-four or five-five to Officer  
18       Bradshaw?

19          A       Yes, sir.

20                   MR. THOMPSON: That's all.

21                   THE COURT: Any redirect  
22       examination, Mr. Britt?

23                   MR. BRITT: No, sir.

24                   THE COURT: Thank you sir, you  
25       may step down.

1 MR. BRITT: We call Dorothy  
2 Tedeschi.

3 THE COURT: If you'll come up and  
4 be sworn, please, ma'am.

5 Please place your left hand on the  
6 Bible and raise your right, please

7 DOROTHY TEDESCHI,  
8 being first duly sworn was examined and testified as  
9 follows:

10 DIRECT EXAMINATION

11 THE COURT: Thank you, ma'am.

12 For the record, your name is Dorothy  
13 Tedeschi?

14 THE WITNESS: Yes, sir.

15 THE COURT: And your name has  
16 previously been spelled for the record?

17 THE WITNESS: Yes, sir.

18 BY MR. BRITT:

19 Q Mrs. Tedeschi, are you the wife of Joseph  
20 Tedeschi?

21 A Yes, sir.

22 Q You reside in Warwick, Rhode Island?

23 A West Warwick.

24 Q In July of '93 did you accompany your  
25 husband, your brother and sister-in-law on a trip to

1 Florida?

2 A Yes, I did.

3 Q Did you have an occasion on July the 3rd of  
4 1993 to stop at the Family Inn located in Rowland,  
5 North Carolina?

6 A That's right.

7 Q After checking into the motel,  
8 Ms. Tedeschi, did there come a time during the early  
9 morning hours of July the 4th of 1993 when your group  
10 decided to leave?

11 A Yes.

12 Q How many times did you go out to the car  
13 that morning?

14 A The men went out first, then they came back  
15 and they went out again, and right after that, I went  
16 out carrying different items with my sister-in-law.

17 Q What floor of the motel --

18 A On the second deck.

19 Q And when the men went out to load the items  
20 into the car the first time, did you walk out onto  
21 the balcony?

22 A I walked out to the balcony, yes, sir.

23 Q Overlooking the parking lot?

24 A Yes.

25 Q Were there lights in the parking lot?

1 A Yes.

2 Q Were you able to see your husband and your  
3 brother?

4 A Yes.

5 Q When your husband and your brother returned  
6 to the room, did all four of you then gather items  
7 and return to the car?

8 A Yes.

9 Q What happened after you left the room and  
10 returned to the car?

11 A Well, my brother and my husband were on the  
12 back end of the car loading the car. I -- my  
13 sister-in-law and I were walking down together, and I  
14 put the camcorder in the car, and I was heading to  
15 the trunk when these boys were approaching my brother  
16 and my husband.

17 Q Approximately how far away from you were  
18 these boys when you first saw them?

19 A I must tell you, feet and all distance, I'm  
20 not very good at. But I'll say from here to where my  
21 husband is is when I saw the boys.

22 Q And your husband is seated here on the  
23 first row?

24 A Yes, sir.

25 Q Would you say that's somewhere between 15

1 and 20 feet from where you're sitting?

2 A If you know that distance, yes, sir.

3 MR. BOWEN: Object.

4 THE COURT: That's okay.

5 THE WITNESS: I'm trying to be  
6 truthful.

7 MR. THOMPSON: Object, move to  
8 strike.

9 THE COURT: Folks, is there any  
10 dispute as to the distances?

11 MR. BOWEN: Just don't want the  
12 DA testifying.

13 MR. THOMPSON: Not other than she  
14 testified to. Object to the DA's comment.

15 BY MR. BRITT:

16 Q What if anything did you observe these two  
17 boys doing?

18 A Well, Mr. Demery was on this side, which is  
19 the right, and Mr. Green was on the left. Mr. Demery  
20 had the gun up to the side of his head, approached  
21 the boys, and went like this, not to make any noise.

22 Q For the record, if the Court will --  
23 Ms. Tedeschi, you've held your hand up to your mouth  
24 with your index finger?

25 THE COURT: That's okay.

1 BY MR. BRITT:

2 Q That's correct?

3 A Yes.

4 THE COURT: For the record, is  
5 there any dispute that she has held her  
6 right hand up --

7 THE WITNESS: No, they did.

8 THE COURT: I understand, but  
9 you're showing what they --

10 THE WITNESS: Yes, okay, sir.

11 THE COURT: -- placed her finger  
12 to her lips?

13 MR. THOMPSON: There's no  
14 dispute.

15 THE COURT: Okay, let's go,  
16 folks.

17 THE WITNESS: When I saw that, I  
18 have to say this, as I saw it, and what was  
19 in my mind, I can't say nothing different,  
20 I saw that, I was in disbelief. I said in  
21 a low tone to my sister, we're being  
22 robbed. And I still couldn't believe it  
23 when they were still asking for money and  
24 everything.

25 BY MR. BRITT:

1 Q Which side of the car were you on?

2 A I was on the passenger side.

3 Q Which side of the car was your husband on?

4 A By the time they got through with him, he  
5 was on the driver's side.

6 Q And did either of the two individuals that  
7 you had seen approaching your husband and your  
8 brother come to the side of the car where you were?

9 A Well, my -- Mr. Demery followed my  
10 husband. Mr. Green helped himself to what was in,  
11 that he was able to carry, the camcorder case and all  
12 the equipment, he helped himself to that, took out  
13 the shaving bag. And then he came over to me and  
14 helped himself to my purse. I knew eventually they  
15 were going to get it, but trying to stall it so maybe  
16 somebody would hear. I was talking loud, louder than  
17 I'm talking now. And I told him no, because the  
18 money -- well, we knew that's what they wanted, but  
19 the pictures were not for him. And I said, I've got  
20 things in this purse I want to keep. And they said  
21 no. They gave me a hard time. The longer --.

22 MR. BOWEN: Object to that  
23 conclusion.

24 THE WITNESS: Excuse me?

25 THE COURT: Overruled.

1                   THE WITNESS:   And the longer I  
2                   took to detain them, this was the thing,  
3                   but either they hurt us or didn't want to  
4                   get involved, or whatever, and he was so  
5                   close to me that I could have touched him.  
6                   I looked at him right in his face, like I  
7                   was a relative or whatever, trying with my  
8                   heart to let him know what he's doing.

9   BY MR. BRITT:

10            Q     Did you say anything to him?

11            A     I said, "Do you realize what you're doing  
12            to yourself, to your family, to us?" And he said,  
13            "Just give me your bag," but his eyes were on  
14            Mr. Demery. Mr. Demery was going around, his eyes  
15            was going on to Mr. Demery, but then they would come  
16            back to me. Every once in a while, he would watch  
17            Mr. Demery.

18                    Then by the time he got through with me,  
19            and we were so close, so close. And Mr. Demery came  
20            around the front of the car, and he started giving us  
21            a hard time, and for me to give this gentleman my  
22            pocketbook. And he stamped his feet, crunched his  
23            teeth, and told me I did not understand. And he kept  
24            going like that (indicating).

25                    I said, "Listen here, I understand better

1 than you think I do." I wasn't scared. I was  
2 shocked. And I was mad. Then later, as time goes  
3 on, you realize what happened to you, and the fear  
4 stays with you.

5 So anyway, but this gentleman didn't have  
6 too much to say. All he said, "Anything else?" And  
7 happened to look in the car, and he said, "What are  
8 you looking at?" Or "What are you looking for?"

9 And I said, "Nothing, you got everything."  
10 And then I gave him my purse. And then that's when  
11 Demery came around and was giving me a hard time. He  
12 told everybody, get in the car. I said no, I'm not  
13 getting in the car. He said, "I said, get in the  
14 car." And they all scattered, they got in the car.

15 This is very sad. And I said, "No, I'm not  
16 getting in the car." Then he got real mad at me,  
17 stamped his feet and everything, and then he went,  
18 "Get in the car, I'll blow your head off, buddy."  
19 Kept the gun up like this.

20 And this gentleman took off down the  
21 driveway. And when he took off down the driveway,  
22 this kid, I guess, wanted to keep up with him, so I  
23 put one foot in the car, and Demery took off after  
24 Mr. Green. But Mr. Green was halfway down the  
25 drive.

1                   And then I got out of the car, and I ran  
2 down, half way down the drive. They didn't -- but it  
3 did appear to me that Mr. Green went on and he got to  
4 a certain car -- he went around the passenger side,  
5 and Mr. Demery went around the driver's side, and  
6 just then, brake lights went on. So somebody had to  
7 be in that car, somebody had to have seen them. I  
8 can't add to anything that's been already decided  
9 upon these people, but that's the impression I  
10 got.

11                   MR. BOWEN: Object, move to  
12 strike.

13                   THE COURT: All right. The  
14 objection is sustained. Motion to strike  
15 is allowed.

16                   MR. BOWEN: Desire for  
17 instruction.

18                   THE COURT: Members of the jury,  
19 please don't consider the last remark made  
20 by Ms. Tedeschi, that's not to take any  
21 part in your deliberations.

22                   THE WITNESS: I'm sorry.

23                   THE COURT: That's okay, ma'am.

24 BY MR. BRITT:

25                   Q       Mrs. Tedeschi, the two people that

1 approached you, your husband, your brother and  
2 sister-in-law in the parking lot, do you recall how  
3 they were dressed?

4 A Mr. Green had a navy blue hood attached to  
5 his sweat shirt. I say Mr. Demery had something like  
6 a beige with elastic band around, jacket, which was a  
7 little, maybe one size too big for him. And he had a  
8 black hat.

9 Q And you said that the defendant was close  
10 to you, so close that you could touch him?

11 A I could touch him. You know what I wanted  
12 to do? I can't say it, can I?

13 MR. BOWEN: Object.

14 BY MR. BRITT:

15 Q How far away from you was he?

16 A I would say from here to that -- is that a  
17 computer? Or whatever it is? From here to the end  
18 of that table. But as we talked, I got like kind of  
19 close because when you're angry, you know, and I was  
20 more mad than frightened.

21 Q Were you wearing your glasses that morning?

22 A Yes, I was, they were tinted but they were  
23 still light, because they only get dark in the  
24 sunlight. And that -- I do recognize Mr. Green.

25 Q Was there anything that obstructed your

1 view of either of the individuals that approached  
2 you?

3 A Nothing. Face to face. What was going to  
4 obstructed us? Right here.

5 Q When you say that the defendant ran from  
6 the car, was he carrying any items with him?

7 A Mr. Green didn't say too much, he just had  
8 the stuff. I guess he figured I was giving this guy  
9 a hard time.

10 MR. BOWEN: Object.

11 THE WITNESS: I guess what he  
12 thought was wrong, okay.

13 BY MR. BRITT:

14 Q What stuff did you see him take?

15 A The case with all our camera equipment, the  
16 shaving, my camcorder, with special video in it.  
17 What other items he took, I don't know, but he is the  
18 one that took these items. Mr. Demery took my  
19 sister-in-law's pocketbook, she begged him not to  
20 take her medicine and her glasses. He just had the  
21 gun in the right-hand. He was feeling in the  
22 left-hand in her purse, he gave it back to her. She  
23 was lucky.

24 Q Did either of them take your pocketbook?

25 A Mr. Green.

1 Q And did you have any money in your  
2 pocketbook?

3 A Well, money I didn't want to tell my  
4 husband I had. Only what I had up front, but I had a  
5 secret compartment.

6 Q How much money did you have in your  
7 pocketbook?

8 A Started out in the front with \$300, but we  
9 went shopping at South of the Border, but then I had  
10 a little bit left in the secret compartment. I don't  
11 know, about \$150, I think I had in that.

12 Q And after you were robbed there in the  
13 parking lot, did you talk with the police?

14 A Well, that's the thing, I went down the  
15 driveway, you know. If the others would have gone  
16 with me, I would have had a better chance. But when  
17 I say -- I'm just saying what I thought, that they  
18 had gotten in that car with the brakes, right, I  
19 said, follow them. They didn't want to follow them.

20 So we went around to the office, it was  
21 dim. Then I saw a police cruiser. I know you're  
22 getting sick of hearing this, but I saw a police  
23 cruiser, oh, God help us, there's somebody. Nobody  
24 in the police cruiser, so there was an empty lot  
25 between the Family Inn, and the Eight Days Inn.

1 Well, let's go to the Eight Days Inn, it's well lit.

2 Well we ran -- well we didn't run, but we  
3 got there faster so we drove to the Eight Days Inn.  
4 There was another cruiser. I says, oh, there's  
5 another cruiser, nobody in it. They must be having  
6 coffee in Eight Days Inn. We went in there and said,  
7 where is the officers belonging to those cruisers?  
8 Oh, there's no officers for those cruisers. Those  
9 are decoys that you have there in that town, decoys.  
10 Well, at least you could use it for a plant if you're  
11 going to keep them around.

12 MR. BOWEN: Object and move to  
13 strike.

14 THE WITNESS: Objection.

15 THE COURT: Objection is  
16 sustained. Motion to strike is allow.

17 MR. BOWEN: Desire to be  
18 instructed.

19 THE COURT: Members of the jury,  
20 please disregard the place comment made by  
21 Mrs. Tedeschi.

22 BY MR. BRITT:

23 Q After you went to the Days Inn, did the  
24 police arrive?

25 A Yes, the operator called -- I'm not

1 familiar, you know, with your surrounding towns. The  
2 operator called one town, then she called, and she  
3 says, I'm sorry, but I can't get anybody here. She  
4 tried there, and she finally got somebody, and that's  
5 when the officers came.

6 Q Did you give the officers a description of  
7 the two individuals that robbed you?

8 A Yes, they went to the Family Inn and looked  
9 around, I say, yeah, if I was back home we would have  
10 escort -- we would have the Swat team over  
11 there.

12 MR. BOWEN: Object.

13 THE WITNESS: But I guess they  
14 can't afford it.

15 THE COURT: Sustained.

16 MR. BOWEN: Desire the jury to be  
17 instructed.

18 THE WITNESS: I'm sorry.

19 THE COURT: Disregard the last  
20 comment of Mrs. Tedeschi.

21 BY MR. BRITT:

22 Q Did you give the police a description of  
23 the individuals that had robbed you?

24 A Yes, at the station I gave them the  
25 description, but we were all so nervous, I kept

1 saying one thing and then another, and then another,  
2 but in my mind, what I visualize is what I see, and  
3 that is something you don't forget.

4 Q After you talked with the police, did you  
5 continue with your trip to Florida?

6 A I didn't want to, I wanted to go home, but  
7 these two individuals never been to Florida.

8 MR. BOWEN: Object.

9 THE WITNESS: Okay.

10 THE COURT: Who are you talking  
11 about?

12 THE WITNESS: My brother-in-law  
13 and sister-in-law that were with us.

14 THE COURT: Overruled.

15 THE WITNESS: So we decided to  
16 take them on to Florida, but all the while  
17 my heart wanted to go --

18 BY MR. BRITT:

19 Q After that time did there come a time that  
20 you saw a news story on television?

21 A I came in, my daughter says, Mom, look --

22 MR. BOWEN: Object.

23 THE COURT: Explain subsequent  
24 conduct?

25 MR. BRITT: Yes.

1 THE COURT: Overruled. Members  
2 of the jury, the testimony now being  
3 elicited from Mrs. Tedeschi that she said  
4 was made to her by her daughter are not  
5 being offered for the truth of the matters  
6 asserted but simply to explain the  
7 subsequent conduct of Mrs. Tedeschi. You  
8 may consider this evidence for that limited  
9 purposes and no other.

10 THE WITNESS: So when we  
11 approached, I says, "Oh, Mr. Jordan got  
12 killed, it was murdered." As she told me  
13 the story, and happened to be on. We  
14 looked, and I said, "Oh, my God, that's  
15 those boys."

16 BY MR. BRITT:

17 Q When you say "That's those boys," what are  
18 you referring to?

19 A Mr. Green and Mr. Demery. I slept on it,  
20 and called the authorities the next morning.

21 Q And in that news account, did you see  
22 photographs of Larry Demery and Daniel Green?

23 A They were walking to a courtroom with other  
24 officers.

25 Q And did you recognize those two

1 individuals?

2 A Right away.

3 Q And when did -- from what event did you  
4 recognize them from?

5 A From the robbery.

6 Q And after sleeping on it and contacting the  
7 authorities, were you visited by the FBI?

8 A Yes, twice.

9 Q And on one of those occasions, did the FBI  
10 agent show you a series of photographs?

11 A Well, when they came over, they took me in  
12 one room and my husband in another, and we each gave  
13 our story separate, and we looked at the photographs,  
14 and I did identify them.

15 MR. BRITT: May I approach?

16 THE COURT: Yes, sir.

17 BY MR. BRITT:

18 Q Mrs. Tedeschi, I'm going to show you what's  
19 previously been marked as State's Exhibit Number 68,  
20 and ask you if you've ever seen that before?

21 A Yes.

22 Q Show you what's been marked as State's  
23 Exhibit Number 69 and ask you if you've ever seen  
24 that before?

25 A Yes.

1 Q State's Exhibit 68 and 69, are they in the  
2 same shape and condition today as they were when you  
3 first saw them?

4 A Yes, they are.

5 Q And were they first shown to you by FBI  
6 agents in your home in West Warwick, Rhode Island?

7 A Yes.

8 Q Were you asked to identify any individuals  
9 in either State's Exhibit 68 or 69?

10 A Yes.

11 Q Were you able to identify anyone in State's  
12 Exhibit --

13 A Yes, sir.

14 Q Who in State's Exhibit 68 were you able to  
15 identify, what number is that photograph?

16 A Number three.

17 Q For the record, State's Exhibit 60 --

18 MR. THOMPSON: Object, Your  
19 Honor, that's for the record.

20 THE COURT: Complete your  
21 statement Mr. Britt.

22 MR. BRITT: For the record,  
23 State's Exhibit 68 is a photographic lineup  
24 containing a known photograph of the  
25 defendant Daniel Green, and the individual

1 depicted in photograph number three in  
2 State's Exhibit 68 is the defendant Daniel  
3 Green.

4 THE COURT: Let the record so  
5 show.

6 BY MR. BRITT:

7 Q In State's Exhibit Number 69, were you able  
8 to identify anyone?

9 A Yes.

10 Q What number?

11 A Mr. Demery, number eight.

12 Q And for the record, State's Exhibit Number  
13 69 is a photographic lineup containing the known  
14 photograph of the defendant Larry Martin Demery and  
15 that photograph depicted as number eight is the known  
16 photograph of Larry Martin Demery?

17 THE COURT: Let the record so  
18 show.

19 BY MR. BRITT:

20 Q Mrs. Tedeschi, when you identified the  
21 defendant and Larry Martin Demery for the FBI, was  
22 that based upon your memory of the events of July the  
23 4th, 1993?

24 A Yes, sir. The face, what happened to me,  
25 face to face, we were weren't that far apart, that is

1 embedded in your mind, you do not forget.

2 Q And can you identify anyone in this  
3 courtroom as one of the individuals that robbed you  
4 in the parking lot of the Family Inn on July the 4th,  
5 1993?

6 A Yes, sir.

7 Q And where is that person situated at this  
8 time?

9 A First gentleman at that table.

10 Q Can you describe what he's wearing and his  
11 appearance?

12 A He's got a black suit on and glasses, and  
13 his beard, which he wasn't that day, clean face.

14 MR. BRITT: The record will  
15 reflect that the witness identified the  
16 defendant as one of the individuals who  
17 robbed her on July the 4th, 1993.

18 THE COURT: Yes, sir.

19 BY MR. BRITT:

20 Q Mrs. Tedeschi, is there any difference in  
21 his appearance today than the way he appeared on July  
22 the 4th, 1993?

23 A Yes, he has facial hair. He has a beard.

24 Q What is it that causes you to remember the  
25 defendant as one of the individuals who robbed you on

1 July the 4th?

2 A Because he was right in front of me, very,  
3 very -- no feeling, just staring at me.

4 MR. BOWEN: Object.

5 THE WITNESS: Excuse me.

6 THE COURT: Overruled. You may  
7 complete your answer.

8 THE WITNESS: He was standing in  
9 front -- how else can I say this? He had a  
10 nice face, he just stared at me. I was  
11 afraid of the other boy. He just stood  
12 there, I felt like I could talk to this  
13 boy.

14 MR. BRITT: I don't have any  
15 other questions.

16 THE COURT: Any  
17 cross-examination?

18 MR. BOWEN: Yes, Your Honor.

19 THE COURT: Yes, sir. I'm sorry,  
20 before you start, would you like some  
21 water?

22 THE WITNESS: No, I'm fine.

23 CROSS-EXAMINATION

24 BY MR. BOWEN:

25 Q Do you feel okay to go on?

1           A     Yes, I do.

2           Q     Mrs. Tedeschi, when you gave a description  
3 to the police in Rowland, did you give the height,  
4 your estimated height of the black individual?

5           A     No, they asked me, was he about five this,  
6 five that? I don't know, I know he's taller than I  
7 am. I've five-two, and I would have to look sort of  
8 like this.

9           Q     How tall are you?

10          A     I've five-two.

11          Q     Well, you gave the FBI the information that  
12 in your opinion he was five-five and 145 pounds, did  
13 you not?

14          A     Well, if I did, I don't recall, because I'm  
15 not one for weight. You can ask me how much somebody  
16 weighs, I wouldn't know, how high they are, I  
17 wouldn't know.

18          Q     Well, now, you got a chance to look --

19          A     Because I'm that type of person that don't  
20 take all that into consideration.

21          Q     You do recall being asked by the FBI when  
22 they came to see you in Rhode Island something about  
23 the height and weight of the individual, don't you?

24          A     I said I was five-two, and I had to look at  
25 up at him at a level. So five-five, five-six,

1 five-eight, I don't know, but I said, if I said  
2 five-five, I think that was a little too short.

3 Q Now, they gave you have a copy of your  
4 statement once you had made it, did they not, let you  
5 look over it?

6 A Yeah, but word for word, I just read, and I  
7 said yep. The only thing is, what is the difference,  
8 I see that face, the face, you can't forget it.

9 MR. BOWEN: Object to  
10 unresponsive.

11 THE WITNESS: All right.

12 BY MR. BOWEN:

13 Q I would like to ask you, Mrs. Tedeschi, if  
14 you had the opportunity to review the statement and  
15 read what it was that you told the FBI regarding  
16 height and weight of the dark individual?

17 A Oh, let's see now. One, two, three, four,  
18 we had four current interviews. Maybe five-five, I  
19 might have said, I don't remember now. I'm being  
20 honest. I might have said it because that's taller  
21 than what I am. But I think he was a little taller.

22 Q Well, do you remember reading over the  
23 statement and the statement being given back to you  
24 in writing that you gave, saying five-five, 145  
25 pounds, do you remember reading that?

1           A       No, I don't remember that,, I might have,  
2 I'm not saying I didn't, I just don't remember.

3           Q       Whatever it was that the FBI gave you to  
4 read, you didn't cause to them or suggest to them  
5 that any correction should be made?

6           A       No, I did not.

7           Q       You also told the FBI that the individual  
8 who had the gun was the light-skinned individual?

9           A       Light-skinned, yes.

10          Q       Dark-skinned individual never had any type  
11 of weapon whatsoever?

12          A       No, he did not.

13          Q       And you say that when the light-skinned  
14 individual said anything about, you don't understand,  
15 get in the car or I'll blow your head off?

16          A       Yes, that was after three or four times, I  
17 aggravated him.

18          Q       You said at that point when that was said,  
19 the dark individual ran, is that true?

20          A       Yes, he ran.

21          Q       And the dark individual never threatened  
22 you, did he?

23          A       No.

24                   MR. BOWEN: Thank you, ma'am.

25                   That's all.

1 THE COURT: Mr. Britt?

2 MR. BRITT: No other questions.

3 THE COURT: Mrs. Tedeschi, thank  
4 you very much, you may step down.

5 THE WITNESS: Thank you, you  
6 better watch my step today.

7 THE COURT: Yes, ma'am.

8 MR. BRITT: May I approach?

9 THE COURT: Yes, sir. Gentleman,  
10 may Mr. and Mrs. Tedeschi be released?

11 MR. THOMPSON: Yes.

12 THE COURT: Thank you both.  
13 You're free to go. If you'd like to remain  
14 you're free to, but you're free to go at  
15 this time.

16 Mr. Britt.

17 MR. BRITT: Your Honor, the State  
18 rests its portion of its evidence in these  
19 proceedings.

20 THE COURT: Folks, it's now  
21 approximately 10:30. The State having  
22 rested the presentation of its evidence at  
23 the stage, is counsel for the defendant  
24 ready to go forward?

25 MR. THOMPSON: Yes.

1 THE COURT: Or do you folks need  
2 a slight break?

3 MR. THOMPSON: Yes, sir, we're  
4 ready to go forward.

5 THE COURT: All right.

6 MR. THOMPSON: We're ready.

7 THE COURT: You may call your  
8 first witness.

9 MR. THOMPSON: We call Dr. Glenn  
10 Rohrer.

11 THE COURT: Okay. If you'll  
12 place your left hand on the Bible and raise  
13 your right, please.

14 **GLENN ROHRER,**  
15 being first duly sworn was examined and testified as  
16 follows:

17 **DIRECT EXAMINATION**

18 THE COURT: If you'll take the  
19 witness stand, please. And Doctor, if  
20 you'll state your full name, please.

21 THE WITNESS: Glenn, and that's  
22 with two N's. Last name is Rohrer,  
23 R O H R E R.

24 THE COURT: Thank you, sir.

25 BY MR. THOMPSON:

1 Q Dr. Rohrer, where are you employed?

2 A I'm an associate professor, School of  
3 Social Work and Criminal Justice, East Carolina  
4 University.

5 Q And what educational institutions have you  
6 attended?

7 A I have a Bachelor's Degree in social work  
8 from Ohio State University, a Master of Divinity  
9 Degree from the Methodist Theological Seminary in  
10 Ohio, Master of Social Work degree from Ohio State  
11 University, Ph.D. in counseling also from Ohio State  
12 University.

13 Q And tell us about your -- first  
14 professional work experience?

15 A I've worked most of my professional career  
16 in state institutions, both adult and juvenile  
17 correctional facilities, state substance abuse  
18 treatment center, and a short period of time in  
19 public mental health center.

20 Q And what certifications do you have?

21 A I'm a certified clinical social worker in  
22 the State of North Carolina. I'm a member of the  
23 Academy of Certified Social Workers, which is the  
24 national certification body for social work  
25 professionals. I'm a Certified Substance Abuse

1 Counselor in North Carolina. And I also serve as an  
2 examiner for the credentialing board in certification  
3 of other counselors and substance abuse in this  
4 state.

5 Q Doctor, how does a professional social  
6 worker approach mental health and substance abuse  
7 problems?

8 A I think the major professions that deal  
9 with mental health substance abuse problems is  
10 psychiatrists, psychologists, social workers and  
11 psychiatric nurses and so forth. Social work differs  
12 from the others in terms of most of them focus on the  
13 individual pathology, their biological makeup,  
14 psychological makeup, and so on.

15 Social work takes those into consideration,  
16 but also includes a person in the environment kind of  
17 an approach or what's known as general systems theory  
18 that considers the fact that an individual is more  
19 than just what is inside of them, they belong to  
20 families, community, schools, churches, so forth, so  
21 those factors are considered not as excuses for  
22 behavior, but just as that they legitimately affect  
23 how an individual behaves.

24 Q Have you testified as an expert in capital  
25 cases before?

1           A     Yes, sir, I have.

2           Q     Approximately how many times, sir?

3           A     I think it's five in the last year or so.

4           Q     And in what area have you -- in those cases  
5 in which you've testified, have you testified as an  
6 expert witness --

7           A     In the area of social work and family  
8 systems theory, which is tied to social work, and  
9 also in substance abuse, and substance abuse  
10 treatment and assessment.

11          Q     Other than testifying, Dr. Rohrer, have you  
12 provided litigation support in cases before?

13          A     Yes, I have. The proceeding that we're in  
14 now is ordered by the Supreme Court and part of that  
15 is to present mitigating and aggravating factors and  
16 the Court has seen fit to appoint as part of the  
17 defense team, individuals to help in the preparation  
18 of that particular part of the trial proceedings.  
19 And so I've served on defense teams in a number of  
20 cases to assist them in preparing mitigation issues  
21 for this part of trial.

22          Q     Dr. Rohrer, what techniques and sources of  
23 information do you use in your area of expertise?

24          A     The basic one from the social work field is  
25 just a thorough social history, developmental history

1 of the individual. We also look at, beyond that, a  
2 tool that's fairly commonly used is a tool called a  
3 genogram that looks at as many generations of a  
4 family's development as we can find somebody who  
5 knows something about. We use another tool called an  
6 echo map, which is a tool that looks at the family's  
7 interaction with the community and how involved or  
8 isolated they are.

9 In the substance abuse area, there are a  
10 number of tests and assessment instruments that  
11 assess substance abuse problems. The American  
12 Society of Addiction Medicine has a tool now that  
13 even goes to the point of identifying what level of  
14 treatment a substance abuser might need to be  
15 involved in.

16 Q Are these techniques and sources that  
17 you've testified to reasonably relied upon by other  
18 experts in your area of expertise?

19 A Yes, sir, they are.

20 Q And did you use, rely on those techniques  
21 and sources and data in your preparation for this  
22 case?

23 A Yes, and circumstances determine which ones  
24 use more, and in this case, we used a genogram more,  
25 but we used all that applied, yes, sir.

1 MR. THOMPSON: Your Honor, at  
2 this time, I could request the Court to  
3 approve Dr. Rohrer as an expert in the area  
4 of social work family systems theory an  
5 substance abuse.

6 THE COURT: State wanted to be  
7 heard?

8 MR. BRITT: As to the tender as  
9 an expert in social work, no objection. As  
10 to the tender as an expert in the area of  
11 substance abuse, there's no objection. As  
12 to expert in the area of family systems  
13 theory, there is an objection. No  
14 foundation for that.

15 THE COURT: You folks want to ask  
16 additional questions?

17 MR. THOMPSON: Yes, sir.

18 BY MR. THOMPSON:

19 Q What, Dr. Rohrer, is social work family  
20 systems theory?

21 A It's a basic tenant of the profession to  
22 just look at family systems in terms of how people  
23 interact, what -- intergenerational patterns are,  
24 divorces, marriages, effects of those sorts of  
25 things, it's just a basic issue -- we're not talking

1 about this as a separate field as family therapy,  
2 which I think may be some confusion here, but just  
3 the basic tenant of looking at family systems as part  
4 of every social work practitioner's professional  
5 competence, I think.

6 Q Do you use the same techniques and sources  
7 that you have testified to in the area of social work  
8 family systems theory?

9 A Yes, that's correct.

10 Q Have you qualified, Dr. Rohrer, as an  
11 expert in the area of social work family systems  
12 theory?

13 A Yes.

14 Q How many times?

15 A At least five in the last year.

16 MR. THOMPSON: Your Honor, at  
17 this time, we would tender Dr. Rohrer as an  
18 expert witness in the area of social work  
19 family systems theory.

20 THE COURT: Mr. Britt?

21 MR. BRITT: No objection.

22 THE COURT: Witness may so  
23 testify in the areas of social work family  
24 systems theory and substance abuse. Yes,  
25 sir.

1 BY MR. THOMPSON:

2 Q Now, in the course of your preparation for  
3 this case, Dr. Rohrer, did you in fact use a  
4 genogram?

5 A Yes, we did.

6 Q Did you bring some visual aid materials  
7 with you, Dr. Rohrer, today?

8 A Yes, I think it's easier just to look at  
9 this, so you can understand what it is. It's  
10 basically a family tree. And I do have some  
11 overheads and other handouts that would just  
12 demonstrate what it is and how it works.

13 Q Would you're using those visual aids and  
14 handouts assist you as you testify?

15 A Yes, they would.

16 MR. THOMPSON: Your Honor, at  
17 this time, if we can have a break, that's  
18 what I wanted to do, we can set this stuff  
19 up.

20 THE COURT: Dr. Rohrer, you may  
21 step down for the moment. Thank you, sir.

22 Ladies and gentlemen we're going to  
23 take -- well, let me give you until 11:00.  
24 Please recall the instructions previously  
25 given to you concerning your conduct, those

1 instructions remain in effect during this  
2 break. Everyone else please remain  
3 seated. If you folks will reassemble in  
4 the jury room at 11:00. Thank you.

5 (Jury out at 10:39 a.m.)

6 THE COURT: We're at ease,  
7 folks.

8 (Defense Exhibits 46, 47 were  
9 marked for identification.)

10 (Brief recess.)

11 THE COURT: All counsel are  
12 present, the defendant is present in open  
13 court. Mr. Horne, do we have all members  
14 of the jury secured?

15 THE BAILIFF: Yes, sir.

16 THE COURT: Mr. Thompson, you  
17 folks let me know when you're ready to go  
18 forward.

19 MR. BRITT: I notice he's got an  
20 overhead, do we need to close those  
21 blinds?

22 THE COURT: My guess is yes.  
23 Doctor.

24 THE WITNESS: That would help,  
25 yes.

1 THE COURT: If you'll bring the  
2 jury in, please, sir.

3 (Jury in at 11:02 a.m.)

4 THE COURT: Mr. Thompson.

5 MR. THOMPSON: Yes, sir. Your  
6 Honor, may I --

7 THE COURT: Yes, sir.

8 MR. THOMPSON: May I approach the  
9 witness?

10 THE COURT: Yes, sir.

11 BY MR. THOMPSON:

12 Q Dr. Rohrer, I hand you what's been marked  
13 Defendant's Exhibit Number 46. Can you identify,  
14 what is Defendant's Exhibit Number 46?

15 A This a genogram which we prepared  
16 demonstrating some of the intergenerational problems  
17 in the Green family.

18 Q Dr. Rohrer, in your preparation for this  
19 case, other than the sources of information and  
20 techniques that you've testified to, specifically,  
21 did you talk to any individuals?

22 A Yes, we did.

23 Q And what kind of -- what individuals did  
24 you talk to in preparation of this case, and  
25 specifically, in preparation of Defendant's Exhibit

1 Number 46?

2 A Talked to Daniel extensively; talked to his  
3 mother, Ann; talked to his sister, Ebony; talked to  
4 his aunt Elizabeth. Those were the four family  
5 members who knew the most and could remember the most  
6 about the family history. There are some other  
7 elderly folks whose memory was not as good, and we  
8 did not use what they had because we were concerned  
9 about that. But there are four independent sources  
10 of the family material that we're talking about  
11 today.

12 Q All right, sir. Now, using Defendant's  
13 Exhibit Number 46, can you use that to, in your  
14 testimony as you testify as to what you found with  
15 respect to the substance abuse?

16 A Yes, that's correct.

17 Q In the family?

18 A Yes, we've just traced the pattern of that  
19 from generation to generation.

20 Q Do you have an overlay for -- excuse me,  
21 for the visual aid, which is the same as Defendant's  
22 Exhibit Number 46?

23 A Yes, it's identical. The visual aid is  
24 half, because it's a very large family so we could  
25 only get half on the machine at one time.

1 MR. THOMPSON: Your Honor, at  
2 this time may the witness step down and use  
3 the visual aid?

4 THE COURT: Yes, sir. If we need  
5 to turn the lights out, please let us know.

6 THE WITNESS: I think it will be  
7 fine.

8 THE COURT: Mr. Britt, you may  
9 position yourself wherever you like.

10 BY MR. THOMPSON:

11 Q Dr. Rohrer, again, what is a genogram?

12 A Okay. A genogram is basically -- let me  
13 slide this down a little bit.

14 The genogram is basically a family tree. I  
15 think most everyone has drawn a family tree of some  
16 sort. The symbols that are universally used, the  
17 squares justifiably are that of men, the circles are  
18 women, ladies in the pattern. When we have connected  
19 lines between people, those indicate marriages. The  
20 cross line indicates divorces, so you'll see some of  
21 those lines in there. The X's are individuals who  
22 are deceased. And just in terms of getting some of  
23 this on, because there are so many individuals, this  
24 is a relationship here. It's not a marriage, the  
25 dotted line is a live-in situation, or there's a

1 number of terms for that, I'm not sure what the in  
2 term is for that these days. But in other words,  
3 that's a relationship similar to a marriage without a  
4 marriage, when you see a dotted line. We put that  
5 one up, it probably would be better going out, but  
6 because of space issue we put it out. Those are the  
7 basic tenants, squares are men, circles are women,  
8 lines coming down are children, and so on, lines  
9 across to indicate people who are married to each  
10 other. So that's basically how it works.

11 Q Dr. Rohrer, did you find in your preparing  
12 the genogram and in your investigation, any  
13 intergenerational patterns?

14 A Yes, before, this is a very large family,  
15 so I don't know if I said that, but it's half. In  
16 terms of the family person, we have four generations  
17 at points here, and there are two patterns that  
18 emerge. We ask a number of questions about  
19 education, health, and so on, and there are two  
20 patterns that came out clearly in looking at the  
21 intergenerational patterns. One was the tremendous  
22 number of substance abusers, and the other was a  
23 pattern of violent deaths, mostly murders, members of  
24 Daniel's family who have been murdered. And they  
25 have five of those that came out. So those are the

1 two patterns, extensive substance abuse, and a number  
2 of relatives who were murdered.

3 Q Now, could you indicate using the genogram,  
4 those individuals who you found who had substance  
5 abuse problems?

6 A Yes.

7 THE COURT: Mr. Thompson, is this  
8 a different Exhibit Number, do we need  
9 something to identify this for the record?

10 MR. THOMPSON: No, sir.

11 THE WITNESS: It's identical to  
12 the one that will be entered into the  
13 record, sir.

14 THE WITNESS: I'm going to have  
15 to move this. For some reason we're not  
16 getting it all on here at one time.

17 What we have, this is the defendant's  
18 mother, the defendant and his sister are  
19 one generation below, so we have four  
20 generations, the defendant and his sister,  
21 Ann and David who are his parents, and  
22 that's just dropped down so we can  
23 demonstrate the parents better. And this  
24 is the mother's side of the family. Ann is  
25 Daniel's mother, and these are her brothers

1 and sisters, and then we'll back this up  
2 another generation here. So those, what  
3 we're looking at here, is the number of  
4 folks on the mother's side who have had  
5 substance abuse problems.

6 Going through this, again, this is  
7 mother and her brothers and sisters. Of  
8 her brothers and sisters, two had serious  
9 alcohol problems. Bernie, II was a Vietnam  
10 veteran, came back from Vietnam with  
11 problems with alcohol and drugs, and had  
12 numerous other problems in his life, but  
13 has worked on them, and at this point has  
14 been -- has been in court, perhaps during  
15 these proceedings.

16 These are two of his children. Anna,  
17 who has a serious problem with cocaine,  
18 crack cocaine. Not very functional  
19 individual. And that's one of Bernie's  
20 children. The next is Bernie, III, Bernie,  
21 III has had problems with alcohol, drugs,  
22 has been arrested numerous times, has done  
23 jail time, been involved in several  
24 problems related to his substance abuse.

25 The next individual here is Arnold,

1 which is Ann's brother. Arnold and we will  
2 have a good deal to say about Arnold. He  
3 had been a serious alcohol and drug  
4 abuser. And the X indicates that he is  
5 deceased, and we will talk a little bit  
6 more about that in just a moment. Orlando  
7 is one of his sons who also had a problem  
8 with alcohol and drugs both.

9 Moving up, we can still see this on  
10 here, this is Daniel's grandfather Bernie  
11 Green, Sr., he had several relationships.  
12 This is one between Bernie and Bernice,  
13 which was not a marriage, but a  
14 relationship. And one of the children born  
15 of that marriage is Sterling. Sterling has  
16 had numerous legal problems and drug  
17 problems, was involved in crack, is in the  
18 penitentiary right now for assault on a  
19 female, kidnapping, and other serious  
20 problems, many of which relate to his  
21 substance abuse issues. But Sterling has  
22 had a number of problems.

23 Moving up, and I need to get this up  
24 here if I can -- moving up to the next  
25 relationship --

1 BY MR. THOMPSON:

2 Q Would you back up a little bit so the jury  
3 can see?

4 A I'm sorry. Moving up to the next  
5 generation, and that is his great grandmother, and  
6 she was a serious alcoholic in her day, got into  
7 legal difficulty, cut a lady up with a knife one  
8 time, and most of that is related again to substance  
9 abuse.

10 Matthew Green is again, and that was  
11 married to -- or was common law related to  
12 Mr. Richardson, and Matthew Green is the son of that  
13 marriage, has some serious problems with alcohol.

14 So in this group, there, again, you can see  
15 the pattern, starting at mother's generation, couple  
16 of her brothers, couple of Daniel's cousins here, and  
17 then moving on through the other couple  
18 generations.

19 THE COURT: Mr. Thompson, if  
20 you'll bear with me. So the record  
21 accurately reflects your testimony, Doctor,  
22 is there any indication on what has been  
23 marked as Defendant's Exhibit Number 46  
24 indicating those individuals whom you've  
25 testified about who had some form of

1 substance abuse problems?

2 THE WITNESS: Yes, they are in  
3 Green on the handout.

4 THE COURT: Thank you, sir.

5 BY MR. THOMPSON:

6 Q And Dr. Rohrer, on Defendant's Exhibit  
7 Number 46, how are those individuals indicated?

8 A They are indicated in a green color that  
9 marks the box.

10 Q And the visual aid that you are using is  
11 the exact replica of Defendant's Exhibit Number 46?

12 A That's correct, yes.

13 Q All right. Now --

14 A There's another half of this that we wanted  
15 to point out. This is again, the Green -- Green side  
16 of this family. This is Daniel's father, David. And  
17 his side of the family. We were not -- we did not  
18 have direct contact with folks on this side of the  
19 family, so we didn't -- weren't able to go back as  
20 far generation wise, so that's why this -- it's a  
21 lopsided genogram because we're not able to make  
22 contact with these folks. Daniel's father, David,  
23 has had many problems, in and out of institutions,  
24 has had serious problems with drugs, one of the  
25 respondents we asked about this said, if the drug is

1 made, David has tried it at some time. So he's used  
2 just about every kind of drug or substance known.

3 David -- and the result of that issue with  
4 David is he was never a father to this young man at  
5 all. There are numerous occasions where he made  
6 promises he didn't keep. There was a time when the  
7 family was living in Philadelphia, David went and  
8 picked up Daniel and Ebony, took them to a park in  
9 Philadelphia, a fairly dangerous neighborhood, and  
10 left them.

11 MR. BRITT: Objection.

12 THE COURT: Do you want to be  
13 heard, Mr. Britt?

14 MR. BRITT: Yes, sir. Well, this  
15 is outside the scope of what his expertise  
16 is in regard to substance abuse as it  
17 relates to this graph.

18 THE COURT: He's been qualified  
19 in areas in social work and family systems  
20 theory. Do you want to be heard, sir?

21 MR. BRITT: No, sir.

22 THE COURT: Objection is  
23 overruled. Mr. Thompson.

24 BY MR. THOMPSON:

25 Q You may continue.

1           A       So in other words, David was not father of  
2 the year, I guess that's the way to put that. He's  
3 never served as a father, as a role model, as any  
4 kind of an individual who was helpful to Daniel at  
5 all. His substance abuse problem is the reason for  
6 that, and causes people to do things like leave their  
7 kids in the park unattended in Philadelphia.

8                   The next level, these are David's brothers  
9 we just drop him down, so these are David's brothers,  
10 Billy, Gene, and James. Those three individuals were  
11 serious alcoholics, two of the three are dead. One  
12 of them is dead because he got drunk and walked in  
13 front of a train in Fayetteville and was killed. The  
14 other is dead from complications that represent from  
15 a long period of addiction to alcohol. James is  
16 also, is still living, and has had numerous problems  
17 with alcohol most of his life.

18                   The other substance abuser on this side of  
19 the family is related, it's the wife of one of  
20 David's brothers, and that's Maggie, and she's an  
21 alcoholic. All of these people, Daniel knows about  
22 or has had direct contact with or in family  
23 conversations, this kind of thing where you have lots  
24 of chaos and so on, family talks about this, so these  
25 are not people that he's never heard of or met.

1 These are people that have dealt with him. None of  
2 these people are direct caretakers, and that's  
3 important to know, they are not direct caretakers.

4 Q Dr. Rohrer, what are some of the negative  
5 consequences of substance abuse on the family?

6 A Based on the substance abuse literature,  
7 there are numerous problems. I think just about any  
8 social problem anybody can think of is related to  
9 alcohol and drugs. We're talking about domestic  
10 violence is related to it, talking about assault,  
11 talking about all kinds of issues, physical assault,  
12 negligence, murder rate is tied to it, rape rate is  
13 tied to it. All of those. And again, anybody who  
14 reads a newspaper or has any kind of a family with a  
15 slight problem, I think, is aware of just multiple  
16 problems that these kinds of issues bring up in the  
17 family.

18 Q Looking specifically at this family, what  
19 are some of the problems that substance abuse caused  
20 in your investigation?

21 A Okay. The basic one has to do with the  
22 father, and basically, Daniel lost his father to  
23 substance abuse. He was not available to him. He  
24 got in trouble, went to prison. When he was around,  
25 he was using and abusing, and was not a father.

1           And there are several examples of him just  
2 not living up to things, things you normally expect  
3 your dad to do, remember your birthday, remember  
4 Christmas. This man was in a position where he  
5 didn't do any of those things for his son. Really,  
6 in talking to Daniel about him, he just does not know  
7 him, but he has lots of very bad feelings about the  
8 way he's treated him.

9           Q       What age was the defendant when his father  
10 left?

11          A       There's a period, I'm not sure he was ever  
12 there, but there was a period when he was there, and  
13 the age of about three comes up when I think he went  
14 to the penitentiary the first time, and I think that  
15 would be pretty much where there was any regular  
16 contact would have been at the age of three, I  
17 believe. He was in and out, and Daniel has seen him  
18 and talked to him, but from age three on, he was  
19 there, so we're not talking about him being  
20 physically abusive or anything in this situation, it  
21 was more he just wasn't there, he wasn't available.

22          Q       Do you know what age the defendant was when  
23 he was abandoned in the park?

24          A       I believe it was somewhere around -- I'm  
25 not sure if he was eight and Ebony was -- I think

1 Daniel was 12 and Ebony was eight, but I'm not  
2 positive of those dates. I know they were young  
3 enough that it scared them. But it was interesting,  
4 in talking to Ebony, who is considerably younger than  
5 Daniel, she still remembers that, so she was old  
6 enough to remember that. The exact age I'm not sure  
7 of but scared them very badly, and they remember it  
8 years later.

9 Q The substance abuse that you've testified  
10 to, Dr. Rohrer, and the level of substance abuse,  
11 what effect would it have on a child exposed to that  
12 environment?

13 MR. BRITT: Objection.

14 THE COURT: Do you want to be  
15 heard, sir?

16 MR. BRITT: Yes, sir.

17 THE COURT: Members of the jury,  
18 there's a matter of law the Court must take  
19 up at this time. Please recall my  
20 instructions in that regard, don't worry or  
21 speculate about what takes place in the  
22 courtroom in your absence, and if all  
23 members of the jury with step to the jury  
24 room.

25 (Jury out at 11:22 a.m.)

1                   THE COURT: Let the record  
2 reflect the following is being conducted in  
3 the absence of the jury. What's the basis  
4 of the objection, Mr. Britt?

5                   MR. BRITT: Your Honor, the  
6 question is the substance abuse that you've  
7 testified to, Dr. Rohrer, and the level of  
8 substance abuse, what effect would it have  
9 on a child exposed. There is no testimony  
10 as to the level of substance abuse.

11                  THE COURT: So it's foundational.

12                  MR. BRITT: Yes, sir. Also his  
13 own testimony is that based on this  
14 chart -- well, his testimony is that none  
15 of these people of whom he's identified as  
16 having a substance abuse problem were  
17 caregivers to the defendant, so that  
18 there's --

19                  THE COURT: He also testified  
20 that it was the subject of family  
21 discussion. But I agree with you insofar  
22 as your contention is that the foundation  
23 hasn't been completed.

24                  MR. BRITT: Yes, sir.

25                  THE COURT: Mr. Thompson, ask

1 additional foundational questions.  
2 Specifically, questions that show some  
3 contact or some knowledge on the part of  
4 the defendant as to substance abuse on the  
5 part of his purported father or anybody  
6 else.

7 MR. THOMPSON: Yes, sir.

8 THE COURT: Bring the jury back  
9 in, please, Mr. Horne.

10 (Jury in at 11:23 a.m.)

11 THE COURT: The objection is  
12 sustained at this point. You may ask  
13 additional foundational questions, sir.

14 BY MR. THOMPSON:

15 Q Dr. Rohrer, did you discuss with the  
16 defendant and other members of the family -- strike  
17 that. Did you discuss with the defendant the  
18 substance abusers that you've testified to?

19 A Yes, I did, yes, we talked about those,  
20 sure.

21 Q And was the defendant knowledgeable of  
22 those individuals that you've testified to and their  
23 substances abuse problem?

24 A Yes, the majority of them. His mother  
25 added some that obviously who had passed away before

1 he was born, but he was aware from family discussions  
2 and reunions, the topic about remember when uncle so  
3 and so got drunk and made a fool out of himself, that  
4 kind of thing, which I think we've all had uncle's  
5 like that probably.

6 Q What was the level of substance abuse in  
7 this family in your opinion?

8 MR. BRITT: Objection.

9 THE COURT: You may answer.

10 THE WITNESS: By level, how I  
11 interpret that it was extensive throughout  
12 the family, we don't know these people, so  
13 in terms of going in and saying in an  
14 individual specific case, we don't know,  
15 but to have this many layers of it, we're  
16 talking 14 people in four generations here,  
17 it's extensive. And I guess the reason  
18 that we raise this, I at least raise this  
19 as a pattern that's a problem, is that  
20 normally the family is where people go for  
21 help, they go for support.

22 In this family they are all drunk or  
23 have problems with cocaine and are just not  
24 simply available to him. The kinds of  
25 things that you go to your uncle for. His

1 favorite uncle in that is Uncle Arnold,  
2 which is on the other page. And I  
3 mentioned him, and I would like to, if I  
4 may just go back and point out the issues  
5 with Arnold.

6 Arnold was very close to Daniel's  
7 mother, it's his mother's brother, and he  
8 was very close to her, and therefore, was  
9 in and out of the house with Daniel fairly  
10 often. Daniel loved this man and was very  
11 close to him. He had a serious problem  
12 with alcohol and drugs. And at one point  
13 Ann had talked him into going into  
14 treatment. He went home the day he was  
15 going to get some help for this, went home  
16 and got, to get his clothes to go for  
17 treatment for his substance abuse problem,  
18 and got into a fight with his wife, and  
19 ended up choking her on the floor out of --  
20 again, frustration or whatever, related to  
21 his substance abuse. And her mother came  
22 in and shot him and killed him. So he was  
23 murdered at about -- and he was the closest  
24 individual that Daniel related to. And so  
25 this man was shot and killed.

1           And Daniel, his mother obviously was  
2           very close to her brother, and they were  
3           directly involved. That's the closest  
4           directly involvement to a substance abuser  
5           in this situation, but when he was killed,  
6           the family moved back from -- this happened  
7           in Philadelphia, they came back to North  
8           Carolina, and that's a pattern of another  
9           move, which I think is another issue in  
10          this case that will be raised later. But  
11          he was very close to him, so he literally  
12          had shot out from under him the only real  
13          father figure that had come around and  
14          spent time with him and that he related to.

15          Q       And what effects would this substance abuse  
16          have on a child exposed to this environment?

17                   MR. BRITT:    Objection.

18                   THE WITNESS:   Again, the  
19          literature --

20                   THE COURT:    Yes, sir.

21                   MR. BRITT:    As to the effect it  
22          would have on a child --

23                   THE COURT:    Be specific

24          BY MR. THOMPSON:

25          Q       What effect did this substance abuse



1 statement made by Dr. Rohrer, specifically  
2 as to any accountability regarding anyone  
3 else other than the defendant in this  
4 case. You may ask additional questions,  
5 sir.

6 MR. THOMPSON: Yes, sir.

7 BY MR. THOMPSON:

8 Q Dr. Rohrer, based on what you have found  
9 with respect to the substance abuse in this family,  
10 would you expect the defendant to be a substance  
11 abuser?

12 MR. BRITT: Objection -- no, I  
13 withdraw that.

14 THE COURT: You may answer.

15 THE WITNESS: Yes, you would,  
16 based on this extensive pattern, you would  
17 expect him to have a problem.

18 BY MR. THOMPSON:

19 Q What did you find with respect to the  
20 defendant and any substance abuse?

21 A He does not have a substance abuse problem,  
22 and I looked for it itself because with this  
23 background, you would certainly expect that, but  
24 there's no indication that he does, which is rare,  
25 and I think a positive attribute that somebody could

1 be exposed and genetically exposed to this as he is,  
2 and not have a problem, he does not have a problem.

3 Q Do you have an opinion as to what would  
4 account for him not having a problem?

5 MR. BRITT: Objection.

6 THE COURT: Overruled. You may  
7 answer.

8 THE WITNESS: I asked him  
9 directly, why don't you have a substance  
10 abuse problem. His response, in a couple  
11 of ways, one is that he grew up in a  
12 Baptist church as a young man, and I think  
13 was influenced by that church. He has  
14 moved onto Muslim faith, which also holds  
15 very strong opinions against abusing and  
16 using substance, and I think that value  
17 core comes out of it. I think also he has  
18 seen and particularly some of his cousins  
19 who are closely related to him, the  
20 problems that it causes, and he made a  
21 conscious decision not to get into that  
22 pattern and not to let it damage his life  
23 as it has some of his other family members.

24 BY MR. THOMPSON:

25 Q Did you discuss with the defendant his

1 Muslim faith and when that change was made?

2 MR. BRITT: Objection.

3 THE WITNESS: Yes, I did.

4 THE COURT: I'm sorry, Mr. Britt.

5 MR. BRITT: Objection.

6 THE COURT: Would you like to be  
7 heard, sir?

8 THE COURT: Question is asked in  
9 the context of his testimony.

10 MR. BRITT: I'll withdraw it.

11 THE COURT: Yes, sir.

12 THE WITNESS: Yes, I did ask him  
13 about that, and he indicated that he  
14 started reading the Koran -- he's always  
15 been interested in religion and religious  
16 literature, but started somewhere around  
17 eight or nine years old reading that so  
18 it's something very deep in his value  
19 system.

20 BY MR. THOMPSON:

21 Q Did you discuss with the defendant the  
22 circumstances surrounding his change in name?

23 A Yes, I did.

24 Q And what were those circumstances?

25 A The Muslim faith, as I understand it, and

1 again, I'm not an expert in that area, but when I  
2 asked him this, he said that that change comes at the  
3 age of 21, that that is the custom of this religion,  
4 to change your name to a Muslim name at that point.  
5 I've told him I didn't think that was very good  
6 timing in his situation, but he believed that it was  
7 his duty to do that, so he did it.

8 Q You indicated that there was a second  
9 pattern of -- a second generational pattern?

10 A Yes, there's a pattern of violent death in  
11 this family.

12 Q And do you have a visual aid which would  
13 assist you in your testimony as to what that pattern  
14 shows?

15 A Yes, I do.

16 MR. THOMPSON: Your Honor, may he  
17 step down and do that?

18 THE COURT: Yes, sir.

19 THE WITNESS: We're going to have  
20 to move this, this does not cover the whole  
21 pattern, but let me just mention that ones  
22 that are here

23 BY MR. THOMPSON:

24 Q Before you do that, Dr. Rohrer, I'm handing  
25 you what has been marked as Defendant's Exhibit

1 Number 47, what is that?

2 A Copy of the overhead transparency,  
3 demonstrates that six members of the family died  
4 violent, and there are black crosses to indicate the  
5 deaths.

6 Q And the overhead transparency that you are  
7 using in your testimony is the exact replica of  
8 Defendant's Exhibit Number 47?

9 A Yes, sir, it's identical.

10 Q Using the overhead transparency, would you  
11 tell us your findings with regard to the generational  
12 patterns as to violent death?

13 A Yes. Normally, we don't assume that this  
14 kind of pattern is going to emerge, so this came in  
15 terms of some of the other things we asked for. We  
16 do not ask and see this very often, never seen this  
17 before. We ask in terms of when somebody has passed  
18 away, we ask how that happened. And in this case, we  
19 kept hearing the same things. So there is a pattern  
20 here that is very unique to this family, and I had  
21 not seen this level of violence before.

22 You can see five of these, one more beyond  
23 that. There are six members of this family who have  
24 died violently. Just run down these: Billy, who was  
25 a paternal uncle of the defendant, was murdered.

1 Gene, who again is a paternal uncle, was a severe  
2 alcoholic and got drunk and walked in front of a  
3 train in Fayetteville and was killed. Arnold, we  
4 mentioned before, the very close uncle to Daniel, was  
5 shot and killed by his mother-in-law. That was ruled  
6 -- there was a trial related to that. It was ruled  
7 justifiable homicide because he was choking his wife  
8 at the point when that happened. Hazel is a maternal  
9 great aunt, lived in Philadelphia, at the age --  
10 young, I'm not sure exactly how old Hazel was, she  
11 was stabbed 16 times in her apartment, someone broke  
12 in, nobody was ever arrested for that murder.

13 Chuckie is a paternal great uncle, also  
14 lived in Philadelphia, Hazel and Chuckie both lived  
15 in Philadelphia, and Arnold, so when the defendant  
16 was living in Philadelphia, these stories were  
17 prominent because that side had seen all that stuff  
18 and had been there. Hazel and Chuckie were both  
19 considerably older, so these are stories he heard.  
20 So not necessarily he was there and went to funerals  
21 and stuff. Chuckie was shot in the back seat,  
22 there's some confusion how that was related, but may  
23 have been some kind of romantic situation that went  
24 wrong, which is what appears, a boyfriend shot him of  
25 a lady that they were both arguing about.

1                   Last is great grandfather on the mother's  
2 side, Nelson was stabbed to death. And again, we  
3 don't have a lot of information about that.

4                   So we've got, again, five members of his  
5 family were murdered, and another died violently with  
6 this train accident, and again there's this culture  
7 of everybody dies violently.

8 BY MR. THOMPSON:

9           Q       Did you talk to other persons than the  
10 defendant with regard to these individuals, six  
11 individuals that you've just testified to?

12           A       Talked to his mother, his sister Ebony  
13 knows about this. Also talked to Elizabeth, who was  
14 the lady being choked when Arnold was killed, and he  
15 as there and lived through much of this history, so  
16 she knows it well, Elizabeth knows it well.

17                   MR. THOMPSON: May he turn that  
18 off, Your Honor?

19                   THE COURT: Yes, sir.

20                   THE COURT: Doctor, are we going  
21 to need the --

22                   THE WITNESS: No, we're not,  
23 unless --

24                   THE COURT: Do you need this for  
25 cross-examination?

1 MR. BRITT: As I understand it,  
2 he has handouts.

3 THE COURT: Okay.

4 BY MR. THOMPSON:

5 Q Dr. Rohrer, what effect, if any, in your  
6 opinion did these patterns of substance abuse, as  
7 well as violent deaths, have on the defendant?

8 A I think the overall effect of that is to  
9 produce a young man who feels that the world is a  
10 pretty scary, inconsistent place, that you can't  
11 count on much. I think that's part of it. I think  
12 there's an element of resentment in that, losing  
13 people that are close, not having a dad that came  
14 around or paid much attention, and therefore, a lack  
15 of trust in adults in a young kid, and certainly,  
16 then our relationship with adults is how we get our  
17 relationship to authority figures.

18 So I think out of that comes some  
19 resentment of authority figures. I think there's  
20 some suspicion that comes with that. Is this person  
21 going to do what they did too, you know, whoever has  
22 been on your mind that day, in terms of murder, is  
23 somebody going to hurt me, attack me, take my money.  
24 So I think there's some suspicion about that. I  
25 think -- the overall effect of that, that sticks in

1 my mind is the first time I ever talked to Daniel  
2 Green, I -- we were talking about that, and talking  
3 about that pattern, he said that my response to that  
4 is that I decided when I was about eight or nine  
5 years old that I would never live past the age of 21,  
6 so I guess that in summary in Daniel's words is what  
7 it did to him.

8 Q Dr. Rohrer, did you discuss with the  
9 defendant, as well as family members, the defendant's  
10 relationship with his sister Ebony?

11 A Yes, I did.

12 Q What kind of relationship is that?

13 A He's -- it's very close. I also talked to  
14 his sister as well, and related to her. They are  
15 very close. Daniel was the typical big brother,  
16 showing jealousy when boys came around, and the  
17 things you would normally expect a big brother to do.

18 Q During your investigation in this case,  
19 Dr. Rohrer, did you find or discover the places where  
20 the defendant had lived?

21 A Yes, one of the things that we do in  
22 constructing a genogram is to talk about movement  
23 around, where did you live, where did you go to  
24 school, that sort of things. So yes, we discussed  
25 that. He moved back and forth numerous times, I

1 think, between Philadelphia, and this area, around  
2 this area a number of times. I think there are a  
3 number of those moves that have been documented.  
4 There's also a number of schools, every time you  
5 move, you change schools, and one of the issues  
6 related to that was the number of schools, 13 or --  
7 we kept counting those and every time we talked, we  
8 came up with another one. But I think the total was  
9 somewhere around 14 different schools in ten years,  
10 to the point -- and in asking him how do you get  
11 along with the new kids each time you go to a school,  
12 it's like after a while you just sort of give up on  
13 trying, because we may be at some other school next  
14 week or something.

15 Q Did you review his school records?

16 A Yes, I did.

17 Q With respect to the school records, what if  
18 anything did they show with respect to the different  
19 schools?

20 A First of all, it was hard to get them,  
21 because there were a number of them that either lost  
22 them or didn't have them, so we didn't see every  
23 school record. There were -- in terms of testing, he  
24 tested anywhere from normal to superior, was at one  
25 point tested superior and supposedly put in

1 accelerated or advanced type classes. And then in  
2 the middle one of these moves, that got lost in the  
3 shuffle, and that's something he felt very badly  
4 about, because I think he preferred the challenge of  
5 other classes. He also was a discipline -- some  
6 problems in school, a fight or two, and I think  
7 kicked out of some schools. So it's not a choir boy  
8 school record, but certainly not a problem, and went  
9 on and finished school, and finished school, and in  
10 fact has some college work.

11 Q In your investigation with respect to the  
12 communities that he lived in, what type of  
13 communities did the defendant live in?

14 A Most of them were poor communities, where,  
15 again, with a mother basically as a carekeeper, and  
16 then his grandmother, there wasn't a lot of money,  
17 there wasn't a father, there wasn't a lot of support,  
18 so he moved around. There's a number of moves, it's  
19 hard to characterize them. Some of the  
20 neighborhoods, the Philadelphia, at least one was  
21 sort of an upper class neighborhood as he described  
22 it, others were inner city, slums, ghettos, rural  
23 areas in this area, but there's just a constant  
24 movement to the point where I think there's not a lot  
25 of roots involved in this, in terms of this is home

1 kind of thing.

2 MR. THOMPSON: Your Honor, may I  
3 have a moment?

4 THE COURT: Yes, sir.

5 BY MR. THOMPSON:

6 Q Dr. Rohrer, what kind of relationship can  
7 you find that the defendant had with his mother,  
8 Elizabeth Ann Green?

9 A He's very close to his mother, very  
10 protective of his mother. I think surprisingly --  
11 maybe not surprisingly between mother -- very open.  
12 Talked a lot about his feelings and what he had done,  
13 and so on, they are very close.

14 Q And with regard to the mobility and the  
15 movement that you indicated that you found in the  
16 defendant's life experiences, what effect did that  
17 have on the defendant, if any, if you have an  
18 opinion?

19 A It's just that there's no place called  
20 home, and so you have sort of this rootlessness,  
21 having to make new friends, having to go to new  
22 schools, deal with new neighborhoods, having to be  
23 exposed to just change constantly, there was enough  
24 movement, it was almost constant change.

25 Q Did you, in talking to the defendant or his

1 family, discover what kind of talents or hobbies the  
2 defendant had?

3 A Yes, that's one of the things that we ask  
4 about, is talents and hobbies.

5 Q What are those?

6 A In Daniel's case, he likes to write poetry  
7 and songs, has written some poems which I've read,  
8 some of the -- one of his songs was recorded that I  
9 saw.

10 Q Did you discover any specific handicaps,  
11 specifically with regard to speech or defects?

12 A Yes, Daniel has a stuttering problem, and  
13 the records document that it goes back to early days,  
14 and he was in some speech therapy in school, but he  
15 obviously at least still has a tinge of that speech  
16 stuttering problem, but it's there, and it goes back  
17 a long ways.

18 Q In your investigation, did you find,  
19 Dr. Rohrer, whether the defendant lived with  
20 relatives other than his mother?

21 A Yes, he lived with his grandmother. I  
22 think there was a period when his sister was ill, and  
23 I think he went to live with his grandmother. And  
24 that may have, on a number of occasions, that  
25 history, there's a lot of movement, and some of

1 that's escapes me, other than I remember the illness  
2 that Ebony had, and I think he went with grandma for  
3 a period of that time.

4 MR. THOMPSON: That's all.

5 THE COURT: Any  
6 cross-examination, Mr. Britt?

7 CROSS-EXAMINATION

8 BY MR. BRITT:

9 Q Dr. Rohrer, how many times did you talk  
10 with the defendant?

11 A I work with a group, so --

12 Q How many times did you personally talk with  
13 him?

14 A About three or four, I think.

15 Q How many times did any member of your group  
16 talk with him?

17 A Another probably three or four.

18 Q So total of eight times?

19 A At least that.

20 Q As a group?

21 A Yes, at least that.

22 Q And how much time was involved in those  
23 eight visits?

24 A That's not all -- I have a figure in all  
25 the time we spent on the case. Do you want it broken

1 as direct contacted.

2 Q As direct contact with the defendant.

3 A Probably 20, 25 hours, somewhere in that  
4 neighborhood.

5 Q And you have approximately 70 hours total  
6 time?

7 A That's correct.

8 Q How much time did you -- how much contact  
9 did you have with his mother?

10 A Met with her on two different occasions,  
11 and talked to her three or four.

12 Q How about group contact?

13 A Other members also went to the home and met  
14 with her and her daughter, so total of probably ten  
15 or 12 hours with that, I think, various times.

16 Q And correct me if I'm wrong, when you had  
17 contact with his mother, did you also have contact  
18 with his sister?

19 A Yes.

20 Q So --

21 A They were separated -- is that -- they were  
22 separated, we went to the home on one occasion --  
23 well, first of all, I met with his mother at the  
24 attorney's office by herself for like four or five  
25 hours. We went to her home, and two of my colleagues

1 met with her and Ebony, and then I met with Elizabeth  
2 in a different part of the area so they couldn't hear  
3 us talking, and we couldn't hear them.

4 Q And it's your testimony that the defendant  
5 made a conscious decision not to get involved with  
6 controlled substances?

7 A That's what he said, yes. And I looked, I  
8 really looked hard for substance abuse problems, and  
9 they are just not there. He smoked marijuana at one  
10 point, I think, as most kids -- well, I don't know  
11 about most kids, but kids do. But other than that,  
12 there's not a problem there.

13 Q And when you used the term "substance abuse  
14 problem," are you relating that to an addiction?

15 A Yes. It's a difficult -- in going back  
16 through this genogram and doing that, because we  
17 didn't do a formal face to face assessment. How we  
18 do that, and most lay people don't understand the  
19 difference between addictions and so on. What we  
20 talk about, did you see him regularly for long  
21 periods of times use in the morning, and so on. So  
22 those people would have been there.

23 The other issue is about problems,  
24 substance abuse causes problems, so people I had  
25 listed there have problems, DWI's, assaults,

1 nonsupport. There's a number of those in there. So  
2 we went with either, did you see him regularly use,  
3 or did what -- did their addiction cause problems.  
4 What causes trouble is trouble, that's my way of  
5 looking at substance abuse problems.

6 Q And the individuals that you've identified  
7 in the genogram with substance abuse problems, they  
8 are approximately 14, 15 individuals?

9 A 14, I think.

10 Q And of those 14 or 15 individuals, the  
11 defendant has had direct contact with his father?

12 A Yes.

13 Q With his uncle Billy?

14 THE COURT: Yes, Arnold.

15 MR. BRITT: Excuse me.

16 THE WITNESS: Arnold he did.

17 There is an uncle Billy who was killed, I'm  
18 not sure about the direct contact with  
19 Billy.

20 BY MR. BRITT:

21 Q When was Billy killed?

22 A I thought I had the date. I don't have --  
23 I don't have that date. Wait a minute. Billy was  
24 killed in 1979.

25 Q His uncle Gene?

1           A       Yes, he's the one that was hit by the train  
2 in Fayetteville.

3           Q       When did that happen?

4           A       Nobody could for sure give dates, I don't  
5 have the date on Gene.

6           Q       So any effect that Gene's death had on the  
7 defendant is based, on your investigation, is based  
8 purely upon second hand knowledge?

9           A       Right, and the only affect it would have is  
10 that it fits this pattern that life is short, and you  
11 die young. We're not talking about --

12          Q       Do you know how old Gene was when he was  
13 killed?

14          A       Early thirties, I believe.

15          Q       How old was Billy when he was killed?

16          A       I think about the same.

17          Q       His uncle James, you also indicated he had  
18 a substance abuse problem?

19          A       Yes, and we're switching back and forth,  
20 James was not killed.

21          Q       James was not killed, is that correct?

22          A       Yes.

23          Q       He had direct contact with James?

24          A       I believe he did. Again, the point is not  
25 being made that there was a direct influence or that

1 they assaulted him or anything like that. That's not  
2 there. There's no -- and that's not being put  
3 forward. They just weren't emotionally available, I  
4 guess.

5 Q And his exposure to his father's substance  
6 abuse would have been at a very young age?

7 A That's correct.

8 Q Had little or no contact with his father  
9 since about the age of three?

10 A There's been sporadic contact, and I think  
11 Daniel certainly is well aware of his father's  
12 substance abuse problems, I think he has seen him  
13 high. So he's aware of that certainly.

14 Q And as to these violent deaths, his great  
15 uncle Chuckie --

16 A Yes.

17 Q -- when was he killed?

18 A 1984.

19 Q And again, is that -- the fact or any  
20 effect that it might have upon the defendant is based  
21 upon secondhand information?

22 A He was living in Philadelphia at the time,  
23 so they were close by. I think there was involvement  
24 in funerals and that sort of thing. It's a tragedy  
25 that certainly when somebody is murdered in their

1 family, even if they are far away, you certainly hear  
2 about that, and it gets talked about, but in '84 and  
3 Philadelphia, he was there when that issue happened.

4 Q And Nelson, who was his great grandfather?

5 A He was not there when that happened.

6 Wasn't born when that happened. Again, there's lots  
7 of myths and so on about your great grandpa being  
8 murdered with a knife.

9 Q And the schools that you've referred to,  
10 the number of schools that he's attended, you had  
11 indicated that the records reflected that he was  
12 kicked out of schools or expelled from schools for  
13 fighting?

14 A Yes.

15 Q That was true in Scotland High School?

16 A There were a number -- I'm not sure, I  
17 believe you're -- I believe that's correct.

18 Q That was true with West Florence High  
19 School?

20 A I only remember one incident, one  
21 circumstance where the record shows he was kicked out  
22 of school for fighting, and I don't know whether it  
23 was in that period that you're referring to there,  
24 between his time here and in South Carolina -- it's  
25 right in that same time period.

1 Q You also indicated that the records show  
2 that he was a discipline problem?

3 A The fighting would be a discipline  
4 problem. I don't believe it says anything else about  
5 that. I think there were some other kids with the  
6 stuttering and things, and I think there's some kids  
7 who pick on kids who stutter, so I think for a good  
8 period of his life he didn't fight back, looks like  
9 at about the age of 13 he started to fight back.

10 THE COURT: Dr. Rohrer is  
11 requesting that the record show those were  
12 not his comments. Let the record so show.

13 (Reporter's Note - Something came over  
14 the speaker in the courtroom).

15 Yes, sir, Mr. Britt.

16 BY MR. BRITT:

17 Q You've also testified, Dr. Rohrer, that  
18 it's your opinion that the defendant resists or holds  
19 some resentment to authority figures?

20 A Yes, sir, that's correct.

21 Q Who characterizes them as authority figure?

22 A Your initial authority figures in your life  
23 are your parents, and then when you start moving, the  
24 wider the circle goes and the more authority you come  
25 in contact with, school, teachers and Sunday school

1 teachers. And then eventually to authorities, people  
2 in the police, people at the Y or Boys Club, anybody  
3 who can tell you what to do I guess is what it comes  
4 down to.

5 Q Dr. Rohrer, the murder of James Jordan does  
6 not qualify as a violent death that has an effect on  
7 the defendant?

8 A The pattern --

9 MR. THOMPSON: Object.

10 THE COURT: Objection is  
11 sustained to the form of the question.  
12 Members of the jury, you instructed you  
13 that you are not to consider Mr. Britt's  
14 last question, that matter is not to take  
15 any part in your deliberations in this  
16 case, as to your deliberations as to  
17 punishment in any regard.

18 MR. BRITT: I don't have any  
19 other questions.

20 REDIRECT EXAMINATION

21 BY MR. THOMPSON:

22 Q Dr. Rohrer, you mentioned there were other  
23 team members who saw the defendant?

24 A Yes.

25 Q Who were these, what are the names of those

1 individuals?

2 A James Cavanaugh is one individual that  
3 spent time just with Daniel at the jail. Mrs. --

4 Q What is he -- what is his --

5 A He's a consultant to our group that works  
6 on mitigation cases, consultant to us. Mrs. June  
7 Waller is the other member, actually of our team, and  
8 Dr. Brent Dennis, those are the other three  
9 individuals who worked for us on this.

10 Q What are the certifications of these  
11 individuals who you've just testified as being team  
12 members?

13 MR. BRITT: Objection to  
14 relevance.

15 THE COURT: Form of the question,  
16 the objection is sustained. Rephrase.

17 BY MR. THOMPSON:

18 Q Well, what professions are these  
19 individuals in?

20 A They are all social workers. Mr. Cavanaugh  
21 is completing a Master's degree in social work, he is  
22 an ordained minister at this point, is completing his  
23 degree in social work. Mrs. Waller has a Masters in  
24 social work, certified clinical social worker, member  
25 of the Academy of Certified Social Workers.

1 Dr. Dennis is a Ph.D. in counseling from Columbia  
2 University. He is a professor in the university. Is  
3 a certified clinical social worker and member of the  
4 Academy of Certified Social Workers.

5 Q Now, Dr. Rohrer, specifically, Exhibit  
6 Number 47, those individuals on that exhibit are  
7 dead, are they not?

8 A That's correct, they were murdered, most of  
9 them were murdered.

10 Q Specifically, with regard to Exhibit Number  
11 46, the genogram, many of those individuals are dead?

12 A That's correct.

13 Q And is it the normal practice in your  
14 profession in preparing a genogram with deceased  
15 family members in it to get information from family  
16 members who are living, about those deceased family  
17 members?

18 A That's all you have left. It's hard to --  
19 one of the things we try to do in this is get  
20 collateral interviews on family issues, the neighbors  
21 don't know those things, or the school teachers or  
22 others that we talk to in regard to other issues, so  
23 you have to rely on families, that's all there is  
24 that knows that, and they don't always know all of  
25 it, or won't tell us, at least.

1                   MR. THOMPSON: Your Honor, we  
2                   desire at this time to introduce  
3                   Defendant's Exhibit Number 46 and Number 47  
4                   into evidence.

5                   THE COURT: For what purpose,  
6                   Mr. Thompson?

7                   MR. THOMPSON: To illustrate the  
8                   testimony of Dr. Rohrer.

9                   THE COURT: State want to be  
10                  heard, Mr. Britt?

11                  MR. THOMPSON: And --

12                  THE COURT: I'm sorry, did I cut  
13                  you off? You're offering them for  
14                  illustrative purpose only?

15                  MR. THOMPSON: And desire that  
16                  they be passed to the jury.

17                  THE COURT: Mr. Britt, do you  
18                  want to be heard?

19                  MR. BRITT: No, sir.

20                  THE COURT: Do you want a  
21                  limiting instruction.

22                  MR. BRITT: Yes, sir.

23                  THE COURT: Members of the jury,  
24                  Defendant's Exhibits 46 and 47 are being  
25                  admitted at this time for the limited

1 purpose of illustrating the testimony of  
2 Dr. Rohrer.

3 Now, please recall the instruction  
4 that I've given you on numerous occasions  
5 as to how you are to consider these  
6 exhibits. Again, I'm obligated to instruct  
7 you that you may consider Defendant's  
8 Exhibits 46 and 47 to the extent that you  
9 find that they are of aid or assistance in  
10 understanding his testimony and for no  
11 other purpose.

12 Mr. Horne, if you'll pass the exhibits  
13 to the members of the jury, please, sir.  
14 In that regard, folks, please recall my  
15 instructions, examine each exhibit  
16 individually and carefully and without any  
17 comment.

18 (Exhibits passed to the jury.)

19 THE COURT: Mr. Thompson, do we  
20 have copies?

21 MR. THOMPSON: Not of those  
22 exhibits, Your Honor.

23 THE COURT: Okay.

24 Thank you, sir. Mr. Thompson.

25 MR. THOMPSON: That's all.

1 THE COURT: My additional matters  
2 on behalf of the State, Mr. Britt?

3 MR. BRITT: No, sir.

4 THE COURT: May Dr. Rohrer be  
5 released, folks?

6 MR. THOMPSON: Yes, sir.

7 THE COURT: Thank you, sir,  
8 you're free to go. Any additional evidence  
9 on behalf of the defendant, Mr. Thompson,  
10 Mr. Bowen.

11 MR. BOWEN: Yes, sir, Your Honor,  
12 the defense calls Dr. James H. Johnson,  
13 Jr.

14 THE COURT: If you'll come up and  
15 be sworn.

16 MR. BRITT: Your Honor, I believe  
17 Dr. Rohrer needs some time to collect his  
18 things.

19 THE COURT: Members of the jury,  
20 let's take about ten minutes, if you will.  
21 Is that enough time, Dr. Rohrer?

22 THE WITNESS: Yes.

23 THE COURT: Folks, please recall  
24 my instructions, and please recall that  
25 it's your duty to abide by the Court's

1 instructions concerning your conduct.  
2 Please reassemble, let me give you until 25  
3 after. Please reassemble in the jury room  
4 at 12:25. Thank you, folks.

5 (Jury out at 12:11 p.m.)

6 THE COURT: In the absence of the  
7 jury, simply for the purposes of  
8 information, can you give me some ballpark  
9 estimate as to how many more witnesses you  
10 folks may have?

11 MR. THOMPSON: Two, maybe three.  
12 Two.

13 THE COURT: Essentially what I'm  
14 asking is is it realistic for us to  
15 anticipate completing the evidence tomorrow  
16 or today?

17 MR. BOWEN: Possibly today.

18 THE COURT: I appreciate that.  
19 If that is the case, can we schedule the  
20 charge conference for Friday? That's all  
21 I'm trying to do is just figure out the  
22 schedule down the road.

23 MR. THOMPSON: Yes, sir.

24 THE COURT: I appreciate that.  
25 Thank you. We're at ease

1 (Defense Exhibits 48 through 52 were  
2 marked for identification.)

3 THE COURT: Mr. Thompson, I  
4 appreciate the consideration. We'll bring  
5 the jury in, and we will let them go until  
6 2:00.

7 (Jury in at 12:33 p.m.)

8 THE COURT: Members of the jury,  
9 counsel for the defendant were considerate  
10 enough to indicate to us that they  
11 anticipate utilizing some exhibits with  
12 their next witness, and in order to  
13 expedite the proceedings, they are going to  
14 make copies of those exhibits for all  
15 members of the jury.

16 They will need, however, approximately  
17 15 to 25 minutes to do that. That being  
18 the case, I'm going to release you folks  
19 for lunch at this time, and ask that you  
20 return at 2:00, we will be in a position to  
21 go forward at that time. During lunch  
22 recess, I'm obligated again to instruct you  
23 that you're not to talk about this matter  
24 among yourselves, not to talk about it with  
25 anyone else, not allowed to have anyone say

1 anything to you or in your presence about  
2 this case. If anyone communicates with you  
3 about this matter, or attempts to do so or  
4 says anything about the case in your  
5 presence it's your duty to inform us of  
6 that immediately.

7 Don't form or express any opinions  
8 about that matter. Don't have any contact  
9 or communication of any kind with anyone  
10 involved in the case. Avoid any exposure  
11 to any media accounts which might exist in  
12 connection with this matter, and don't  
13 conduct any independent investigation or  
14 research or inquiry of any kind at all.  
15 See you at 2:00, folks, have a good lunch,  
16 we'll see you then.

17 (Jury out at 12:35 p.m.)

18 THE COURT: In the absence of the  
19 jury, there's one matter that I feel that  
20 we need to bring up on the record. I  
21 apologize I left it in chambers, but  
22 there's been a request for members of the  
23 media regarding setting up a camera at the  
24 time that the jury returns its  
25 recommendation as to sentence in this

1 case. Counsel for the State want to be  
2 heard?

3 MR. BRITT: Your Honor, I think  
4 we have to go back and look at Rule 15, how  
5 it applies.

6 THE COURT: As I indicated  
7 earlier when the issue arose in the context  
8 of the jury's verdict on the issue of guilt  
9 or innocence, I think we are on safe  
10 grounds under Rule 15 at that stage in the  
11 process. Obviously, Rule 15 prohibits any  
12 filming of any members of the jury, and I'm  
13 sure all members of the media understand  
14 that. Other than that, do you want to be  
15 heard?

16 MR. BRITT: No, sir, I'll leave  
17 it to your discretion.

18 THE COURT: Counsel for the  
19 defendant?

20 MR. BOWEN: Your Honor, we object  
21 at this stage. We have not objected from  
22 the beginning to complete camera coverage  
23 of the proceedings, but to pick out and  
24 single out one particular part of the  
25 proceedings, without having put the rest of

1 it before the public, we object to that.

2 THE COURT: Okay. For the  
3 record, that, as I indicated, would occur  
4 if allowed in the discretion of the Court,  
5 at the time the jury returns its  
6 recommendation as to sentence. At that  
7 point the proceedings would essentially be  
8 at an end. Any prejudice you want to  
9 address for the purposes of the record?

10 MR. BOWEN: I'm -- if they make a  
11 tape of what the result is, how does that  
12 occur after the proceedings are over?

13 THE COURT: Okay, the procedure  
14 that I would utilize is once the Court has  
15 been informed that the jury has reached a  
16 unanimous recommendation as to sentence, in  
17 effect, that would have concluded, except  
18 for the formality of bringing them out into  
19 court to publicly pronounce their  
20 recommendation as to sentence, but in  
21 effect, that would conclude the jury  
22 deliberation on the issue of recommendation  
23 as to sentence.

24 What would remain would be the  
25 formality of bringing them into open court,

1 taking the recommendation of the jury, and  
2 polling them. But in essence, the  
3 deliberations would have been concluded.

4 MR. BOWEN: And your thinking is  
5 thereby, there would be no more jury  
6 deliberations to prejudice by having the  
7 matter in the press. And I see what logic  
8 that you're going under, but we feel that  
9 under rulings of the Court, the jury would  
10 never have been entitled to see those  
11 proceedings on the press anyway, and we  
12 have always taken the position that these  
13 entire proceedings could be viewed by the  
14 public through the cameras, and we have  
15 relied on the fact that your instructions  
16 would be sufficient to the jury to keep  
17 them from seeing, and that it would have  
18 thereby been no prejudice.

19 It simply seems to us that it's simply  
20 incongruous to show one part and not show  
21 the other. That's our position, and I  
22 think the defendant wants to indicate  
23 something in particular.

24 The objection stands, thank you.

25 THE COURT: Folks, I note your

1 objection for the record. The objection is  
2 overruled. In the discretion of the Court,  
3 I will allow a camera in the courtroom once  
4 the jury has been sent out for the purposes  
5 of deliberation as to their recommendation  
6 as to sentence, for the purposes of  
7 recording for public consumption the  
8 recommendation of the jury in this case as  
9 to sentence.

10 MR. THOMPSON: Judge, now that's  
11 not -- you're saying once they have been  
12 sent out?

13 THE COURT: Yes, sir.

14 MR. THOMPSON: For deliberation?

15 THE COURT: Yes, sir, they won't  
16 know the camera is in here.

17 MR. BOWEN: Well, the press may  
18 report that it is, and of course, we're  
19 again assuming they will not read the press  
20 or get any information, but suppose they  
21 were to get some information, they know  
22 what they are about to come back to is a  
23 camera trained on them to tell the world  
24 what their verdict is. We've avoided these  
25 things for months.



1 very much a part of the proceedings.

2 THE COURT: Yes, sir.

3 MR. THOMPSON: And you're  
4 allowing cameras in the courtroom, that  
5 would be during the proceedings.

6 THE COURT: Yes, sir.

7 MR. THOMPSON: Which again, we  
8 argue to you is inconsistent with what you  
9 have already ruled.

10 THE COURT: Yes, sir. Anything  
11 further? Objection is overruled, exception  
12 is noted for the record. Court ruling  
13 stands. It's discretionary with the  
14 Court.

15 Folks, at any stage of the process  
16 I've exercised any discretion, I've given  
17 you folks opportunity to put any part in  
18 the record that you contend would give rise  
19 to prejudice for the defendant. I  
20 appreciate your arguments, but the Court,  
21 in the exercise of its discretion, is going  
22 to allow the camera in the courtroom for  
23 the purpose of recording recommendation as  
24 to sentence. Yes, sir, Mr. Britt.

25 MR. BRITT: I don't know if this

1 is the time to do it, or maybe a later  
2 time, but under Rule 15, specifically  
3 Subsection C regarding location --

4 THE COURT: That's a matter we  
5 have to iron out. Two possibilities are  
6 that area right there, which would pan over  
7 (indicating) there, or this area right  
8 here, which would pan over in that  
9 direction.

10 Folks, I am adamant, and I think I've  
11 expressed this on a number of occasions,  
12 and I am confident that members of the  
13 media will act responsibly in terms of  
14 their obligations under Rule 15, but I am  
15 adamant in complying with Rule 15.  
16 Anything further, folks?

17 MR. BRITT: No, sir.

18 THE COURT: We're at ease until  
19 2:00.

20 THE BAILIFF: All rise, please.

21 (Lunch recess.)

22 THE COURT: Good afternoon,  
23 folks.

24 Let the record reflect that all  
25 counsel are present, the defendant is

1 present in open court. Mr. Horne, for the  
2 record do we have all members of the jury  
3 secured in the jury room?

4 THE BAILIFF: Yes, sir, we do.

5 THE COURT: Mr. Bowen,  
6 Mr. Thompson, you folks ready to go  
7 forward?

8 MR. BOWEN: We're ready.

9 THE COURT: Mr. Horne, if you'll  
10 bring the jury in, please.

11 (Jury in at 2:00 p.m.)

12 THE COURT: Good afternoon,  
13 folks.

14 Mr. Thompson, you may call your next  
15 witness.

16 MR. BOWEN: If Your Honor,  
17 please, we call Dr. James H. Johnson, Jr.

18 THE COURT: If you'll come up and  
19 be sworn, please, sir. Come right around,  
20 please. If you will place your left hand  
21 on the Bible please, and raise your right.

22 JAMES H. JOHNSON, JR.,  
23 being first duly sworn was examined and testified as  
24 follows:

25 DIRECT EXAMINATION

1 THE COURT: If you'll take the  
2 witness stand, please.

3 BY MR. BOWEN:

4 Q State your full name, please, sir.

5 A My name is James H. Johnson, Jr.

6 Q And where do you reside, Dr. Johnson?

7 A Chapel Hill, North Carolina.

8 Q And by whom are you employed, sir?

9 A University of North Carolina at Chapel  
10 Hill.

11 Q In what capacity?

12 A I'm an E-Maynard Adams professor of  
13 geology, sociology and business.

14 Q And are you employed currently as the  
15 director of any particular program, sir?

16 A I'm the director of the Urban Investment  
17 Strategist Center.

18 MR. BOWEN: Pardon me, may I  
19 approach the witness and move that  
20 microphone closer, Your Honor?

21 THE COURT: Yes, sir, or you can  
22 move it up, Doctor.

23 THE WITNESS: Well it's at the  
24 edge.

25 BY MR. BOWEN:

1 Q Couple of jurors are having trouble hearing  
2 you, Doctor.

3 A I'm sorry.

4 Q I'm sorry, you say you're the director --

5 A Of the Urban Investment Strategies Center  
6 at the University of North Carolina at Chapel Hill.

7 Q Where do you hold your Bachelor of Science  
8 degree from, if you have one sir, and in what field?

9 A North Carolina Central University, Durham,  
10 North Carolina.

11 Q Do you have a master of science degree,  
12 sir?

13 A Yes, sir.

14 Q Where is that from?

15 A University of Wisconsin at Madison.

16 Q Do you have a Ph.D.?

17 A Yes.

18 Q From where, sir?

19 A Michigan State University.

20 Q And what field did you get your Ph.D. in  
21 sir?

22 A Ph.D. is urban social geography.

23 Q Receiving it when?

24 A In May of 1980, May 2nd, at 3:30 in the  
25 afternoon. Monumental time.

1 Q And what field did you get your masters in,  
2 sir?

3 A I also got my masters in Urban Social  
4 Geography.

5 Q Now, since the time that you have gotten  
6 your Ph.D. have you taught at the college level?

7 A Yes, sir.

8 Q Tell the jury please where you've taught  
9 and in what field you've taught.

10 A For 14 years, I taught at the University of  
11 California at Los Angeles, or UCLA, in the field of  
12 geography. I resigned my job at UCLA in 1992, and  
13 took the current job that I have at the University of  
14 North Carolina at Chapel Hill.

15 Q Do you have regularly -- have you regularly  
16 done research in connection with these university  
17 posts since receiving your Ph.D. degree?

18 A Yes, I have.

19 Q What is your particular area of interest?

20 A I do work principally on urban and racial  
21 inequality in American society.

22 Q Now, have you published, Dr. Johnson?

23 A Yes.

24 Q And over what period, describe the number  
25 and the type of articles or research projects which

1 you have published.

2 A I published my first article paper when I  
3 was a master student in 1977, and I have published  
4 since '77 about 100 articles, one research monograph,  
5 and I've edited four theme issues of scholarly  
6 journals during that period.

7 Q Now, you joined the UNC faculty when, sir?

8 A In 1992.

9 Q Now, during this period of time, after  
10 receiving your Ph.D., and particularly in the last  
11 ten years, have you had an occasion to serve as an  
12 expert witness in any type of death penalty  
13 litigation?

14 A Yes, sir.

15 Q In what states have you served as such a  
16 witness?

17 A In California and Nevada.

18 Q And how many times have you served in that  
19 capacity, sir?

20 A I think I've been called to testify on  
21 about 12 different occasions, and I've worked in  
22 probably two dozen cases altogether, but some of them  
23 didn't get to the penalty phase which required my  
24 testimony.

25 Q And have you qualified for those particular

1 cases in which you did testify in any particular  
2 field?

3 A As a professional demographer, yes.

4 Q Tell the jury what a professional  
5 demographer is and what one does.

6 A Demography is the field -- is a field in  
7 which one studies population trends, demographic  
8 changes, particularly as they relate to family  
9 structure, fertility and mobility behavior, that is  
10 migration, why people move from place to place and  
11 what are the forces that undergird those mobility  
12 decisions.

13 Q Now, does demography encompass the academic  
14 disciplines which you have in sociology and geology?

15 A Right. Most demographers are either  
16 geographers or sociologists by training.

17 Q Did the articles, the hundred or so that  
18 you have published, have they dealt with demographic  
19 themes or issues?

20 A Some of them have, yes.

21 Q And do the courses which you teach deal in  
22 whole or in part with demographic themes or issues?

23 A Yes.

24 Q Have you been guest lecturer at any  
25 universities or any conventions of folks who practice

1 in your profession?

2 A Yes.

3 Q Now, how long have you been practicing as  
4 what you would term a professional demographer?

5 A Well, I got my Ph.D. in 1980, so this is  
6 1996, 16 years.

7 Q So your Ph.D. is in a discipline that has  
8 enabled you to practice as a professional demographer  
9 and you have testified in those areas?

10 A Yes.

11 Q How does a professional demographer acquire  
12 his or her data in order to render opinions as an  
13 expert?

14 A Professional demographers gather data in a  
15 number of different ways. One -- some professional  
16 demographers conduct social surveys. I'm sure many  
17 of you have gotten phone calls between 6:00 and 9:00  
18 at night from some nice, fast-talking person asking  
19 you to give them 15 minutes of your time, and it ends  
20 up 35 minutes of your time. That's -- I'm one of  
21 those people who would be calling you, or people that  
22 I employ would be calling you. We gather data  
23 through surveys.

24 The other way we get our data, principally  
25 through published documents, documents provided by

1 the U.S. Bureau of the Census. Every ten years you  
2 get either a long census form or short form from the  
3 U.S. Bureau of the Census asking you about everything  
4 in your life, and threatening you, if you don't  
5 answer it, to come get you and lock you up. So the  
6 census is something that is gathered every ten years,  
7 and there are published volumes of the census that  
8 we, as demographers use a lot in our work.

9 In addition, now with the advances in  
10 communications technology, much of the data gathered  
11 by the census on households and families are  
12 available in computerized forms, either on tape or  
13 CD-ROM, things of that nature. We use a lot of that  
14 data. And a lot of times we exploit vital statistics  
15 that are also gathered by the census, and any kind of  
16 detailed case records that would be gathered at the  
17 state or local level of government and even sometimes  
18 for a local planning areas in various jurisdictions.  
19 So we use kind of primary data, data that we gather  
20 on our own, and do secondary analyses of data that  
21 have been gathered by other people.

22 Q Now, Dr. Johnson, when you testify as an  
23 expert witness in a court of law concerning matters  
24 of professional demography, do you rely on a type of  
25 material such as you've just described, that is,

1 reasonably relied on by experts in the particular  
2 field of professional demography?

3 A Yes.

4 MR. BOWEN: Now, Your Honor, at  
5 this time I would submit Dr. Johnson as an  
6 expert in the field of demography.

7 THE COURT: Mr. Britt.

8 MR. BRITT: May I be heard?

9 THE COURT: Yes, sir. Members of  
10 the jury, there's a matter of law the Court  
11 must take up at this time. Please recall  
12 my instructions in that regard. Don't  
13 worry or speculate about what takes place  
14 in the courtroom in your absence. If all  
15 members of the jury would step to the jury  
16 room.

17 (Jury out at 2:09 p.m.)

18 THE COURT: Let the record  
19 reflect the following is being heard in the  
20 absence of the jury.

21 MR. BRITT: Your Honor, I  
22 requested to be heard. At this time, I do  
23 not have any quarrel with Dr. Johnson's  
24 qualifications, but to have him tendered as  
25 an expert in the field of demography with

1 no -- that's a pretty broad term. And I  
2 have been provided a copy of the report  
3 that he prepared in connection with his  
4 testimony, some 14 pages long with two  
5 tables attached to it. Much of this deals  
6 with socioeconomic issues in a general  
7 sense of Robeson County and North Carolina,  
8 deals with racial inequality that he  
9 alleges occurs here in the court system,  
10 and as I understand the purpose of this  
11 proceeding is to offer evidence as it  
12 relates to mitigating circumstances as they  
13 relate specifically to the defendant.

14 Much of my objection is based upon the  
15 information contained in his report has  
16 nothing to do with the defendant as it does  
17 to the general ideas surrounding  
18 joblessness among blacks, Indians and  
19 whites in Robeson County, economic status  
20 among blacks, Indians and whites in Robeson  
21 County, and the state. I don't see how  
22 that relates to experiences or mitigating  
23 circumstances that they say affect the  
24 defendant.

25 THE COURT: Mr. Bowen.

1 MR. BOWEN: Your Honor, the  
2 answer to that is that Dr. Johnson's thesis  
3 sentence of this monograph, which the  
4 District Attorney has, and by the way,  
5 there is no quarrel in this paper or in his  
6 potential testimony about the court system  
7 or the way that there's racial inequality,  
8 particularly. Most of this --

9 THE COURT: Court doesn't take  
10 offense even if it did.

11 MR. BOWEN: Well, what he's going  
12 to testify is, number one, is Daniel  
13 Green's case in the broader society  
14 context, that he has to talk about  
15 employment possibilities, other social  
16 possibilities in that. Number two, he's  
17 going to talk about the local environmental  
18 context or milieu in which the homicide  
19 occurred, where Daniel Green found himself  
20 in his local environment. And third, the  
21 life course context experiences of the  
22 defendant as they relate to the first two.

23 THE COURT: Okay. Folks, I'm  
24 going to have to take up objections as they  
25 are made and deal with them as they are

1           made as to specific questions and specific  
2           matters. You don't object to the tender?  
3           Feel free to make any objections that you  
4           think are appropriate.

5                       MR. BRITT: Yes, sir.

6                       THE COURT: Bring the jury back  
7           in, please, Mr. Horne.

8                               (Jury in at 2:13 p.m.)

9                       THE COURT: The witness may  
10          testify as an expert in the field of  
11          demography.

12                       MR. BOWEN: Thank you, Your  
13          Honor.

14          BY MR. BOWEN:

15               Q       Dr. Johnson, in approaching the case of  
16          State versus Daniel Green, also known as U'Allah, did  
17          you develop through your statistics and data, did you  
18          develop a broader societal context with which to view  
19          and explain your opinions concerning mitigation in  
20          this case?

21               A       Yes.

22                       MR. BRITT: Objection.

23                       THE COURT: Dr. Johnson, is the  
24          testimony that counsel has proposed to  
25          elicit related to this defendant as he

1 I should preface this by saying that much  
2 of my work on African American males was done as a  
3 part of a national commission on the status of  
4 African American males that was put together by a  
5 joint group in Congress several years ago, and I was  
6 the principal demographer in that commission. And so  
7 these specific tables come from my published work and  
8 published work of other researchers, and also from a  
9 recent study we just completed for the Ford  
10 Foundation and the Russell Sage Foundation, a six  
11 million dollar study looking at racial inequality  
12 during the 1980s. We interview 8,600 households  
13 across four cities, and about 4,000 employers. So  
14 these data come from survey from the earlier work we  
15 did.

16 Q And Dr. Johnson, what categories of data  
17 does this exhibit, Defense 52, deal with?

18 A It provides a national picture at --  
19 several of the tables provide a national picture over  
20 time about how the status of African American males  
21 has changed dramatically, has worsened if you will.  
22 I call it in my work the declining economic fortunes  
23 of African American males. And what I argue is, is  
24 when we start looking at black family structure and  
25 the impact on youth in American society, that's part

1           might fall into certain categories?

2                         THE WITNESS: Yes, sir.

3                         THE COURT: Mr. Bowen, the  
4           objection is overruled.

5 BY MR. BOWEN:

6           Q       Did you rely on certain statistics and data  
7           for your background in discussing the broader  
8           societal context?

9           A       Yes.

10          Q       Did you develop some graphics to that end,  
11          sir?

12          A       Yes.

13                         MR. BOWEN: May I approach the  
14          witness, Your Honor?

15                         THE COURT: Yes, sir.

16 BY MR. BOWEN:

17          Q       Dr. Johnson, I show you what has now been  
18          marked as Defendant's Exhibit Number 52, and ask you  
19          can you identify that, please?

20          A       Yes, sir.

21          Q       What is that?

22          A       These are a series of tables that I put  
23          together from some of the published work that I have  
24          done on the status of African American males and how  
25          that has changed over the last two decades.

1 and parcel of that deterioration that we have  
2 witnessed is, it reflects economic changes in  
3 American society, particularly that dealt with the  
4 large number of jobs lost and that that has  
5 disproportionately impacted African American males.

6 Q For example, in that material do you have a  
7 graph concerning joblessness?

8 A Yes, sir.

9 Q Graph concerning weeks worked?

10 A Yes, sir.

11 Q Weekly earnings?

12 A Yes, sir.

13 Q Concerning annual earnings?

14 A Yes, sir.

15 Q Relating skin tone and non-work race skin  
16 tone and non-work?

17 A Yes, sir.

18 Q And several others dealing with race, skin  
19 tone, and non-work?

20 A That's correct.

21 Q And then further, some raw figures  
22 involving socioeconomic indicators for Robeson County  
23 and North Carolina?

24 A Absolutely, yes, sir.

25 Q Now, can you use the graphic material and

1 the data contained in Defense Exhibit Number 52 to  
2 illustrate to the jury your testimony about these  
3 categories and materials?

4 MR. BRITT: Objection.

5 THE COURT: As they might apply  
6 to the defendant?

7 BY MR. BOWEN:

8 Q Yes, as they might apply to this  
9 defendant.

10 THE COURT: Overruled.

11 THE WITNESS: Yes, sir.

12 MR. BOWEN: If Your Honor,  
13 please, at this time, I move that this  
14 exhibit be introduced for the limited  
15 purpose.

16 THE COURT: What is the number,  
17 sir?

18 MR. BOWEN: Number 52, Your  
19 Honor.

20 THE COURT: Okay. Mr. Britt, do  
21 you want a limiting instruction, sir?

22 MR. BRITT: Yes, sir.

23 THE COURT: Members of the jury,  
24 Defendant's Exhibit 52 is being admitted at  
25 this time for the limited purpose of

1 illustrating the testimony of the witness  
2 now before you, Dr. Johnson. And to extent  
3 that you find it of aid or assistance in  
4 understanding that testimony, you may  
5 consider this exhibit for that limited  
6 purpose and for no other purpose.

7 MR. BOWEN: Your Honor, I would  
8 respectfully move at this time, I have  
9 copies for all the jury and Your Honor, and  
10 respectfully move to be able to pass it at  
11 this time.

12 THE COURT: Mr. Britt, do you  
13 want to be heard?

14 MR. BRITT: No, sir.

15 THE COURT: Yes, sir, thank you.  
16 If you'll hand the copies for the jury to  
17 Mr. Horne, please.

18 (Exhibit passed to the jury.)

19 THE COURT: Thank you, sir.

20 BY MR. BOWEN:

21 Q Now, Dr. Johnson, in terms of your first  
22 topic, that is, the broader societal context in which  
23 Mr. Daniel Green found himself, can you discuss the  
24 issues of joblessness in this country and in the area  
25 in which Mr. Green lived and worked?

1 A Yes, sir.

2 Q Please do so.

3 THE COURT: First of all, there's  
4 no objection, and I understand. You're  
5 going to have to place Mr. Green in a  
6 specific category, first of all.

7 BY MR. BOWEN:

8 Q What is your understanding from your data  
9 as to Mr. Green's age, his race, and his sex?

10 A Well, he's a young black male of about 22  
11 years old. What I was able to do is pool national  
12 data level for 22 year old males. That's as close as  
13 we could get. Secondly, he is African American, and  
14 he does live in the United States. And more  
15 specifically, at the time of the commission of this  
16 crime, he was in Robeson County.

17 So I have national level data, because one  
18 of my arguments is that understanding the experience  
19 of an African American male locally is related to  
20 what happens to African American males nationally,  
21 those are not unique or discrete categories but  
22 rather they are connected.

23 Q And from a professional demographer's point  
24 of view, what type of world or university did  
25 Mr. Green face in terms of the job market?

1 MR. BRITT: Objection.

2 THE COURT: Sustained as to the  
3 form of the question.

4 BY MR. BOWEN:

5 Q What type of jobless data are you able to  
6 share with us that Mr. Green would have felt at about  
7 the time of this event in 1993?

8 MR. BRITT: Objection.

9 THE COURT: Sustained as to the  
10 form of the question.

11 BY MR. BOWEN:

12 Q In the broader societal view, what type of  
13 joblessness was the status of our society at the time  
14 that's relevant to Mr. Green's case?

15 MR. BRITT: Objection.

16 THE COURT: Sustained as to the  
17 form of the question.

18 BY MR. BOWEN:

19 Q Can you tell the jury what the joblessness  
20 rate for the category of young black males such as  
21 Mr. Green versus other races of the society  
22 work?

23 MR. BRITT: Objection.

24 THE COURT: Sustained. Members  
25 of the jury, there's a matter of law the

1 Court must take up. Again, please recall  
2 my instructions, don't worry or speculate  
3 about what takes place in the courtroom in  
4 your absence. If you folks would please  
5 step to the jury room.

6 (Jury out at 2:22 p.m.)

7 THE COURT: Folks, Skipper versus  
8 South Carolina and Locker versus Ohio stand  
9 for proposition that the Court cannot limit  
10 evidence in mitigation in a penalty phase,  
11 which basically makes it fairly unlimited.  
12 In order for you to get any testimony in  
13 through Dr. Johnson, you're going to have  
14 to establish -- and presumably he's done  
15 this -- that he is aware of Mr. Green's  
16 socioeconomic situation at the time in  
17 question, and how that information may fit  
18 in with what it is that you want to elicit  
19 from him.

20 MR. BOWEN: Yes, sir.

21 THE COURT: Mr. Britt, do you  
22 want to be heard further?

23 MR. BRITT: No, sir.

24 THE COURT: If you'll bring the  
25 jury back in, please, Mr. Horne.

1 THE BAILIFF: We have Ms. Odum  
2 who appears to be ill.

3 THE COURT: I need to do that on  
4 the record in open court. If you'll bring  
5 them in, please.

6 (Jury in at 2:24 p.m.)

7 THE COURT: Ms. Odum, are you  
8 feeling okay, ma'am? Feel absolutely free  
9 to tell me what your honest situation is.  
10 Are you capable of going forward at this  
11 time?

12 JUROR: (Nods head  
13 affirmatively.)

14 THE COURT: Again, if at any time  
15 you feel that a break is necessary or if  
16 any time you feel you're not able to  
17 proceed, please let us know. Don't  
18 hesitate. Okay?

19 JUROR: (Nods head  
20 affirmatively.)

21 THE COURT: Mr. Bowen.

22 BY MR. BOWEN:

23 Q Dr. Johnson, in assimilating the data, did  
24 you assimilate specific socioeconomic data relating  
25 to Mr. Green?

1           A       I reviewed his records, and it was clear to  
2 me that Mr. Green was a young African American male  
3 who was caught in a system of economic restructuring  
4 in American society. He was weakly attached to the  
5 labor market. He was experiencing difficulty in the  
6 education system. And those two things together made  
7 it difficult for him growing up here.

8                       And at the same time, it had an effect by  
9 virtue of him being an African American male, and  
10 being in a society in which Mr. African American  
11 males were experiencing joblessness and difficulty in  
12 the economy, the notion of having access to  
13 mainstream role models, that is, men with good jobs,  
14 was something that was difficult for him. And thus,  
15 that's the reason that I've put together these  
16 joblessness statistics.

17           Q       What type of sources did you use to learn  
18 specifically about Daniel Green's socioeconomic  
19 background?

20                       JUROR: I can't hear.

21                       MR. BOWEN: I'm sorry.

22 BY MR. BOWEN:

23           Q       What kind of sources, Dr. Johnson, did you  
24 use to learn about Daniel Green's specific  
25 socioeconomic background?

1           A       I reviewed a wide range of records that  
2 were provided to me, including records on sort of his  
3 family background, that included information about  
4 his mother and his father, his entire family, about  
5 his schooling experience, about his work experience,  
6 and about his mobility behavior. And from that I was  
7 able to paint a picture of his socioeconomic status.

8           Q       And is this the type of data that experts  
9 in your field typically rely on to come to  
10 conclusions about matters of broader societal  
11 context?

12          A       Yes.

13          Q       Now, in terms of broader societal context  
14 as it specifically relates to U.S. joblessness in 20  
15 year old males, is that a category that Mr. Green  
16 would fit, 20 year old male?

17                   MR. BRITT:  Objection.

18                   THE WITNESS:  Yes.

19                   THE COURT:  The objection is  
20 sustained.  Members of the jury, you're not  
21 to consider the last question asked by  
22 Mr. Bowen and you're not to consider any  
23 answer that may have been given by the  
24 witness.  Those matters are not to take any  
25 part in your consideration in this case in

1 any respect.

2 Dr. Johnson, what if any information  
3 did you have about Mr. Green's employment  
4 during the months of July 1993?

5 THE WITNESS: Well, I have laid  
6 out all of the information on one of these  
7 graphics that I have here about his  
8 employment, the schooling, and a range of  
9 other issues on one of those graphics.

10 THE COURT: I understand that,  
11 but before we can get to those matters,  
12 there's some foundation matters. Do you  
13 know whether or not Mr. Green was employed  
14 during July of 1993?

15 THE WITNESS: I would have to go  
16 back and look in detail at my records.

17 THE COURT: Okay.

18 THE WITNESS: He was employed as  
19 a dishwasher at a restaurant.

20 THE COURT: Prior to that time,  
21 before July of '93, do you know what his  
22 employment history was?

23 THE WITNESS: When I characterize  
24 him as being weakly attached to the labor  
25 market, it means that he had a series of

1 marginal jobs, he was in and out of the  
2 labor market.

3 THE COURT: Do you have  
4 information as to the nature of those  
5 jobs?

6 THE WITNESS: I have some of them  
7 listed here.

8 THE COURT: Could you tell us  
9 about some of those, please?

10 THE WITNESS: I would have to go  
11 through them again.

12 THE COURT: Yes, sir, take your  
13 time.

14 THE WITNESS: Actually, I believe  
15 that was the only evidence of jobs that I  
16 had in the records that I reviewed was the  
17 one at the restaurant after he got out of  
18 prison, which against reaffirms the  
19 statement that I made earlier he was weakly  
20 attached to the labor market.

21 THE COURT: Mr. Bowen.

22 BY MR. BOWEN:

23 Q Now, Dr. Johnson, how does that  
24 information, if it does, relate to your graphic on  
25 U.S. joblessness overall?

1           A       This is an important graphic, because when  
2 it says that is for African American men, and  
3 particularly young men like Mr. Green who grew up in  
4 his former years in 1980s, was radically different  
5 from what the situation was when I grew up 20 years  
6 earlier. I'm 41 years old. I'm basically about 20  
7 years, 21 years older than Mr. Green.

8                   What it says, if you look at it very  
9 carefully, is that the unemployment rate for all men,  
10 white and black, in the mid-1960s, was low. That  
11 means large numbers of men had jobs. That means  
12 young men like myself had role models, individuals  
13 who worked every day and set a standard in society.  
14 And note that the gap, the racial gap was very, very  
15 narrow.

16                   But if you look at the second half of my  
17 figure, of the figure, the mid-1980's, between 1983  
18 and 1987, what you will see is a radically different  
19 picture. In particular, what you will see is that  
20 joblessness went up for everyone, white men and black  
21 men. But you will note it went up precipitously for  
22 black men. What that means is that the kind of role  
23 models that he had, and the kinds of communities that  
24 he found himself in, were large numbers of people who  
25 were not connected to the labor market. And we know

1 that when you're connected to the labor market, you  
2 have a routine kind of schedule. There's something  
3 about work that stabilizes your life. And if you  
4 don't have a job, it's very destabilizing. And one  
5 of the things that is crucial, that in some of the  
6 communities in which he lived, jobless rates for  
7 black men were upwards of 60 percent. This is a  
8 national level picture. You see the that.

9           If you didn't have a high school education,  
10 36 percent of 20 year old men without a high school  
11 education were disconnected from the labor market.  
12 Most of those men were idle, they were neither at  
13 work or in school. And I want to emphasize the  
14 combination, because I think it's a very dangerous  
15 combination, neither at work nor in school. They  
16 weren't working, and they weren't in school. They  
17 were idle. And in the environments in which he spent  
18 part of his life, there were large numbers of idle  
19 men. And that's very, very significant in terms of  
20 growing up.

21           When you contrast that with the experience  
22 that I had, I did not encounter men who did not have  
23 jobs. I lived in an environment in which not only  
24 did all the men in my life have jobs, but I had a job  
25 as well. I've had a job since I was six years old.

1 And that is a stabilizing influence. And you get  
2 certain modes of operating in American society. We  
3 live in a radically different world today, and it's  
4 hitting Robeson County very hard. If you look at the  
5 front page of the paper today, with Sara Lea  
6 closing --

7 MR. BRITT: Objection.

8 THE WITNESS: -- the plant,  
9 that's the same kind of --

10 THE COURT: I apologize. The  
11 objection at this point is sustained.

12 BY MR. BOWEN:

13 Q Dr. Johnson, you're going to get to the  
14 issue of mobility in a little bit, but in your  
15 background, did you determine that in his youth  
16 Daniel Green had moved a number of times?

17 A Yes.

18 Q How many moves did he have over what period  
19 of time did your research show?

20 A We have graphed them on one of the figures.

21 Q We're going to get to that in a minute.  
22 Just give us the number.

23 A We have at least 12 that we could document  
24 and identify a specific address. I think there were  
25 probably more than that. The significance of that

1 figure is that if you look at standard demographic  
2 research, it shows that on average, the typical  
3 person moves five times in his or her life.

4 Mr. Green, we've been able to document at least 12  
5 moves, and I think they were more than that, because  
6 we could not identify all the addresses. So we're  
7 talking about high degrees of mobility.

8 Q Going back to joblessness, how does that  
9 impact on employability and job stability?

10 A Well, it's important because it means that  
11 you never lay anchors down anywhere. It's a form of  
12 instability in one's life. It's disruptive. Anyone  
13 who has moved recently will recall what kind of  
14 disruptive experience it is. And when you move  
15 frequently, you can't lay down roots, can't connect  
16 with the labor market, and your family is unstable.  
17 And it has something to do with, in the first place,  
18 not having a job in many instances.

19 Q Did your source of information indicate  
20 that Daniel Green caused those moves?

21 A Absolutely not.

22 THE COURT: I'm sorry, we need to  
23 clarify. Is your answer is Mr. Green  
24 absolutely did not cause those matters?

25 THE WITNESS: Did not cause the

1 moves.

2 THE COURT: I wanted to simply  
3 clarify so there would be no  
4 misunderstanding as to your response.

5 BY MR. BOWEN:

6 Q Dr. Johnson, were you able to tell from  
7 your research, the sketchy job history that Mr. Green  
8 had, was that part-time work, full-time work or could  
9 you tell?

10 A I think it was part-time work.

11 Q Now, your second page of your materials has  
12 to do with weeks of work for 20 year old male. What  
13 were your findings and how does that graphic  
14 relate --

15 THE COURT: You have to go from  
16 the specific to the general. Establish  
17 what if any information Dr. Johnson had as  
18 to Mr. Green in that context.

19 BY MR. BOWEN:

20 Q Did you find out through your research and  
21 background study on Mr. Green whether or not his was  
22 a full-time job involvement or whether he was  
23 part-time?

24 A I think it was part-time, but the records  
25 show that when he was working in the kitchen, the

1 other people quit, quite unpredictably, and he was  
2 forced to do all the work in the kitchen. So I don't  
3 know whether it was part-time or not. What is  
4 significant is that it was a marginal job that didn't  
5 pay very well.

6 Q So were you able to determine whether or  
7 not there was continuity or not in Mr. Green's job  
8 history, was he steadily employed or was it --

9 A He was not steadily employed, and my  
10 testimony is that. And what is significant here is  
11 that increasingly African American males are not  
12 steadily employed, are not strongly attached to the  
13 labor market.

14 Q Now, did that appear in Mr. Green's case to  
15 relate in part to job availability?

16 A I'm not sure what you're asking.

17 Q Did it relate to whether or not he could  
18 find available jobs in this area?

19 A Well, I'm sure that there are available  
20 jobs in these areas, but at the same time, as to --  
21 economy has restructured. What we know from large  
22 numbers of employers' surveys is that employers  
23 increasingly have very negative views of young black  
24 males. We just completed surveys and interviews with  
25 4000 employers, and they will tell you unequivocally

1 that young black males have a poor work ethic, are  
2 uneducatable, untrainable, and most importantly, are  
3 dangerous.

4 And the significant thing about this  
5 finding is that those kinds of stereotypic views are  
6 applied categorically, that is to say they apply to  
7 me almost equally as they would to Mr. Green in many  
8 instances. And that is one of the factors that  
9 drives the high rate of joblessness and weak  
10 attachment to the labor force for all black men. The  
11 significance of it is not just that Mr. Green is  
12 weakly attached to the labor market, but those men  
13 that serve as role models, those men that serve as  
14 fathers and families, and creating stable  
15 communities, are idle. They are neither at work nor  
16 in school. And that is a crucial thing that is  
17 radically different today in the late -- well, in the  
18 late 1980s and early 1990s from what existed 20 years  
19 ago.

20 Q About Mr. Green's specific situation, were  
21 you able to determine what his wages and benefits  
22 package was?

23 A No. If he's a dishwasher, if it's like  
24 every place else, my guess is it's minimum wage.

25 Q Now, can you tell us about, in the larger

1 societal context, can you speak to -- through your  
2 graphics there on the third page, can you speak to  
3 weekly earnings of workers in the United States for  
4 20 year old black males?

5 A Well, what you basically see is, is the  
6 other kind of general finding is that black males  
7 have either experienced declining wages or stagnating  
8 wages while the cost of living has gone up sharply.  
9 So among those who do work, either their wages are  
10 not radically different from 20 years ago or there's  
11 only modest improvements, and precisely at the time  
12 that the cost of living and everything has gone up.  
13 So the ability to form and maintain stable families,  
14 the ability to have the wherewithal in the regulated  
15 economy is decreasing, and it's decreasing more for  
16 African American men than for other men.

17 Q Now, are these graphics adjusted for  
18 inflation or not, Dr. Johnson?

19 A These control for inflation.

20 Q Can you, in the larger societal context,  
21 relate your graphic on weeks worked to Mr. Green's  
22 specific space?

23 A For the benefit of the jury, that's figure  
24 1-b, the weeks worked. Basically what it shows is  
25 that over that 20 year period --

1 MR. BRITT: Objection.

2 THE WITNESS: -- white males  
3 increased --

4 THE COURT: I apologize, there's  
5 an objection.

6 THE WITNESS: I'm sorry.

7 THE COURT: That's okay. Members  
8 of the jury, there's a matter of law the  
9 Court must take up. Please recall my  
10 instructions, don't worry or speculate  
11 about what takes place in the courtroom in  
12 your absence, and folks, please step to the  
13 jury room.

14 THE WITNESS: I didn't hear him.

15 THE COURT: That's okay.

16 (Jury out at 2:40 p.m.)

17 MR. BRITT: She needs some help,  
18 she twisted her ankle.

19 THE COURT: Sir, will you assist  
20 her, please?

21 THE COURT: Ms. Odum, do you want  
22 us to call for some medical assistance,  
23 ma'am?

24 JUROR: I can handle it.

25 THE COURT: Let us know.

1           Folks, let me tell you what my concern  
2           is. Mr. Britt's position is, under the  
3           law, a valid position. The information  
4           generally really doesn't have any place in  
5           a sentencing hearing unless that general  
6           information can be tied to the specific  
7           defendant.

8           Now, let me state my position. I know  
9           there are a lot of folks who would argue  
10          that this really doesn't have any place in  
11          mitigation. I don't agree with that. I  
12          think there's valid information here about,  
13          potentially, the defendant that may be  
14          considered in mitigation, but in order for  
15          this evidence to be admissible, the  
16          evidence is going to have to relate to  
17          Mr. Green's specific situation at the time  
18          in question and how -- and prior to that,  
19          as those factors may have impacted on him.  
20          Otherwise, this evidence is not going to be  
21          heard by the jury.

22                 May I make a suggestion, folks? May I  
23                 make a suggestion?

24                         MR. BOWEN: Yes, sir.

25                         THE COURT: All right. This is

1 an area where the questions are going to  
2 have to be awfully specific and awfully  
3 pointed. I'm assuming that what you folks  
4 are doing is offering this under the  
5 catchall. Is that accurate?

6 MR. THOMPSON: Well, Your Honor,  
7 what we're actually doing, and Dr. Johnson  
8 has testified that basically it's three  
9 areas with reference to this defendant.

10 THE COURT: One sentence. I  
11 don't mean to cut you off, I apologize.

12 MR. THOMPSON: And I think we  
13 can --

14 THE COURT: I apologize. Give me  
15 a one-sentence statement as to the  
16 mitigating circumstances that I would  
17 submit to this jury based on Dr. Johnson's  
18 testimony. One sentence.

19 MR. THOMPSON: He has to finish  
20 testifying. And again, if I may be heard,  
21 what he's doing is he says that -- he's  
22 looked at Mr. Green within, first of all,  
23 the broad societal context, then the local  
24 environmental context, and then his  
25 individual, as that applies. Now he's

1 contextualizing all. Now, from what we're  
2 understanding from what Your Honor is  
3 saying, and I talked to counsel, we can  
4 start from the individual --

5 THE COURT: That's what we have  
6 to do.

7 MR. THOMPSON: And then go to  
8 broader societal context.

9 THE COURT: Yes, folks, otherwise  
10 it's not admissible.

11 MR. THOMPSON: He was going from  
12 the broad to the individual; now we're  
13 going to start from the individual and go  
14 to the broad.

15 THE COURT: Yes. Can you give me  
16 a one-sentence statement of the mitigating  
17 circumstance, nonstatutory, that I would  
18 submit to the jury based on Dr. Johnson's  
19 testimony?

20 MR. THOMPSON: We hope there  
21 would be seven.

22 THE COURT: I'll take them one at  
23 a time.

24 MR. BOWEN: All right.

25 THE COURT: Yes, sir.

1                   MR. BOWEN: Just starting at a  
2 point, proposed mitigator, the defendant  
3 was reared primarily in an economically  
4 stressed community. We hope to be able to  
5 establish that. Second, that economic  
6 disparity in Robeson County is considerable  
7 for nonwhites and white citizens.  
8 Defendant spent much of his life in and  
9 around Robeson County, which is socially  
10 and geographically isolated, economically  
11 marginalized from the mainstream North  
12 Carolina society. Defendant had an  
13 unstable family situation characterized by  
14 chronic mobility. Defendant was exposed to  
15 death and violence in critical points of  
16 growth and development. That would come  
17 through Dr. Johnson --

18                   THE COURT: Folks, I am bound by  
19 the law. I am bound by legal precedent.  
20 Again, I think that much of the information  
21 that Dr. Johnson has to share about this  
22 defendant may be useful to the jury in  
23 considering the mitigating circumstance.  
24 But there is a risk involved, a tactical  
25 risk. It's not my decision to make; it's

1 your decision to make.

2 One is conveying to the jury an  
3 impression that Dr. Johnson's testimony as  
4 to -- is being offered as justification for  
5 first degree murder, robbery with a  
6 dangerous weapon, and conspiracy to commit  
7 robbery. That may not sell well. That's a  
8 tactical consideration.

9 And I think for this evidence to be  
10 both admissible and persuasive, a lot of  
11 thought has to be given to what it is  
12 precisely that you want to get in as it  
13 relates to this defendant, and from what  
14 I'm hearing and from my observations of the  
15 jury, simply my observations, I may be  
16 wrong, if you're real broad, it could be  
17 misconstrued, misinterpreted, and could  
18 impact negatively when it's intended to  
19 impact positively. I am -- I'm sympathetic  
20 to this information as it may relate to  
21 Mr. Green. I think much of this  
22 information really needs to be understood  
23 as it applies to Mr. Green, and bound by  
24 the law.

25 MR. BOWEN: We have a wealth of

1 individual information, graphics that go on  
2 for 40, 50, 80 or 90 bullets of  
3 information. It's just that we started  
4 presenting it from the broad to the  
5 specific, and I suppose it can be done the  
6 other way, and the evidence will come in  
7 either way, I hope. But now you were  
8 asking me for specific proposed mitigating  
9 factors --

10 THE COURT: Where do these  
11 citizens come from?

12 MR. BOWEN: Sir?

13 THE COURT: Where do they live,  
14 what county do these folks live in?

15 MR. BOWEN: Your Honor, our next  
16 category is Robeson County, North Carolina.

17 THE COURT: I understand that.  
18 What was that one that you mentioned about  
19 Robeson County? Read that again to me,  
20 please. Yes, sir.

21 MR. BOWEN: Is it the one that  
22 says defendant's Robeson County environment  
23 has had a long history of racial  
24 inequality?

25 THE COURT: That's one of them.

1 Got another one there with Robeson County  
2 in it?

3 MR. BOWEN: Defendant spent most  
4 of his life in and around Robeson County,  
5 which is socially and geographically  
6 isolated.

7 THE COURT: Now, who's socially  
8 and geographically isolated? Robeson  
9 County is, is that what your contention  
10 is?

11 MR. BOWEN: That is what this  
12 witness's contention is based on his  
13 scholarly studies.

14 THE COURT: That's what you want  
15 these folks to buy in to?

16 MR. BOWEN: Judge --

17 THE COURT: I'm not trying to  
18 interfere.

19 MR. BOWEN: I don't understand  
20 the role of the Court in cross-examining me  
21 and the defense team about these issues  
22 that we have an expert that feels strongly  
23 about what he's testifying to. I didn't  
24 make up his testimony. I don't know what  
25 he's going --

1                   THE COURT: Well, let me make it  
2                   real candid and clear to you. When you  
3                   represent somebody whose life is on the  
4                   line, then you have to give a lot of  
5                   thought to what you do.

6                   MR. BOWEN: Judge, obviously  
7                   you've given a lot of thought to it and  
8                   obviously you would do it differently. But  
9                   let me say this: We've got some of the  
10                  best experts in the field, and they choose  
11                  to do it this way I'm afraid, Judge --

12                  THE COURT: I'm not questioning  
13                  how you deal with it. I'm just asking that  
14                  you think about it.

15                  MR. BOWEN: May I say that we  
16                  have thought about it.

17                  THE COURT: Yes, sir. May I  
18                  make -- let me inquire into Ms. Odum's  
19                  situation. I don't want to put you folks  
20                  under the gun in terms of doing it my way.  
21                  Expect to do it your way, and perhaps we  
22                  might use this afternoon more profitably to  
23                  give you folks an opportunity to sit down,  
24                  and I'm going to let -- unless you folks  
25                  are ready to go forward now.

1 MR. THOMPSON: If she is.

2 MR. BOWEN: We're prepared to go  
3 forward.

4 MR. THOMPSON: If Ms. Odum --

5 THE COURT: All right. Okay.  
6 Yes, sir. Any information?

7 THE BAILIFF: I had some ice  
8 brought up in a plastic bag that was given  
9 to Ms. Odum.

10 THE COURT: Does she need a  
11 break?

12 THE BAILIFF: Yes, sir, and they  
13 are asking for rubber bands and paper  
14 clips.

15 THE COURT: Yes, sir. If you'll  
16 check and see if they need a break.

17 THE BAILIFF: Some of the members  
18 of the jury say that her ankle is swelling  
19 and she needs to come home.

20 THE COURT: When you turn your  
21 ankle like that, I would expect that. If  
22 you'll ask all members of the jury to come  
23 in. Can we put a seat right there for  
24 Ms. Odum?

25 THE BAILIFF: Yes, sir.

1 THE COURT: And before we do  
2 that, I don't know what her situation is,  
3 whether she drove or not, whether she will  
4 need assistance. Ask all members of the  
5 jury to come in, and if you will assist  
6 Ms. Odum in coming into the courtroom and  
7 getting into that chair right there.

8 (Jury in at 2:52 p.m.)

9 THE COURT: Members of the jury,  
10 we're going to stop at this point. Before  
11 I say anything else, Ms. Odum, did you  
12 drive here this morning?

13 JUROR: (Nods head  
14 affirmatively.)

15 THE COURT: Do you need  
16 assistance in getting home?

17 MR. THOMPSON: I'll try to get  
18 there.

19 THE COURT: Don't mean to suggest  
20 to you what you ought to do, but we'll be  
21 glad to assist you in any way we can.

22 JUROR: The reason she fell was  
23 she's so weak that she could not -- she  
24 needs somebody to help her home.

25 JUROR: Yes.

1 THE COURT: Thank you. Can we  
2 help in that regard, ma'am?

3 THE BAILIFF: Yes.

4 THE COURT: We'll take care of  
5 that. Members of the jury -- do you need  
6 to get to a healthcare provider this  
7 afternoon? Can we assist you in that  
8 regard?

9 JUROR: (Nods head  
10 affirmatively.)

11 THE COURT: We'll do that.  
12 Folks, we are tentatively setting court for  
13 9:30 tomorrow morning. Let me ask all of  
14 you to call before 8:30. We don't know at  
15 this point what Ms. Odum's situation might  
16 be. So I very much appreciate your  
17 cooperation. If you will call at 8:30 or  
18 after 8:30, and report as directed at 9:30,  
19 unless you get a message to the contrary  
20 when you call tomorrow morning, we'll go  
21 forward then.

22 Don't talk about the case among  
23 yourselves overnight with anyone else.  
24 Don't allow anyone to say anything to you  
25 or in your presence about the case. If

1 anyone communicates about this matter or  
2 attempts to do so, or if anyone says  
3 anything about the case in your presence,  
4 it's your duties to inform us of that  
5 immediately. Don't form or express any  
6 opinions about this matter. Don't have any  
7 contact with anyone who's involved in the  
8 case. Avoid any exposure to any media  
9 accounts which might exist in connection  
10 with this matter, and don't conduct any  
11 independent inquiry or investigation or  
12 research of any kind.

13 Folks, we are close to concluding this  
14 case. We very much appreciate your  
15 cooperation and continued cooperation in  
16 this matter. All members of the jury  
17 seated in the jury box are free to go at  
18 this time.

19 You folks also going to assist  
20 Ms. Odum?

21 JUROR: Yes.

22 JUROR: I think Paula will.

23 THE COURT: Thank you, folks.  
24 You are free to go at this time. If you  
25 will leave those in your seats.

1 (Jury out at 2:55 p.m., all except  
2 Ms. Odum).

3 THE COURT: Who can we rely on,  
4 and I need something for the record in  
5 terms of a name, in terms of assisting  
6 Ms. Odum to a healthcare provider and  
7 home?

8 THE BAILIFF: Deputy Smith.

9 THE COURT: You're Deputy Smith?  
10 Would you state your full name, please,  
11 sir.

12 THE BAILIFF: Joyce Smith.

13 THE COURT: I instruct you that  
14 you are not to --

15 THE BAILIFF: Judge, he has  
16 helped us here in the courtroom, and if the  
17 Court --

18 THE COURT: He's been a bailiff  
19 in this courtroom?

20 THE BAILIFF: If the Court would  
21 give me a minute, I'll get you someone.

22 THE COURT: Yes, sir. If you  
23 will, please.

24 THE BAILIFF: Ms. Emanuel stated  
25 she was going to try to get ahold of her

1 fiancée, Steve, and he would try to take  
2 care of it.

3 THE COURT: He is hospitalized,  
4 isn't he?

5 JUROR: He just got out of the  
6 hospital last night. He's been there all  
7 night.

8 THE COURT: That may not work,  
9 folks. We'll get assistance.

10 THE COURT: Ms. Odum, are you,  
11 with assistance, capable of going to the  
12 jury room? Can you go in there for just a  
13 second? All right. If you'll help her  
14 folks.

15 (Ms. Odum leaves.)

16 THE COURT: Let the record show  
17 the following is occurring in the absence  
18 of the jury.

19 Dr. Johnson, recognizing based on the  
20 information that you just shared with us,  
21 you've been here three days; would being  
22 here tomorrow pose a significant problem  
23 for you?

24 THE WITNESS: I just have to  
25 check with my office to see. I don't think

1 so.

2 THE COURT: Well, is there -- if  
3 there is any consolation, we've been in  
4 court since October, and before that.

5 THE WITNESS: I'm sorry.

6 THE COURT: And before that, I've  
7 been involved in cases July or August,  
8 1994, '95, I don't even remember which.

9 Mr. Bowen, Mr. Thompson, let me make  
10 my position clear. I do not intend or mean  
11 in any way to be critical. I do not intend  
12 or mean in any way to tell you folks how to  
13 try your case, and by the same respect I  
14 don't mean to tell the State how to try  
15 theirs. Bottom line is you folks can try  
16 your case anyway you want to, I will not  
17 interfere with that. And perhaps I am  
18 overstepping my bounds, making suggestions  
19 to either you or counsel for the State, but  
20 as I indicated to you folks at the  
21 beginning of these proceedings, my role is  
22 to see to it both the State of North  
23 Carolina and your client get a fair game.  
24 And if I make suggestions to you folks,  
25 it's simply that, a suggestion. You are

1 free to take it for what it's worth.  
2 You're free to disregard it, you're free to  
3 do whatever you folks want to do.

4 But my objective remains seeing to it  
5 to the best that I can the State of North  
6 Carolina gets a fair trial and that your  
7 client gets a fair trial. I do not mean to  
8 be critical. Don't take it personally. I  
9 don't take anything personally. Think  
10 about it for what it's worth and do what  
11 you want to do with it.

12 MR. BOWEN: Yes, sir. Let me say  
13 this, Your Honor. The material that you're  
14 talking about, that is, the individualized  
15 stuff on Daniel Green, it's all here. We  
16 chose an organization that tracked down  
17 Dr. Johnson's papers starting from the  
18 broad context to the individual. We can  
19 reverse that. I hear what you're saying.  
20 I am a little concerned that the Court is  
21 eliciting from the defense our proposed  
22 mitigating factors before it's time --

23 THE COURT: Mr. Bowen, let me  
24 explain that to you. I have to know in  
25 order to decide the issue of admissibility,

1 I have to know that. And the format you  
2 chose to elicit the testimony is the format  
3 that probably wouldn't get it in in front  
4 of almost anybody I know sitting up here,  
5 because foundationally it has to relate to  
6 the defendant first in order to make it  
7 arguably admissible to the jury.

8 MR. BOWEN: Well, it's here, and  
9 what we're saying is we will make that  
10 shift, and can, and will, and would, and  
11 that's not a problem.

12 THE COURT: And let me state  
13 again, folks --

14 MR. BOWEN: But we have the  
15 information.

16 THE COURT: -- this I think may  
17 be valid mitigation evidence to consider.  
18 I think there's some figures here that  
19 would surprise a lot of folks. But in  
20 order for these figures to be admissible,  
21 they have to relate to this defendant. And  
22 from my perspective, for what it's worth,  
23 thought has to be given to the package that  
24 it's contained in in terms of how  
25 persuasive it is, is it potentially

1 positive or is there a risk that may be  
2 negative. That's all I'm saying. And for  
3 what it's worth, you do, folks, do what you  
4 want. I'm not going to interfere in any  
5 way.

6 Thank you, Dr. Johnson, you may step  
7 down.

8 Yes, sir, Mr. Bowen, anything you want  
9 to say?

10 MR. BOWEN: No, sir.

11 THE COURT: Okay.

12 MR. THOMPSON: Yes, sir, Your  
13 Honor, with regard to other exhibits we've  
14 shared them with the State pursuant to  
15 discovery --

16 THE COURT: I appreciate that,  
17 folks. We're close to finishing --

18 MR. THOMPSON: And I know the  
19 State has given the Court copies of things  
20 that it intended to offer.

21 THE COURT: Yes, sir.

22 MR. THOMPSON: And we just like  
23 to share with the Court these exhibits,  
24 we've already had them marked. State has  
25 them, and they are actually four graphs

1           that were prepared by Dr. Johnson, and we  
2           will be -- we're able to do that now as  
3           we've done for the State.

4                         THE COURT: I appreciate that.  
5           And again, I don't mean to interfere with  
6           how you folks deal with your case in any  
7           way. For what it's worth, folks, race is a  
8           very sensitive issue. And it's got to be  
9           approached very delicately.

10                        MR. THOMPSON: Don't I know.

11                        THE COURT: Mr. Britt, anything  
12           you want to say?

13                        MR. BRITT: Not along those  
14           lines. I do have an inquiry I would like  
15           to make.

16                        THE COURT: Okay.

17                        MR. BRITT: In light of a  
18           statement that Dr. Johnson made to a  
19           question from the Court about the  
20           defendant's prior employment, the answer as  
21           I recall it, he was working as a dishwasher  
22           at a restaurant and prior to that he was in  
23           prison. Just so I don't run afoul of any  
24           of the Court's previous orders, because I  
25           think I can argue that that door has now

1           been opened --

2                   THE COURT:   Well, two things  
3           about that.

4                   MR. BRITT:   And they are all  
5           reference --

6                   THE COURT:   One, it was in  
7           response to a question I put to him.

8                   MR. BRITT:   Yes, sir.

9                   THE COURT:   So that didn't open  
10          the door.

11                   MR. BRITT:   And there are  
12          references in these graphs to the defendant  
13          being in prison.

14                   THE COURT:   That may open the  
15          door if they get into it, but the Court  
16          rules they have not opened the door based  
17          on the response of Dr. Johnson because that  
18          was a question not put by counsel for the  
19          defendant but it was in response to a  
20          question of the Court.

21                   MR. THOMPSON:  Yes, sir.  And  
22          Your Honor, we are aware of that, and as I  
23          gave the graphs to Mr. Britt, he understood  
24          and I told him some of those matters -- in  
25          fact, it was in some of the reports, the

1 report's not going to be introduced, but  
2 we're aware of doors possibly being  
3 opened.

4 Your Honor, may I approach the bench  
5 and give you copies of those?

6 THE COURT: Yes, sir. Folks,  
7 we're close to finishing. We have stumbles  
8 and pitfalls, but we can make it. We'll be  
9 all right. We can make it.

10 Anything further from either counsel?

11 MR. THOMPSON: No, sir.

12 THE COURT: Mr. Britt?

13 Have a good evening, folks, we'll see  
14 you tomorrow morning hopefully at 9:30. As  
15 you recall, I indicated to the jury they  
16 are to call in at 8:30. We'll have to play  
17 it by ear.

18 THE BAILIFF: Ms. Odum, what are  
19 we going to do about Ms. Odum?

20 THE COURT: Have you got a  
21 name --

22 THE BAILIFF: Darren Addison.

23 THE COURT: Allison?

24 MR. BRITT: Addison.

25 THE COURT: Addison. Let the

1 record reflect that Robeson County Deputy  
2 Sheriff Darren Addison will be  
3 transporting -- is he present?

4 THE BAILIFF: He's on his way.

5 THE COURT: All right. Folks,  
6 I'm going to indicate on the record to  
7 Major Watson the instructions that I want  
8 Major Watson to give to Addison. Any  
9 objection?

10 MR. BRITT: No, sir.

11 THE COURT: Any objection by  
12 counsel for the defendant?

13 MR. THOMPSON: No, sir.

14 THE COURT: Major Watson, I  
15 instruct you as a superior officer in the  
16 Robeson County Sheriff's Department to  
17 instruct Deputy Sheriff Darren Addison as  
18 follows: He is not to talk with Ms. Odum  
19 about this case. He is to be present in  
20 court at 9:30 tomorrow morning so that he  
21 can put on the record any conversation that  
22 may occur between Ms. Odum and him. He is  
23 not to engage her in any conversation at  
24 all about any of the matters now before the  
25 Court.

1                   Yes, sir, you understand those  
2 instructions?

3                   THE BAILIFF: Yes, sir.

4                   THE COURT: Mr. Britt?

5                   MR. BRITT: Nothing further.

6                   THE COURT: Thank you, sir. I  
7 thought I heard somebody say something for  
8 the record.

9                   MR. BRITT: No, sir. I did say  
10 something about we needed the name for the  
11 record.

12                   MR. THOMPSON: Your Honor --

13                   THE COURT: Yes, sir.

14                   MR. THOMPSON: The defendant  
15 wanted me to ask the Court if he could be  
16 allowed to consult with his family members  
17 a few minutes.

18                   THE COURT: Where?

19                   MR. THOMPSON: Here, here in  
20 the --

21                   THE COURT: I'm not  
22 unsympathetic. What are your rules and  
23 policies, sir?

24                   THE BAILIFF: Judge, no one is  
25 allowed to contact or visit unless it comes

1 directly from the Sheriff.

2 THE COURT: I'm not going to  
3 interfere with the local Sheriff's  
4 Department.

5 MR. THOMPSON: And I understand  
6 the -- you know, Mr. Demery throughout  
7 these proceedings while up here has been  
8 able to contact and has contacted --

9 THE COURT: Apparently that came  
10 with authorization from the Sheriff.

11 MR. THOMPSON: Because I  
12 personally observed him in the DA's office.

13 THE COURT: If sheriff Maynard  
14 does not object, the Court is on record as  
15 saying the Court does not object.

16 MR. THOMPSON: Yes, sir, thank  
17 you.

18 THE COURT: If you'll indicate to  
19 Ms. Odum that she will need to call before  
20 8:30 tomorrow and let us know what her  
21 situation is. And that's the number Ms.  
22 Gaines is going to give you right now,  
23 sir.

24 THE BAILIFF: Judge, is Ms. Odum  
25 to be transported to her residence?

1                   THE COURT:   Healthcare provider,  
2                   her choice.   She indicated she wanted to go  
3                   see a doctor, and from there, home.   If she  
4                   needs assistance in getting her vehicle  
5                   from here to her home, can the Sheriff's  
6                   Department accommodate her in that  
7                   respect?

8                   THE BAILIFF:   Yes, sir.

9                   THE COURT:   Thank you, sir.   Yes,  
10                  sir, if you'll recess us until 9:30,  
11                  please.

12                  THE BAILIFF:   All rise, please.

13                  (Court adjourned.)

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NORTH CAROLINA  
ROBESON COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 93 CRS 15291-93

STATE OF NORTH CAROLINA )  
)  
)  
vs. )  
)  
DANIEL GREEN, aka AS-SADDIQ )  
AL-AMIN SALLAM U'ALLAH, )  
)  
DEFENDANT. )

VOLUME 45

Transcript of Proceedings before the  
Honorable GREGORY A. WEEKS, Judge Presiding,  
before Steve S. Huseby, Registered Professional  
Reporter and Notary Public, Robeson County  
Courthouse, Lumberton, North Carolina, on  
the 7th day of March, 1996.



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## 1 APPEARANCES OF COUNSEL:

2 On Behalf of the State of North Carolina:

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5 16-B Prosecutorial District  
Lumberton, North Carolina 28358

6 On Behalf of the Defendant:

7 ANGUS B. THOMPSON, Esq.  
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Lumberton, North Carolina 28358

10 and

11 WOODBERRY A. BOWEN, Esq.  
12 Bowen & Byerly  
13 P.O. Box 846  
Lumberton, North Carolina 28359

14

15 (March 7, 1996. Proceedings in open court.)

16

17 THE COURT: Let this record show  
18 all counsel are present, the defendant is  
19 present in open court. Mr. Horne, do we  
20 have all members of the jury secured in the  
21 jury room?

22 THE BAILIFF: Yes, we do.

23 THE COURT: A matter of business,  
24 the Court upon arrival was handed a note  
25 that reads as follows: Good morning,

1 Mr. Weeks, from Paula Manuel Locklear. My  
2 children are not sick but all three have  
3 checkups today, 1:00, 2:15. Can we  
4 accommodate her?

5 MR. THOMPSON: I think we can.

6 THE COURT: I appreciate that.

7 MR. BRITT: The other matter we  
8 need to put on the record, yesterday when  
9 the alternate was escorted away by Deputy  
10 Addison --

11 THE COURT: Let's do that now.  
12 Your name for the record, sir.

13 THE BAILIFF: Deputy Darren  
14 Addison.

15 THE COURT: You received  
16 instructions from the Court through Major  
17 Watson yesterday as to what you were and  
18 were not to do in connection with your  
19 transportation of Ms. Odum.

20 THE BAILIFF: Yes, sir.

21 THE COURT: For the record, would  
22 you state whether there was any  
23 conversations between yourself and Ms. Odum  
24 during your transportation.

25 THE BAILIFF: No, none at all.

1 THE COURT: Particularly, was  
2 there any conversation between you and  
3 Ms. Odum about this case?

4 THE BAILIFF: No.

5 THE COURT: Anything from counsel  
6 for the State?

7 MR. BRITT: No, sir.

8 THE COURT: Anything from counsel  
9 for the defendant?

10 MR. BOWEN: No, sir.

11 THE COURT: You folks ready to go  
12 forward?

13 MR. BOWEN: Yes, sir.

14 THE COURT: Dr. Johnson, I very  
15 much appreciate you making your trip down  
16 here. I recognize from making that trip  
17 myself, the roads are treacherous. All  
18 right. Ready to go?

19 THE BAILIFF: May Mr. Addison be  
20 excused?

21 THE COURT: Yes, sir.

22 Another unrelated matter of business I  
23 want to put on the record at this time,  
24 Mr. Horne had some information he wanted to  
25 share with us with regard to Ms. Manuel.

1 If you'll put that on the record at this  
2 time.

3 THE BAILIFF: I was informed by  
4 Major Watson this morning that  
5 Ms. Manuel -- not Ms. Manuel, Ms. Odum.

6 THE COURT: I apologize.

7 THE BAILIFF: Had requested  
8 assistance from the parking lot to the  
9 courtroom. I went down myself and assisted  
10 her from the parking lot to the courtroom.

11 THE COURT: Okay. Was there any  
12 conversation between yourself and Ms. Odum  
13 regarding this case?

14 THE BAILIFF: No, sir.

15 THE COURT: Of any kind?

16 THE BAILIFF: No, sir.

17 THE COURT: Anything on behalf of  
18 the State?

19 MR. BRITT: No, sir.

20 THE COURT: Counsel for defendant?

21 MR. THOMPSON: No, sir.

22 THE COURT: Folks, this is going  
23 to be a good day, we're going to make it.  
24 We're going to get through today.

25 THE BAILIFF: Judge, do we want

1 Ms. Odum to sit in her seat?

2 THE COURT: Any objection from  
3 either counsel if Ms. Odum receives  
4 assistance from Mr. Horne to the jury box?

5 MR. BRITT: No, sir.

6 MR. THOMPSON: No, sir.

7 THE COURT: Ms. Gaines indicated  
8 that Ms. Odum probably needs something to  
9 elevate her foot.

10 Unrelated matter, Mr. Britt stopped me  
11 in the hallway as I was coming in with  
12 Mr. John Campbell, one of the attorneys  
13 representing Mr. Demery, regarding  
14 scheduling. My response to that was I'll  
15 talk to you folks later, I want to get  
16 through with this first.

17 MR. BRITT: That's fine.

18 THE COURT: Mr. Horne, if you'll  
19 bring the jury in, please.

20 (Jury in at 9:41 a.m.)

21 THE COURT: Good morning, ladies  
22 and gentlemen. How is everyone?

23 JUROR: Fine.

24 THE COURT: Ms. Manual, I read  
25 your note. I understand you have

1           appointments for your children at -- I just  
2           had them -- 1:00.

3                   JUROR: My mother usually does my  
4           running around for me. She has the flu as  
5           of yesterday.

6                   THE COURT: And your children  
7           have scheduled appointments at 1:00 and  
8           2:15. Indications are we will be able to  
9           accommodate you. We'll certainly do the  
10          best we can. All counsel ready?

11                   MR. BRITT: Yes, sir.

12                   THE COURT: Mr. Bowen.

13                   MR. BOWEN: Yes, sir.

14                   THE COURT: Yes, sir.

15 BY MR. BOWEN:

16           Q        Dr. Johnson, with regard to Daniel Green's  
17           life, did you accumulate data on the family moves  
18           from 1974 until 1993?

19           A        Yes, I did.

20           Q        And did you arrange that information in  
21           some sort of a graphical form to better enable the  
22           jury to look at that?

23           A        Yes, sir.

24           Q        And I'll show you --

25                   MR. BOWEN: May I approach him,

1 Your Honor?

2 THE COURT: Yes, sir.

3 BY MR. BOWEN:

4 Q I'll show you now Defendant's Exhibit 48  
5 for identification and ask you what this is?

6 A That is a map that is entitled residential  
7 moves of Daniel Andre Green, from 1974 to 1993.

8 Q All right.

9 MR. BOWEN: May I move around  
10 freely, Your Honor?

11 THE COURT: Yes, sir.

12 BY MR. BOWEN:

13 Q As to Defense Exhibit Number 48,  
14 Dr. Johnson, is this also a large rendering,  
15 approximately 30 to 40 times --

16 A Yes, sir.

17 Q -- of that, and that is here in my hand?

18 A Yes, sir.

19 Q Is that an exact duplicate of Defense 48  
20 which is before you?

21 A Yes, sir.

22 MR. BOWEN: Your Honor, may I set  
23 this up?

24 THE COURT: Yes, sir.

25 BY MR. BOWEN:

1           Q       As to State's Exhibit Number 48, have you  
2 produced enough copies to be available to the jury of  
3 this particular exhibit?

4           A       Yes, sir.

5           Q       Can you use this exhibit to more fully  
6 illustrate your testimony concerning the moves made  
7 by Daniel Green's family from 1974 to 1993 as you've  
8 testified to the jury?

9           A       Yes, I can.

10                   MR. BOWEN: Desire to introduce  
11 it for the limited purpose.

12                   MR. BRITT: No objections. If we  
13 could for purposes of the record clarify,  
14 this is Defendant's Exhibit Number 48.

15                   THE COURT: Yes, sir. Do you  
16 want a limiting instruction?

17                   MR. BRITT: Yes, sir.

18                   THE COURT: Members of the jury,  
19 Defendant's Exhibit 48 is being introduced  
20 for the limited purpose of illustrating the  
21 testimony of Dr. Johnson who is now before  
22 you. To the extent that you find  
23 Defendant's Exhibit 48 of aid or assistance  
24 in understanding Dr. Johnson's testimony,  
25 you may do so. Yes, sir.

1 MR. BOWEN: May Mr. Horne pass  
2 copies to the jury?

3 THE COURT: Yes, sir.

4 (Exhibits passed to the jury.)

5 THE COURT: Do you have copies  
6 there, Dr. Johnson?

7 THE WITNESS: Yes, thank you.

8 BY MR. BOWEN:

9 Q Now, Dr. Johnson, can you --

10 MR. BOWEN: Does His Honor have  
11 one?

12 THE COURT: Yes.

13 BY MR. BOWEN:

14 Q Dr. Johnson, can you describe the entries 1  
15 through 12 that appear on the left-hand side of the  
16 page under the title residential moves of Daniel  
17 Green from 1974 to 1993 on Defense Exhibit 48?

18 A Yes. What is depicted numerically on the  
19 left-hand side of the graphic that you have at your  
20 disposal here are the specific addresses that  
21 correspond to the numbers on the maps. In this case,  
22 what you will see is what we have mapped is his  
23 residential moves within the Robeson County area, and  
24 the move to Philadelphia, which I perceive to be a  
25 pivotal life course event, and then subsequent moves

1 within Philadelphia. So what we have picked up is at  
2 the point in his life that his family decided to  
3 move, his mother and his sister and himself decided  
4 to leave Robeson County and go to Philadelphia, then  
5 within Philadelphia where he moved and the trip back  
6 to North Carolina, then the subsequent moves within  
7 North Carolina.

8 The thing I should point out is that there  
9 were several additional moves that we were unable to  
10 plot because we didn't have addresses, that occurred  
11 between the time Daniel's parents divorced and the  
12 time they decided to move to Philadelphia. So this  
13 is a subset, if you will, of all moves that Daniel  
14 has made in his life.

15 Q Did you ascertain, for example, if there  
16 was additional move to Florence, South Carolina?

17 A Yes.

18 Q Did some of these moves involve changing  
19 schools, Dr. Johnson?

20 A Yes.

21 Q Now, Dr. Johnson, in terms of your survey,  
22 what effect in your opinion did all of these  
23 geographical moves have or what effect did they have  
24 upon Daniel's life?

25 MR. BRITT: Objection.

1 THE COURT: Basis?

2 MR. BRITT: No foundation.

3 THE COURT: Sustained at this  
4 point, unless the question is rephrased.

5 BY MR. BOWEN:

6 Q Now, did you also, Dr. Johnson, assimilate  
7 data on the actual school changes that occurred in  
8 Daniel Green's life?

9 A Yes, I did.

10 Q From 1979 to 1992?

11 A That's correct.

12 MR. BOWEN: May I approach, Your  
13 Honor?

14 THE COURT: Yes, sir.

15 BY MR. BOWEN:

16 Q Like to show you what's been marked as  
17 Defense Exhibit Number 49, and ask you if you can  
18 recognize this exhibit, sir?

19 A This exhibit is entitled schools attended  
20 by Daniel Andre Green from 1979 to 1992.

21 Q And Dr. Johnson, can you use Defense  
22 Exhibit Number 49 to more fully illustrate to the  
23 jury your data about the school changes and school  
24 moves of the defendant Daniel Green during those  
25 times?

1           A       Yes, I can.

2                   MR. BOWEN:  Desire to introduce  
3           it for the limited purposes.

4                   THE COURT:  Mr. Britt.

5                   MR. BRITT:  No objection.

6                   THE COURT:  It's admitted for  
7           illustrative purpose.  Do you want a  
8           limiting instruction?

9                   MR. BRITT:  No, sir.

10                  THE COURT:  Folks, recall the  
11           instruction I gave you earlier.  Same  
12           instructions apply to this exhibit.

13                  MR. BOWEN:  Desire to provide  
14           copies to the jury.

15                  THE COURT:  Yes, sir. .

16  BY MR. BOWEN:

17           Q       Dr. Johnson, please tell us if you will  
18           what school changes occurred in Daniel Green's life  
19           between 1979 and 1992 according to your data.

20           A       Well, as this graphic shows, I believe  
21           there are 14 different school changes that transcend  
22           both Robeson County, Philadelphia, and Florence,  
23           South Carolina, so it's in multiple different  
24           places.  And what it signals to me and illustrates,  
25           when you combine it with the figure on moves is the

1 high degree of instability that existed in Daniel's  
2 life during the formative years of his life. This is  
3 roughly from about age six to about age 16 or 17 --  
4 16.

5 Q In your opinion, Dr. Johnson, did these  
6 moves and the resulting instability have an adverse  
7 effect on Daniel Green's ability to cope in his  
8 environment?

9 MR. BRITT: Objection.

10 THE COURT: To the form,  
11 sustained. Elicit the data, Mr. Bowen, in  
12 its entirety. Then you can come back to  
13 this.

14 MR. BOWEN: Yes, sir.

15 BY MR. BOWEN:

16 Q Now, Dr. Johnson, did you assimilate data  
17 on all of the, what you considered in your expert  
18 opinion to be critical life course events of Daniel  
19 Green?

20 A Yes, I did.

21 Q And did you assimilate that in a graphical  
22 form?

23 A Yes, I did.

24 THE COURT: For the record,  
25 Dr. Johnson, State's Exhibit 48, for

1           example -- or strike that, Defendant's  
2           Exhibit 48, Defendant's Exhibit 49, are  
3           also indicated in terms of time period or  
4           age of the defendant, is that accurate?

5                         THE WITNESS:  Yes.

6                         THE COURT:  Mr. Bowen.

7  BY MR. BOWEN:

8           Q       Now -- may I approach Your Honor?

9                         THE COURT:  Yes, sir.

10  BY MR. BOWEN:

11           Q       Dr. Johnson, I'm going to show you what's  
12           now marked Defendant's Exhibit Number 50, and ask you  
13           what this paper writing is.

14           A       This is entitled a typology of critical  
15           life course events of Daniel Green.  And what we have  
16           attempted to achieve in this graphic is both the kind  
17           of positive and negative influences or events that  
18           have occurred in his life.  And there are five  
19           different types of events graphically portrayed in  
20           this figure.  There are two positive kind of examples  
21           of things that happened in his life, instances of  
22           family stability an family strength, something we  
23           call personal triumphs, and I personally fell that  
24           too often in these kind of cases we focus on the  
25           negative and not the positive.

1           We wanted to illustrate the positive, so we  
2    have a category called personal triumphs that are  
3    denoted by the smiley face that you all see on some  
4    bumper stickers and the like. And then we have three  
5    categories of negative influences, one personal  
6    crises, denoted by a frowning face. We have a  
7    category called death and violence and experience  
8    with death and violence that is like a little  
9    explosive. And then we have examples of family  
10   instability and crisis issues. And basically what  
11   we're arguing is that when you look at his life, that  
12   to understand his experiences you have to look at the  
13   totality of his experience, and we tried to  
14   graphically portray them to the best of our ability.

15           Q     Now, Dr. Johnson, as to the individual  
16   critical life events, did each one of those that you  
17   listed in words on this exhibit, did it come from  
18   your research and data in this case regarding the  
19   particular life of Daniel Andre Green?

20           A     Yes.

21           Q     Now, and is the type of data which you have  
22   assembled here in this particular exhibit, is it of a  
23   type that experts in your field usually and  
24   reasonably rely on in forming opinions such as ones  
25   you may form in this case?

1           A       Yes.

2                   MR. BOWEN:   If Your Honor,  
3                   please, at this time we desire to introduce  
4                   Defendant's Exhibit Number 50 as  
5                   substantive evidence.

6                   THE COURT:   Mr. Britt.

7                   MR. BRITT:   Objection.

8                   THE COURT:   All right.  Members  
9                   of the jury, there's a matter of law the  
10                  Court must take up.  Please recall my  
11                  instructions, don't worry or speculate  
12                  about what takes place in the courtroom in  
13                  your absence, and if you folks would please  
14                  step to the jury room.

15                  Thank you, Mr. Horne, for assisting  
16                  Ms. Odum.

17                               (Jury out at 9:57 a.m.)

18                  THE COURT:   Let the record show  
19                  the following is being conducted in the  
20                  absence of the jury.  Mr. Britt, what is  
21                  the basis of the objection?

22                  MR. BRITT:   One, there's no  
23                  foundation that's been offered to introduce  
24                  it as substantive evidence.  Secondly, if  
25                  it's under Rule 703, if it's the basis of

1 his opinion, he can state his opinion.

2 THE COURT: Yes, sir.

3 MR. BRITT: And the matters that  
4 make up his opinion don't necessarily have  
5 to be admissible in evidence, but a lot of  
6 this is stuff that, as I read it, came from  
7 sources other than the defendant.

8 THE COURT: Well, typically  
9 that's the case.

10 MR. BRITT: Yes, sir.

11 THE COURT: And in any case where  
12 the death penalty is a possible punishment,  
13 factors relating to the defendant  
14 individually are factors that are to be  
15 considered by the jury.

16 MR. BRITT: I understand that.

17 THE COURT: Foundation is not  
18 entirely laid, folks. For example, we've  
19 got a lot of information here, Dr. Johnson  
20 has testified that he obtained that  
21 information during the course of his  
22 investigation into the background from  
23 sources. Yesterday his testimony was that  
24 those sources included close family  
25 members. Let's bring that out a little bit

1 as to these factors.

2 MR. THOMPSON: What sources?

3 MR. BOWEN: In other words, in a  
4 general way, I don't know that he can say  
5 as to each and every one --

6 THE COURT: Yes, sir, I  
7 understand. Mr. Britt's point is that  
8 you've got a lot of information here that  
9 you want passed to the jury as substantive  
10 evidence without foundation for matters set  
11 out on any of those charts at this point.

12 MR. BOWEN: Except for what 703  
13 says, I hear Your Honor.

14 THE COURT: Yes, sir. We've got  
15 the broad statement of "this formed the  
16 basis of my opinion." But we need to  
17 elicit more on that.

18 MR. BOWEN: Sure.

19 THE COURT: While we've got this  
20 opportunity in the absence of the jury,  
21 Dr. Johnson, what are the factors that a  
22 demographer considers in rendering any  
23 opinion that might be reached.

24 THE WITNESS: That is what's  
25 called here critical life course events,

1 Your Honor, the kinds of experiences both  
2 positive and negative that shape a person's  
3 outlook on life.

4 THE COURT: Can you give us some  
5 examples of the kinds of experiences that a  
6 demographer looks for?

7 THE WITNESS: Yes. Chronic  
8 mobility, and I always in trying to explain  
9 that to a jury, it's analogous when you've  
10 got chronic mobility usually tied to family  
11 instability, it's analogous to a tree that  
12 does not have very deep roots. The moment  
13 that you have a storm, the moment that you  
14 have an ice storm, what happens to that  
15 tree? It uproots. And that's what  
16 happened in this situation.

17 THE COURT: So chronic mobility  
18 is one factor?

19 THE WITNESS: Yes.

20 THE COURT: Are there any other  
21 factors?

22 THE WITNESS: Yes. Basically all  
23 of the things that I have identified here,  
24 the significance of death and exposure to  
25 violence, particularly of loved ones, has

1 an adverse effect on kids outlooks on life  
2 and their ability to cope with that.  
3 That's very, very important. Thirdly, any  
4 kind of family crisis outside of violence  
5 and death that lead to mobility are other  
6 kinds of mitigating forces that impact ones  
7 outlook.

8 What's important about all of this,  
9 and in terms of this particular -- in terms  
10 of Mr. Green, is that it's very, very  
11 important because of the kinds of  
12 environments that he found himself in.  
13 Mr. Green's life is a series of  
14 contradictions between two worlds. He  
15 moved to Philadelphia, which is an urban  
16 environment, an isolated environment with  
17 the -- culture is radically different from  
18 Robeson County, South Carolina, kind of  
19 southern environment.

20 And when you factor in the fact that  
21 here is a very bright young individual with  
22 a speech problem, you go to the north and  
23 first of all you talk funny coming from the  
24 south -- and I caught it in LA when I went  
25 so I know how this affects kids, you get

1 labeled as a nerd and people pick on you.  
2 You get the same kind of situation in the  
3 school system here where people pick on  
4 you. Teachers look at you and may not  
5 think you are as smart as you really are  
6 because you have this speech impediment.  
7 It's called labeling, and we know it has  
8 effects on kids.

9 THE COURT: Is the age in which  
10 these events might occur a factor?

11 THE WITNESS: It can be. In his  
12 life, it just so happened they occurred the  
13 first day of school, literally, and that  
14 shaped his outlook. The of the things that  
15 we know very clearly is that in terms of  
16 school systems, what happens to kids  
17 oftentimes that coincides with this  
18 labeling is something we call educational  
19 tracking. And it's not so much the age,  
20 but what is more important in Mr. Green's  
21 case is the timing at which he went to  
22 school, because precisely the time he went  
23 to school, we instituted a series of  
24 policies nationally in the school system to  
25 get tough on education. Because we were

1           responding to a system in which kids were  
2           graduating from high school not being able  
3           to read and write, so we got tough.

4           So what we did is develop a system of  
5           tracking where some kids were put into the  
6           college bound track, other kids put into  
7           the learning disability or LD track, some  
8           in the non-college tracks, general ed  
9           tracks. And it became like a cast system.  
10          Once you got in the track, it was difficult  
11          to get out.

12          Now in Daniel's case, because of the  
13          instability, he was in and out. But when  
14          he came back from Philadelphia, although  
15          his test scores indicated he was a gifted  
16          and talented student, he got put into one  
17          of these general education tracks. When  
18          you're not motivated and not challenged  
19          academically, then you have acting out  
20          behavior, you draw attention to yourself,  
21          you get in trouble, you get expelled or  
22          suspended from school.

23          Now, the significance of that is, is  
24          that for blacks and others minority kids  
25          when they behave -- misbehave in school,

1           they are more likely to be subjected to  
2           suspension and expulsion than white kids.  
3           There's very strong evidence to suggest  
4           that. Now, that's the last thing you want  
5           to do to a kid is put him out on the street  
6           when he should be in school. Being idle,  
7           not in school and not having anything else  
8           to do. Like my grandmother says, an idle  
9           mind is the devil's workshop. And that's  
10          not a a personal problem; that's a societal  
11          problem. And that's my argument.

12                    THE COURT: Based on the  
13           information you've accumulated about these  
14           events, what if any opinion have you  
15           reached?

16                    THE WITNESS: My opinion is that  
17           his life is a life of contradictions, life  
18           of instability, exposure to death and  
19           violence at a young age that ended up  
20           linking him with the criminal justice  
21           system. And I quite frankly think that  
22           when he ended up in prison, and treated as  
23           an adult, that that experience adversely  
24           effected him, adversely effected his  
25           attitude and outlook on life. So when he

1           came out of that system, having a criminal  
2           record for a young black man is the scarlet  
3           letter of unemployability. It creates  
4           frustrations, crates anger, and it's  
5           understandable when you try to play by the  
6           rules but you get kind of waylaid on every  
7           front.

8                         THE COURT: You folks intend to  
9           elicit that matter? This is just for my  
10          information, Dr. Johnson. Mr. Britt, do  
11          you want to be heard?

12                        MR. THOMPSON: Your Honor, while  
13          he's doing that, may I remove that?

14                        MR. THOMPSON: Yes, sir.

15                        MR. BRITT: No, sir.

16                        THE COURT: Is the State  
17          withdrawing its objection?

18                        MR. BRITT: State notes its  
19          objection for the record.

20                        THE COURT: Okay. Folks, under  
21          Locket, under Skipper, I'm going to let it  
22          in. The jury will decide what if any value  
23          it has as a nonstatutory, because most of  
24          the factors that I've seen in Dr. Johnson's  
25          testimony fall within that category. We'll

1 have to formulate the specific nonstatute  
2 factors or mitigating circumstances that  
3 you contend apply based on his testimony.

4 For the record, do you folks  
5 understand that this, if elicited, opens  
6 the door to the State to pursue on  
7 cross-examination the Ellison matter?

8 MR. THOMPSON: Yes, sir.

9 THE COURT: Mr. Green, do you  
10 understand that, sir?

11 MR. GREEN: Yes, sir.

12 THE COURT: Folks, I'm going to  
13 let it in. Note the State's objection.  
14 The objection is overruled. Exception is  
15 noted for the record. But the dangerous  
16 area from my perspective is to prevent any  
17 possible mitigating circumstances from  
18 being considered by the jury. That's  
19 clearly constitutional error, that's  
20 clearly prejudicial, and clearly is not  
21 something that I don't want to do. Bring  
22 the jury back in.

23 THE BAILIFF: Judge, with the  
24 Court's permission I've asked that a  
25 wheelchair be brought up so we can assist

1 Ms. Odum.

2 THE COURT: I'll tell you what,  
3 we're wounded and everything else, but  
4 we're making it. Yes, sir.

5 (Jury in at 10:08 p.m.)

6 THE COURT: We'll be at ease,  
7 folks, while we are attempting to  
8 accommodate Ms. Odum.

9 Thank you, folks.

10 THE COURT: Mr. Bowen.

11 MR. BOWEN: Thank you, Your  
12 Honor.

13 BY MR. BOWEN:

14 Q Dr. Johnson again, looking at the --

15 THE COURT: I apologize for the  
16 interruption. Do you need a moment to  
17 catch your breath?

18 THE COURT: Okay. Mr. Bowen.

19 BY MR. BOWEN:

20 Q Dr. Johnson, in terms of Defense Exhibit  
21 Number 50, entitled typology of critical life force  
22 events of Daniel Green, when a professional  
23 demographer studies the life of an individual, what  
24 kinds of critical or life course events does one  
25 study?

1           A       You look at events that affected the  
2 individual's life personally, events that affected  
3 his family, you look at the environments or  
4 communities in which he grew up in or lived in at  
5 various times in his life, what were those  
6 environments like, were they institutionally rich  
7 communities, were they institutionally incomplete  
8 communities without institutions that connect youth  
9 in particular to mainstream avenues of social and  
10 economic mobility. You look at the history of  
11 mobility. You look at the history of schooling, and  
12 experiences within the various kind of institutions  
13 like schools and churches and other kinds of  
14 institutions.

15           Q       Now, do other factors such as the age or  
16 the family circumstances of an individual when these  
17 critical life events occurred, do they factor in to  
18 the effect?

19           A       Yes.

20           Q       And how so, by example?

21           A       Well, one of the big things that we know  
22 today is, and I speak from policy standpoint, in  
23 terms of kindergarten, one of the things that we know  
24 about kindergarten, it's possible for a kid to flunk  
25 kindergarten. So you're not with your age group if

1 you flunk kindergarten when you go to school. Well,  
2 that's stigmatizing on a kid to flunk kindergarten,  
3 and you can just see how the kids would begin to joke  
4 and kid this kid about you're a failure and you're a  
5 failure for the rest of your life for that.

6 Another example, and this is a real one  
7 from some of the work we've done. I work with kids  
8 in a program to guarantee college access. We had a  
9 kid who sat in the back of the room all the time and  
10 he never wore his glasses. But he couldn't see the  
11 bulletin board. And the crucial thing for him is he  
12 had welfare glasses. And apparently at that time,  
13 there were only two frames, types of frames for kids  
14 with welfare glasses. And all the other kids in the  
15 room knew he wore welfare glasses. And it was  
16 stigmatizing. He sat in the back of the room and  
17 never wore his glasses. No learning was going on.  
18 Those are the kinds of things that seem innocuous but  
19 can be very, very important in a kid's life. That's  
20 a critical life course event.

21 Q Does a physical disability such as a speech  
22 impediment or stuttering problem, would that affect  
23 these critical life course events?

24 A Absolutely. The way your peers respond to  
25 you is different from if you don't have that kind of

1 speech impediment.

2 THE COURT: Dr. Johnson, so we're  
3 clear on what it is that you're testifying  
4 about, are you indicating that these are  
5 factors that affect you at the time but  
6 also affect you throughout your life?

7 THE WITNESS: They can carry  
8 throughout your life.

9 THE COURT: Okay. Mr. Bowen.

10 BY MR. BOWEN:

11 Q And for example, a manner of speaking or an  
12 accent, say if we're speaking with a northern accent  
13 in a southern school or vice-versa, does that have an  
14 effect on critical life?

15 A Yes, it does. Daniel is a case in which he  
16 moved from North Carolina, Robeson County, to  
17 Philadelphia, and he was characterized as a southern  
18 nerd largely because of the way he spoke. And he  
19 was -- he ended up being accosted for that reason.  
20 There are several examples on this graphic of where  
21 he was hit with brass knuckles through no fault of  
22 doing anything, but he didn't fit in to that  
23 environment -- and knocked out, I believe, at that  
24 particular point in time, largely because he was  
25 different. These things can have a very harmful

1 effect on kids throughout their lives, particularly  
2 when they occur at the formative stages of  
3 development.

4 MR. BOWEN: If Your Honor,  
5 please, at this time I would like to  
6 introduce -- first of all, let me ask you,  
7 Dr. Johnson, can you use Defendant's  
8 Exhibit number 50 at this time to  
9 illustrate to the jury your -- the  
10 individual critical life course events that  
11 you found in Daniel Green's history.

12 THE WITNESS: If I -- I lost  
13 count of the numbers. If you mean this  
14 typology of life course events of Daniel  
15 Green?

16 BY MR. BOWEN:

17 Q Yes, sir, I believe that's Defense Exhibit  
18 Number 50. Can you use that to illustrate your  
19 testimony to the jury about what those critical  
20 events are?

21 A Yes, I can.

22 Q All right.

23 MR. BOWEN: At this point, Your  
24 Honor, desire to introduce it for the  
25 limited purpose at this point.

1 THE COURT: Mr. Britt? It's  
2 being offered for illustrative purposes.

3 MR. BRITT: No objection.

4 THE COURT: It's admitted for  
5 illustrative purposes.

6 Members of the jury, please recall my  
7 instructions to the extent that you find  
8 Defendant's Exhibit 50 of aid or assistance  
9 in understanding the testimony of  
10 Dr. Johnson, you may consider it for that  
11 limited purpose. Yes, sir.

12 MR. BOWEN: Your Honor, may we  
13 distribute copies to the jury?

14 THE COURT: Yes, sir.

15 (Exhibits passed to the jury.)

16 THE COURT: Mr. Bowen.

17 MR. BOWEN: Yes, sir.

18 BY MR. BOWEN:

19 Q Dr. Johnson, if you will, starting with the  
20 life course -- critical life course events you've  
21 described for ages zero through eight, would you tell  
22 us what those events were?

23 A What we've tried to do is reconstruct his  
24 family situation in which Daniel was born into.  
25 Daniel's mother and father were not married at the

1 time that he was born. They did not get married  
2 until he was age three. So he was born into a family  
3 context in which his mother and his grandmother were  
4 the primary caregivers. That doesn't mean that his  
5 father wasn't around, just means they weren't  
6 married. They didn't get married until he was age  
7 three. These are critical events --

8 THE COURT: How so? How did that  
9 effect him in your opinion?

10 THE WITNESS: Well, to have the  
11 father in the house is very, very  
12 important, it's a stabilizing influence.  
13 What is more critical in terms of Daniel  
14 was when he witnessed his father being  
15 arrested for probation violation at age  
16 six, and for driving without a license.  
17 And that was also the critical time in  
18 which his parents were divorced. And  
19 that's critical because it represents a  
20 critical point in Daniel's life beyond  
21 which he had little or no contact with his  
22 father. He had some contact but mostly  
23 intermittent contact with his father, and  
24 at the same time when his father left, the  
25 socioeconomic status of the household

1           declined rapidly as happens in most  
2           families when a divorce occurs, unless  
3           you're independently wealthy, which is  
4           rare.

5           Secondly, it triggered the kinds of  
6           residential mobility that we have depicted  
7           on an earlier graphic, this one of  
8           residential moves, because the family was  
9           in an unstable situation. Now, this is  
10          something that's very important for black  
11          families. And I want people to understand  
12          that it is very common when family  
13          dissolution occurs or separation occur,  
14          particularly in African American families,  
15          for families to move back and forth between  
16          the north and south. There are classic  
17          works on this, one written in 1974 by Carol  
18          Stack called "All I Can," where she  
19          documents this tendency to move back and  
20          forth between the north and the south.

21          But those are two radically different  
22          environments, and they affect kids  
23          differently depending on the kinds of  
24          communities that they end up in, either the  
25          origin or destination community. In

1 Daniel's case, when he moved to  
2 Philadelphia and had several subsequent  
3 moves within Philadelphia, much of his life  
4 or a considerable amount of the time in  
5 Philadelphia was spent in north  
6 Philadelphia, which in social science terms  
7 is characterized as one of those ghetto  
8 poor neighborhoods, a neighborhood in which  
9 there are not large numbers of people who  
10 hold jobs every day, where lots of gang  
11 activity and drug dealing and the like  
12 occurs.

13 Now, what I ask you to think about is  
14 a young kid from the south being placed in  
15 that kind of environment. And what you  
16 have is a southern nerd in an inner city  
17 community who did not understand the rules  
18 of the street as it were. There is a  
19 street culture. So you get a kid who runs  
20 to school every day to avoid trouble with a  
21 gang and people who thought that he was  
22 different.

23 BY MR. BOWEN:

24 Q Did you document that Daniel actually did  
25 run to school?

1           A     Yes, it's on this graphic.

2           Q     And did you also document that he was  
3 called a nerd up until --

4           A     Yes.

5           Q     Now, you indicated also between the ages of  
6 seven and 12, there was anxiety about starting  
7 school?

8           A     Well, the interesting think about Daniel is  
9 that his first six years were pretty stable years  
10 because he did have that father figure there, and he  
11 has a strong maternal -- strong maternal influence in  
12 his life, his mother and his grandmother. So Daniel  
13 was a smart kid, he was able to read when he went to  
14 kindergarten, which suggests that -- most kids are  
15 school ready when they enter kindergarten and go into  
16 school. But that's that critical period at which the  
17 family breakup occurred. And you can begin to see  
18 these negative events creep into his life.

19                     If you just look at the period age seven  
20 through 12, what you begin to see is these frowny  
21 faces creeping in. There's really no frowning faces  
22 before that age seven to 12, and that signaled --  
23 that's a critical event that said something is  
24 happening in his life and it's not all good.

25           Q     Now, you document up in the age six area

1 that his father was in and out of prison for a period  
2 of about 15 years, is that right?

3 A From that point on, yes.

4 Q And Dr. Johnson, when the father figure was  
5 absent for Daniel Green, were there any other family  
6 members such as an uncle or brother or any other  
7 person come to fill that void --

8 MR. BRITT: Objection

9 BY MR. BOWEN:

10 Q -- from your data?

11 MR. BRITT: As phrased, no  
12 objection.

13 THE COURT: You may answer.

14 THE WITNESS: When he moved to  
15 Philadelphia, one of his uncles became a  
16 central role model in his life, his  
17 mother's brother.

18 BY MR. BOWEN:

19 Q How long did that last?

20 A Well, his uncle was subsequently killed,  
21 and that actually triggered two things. One, it  
22 devastated the mother and Daniel because that uncle  
23 was a significant fixture in Daniel's life and his  
24 mother's life. And secondly, they moved back to  
25 Robeson County. So you're taking a kid again out of

1 an urban environment and urban culture, an  
2 inculcating him back into a southern rural  
3 environment that created further instability and  
4 adjustment problems.

5 Q Now, Dr. Johnson, if we can while we're  
6 talking about schools, let's go back to Defense  
7 Exhibit Number 49, the graphic concerning the school  
8 moves. And could you tell the jury the names of the  
9 schools that Daniel went to over his school history?

10 A Well, all of the schools are depicted on  
11 this graphic starting with Purvis Elementary, Union  
12 Elementary, Southside Ashpoe Elementary, Union  
13 Elementary, again, Char Juror High, Wagner Middle  
14 School, Pembroke Middle, Pembroke Junior High,  
15 Sycamore Lane Middle, Scotland High, Laurinburg  
16 Institute, Magnolia High, West Florence High, and  
17 Western Piedmont Community College.

18 Now, there are two, to my way of thinking,  
19 in terms of critical life course events, first of  
20 all, I think it's just mind-boggling for anybody to  
21 go to this many schools. And secondly, there are  
22 sections in Daniel's record, like at Laurinburg  
23 Institute, for example, where for two weeks he was  
24 relegated to the principal's office because they  
25 didn't have his school records, they were waiting



1 many public school systems where kids don't even have  
2 books, let alone somebody to teach them to read and  
3 write, so it has a negative effect. In Daniel's case  
4 it was another particular policy, and that is a  
5 policy called educational tracking, where you label  
6 students and you track them in to certain types of  
7 curriculum.

8           When you look at nationally what happens to  
9 kids, what you will see is that blacks and other  
10 minority kids are underrepresented in the gifted and  
11 talented tracks and overrepresented in the general  
12 education, LD, learning disability tracks and those  
13 kind of things. And once you get in one of those  
14 tracks, it becomes almost cast-like, it follows  
15 throughout most of your life.

16           In Daniel's case, because he moved around  
17 so much, he was in and out of various tracks. But if  
18 you're stable, what happens, you find that these kids  
19 literally are followed or tracked into places. And  
20 if you're a smart, bright kid, you're not challenged  
21 intellectually or academically, you begin acting  
22 out. Now, in other words, you become a problem  
23 student, or labeled a problem student.

24           In terms of these get tough on education  
25 policies, what we also did was had an increased

1 emphasis on expulsion and suspension of kids who  
2 acted out. If you look at the data nationally on  
3 expulsions and suspensions, what you will find is  
4 that blacks and other minority kids are more likely,  
5 for the same altercations, to be expelled or  
6 suspended in comparison to their white counterparts  
7 who have engaged in the same kind of altercations.

8 Now, what's the significance of expelling a  
9 kid for an entire year? If it's at grade nine  
10 through 12, typically, the kid does not come back the  
11 next year because that kid is no longer with his or  
12 her cohort, and everybody knows it. In other words,  
13 there's a correlation, a very strong one between  
14 expulsion for the year and dropping out of school.  
15 So here is a policy that we implemented to improve  
16 education that has a perverse effect. It actually  
17 exacerbates, you know, the negative effects in the  
18 school system. Daniel was a victim of that process  
19 at the middle school, and it set into stage a series  
20 of in and out of school expulsions and suspensions  
21 and the like for altercations in other contexts that  
22 oftentimes would not lead to that kind of outcome.

23 BY MR. BOWEN:

24 Q Dr. Johnson, generally you mentioned school  
25 records. Do you have access to a number of Daniel's

1 school records?

2 A Yes, we did.

3 Q What other sources did you use to obtain  
4 the data that is represented on Defense Exhibit  
5 Number 50?

6 A Again, you've got to tell me what number 50  
7 is.

8 Q This is the typology of critical life  
9 course events.

10 A Oh, this one, thank you. We used school  
11 records, prison records, key informant interviews,  
12 every record that anyone had on Daniel that we could  
13 get our hands on, we used to reconstruct life  
14 history. And I might add, to try to give the jury an  
15 appreciation of how difficult this is, what we're  
16 talking about here is a span of 19 years, and you're  
17 trying to reconstruct what happened to a person  
18 across that long time span. This is not an easy task  
19 to do. And so it takes a lot of work, and it's  
20 almost like detective work to reconstruct critical  
21 life history of the families and the like. But we  
22 used a wide range of sources, and then you have the  
23 challenge of trying to cross-validate, cross-classify  
24 to make sure you got things right. So we would  
25 compare one interview with one family member or one

1 person that was in the record with what other people  
2 were saying to make sure that we were as accurate as  
3 possible.

4 Q Now, in your particular protocol, you  
5 intentionally did not interview the defendant himself  
6 is that correct?

7 A That's correct, right.

8 Q Why is that?

9 A I'm not a psychologist, I'm a sociologist,  
10 demographer.

11 Q You talk about cross-validating the data,  
12 what do you mean?

13 A Well, you never rely in social sciences  
14 research on one method because, you know, there are  
15 flaws in data, and there are statistical errors maybe  
16 in work in which the data are gathered and the like,  
17 so you try to look at other sources to see if there  
18 are commonalities across multiple sources. In a  
19 social science, we call it triangulation, where you  
20 try to look at multiple ways of gathering data or  
21 multiple sources to make sure that you're being as  
22 accurate as possible.

23 Q Now, as to every entry that you have listed  
24 on this typology of critical life course events of  
25 Daniel Green, have you obtained this information from

1 one of those genera of sources that you've described?

2 A Yes.

3 Q And have most of those or as many as  
4 possible of those been triangulated and  
5 cross-referenced?

6 A To the best of our ability, about 250 hours  
7 of work to be precise.

8 Q By no means has any of this been solely in  
9 reliance on something that the defendant said to you  
10 personally?

11 A No.

12 Q Now, in the age bracket seven to 12, when  
13 the frowny faces begin, Dr. Johnson, one of the first  
14 entries here is that the mother, that is Ms. Ann  
15 Green, dealt with his sister Ebony's illness, and  
16 while Daniel lived with grandmother Lizzy. Can you  
17 tell us a little bit more about that?

18 A Well, I don't want that to be misconstrued  
19 as negative or reflect on his mother or his  
20 grandmother, but rather it's a symbol of having to  
21 cope with a situation where you have a crisis in your  
22 family, his sister was ill, and he didn't have his  
23 father present, and his mother couldn't be there as  
24 much as I'm sure she would have liked to have been.  
25 So Daniel was connected in a strong bond, much like

1 myself, with his grandmother. The old adage that it  
2 takes a village to raise a child is something that  
3 that's why I label it a kind of frowny face, because  
4 it suggested that Daniel didn't have access to all  
5 the networks and resources that kids who grow up in  
6 what we call traditional families, and I don't even  
7 like that word, because more families are female  
8 headed than are two parent families. But in reality,  
9 certainly you don't have -- you're not embedded in  
10 all of the kinds of networks that kids who do grow up  
11 in traditional families are sometimes.

12 Q And also did the change to being raised for  
13 a time by his grandmother involve yet another move?

14 A Yes.

15 Q And you've indicated that long about in  
16 this age seven to 12 bracket, that speech therapy  
17 began to be provided. Is that the first time you can  
18 document that it was by whatever school system he was  
19 in?

20 A Well, the record showed that he got speech  
21 therapy throughout school, so I don't remember off  
22 the top of my head when it began, but --

23 Q Did you document that he was being teased  
24 constantly when he was dealing with this problem?

25 A Yes, yes. In fact, that's the fourth

1 frowny face.

2 Q In his first grade in Union Elementary  
3 School that you've described on the school move  
4 chart, what were your findings about his environment  
5 to date?

6 A Like most bright, eager young kids, he was  
7 eager about going to school. He was in one of the --  
8 in the first grade at Union Elementary, he was one of  
9 ten African American kids in a predominantly white  
10 native American school. So from day one, Daniel was  
11 viewed as a talented and potentially academic star,  
12 if you will. But a lot of kids, that happens to lot  
13 of kids only later to find out that there's some  
14 critical events in their lives that take them off  
15 track.

16 Q The next event at Union Elementary School  
17 you're able to document that Mr. Robert Ellison and  
18 Bobbie Reeves harassed him a lot?

19 A Yes, about the speech problem.

20 Q Can you elaborate any on that in your data?

21 A Again, it's a kid who has a problem that  
22 can be recognized every time he talks, so people pick  
23 at you. You're labeled again. It's a negative  
24 influence in your life. Daniel I think has worked  
25 hard to overcome that with the aid of a speech

1 therapist, but with the constant mobility, you have  
2 the interaction of having a speech impediment and  
3 talking, quote unquote, southern. And that's a  
4 pretty hectic combination when you're moving around  
5 like he did.

6 Q You indicated in your first star for  
7 violence here that the guys broke a comb on his  
8 head. What can you tell us about that?

9 A Well, Daniel seems to be one of these kids  
10 who, and I'm sure it was imbedded in his family, who  
11 was taught not to fight back. And indeed he avoided  
12 fighting until he was age 13. In those kinds of  
13 situations, you get pushed around a lot. And I think  
14 he got attacked and guys took advantage of him  
15 because he wouldn't fight back.

16 Q Now, Dr. Johnson, if you will pick it up at  
17 age 13 on your charts, and please tell us what you  
18 considered the most important critical life course  
19 events of Daniel Green and how that affected his  
20 life.

21 A Well, clearly I think the move, as I  
22 indicated earlier, the move to Philadelphia and  
23 finding Daniel -- placing Daniel in an environment  
24 that was culturally and geographically radically  
25 different from the environment that he had spent his

1 pre age 13 years in. They left the south as many  
2 black families do and connected with relatives in  
3 Philadelphia. There were subsequent moves in  
4 Philadelphia.

5           When he was there, he had one of these  
6 intermittent contacts with his father who left he and  
7 his sister at a park one day while he was involved in  
8 a transaction someplace else. You see the same kind  
9 of teasing that went on in the school system here  
10 following him to Philadelphia. Again, a  
11 stigmatization. But also, you see evidence of a kid  
12 who's a survivor. If you look at the smiley faces,  
13 age 13 he was involved in boxing. You see he still  
14 avoided fights as much as he could. He ran track at  
15 one of the junior high schools. He won a  
16 tournament. Different kinds of victories in his  
17 life, what I call personal triumphs for a kid. These  
18 personal triumphs are very, very important because  
19 you have a kid who is stigmatized for not being able  
20 to speak in a hip fashion in a city environment,  
21 who's stigmatized because he further stutters, and  
22 all this has kind of a negative effect. But you get  
23 the sense that he's a survivor also by many of the  
24 positive things that he's doing. And although he's  
25 with extended family in Philadelphia, in some of the

1 places that he lived, clearly it was a tight network  
2 of folks there for a while.

3 Q One of the significant critical course  
4 events in the age 13 bracket was that he witnessed an  
5 individual being shot by police. Can you elaborate a  
6 little on that?

7 A Well, what this graphic doesn't tell you is  
8 the individual was a Jamaican kid who was shot, who  
9 was roughly the same age of Daniel at the time. And  
10 the kid was shot in the back by the police.

11 Q How in your opinion would that cause his  
12 view and attitude toward police?

13 A Well, I think it makes you suspicious of  
14 what we call social control agents like the police.  
15 And this is an issue that has received a lot of  
16 attention in the public media, in the social  
17 sciences, following the Rodney King beating in Los  
18 Angeles. But we know that there were incidences in  
19 urban communities, and particularly prior to that  
20 time, that have been very well documented in the  
21 social sciences.

22 Q Now, going back to that incident of being  
23 abandoned or left by his father in the park for a  
24 period of time with his sister Ebony, do you know  
25 approximately what age the kids, Daniel and his

1 sister were at the time?

2 MR. BRITT: Objection. Chart  
3 shows he is 13 years old.

4 THE COURT: Mr. Bowen.

5 BY MR. BOWEN:

6 Q Yes, sir. Do you know what the age -- I'm  
7 really trying to get the approximate age of the  
8 sister, so let me just ask it that way. Was she  
9 younger?

10 A She's younger than Daniel.

11 THE COURT: Based on the  
12 information that you have, from the sources  
13 that you have, how did the defendant view  
14 himself in the context of his sister?

15 THE WITNESS: He was very  
16 protective of his sister. I mean, it's  
17 like most big brothers, you look at your  
18 sister -- even little brothers, if it's in  
19 my case, I'm still protective of my  
20 sister. She's 48 years old. So I don't  
21 think that Daniel is any different from any  
22 other kid in that regard. I mean, he is  
23 very, very protective of her. He's also  
24 very protective of his mother. Like me. I  
25 mean, I don't think he is any different

1 from any other kid in that regard.

2 THE COURT: Mr. Bowen.

3 BY MR. BOWEN:

4 Q Let's move on if we could to age 14  
5 bracket. What critical life course events did you  
6 document?

7 A I think the big one for Daniel here was his  
8 uncle Arnold, the death of his uncle Arnold, his  
9 mother's brother, who was a significant individual in  
10 his life, a role model if you will in his life, who  
11 was killed and adversely effected Daniel and his  
12 mother greatly. When I read about that event, it  
13 brought back to me personally an event in my own  
14 life. I witnessed my grandfather hit by a car and  
15 severed at the waist when I was about 15 years old.  
16 And I sill remember it very vividly because this was  
17 someone who, for me, whenever I needed ice cream  
18 money I could count on it. And that seems trivial  
19 today, ice cream money. It's not trivial, actually,  
20 if you've tried to buy any lately. But in reality,  
21 when you lose someone like that, it leaves an  
22 indelible impact on that, and I think that's what  
23 happened to Daniel.

24 Q What did you mean in your reference to the  
25 loss of the uncle Arnold as mysteriously?

1           A        I mean from the standpoint of Daniel, he's  
2       a young kid, you lose a significant other literally  
3       at the hands of another family member, sometimes  
4       that's hard for kids to understand. I don't mean  
5       that it was the circumstances surrounding it was  
6       mysterious, but in terms of -- we have to situate  
7       what happened in terms of the age of Daniel at the  
8       time and the role that this person played in his  
9       life.

10           Q        How did the uncle die, from your data?

11           A        He was shot by mother-in-law, I believe,  
12       after a domestic dispute.

13           Q        Was that information widely known in the  
14       family, including to Daniel?

15           A        As best I can tell from the records, I  
16       mean, I don't have all of the information about that  
17       event.

18           Q        As to the bracket age 15, Dr. Johnson, what  
19       critical life course event do you document?

20           A        Well, again, you see him bouncing back from  
21       some of negatives that have occurred in his life. He  
22       has a bunch of smiley faces here. He's imbedded in  
23       boxing and wrestling, got back into tennis, got  
24       college prep courses in Scotland High School,  
25       wrestling team and the like, but again, he is

1 confronted -- sang in a choir. He liked it at  
2 Laurinburg Institute because there were northerners  
3 and people from the islands, people that connected  
4 him again with Philadelphia and that kind of people  
5 that he had interfaced with there.

6 But again, you see the negative kinds of  
7 events creep back into his life. Another residential  
8 move to Maxton, he began to fear and think about his  
9 own life course, began to believe that he wasn't  
10 going to live very long given his uncle's death,  
11 which is a common phenomenon for kids who grow up or  
12 spend some of their formative years in these inner  
13 city communities. What I characterized earlier as  
14 ghetto poor, where violence is the rule rather than  
15 the exception, you get kids feeling they are not  
16 going to live very long.

17 Some of you may recall last year published  
18 in the Washington Post, pre-teenaged girl, 12 years  
19 old, asked to write an essay at school wrote her  
20 obituary rather than something she aspired to be in  
21 life, because on her street she had witnessed seven  
22 deaths within like six months. So these kids get  
23 truncated kinds of aspirations, begin to see  
24 themselves as not being able to live very long, and  
25 Daniel exemplified much of that at this age and was

1 connected to his uncle's death as well as the kind of  
2 things that he experienced in Philadelphia.

3 Q And you have indicated in connection with  
4 uncle Arnold death, movie?

5 A Menace To Society, it's a Tupac Shakur  
6 film. Rather there's an individual in the movie that  
7 is about to go to college, interestingly enough, and  
8 he's killed before he gets to go. And that's the  
9 person that Daniel is referring to here. It's a very  
10 powerful movie, I highly recommend it.

11 Q And you even indicate that Daniel himself  
12 was the victim of a robbery?

13 A Yes.

14 Q Tell us about that.

15 A It says here he was hit over the head and  
16 robbed at gun point of his jewelry and his coat while  
17 he was talking on the phone. Those kind of --  
18 anybody ever been kind of mugged at a ready teller or  
19 something of that nature can understand what kind of  
20 impact that has on your life. Or for that matter,  
21 ever come home one day and found that your house has  
22 been burglarized and the like, and can understand  
23 what kind of feeling of violation that that creates.

24 Q Now, after age 16, what critical life  
25 course events do you find relevant to his life?

1           A       Well, you see a bit of residential  
2       mobility, again, moved to Florence, South Carolina,  
3       in terms of negative kinds of things. Lots of  
4       mobility. On the positive side, you see Daniel  
5       reaching age 16, he's an attractive young man, and  
6       the girls that was not -- the girls didn't lose sight  
7       of that fact. So he had some -- that's always  
8       self-esteem enhancing I think when girls pay  
9       attention to you. It also caused him some problems  
10      because other guys didn't like it because the girls  
11      paid attention to him and didn't pay attention to  
12      them, I assume. That caused some problems in terms  
13      of him being involved in altercations with various  
14      people.

15                    You just see quite a bit of residential  
16      mobility and Daniel beginning to interface with  
17      people who were not positive for him. I think he met  
18      this woman named Lisa, and that was the first time he  
19      smoked marijuana. I don't think that that's a  
20      terribly big event other than I think our president  
21      has smoked marijuana, although he said he didn't  
22      inhale, so I wouldn't make a big thing out of that.  
23      But at the same time, it shows kind of peer  
24      influences and things of that nature.

25           Q       Then I notice the name Robert Ellison

1     reappear, Dr. Johnson. Is that the same Robert  
2     Ellison that appeared down in the ages seven to 12  
3     bracket that talking about harassed him at Union  
4     Elementary?

5             A     As best I can tell it's the same person.

6             Q     And what happened with regard to that?

7             A     Well, again, it's this kind of harassment  
8     of Daniel by Robert Ellison and some of the other  
9     guys, they were jealous of the female attention that  
10    Daniel was receiving, and I think there were a number  
11    of efforts to attack Daniel, to assault him, I think.

12            Q     And what resulted?

13            A     I'm sorry?

14            Q     And what resulted?

15            A     And Robert attempted to assault Daniel on  
16    several occasions even though Daniel always attempted  
17    to get away, there were altercations. Again, you see  
18    a young man who is trying to avoid engaging in kind  
19    of altercations.

20            Q     And what ultimately happened in that  
21    regard? Did this cause Mr. Green any legal  
22    problems? What ultimately occurred?

23            A     Well, yes, I mean, ultimately --

24                    JUROR: I can't hear him.

25                    THE COURT: Mr. Bowen.

1 MR. BOWEN: I'm sorry.

2 BY MR. BOWEN:

3 Q What ultimately occurred with regard to the  
4 legal system and these problems with Robert Ellison?

5 A I think there was an altercation in which  
6 Daniel had an accident, based on the records that I  
7 had access to, it was a situation in which Daniel was  
8 backing away, trying to get away but swirling the  
9 axe, and the reports suggest that this gentleman  
10 walked into the axe. But it ultimately signaled a  
11 critical life course event for Daniel because he  
12 ended up being connected with the criminal justice  
13 system, tried as an adult at age 16 years old, and  
14 incarcerated for two and a half years. I think what  
15 was significant about that was the experience within  
16 the criminal justice system that had a negative  
17 impact on his life.

18 Q And what ultimately became of that  
19 conviction?

20 MR. BRITT: Objection.

21 THE COURT: Sustained.

22 BY MR. BOWEN:

23 Q Now, in what way do you say that that had a  
24 negative impact on his life, Dr. Johnson?

25 A I think this is the other area that I think

1 in the late 1980s and -- late 1970s and early 1980s  
2 that we begin to see black kids in particular  
3 adversely impacted by public policy that were  
4 implemented nationally. Just like we got tough on  
5 education, in the late 1970s or early 1980s, we also  
6 got tough on crime in American society. And when you  
7 look at our criminal justice system, what you will  
8 find is that we made a conscious choice to move from  
9 a criminal justice system that focused on  
10 rehabilitation, to focusing explicitly on  
11 punishment.

12 And that's different from what used to  
13 exist such that Daniel was -- and we went on a prison  
14 building binge. Many of these prisons are in  
15 communities that disconnected black males in  
16 particularly from their local communities, their  
17 families are not accessible geographically, and the  
18 kind of treatment and experience within these prisons  
19 is pretty horrible, such as by the time you get out,  
20 you may be more angry than the time you went in.

21 I think there's evidence of Daniel being  
22 locked into one of these isolated cells for 23 out of  
23 24 hours a day. It's dark, you come out for one hour  
24 a day, and you're locked in these environments for  
25 long periods of time. I've had the opportunity to

1 witness one of these prisons in California, it's  
2 called Pelican Bay. Sounds like someplace you want  
3 to go have a vacation, but I assure you it's not  
4 someplace you want to go spend one minute of your  
5 life.

6           When you have a kid at age 16 relegated to  
7 that environment and witnessing the kinds of abuses  
8 that go on within the criminal justice system, it's  
9 bound to have an adverse impact on a kid when he  
10 comes back into society. That adjustment is pretty  
11 difficult.

12           Q     Dr. Johnson, after he had served this  
13 period of time in the criminal justice system, from  
14 your data, was Mr. Green's conviction set aside and  
15 vacated --

16                   MR. BRITT:  Objection.

17                   MR. BOWEN:  Desire to be heard.

18                   THE COURT:  Members of the jury,  
19           I'll have some instructions for you  
20           momentarily.  At this time, please step to  
21           the jury room, there's a matter of law the  
22           Court must take up out of the hearing and  
23           the presence of the jury.  Don't worry or  
24           speculate about what takes place in the  
25           courtroom in your absence.  Thank you.

1 Mr. Horne, will you assist Ms. Odum,  
2 please.

3 (Jury out at 10:51 a.m.)

4 THE COURT: Mr. Bowen, I am  
5 absolutely confident that you knew before  
6 you posed that question in the presence of  
7 the jury that that was a matter you ought  
8 to take up with the Court.

9 MR. BOWEN: Well, Judge, we  
10 have --

11 THE COURT: Because you tried to  
12 get the question in earlier. I sustained  
13 the objection, didn't I?

14 MR. BOWEN: Yes, sir, but I asked  
15 it in a different way, Judge.

16 THE COURT: What's difficult  
17 about saying there's a matter I need to  
18 bring to the Court's attention, there's an  
19 issue of law that we need to discuss out of  
20 the hearing -- what's difficult about  
21 that?

22 MR. BOWEN: Because you asked us  
23 if we were going into this area, and we  
24 said yes, that we're going into the area of  
25 the Ellison matter, the --

1                   THE COURT: What is the basis for  
2 asking Dr. Johnson whether Mr. Green's  
3 conviction was vacated, what legal basis do  
4 you have for that?

5                   MR. BOWEN: Because he needs to  
6 explain this young man's attitude and  
7 behavior within the prison system, and this  
8 young man's attitude and behavior in the  
9 prison system is a function of the fact  
10 that he knew that he was unjustly  
11 incarcerated, and in the motion for  
12 appropriate relief, this court, Your Honor  
13 himself, has validated that result.

14                  THE COURT: You folks argued that  
15 it would be inappropriate and improper for  
16 me to allow the State's request to  
17 introduce my findings of fact and  
18 conclusions of law on the motion to  
19 suppress as to -- didn't you?

20                  MR. BOWEN: At that time, yes,  
21 sir, in the case in chief, but we've  
22 signaled all along we intended to go into  
23 that matter. We discussed with  
24 Mr. Henderson Hill --

25                  THE COURT: Mr. Bowen, I need to

1 take about five minutes. If you'll bear  
2 with me. Let's take about a five-minute  
3 break. I need to take about five minutes,  
4 and then we'll come back and then discuss  
5 this.

6 THE BAILIFF: Court stands at  
7 ease for approximately five minutes.

8 (Court at ease.)

9 THE COURT: Let the record show  
10 that all counsel are present, the defendant  
11 is present, all members of the jury are  
12 secured in the jury room. Yes, sir, you  
13 folks tell me your rationale, your legal  
14 basis for getting this evidence in.

15 MR. BOWEN: One of our proposed  
16 mitigators, Your Honor, is the defendant  
17 has no significant criminal record. Now,  
18 when we talked to our expert, Dr. Johnson,  
19 he felt like because of the time frame in  
20 his years when this prison incarceration  
21 occurred, he felt that was such a  
22 significant life event that he virtually  
23 could not give a complete and honest  
24 picture of this young man's life without  
25 inclusion of that. We consulted with

1 Mr. Henderson Hill; Mr. Hill agreed.  
2 Mr. Thompson and I agreed. And we realize  
3 the down side would be go into the matter  
4 which might open up the State being able to  
5 go into the Ellison matters. But given the  
6 way the evidence came out before Your  
7 Honor, that may not be so bad for the  
8 defendant anyway because it tends to show  
9 that there was at least more  
10 justification --

11 THE COURT: How do you take the  
12 position that the State can't get in  
13 findings of fact and conclusions with  
14 regard to Mr. Demery but it's absolutely  
15 okay for the defendant to get in findings  
16 of fact and conclusions of law at this  
17 stage?

18 MR. BOWEN: We haven't asked for  
19 findings of fact and conclusions of law.

20 THE COURT: You're asking him to  
21 state in the mind of the defendant he was  
22 of the opinion that he was unjustly  
23 convicted.

24 MR. BOWEN: Haven't gotten to  
25 that yet.

1                   THE COURT: That's what I recall  
2 you asking.

3                   MR. BOWEN: What I'm asking is  
4 this. If we're going to expose Daniel to  
5 the jury to the knowledge that he was in  
6 prison -- I mean, they are not going to  
7 have any difficulty concluding that he was  
8 convicted of something -- to tell the whole  
9 story, to have the whole record clear, they  
10 need to also know that conviction was  
11 vacated. First of all, they have to know  
12 that in order to even begin to find the  
13 mitigating factor that he has no  
14 significant criminal record.

15                   THE COURT: Not under our case  
16 law.

17                   MR. BOWEN: It's important for  
18 them to know.

19                   THE COURT: Your position, as I  
20 understood it, there has to be an absolute  
21 absence of conviction to support that  
22 mitigating circumstance. That's not  
23 consistent with our case law.

24                   MR. BOWEN: I didn't say that.  
25 But if a jury can find if someone was

1           incarcerated for a couple of years as an  
2           adult for a significant assault, I think it  
3           would certainly be reasonable for them to  
4           say, well, that's not an absence of any  
5           criminal record, however they may far more  
6           likely find it if they are allowed to know  
7           that that matter has been vacated. I think  
8           that's just part and parcel of exposing  
9           him, because it's a significant life event,  
10          we feel that in mitigation that a jury has  
11          to know this in order to understand his  
12          whole life.

13                         THE COURT: I understand that.  
14          Why is it fair for the jury to get the  
15          whole picture as it relates to the  
16          defendant's theory of the case and unfair  
17          for the jury to get the whole picture when  
18          it relates to the State's theory of the  
19          case?

20                         MR. BOWEN: Because I think when  
21          you say we're trying to get in findings of  
22          fact and conclusions of law, that is not  
23          what we're trying to do. We're just trying  
24          to get in the result.

25                         THE COURT: Let me make it

1 simple. How about if the State only wanted  
2 to get in before the jury that Mr. Demery's  
3 motion to suppress was denied, that's all.  
4 The general result. How is that different  
5 from you attempting to get in the general  
6 result that Mr. Green's conviction was  
7 vacated?

8 MR. BOWEN: Well, because first  
9 of all, it's in a different phase of the  
10 trial. It goes to a completely different  
11 issue. He wants to -- Judge, he wants to  
12 make a -- he wants to counter a  
13 constitutional attack on the circumstances  
14 of giving a confession in that case. Here,  
15 all we're trying to do is establish a lack  
16 of criminal record for Mr. Green, and I  
17 think it totally --

18 THE COURT: The "it hurts"  
19 theory .

20 MR. BOWEN: Sir?

21 THE COURT: The "it hurts"  
22 theory. Under your theory, when they want  
23 to get it in, it hurts. When I want to get  
24 it in, it helps. That's what it comes down  
25 to.

1 MR. BOWEN: No, because it's in a  
2 different phase of the trial and deals with  
3 constitutional tactics.

4 THE COURT: Let me express this  
5 before we go any further. Folks, I am  
6 disappointed that you folks did not raise  
7 this issue with the Court in the absence of  
8 the jury. I would have expected that kind  
9 of conduct from lawyers what appear before  
10 me. I'm disappointed in that matter.

11 MR. BOWEN: We're talking about  
12 life course events. Don't -- wouldn't --

13 THE COURT: Mr. Bowen --

14 MR. BOWEN: -- A significant --

15 THE COURT: May I speak, sir?

16 MR. BOWEN: Yes, sir.

17 THE COURT: I'll give you an  
18 opportunity. I'm disappointed you folks  
19 didn't raise that. I've asked you folks on  
20 numerous occasions that when there is an  
21 issue of law that is questionable, the  
22 appropriate, professional, the ethical  
23 thing to do is say "We need to be heard,  
24 Judge, in the absence of the jury." "We  
25 need to raise a matter of law before the

1 Court."

2 Now, if your rationale is as you say,  
3 what posed any difficulty in standing up  
4 and saying "We need to be heard"?

5 MR. BOWEN: Well, I think the  
6 biggest problem is that Your Honor  
7 perceives a tremendous legal issue here,  
8 and I'm afraid that I just didn't, Judge,  
9 because, you know, we're opening the door  
10 to all these bad things that can come in  
11 out of the Ellison event, and just seems to  
12 me fundamental fairness that goes beyond  
13 any legal analysis, and given the issue of  
14 lack of criminal record that Mr. Green  
15 ought to --

16 THE COURT: Put the questions to  
17 Dr. Johnson that you intend to ask him in  
18 the presence of the jury so you can make  
19 your record and I can rule.

20 BY MR. BOWEN:

21 Q Dr. Johnson, what your -- you've discussed  
22 Dr. Johnson, the incarceration of Mr. Green as an  
23 adult?

24 A Yes.

25 Q And in your view, Dr. Johnson, is that one

1 of the critical life events for Daniel Green?

2 A Yes.

3 Q And in what ways do you consider that  
4 experience and those events critical to his life?

5 A I think he was wrongfully incarcerated, and  
6 the experience itself created a situation that was  
7 negative for youths at age 16.

8 Q What basis do you say that he was  
9 wrongfully incarcerated?

10 A Well, it's my understanding that the  
11 decision was vacated or whatever the language you all  
12 use in legal mumbo-jumbo. I'm sorry to characterize  
13 it that way, but that's the best I understand.

14 THE COURT: That's okay.

15 BY MR. BOWEN:

16 Q In other words, as the record stands now,  
17 it's your understanding that he no longer has a  
18 record of conviction of that Robert Ellison matter?

19 A Yes.

20 Q And how would both the conviction itself  
21 and the setting aside or vacating of that conviction  
22 affect your opinion of Mr. Green's life?

23 A You lose two years of your life, and they  
24 are important years in terms of a young man at age  
25 16. It's the time that you're thinking about making

1 plans for college, it's a time in which you're  
2 thinking about going to the prom, and things of that  
3 nature. And you're put in a situation where you are  
4 geographically isolated from your family and exposed  
5 to an environment that is just not conducive to  
6 growing up in your formative years of your life.

7 THE COURT: Yes, sir, anything  
8 further?

9 BY MR. BOWEN:

10 Q And how would the eventual vacation of  
11 those charges affect Mr. Green's attitude about that  
12 incarceration if you have an opinion?

13 A I think it creates a system of anger and  
14 creates --

15 Q The at whom, sir?

16 A At the system. And I might also add that  
17 it's important because although the decision may have  
18 been vacated in the eyes of employers, and in the  
19 eyes of a community you still did time in prison.

20 Q Now, is it your understanding that the  
21 vacation of that conviction occurred after he had  
22 already served a sentence?

23 A Yes.

24 MR. BOWEN: That's all, Your  
25 Honor.

1 THE COURT: Those are matters you  
2 intend to go into?

3 THE COURT: Mr. Britt.

4 MR. BRITT: May I ask him some  
5 questions?

6 THE COURT: Well, yes, sir.  
7 Dr. Johnson, with all respect, you are  
8 before the jury as an expert in the area of  
9 demography, you're an expert demographer?

10 THE WITNESS: That's correct.

11 THE COURT: You've got a  
12 background in sociology?

13 THE WITNESS: Right.

14 THE COURT: Have no background at  
15 all in psychology, professionally?

16 THE WITNESS: Well, I don't know  
17 what you mean by "professionally."

18 THE COURT: Licensed, certified.

19 THE WITNESS: No.

20 THE COURT: Psychiatry, licensed,  
21 certified?

22 THE WITNESS: No, absolutely not.

23 THE COURT: The difficulty,  
24 folks, is Dr. Johnson is absolutely  
25 entitled to give his expert opinion dealing

1 with matters of demography. We have gone  
2 beyond that. We've gotten into  
3 Dr. Johnson's opinion as to what effect  
4 this had on Mr. Green. We've gotten into  
5 Dr. Johnson's opinion as to the merits of  
6 the underlying conviction involved, which  
7 are clearly outside the scope of his  
8 expertise. Folks, you want to ask some  
9 questions of Dr. Johnson?

10 MR. BRITT: Yes, I just --

11 BY MR. BRITT:

12 Q You have said you had discussed with  
13 someone Mr. Green's incarceration?

14 A Yes.

15 Q Who was that?

16 A I've -- well, that may have been wrong.  
17 What I have done is read about it in the record of  
18 interviews that people have done with various  
19 individuals about the incarceration. If I said  
20 "discussed," I didn't mean that I had talked to  
21 someone directly.

22 Q And those interviews, did they include  
23 transcripts of the proceeding that was held last  
24 March?

25 A No, no.

1 THE COURT: What did they  
2 involve, Dr. Johnson?

3 THE WITNESS: These were key  
4 informant interviews that investigators had  
5 conducted with various individuals.

6 BY MR. BRITT:

7 Q Did you read anything as it related to the  
8 defendant's version of what happened in the incident  
9 involving Robert Ellison?

10 A The "defendant" you mean --

11 Q Daniel Green.

12 A There are things, there are interviews in  
13 the record with Daniel Green about what happened.

14 Q Were you aware that Daniel Green testified  
15 in court proceedings to matters different than what  
16 are contained in your typology as to the events that  
17 occurred involving Robert Ellison?

18 A No.

19 MR. BRITT: I don't have any  
20 other questions.

21 THE COURT: Anything further,  
22 Mr. Bowen, Mr. Thompson?

23 BY MR. BOWEN:

24 Q Dr. Johnson, you've been talking to us  
25 about the various environments in which Mr. Green

1 found himself throughout his life, is that correct?

2 A Yes.

3 Q Would you consider a prison environment a  
4 distinct and significant environment --

5 THE COURT: Mr. Bowen, for the  
6 record, he has already testified and I will  
7 allow him to testify again that Mr. Green  
8 was in prison.

9 BY MR. BOWEN:

10 Q And do you consider that a significant  
11 environment which in and of itself has a critical  
12 effect upon one's life and development?

13 A Yes, I do.

14 THE COURT: Anything further,  
15 folks?

16 BY MR. BOWEN:

17 Q All right. In gathering your data, you  
18 gathered it over what period of time, sir? Not in  
19 his life, but I mean, when did you start it, when did  
20 you finish it?

21 THE COURT: 250 hours.

22 MR. BOWEN: Sir?

23 THE COURT: 250 hours.

24 MR. BOWEN: I mean what time  
25 frame as in what year did he do this.

1 THE WITNESS: I think we started  
2 in about November, the first of November of  
3 '95, and we've been working ever since.

4 BY MR. BOWEN:

5 Q And did you find whether or not at that  
6 time Mr. Green had had any criminal record, prior  
7 criminal record?

8 A No.

9 Q He had none, is that what you're saying?

10 A That's right.

11 MR. BOWEN: That's all.

12 THE COURT: Yes, sir, Mr. Britt?

13 MR. BRITT: Your Honor, I don't  
14 have any other questions. I just -- I  
15 mean, we're going -- as the Court already  
16 noted, we're going beyond areas outside his  
17 expertise, and getting into matters of  
18 personal opinion.

19 THE COURT: Folks, and  
20 ultimately, potential problems might have  
21 been avoided in terms of what may  
22 ultimately end up before the jury by simply  
23 asking for a voir dire in advance so you  
24 would know in advance what the Court's  
25 ruling might be before venturing into these

1 areas. The State's objection is  
2 sustained. Defendant's exception is noted  
3 for the record. It's a matter for  
4 appellate review.

5 Dr. Johnson may testify as he has  
6 already testified, that Mr. Green was in  
7 prison. Dr. Johnson may not testify as to  
8 any opinions he has as to the justness or  
9 unjustness of any underlying conviction, or  
10 any opinion outside the scope of expertise  
11 as established before the Court.

12 MR. BOWEN: Let me ask you this.  
13 May he testify that part of his indicates  
14 that Daniel has no significant criminal  
15 record --

16 THE COURT: What is your  
17 foundation for that? You simply asked  
18 Dr. Johnson did you ascertain that, from  
19 where?

20 MR. BOWEN: From his data -- from  
21 when he began to accumulate his data  
22 between November and now, whenever he ended  
23 accumulating his data.

24 THE COURT: Two problems with  
25 that. Significant is a qualifying word.

1 MR. BOWEN: I'll remove that.  
2 Did he find any criminal record.

3 THE COURT: What is the State's  
4 position?

5 MR. BRITT: Mitigating  
6 circumstances is no -- is worded "no  
7 significant prior criminal history."

8 THE COURT: "History," yes, and  
9 that's different from "record." That's the  
10 second problem.

11 MR. BOWEN: Well, but "record"  
12 would bear on that issue, if he has no  
13 record then one could certainly logically  
14 argue he has no criminal history,  
15 significant criminal history. Now, if this  
16 is available in this man's data, and  
17 we've -- as we've indicated to the Court  
18 we're relying heavily on his data --

19 THE COURT: Ask him the  
20 questions.

21 Dr. Johnson, in obtaining the data  
22 that you shared with us in your testimony,  
23 did you consult any judicial or court  
24 sources?

25 THE WITNESS: I don't know what

1           constitutes --

2                   THE COURT:   Court records.

3                   THE WITNESS:  Key informants

4           by --

5                   THE COURT:  No, sir.

6                   THE WITNESS:  No, sir.

7                   THE COURT:  Mr. Bowen, anything

8           further?

9   BY MR. BOWEN:

10           Q       Okay.  What were your sources if any  
11   relative to Mr. Green's prior criminal record?

12           A       Again, I reviewed all of the key informant  
13   interviews that were done that included interviews  
14   with Mr. Green.  There were media coverage of the  
15   events surrounding the accident, and a range of other  
16   things.  To be honest with you, I don't remember all  
17   of them, but we did that in early November, and we  
18   tried to summarize it to the best of our ability what  
19   we found in those materials.

20                   MR. BOWEN:  That's all.

21                   THE COURT:  Well, folks, I'm  
22   going to have to deal with it in the way it  
23   is.  And I'm sorry about that, but that's  
24   what I'm going to have to do.  I didn't  
25   choose this course.  I talked to you folks

1           yesterday, and told you folks I would not  
2           interfere in any way and I do not intend  
3           to, but it is my responsibility to rule on  
4           matters of law. State want to be heard as  
5           to that later testimony?

6                   MR. BRITT: Yes, sir. If it  
7           isn't part of his data, therefore he can't  
8           state an opinion.

9                   THE COURT: On the basis now  
10          before the Court, the objection is  
11          sustained. But I'll give you folks an  
12          option, option of asking the question on  
13          voir dire right now in another way.

14 BY MR. BOWEN:

15           Q       Dr. Johnson, in your data, did you find any  
16          significant history of prior --

17                   THE COURT: Can't use that word,  
18          Mr. Bowen.

19 BY MR. BOWEN:

20           Q       Did you find any history of any -- did you  
21          find any evidence of prior criminal behavior on  
22          Mr. Green's part -- convictions, I'm sorry, prior  
23          criminal convictions?

24           A       No.

25                   THE COURT: And what were the

1 sources, Dr. Johnson, that you used in  
2 reaching that conclusion?

3 THE WITNESS: Again, to the best  
4 of my recollection, there were --

5 THE COURT: And I don't mean to  
6 quibble, but for my purposes I need to know  
7 specific names or sources.

8 THE WITNESS: I understand. All  
9 I remember is that in the file that we  
10 have, and it's in excess of a thousand  
11 pages, there are key informant interviews  
12 with a range of different individuals,  
13 there's news coverage surrounding all the  
14 events we're talking about, including the  
15 Robert Ellison case, and there are  
16 discussions on both sides of the coin, from  
17 both perspectives, from Daniel Green's  
18 perspective, from Robert Ellison's  
19 prospective. Now, when it comes to what  
20 constitutes a legal document, I honestly  
21 don't remember what they were.

22 THE COURT: Mr. Britt, do you  
23 want to take a position as to the question  
24 as posed?

25 MR. BRITT: If I could ask one

1 question.

2 THE COURT: Yes, sir.

3 BY MR. BRITT:

4 Q Dr. Johnson, you've testified that you  
5 reviewed Mr. Green's prison records?

6 A Yes.

7 Q You're aware in those prison records he was  
8 charged with assault on other inmates and convicted?

9 A Absolutely. And I want to respond to that  
10 if I may, if I'm allowed to.

11 THE COURT: Yes, sir.

12 THE WITNESS: That was my point  
13 about having a young man in a criminal  
14 justice system that focuses on punishment  
15 as opposed to rehabilitation. Here's a  
16 young man that's very proud, that was -- is  
17 an individual who speaks for himself, and  
18 many instances for young black males who  
19 are assertive, they get labeled in prison,  
20 and some of the things that happen in  
21 there, we have no way of knowing, just to  
22 paint him as in a negative way for those  
23 events. I'm fully aware of that, and I  
24 think that is a part, potential problem  
25 that affected his life course of events.

1           That's my testimony on that.

2       BY MR. BRITT:

3           Q       And you're aware that -- you reviewed the  
4       disciplinary records maintained by the Department of  
5       Corrections on the defendant?

6           A       Some of them, yes.

7           Q       You were aware that the defendant was  
8       sentenced as a committed youthful offender?

9           A       Yes.

10          Q       Do you know what that status is?

11          A       No.

12          Q       Are you aware that a committed youthful  
13       offender is eligible to be released the day he walks  
14       into the Department of Corrections?

15          A       No, I don't know the details of any of  
16       that.

17          Q       You were aware that Mr. Green served  
18       approximately two and a half years of a six year  
19       sentence as a committed youthful offender?

20          A       Yes.

21          Q       And that was at a time when the inmates in  
22       North Carolina Department of Corrections served  
23       roughly a tenth of the sentences that they  
24       received?

25                   THE COURT:   You wouldn't get the

1 last --

2 MR. THOMPSON: Well, I object.

3 THE COURT: I can take care of  
4 it, Mr. Thompson. The jury is out, I can  
5 handle it.

6 MR. BRITT: I withdraw it.

7 THE COURT: I'm going to let it  
8 in. I'm going to let Mr. Bowen ask him  
9 questions, State's going to be entitled to  
10 pursue those matters.

11 MR. THOMPSON: Your Honor, may I  
12 be heard?

13 THE COURT: Yes, sir.

14 MR. THOMPSON: The District  
15 Attorney asked him was he aware that he was  
16 convicted of an assault on an inmate. And  
17 when he uses the word "convicted," I mean,  
18 you're talking about disciplinary --

19 THE COURT: Folks, you opened  
20 this Pandora's box and in fairness to the  
21 State, the State's going to get the same  
22 shot.

23 MR. THOMPSON: He's got to have a  
24 good faith basis.

25 THE COURT: Counsel for defendant

1 has to have a good faith basis for raising  
2 questionable matters in the presence of the  
3 jury. Folks, the bottom line is my purpose  
4 is to be fair and evenhanded with the State  
5 and with counsel for the defendant. That's  
6 my purpose.

7 MR. BRITT: So that matters are  
8 clear on the record, my good faith basis, I  
9 have a certified copy of Mr. Green's --

10 THE COURT: And you can question  
11 Dr. Johnson about any matters contained in  
12 that certified copy based on the Court's  
13 ruling.

14 MR. THOMPSON: That's not a  
15 conviction, Your Honor.

16 MR. BOWEN: And you see, we  
17 haven't been served in the discovery with  
18 that and as a conviction, our good faith  
19 basis --

20 THE COURT: Mr. Bowen, if there  
21 was any legal authority in the State of  
22 North Carolina, in the United States of  
23 America, in the universe as we know it, you  
24 would bring it to court for your position.  
25 But I'm going to let it in to a certain

1 extent, and I'm going to give the State  
2 latitude on cross-examination. Bring the  
3 jury back in, Mr. Horne.

4 (Jury in at 11:22 a.m.)

5 THE COURT: Mr. Bowen.

6 MR. BOWEN: Yes, sir.

7 BY MR. BOWEN:

8 Q Dr. Johnson, we were in the age category or  
9 age bracket 16. Are there any other critical life  
10 course events that Mr. Green in your typology there  
11 regarding the age bracket of 16 which you believe are  
12 significant?

13 A Well, let me say that I think all of them  
14 are significant. I don't select and pick and choose  
15 everything that I put down here I think is  
16 significant. And so they are all important. I think  
17 the message that I want to convey is that at this  
18 particular age point, if you just take a summary  
19 view, there are more frowny faces and negative things  
20 than there are positives in his life. That's the  
21 message that should be communicated at this  
22 particular point.

23 Q And how do you feel, if you do, that his  
24 environment and his family circumstances and school  
25 circumstances and the like, other factors which

1 you've talked about, have brought about those  
2 instances that are represented by frowny faces?

3 MR. BRITT: Objection.

4 THE COURT: To the form,  
5 sustained. I'll allow some latitude on  
6 leading so we can get to -- yes, sir.

7 BY MR. BOWEN:

8 Q What other significant events in the age  
9 bracket 16 do you feel had an effect on Daniel's  
10 life?

11 MR. BRITT: Objection.

12 THE COURT: Mr. Bowen, do you  
13 want to point him to a specific matter,  
14 sir.

15 MR. BOWEN: I'll be glad to.

16 THE COURT: Yes, sir.

17 BY MR. BOWEN:

18 Q Now, you indicate that in the ninth grade  
19 in West Florence High School, he was placed back in a  
20 grade, and I believe you talked about that earlier?

21 A Well, I talked about what happens to kids  
22 who move frequently, and there are encounters with  
23 the school system, that's just yet another kind of  
24 negative experience with the school system is tied to  
25 an instable kind of residential environment. So --

1 yes, I have talked about that before.

2 Q And in particular, the event of Mr. Green's  
3 being placed back in West Florence High in the ninth  
4 grade, what effect in your opinion did that have on  
5 Daniel's life?

6 A Well, any time you're retained or placed  
7 back, it has a negative effect, particularly when  
8 you -- kids grow up in cohorts, and they have peers  
9 and the like, and even if you're going to a new  
10 environment, to know that you've already  
11 experienced -- been in an advanced grade and you've  
12 been put back a year, obviously it has negative  
13 effect on you and your aspirations.

14 Q And then in the age 16 to 18 bracket, 1990  
15 to '92, what are the most significant critical life  
16 course events that you found had impact?

17 MR. BRITT: Objection.

18 THE COURT: Sustained as to

19 form.

20 BY MR. BOWEN:

21 Q You indicated that Daniel had some  
22 illnesses in his age 16 to 18 bracket?

23 A Yes.

24 Q What were the nature of those?

25 A I believe they were associated with him

1 being incarcerated, that he was in and out of the  
2 infirmary while he was incarcerated.

3 Q And while there, did he make some  
4 educational progress, did he achieve some skill or --

5 A Yes, he got his GED while he was there, and  
6 got certificates in woodworking and in small engine  
7 repair, I guess.

8 Q And you found other negative events in that  
9 bracket, is that correct?

10 A Yes.

11 Q And then in age 19 bracket, what  
12 significant did you find that he completed his GED  
13 there?

14 A It was completed in prison, yes.

15 Q At the bottom of your first column, Dr.  
16 Johnson, and with respect to ages and dates set forth  
17 on this Defendant's Exhibit 50, what is your notation  
18 there, sir?

19 A Ages and dates are approximate.

20 MR. BOWEN: At this point, Your  
21 Honor, the defense moves to introduce  
22 Defendant's Exhibit Number 50 for  
23 substantive purposes.

24 THE COURT: Mr. Britt.

25 MR. BRITT: No objection.

1 THE COURT: Then without  
2 objection, State's 50 is admitted in  
3 evidence -- strike that, I apologize.  
4 Defense 50 is admitted in evidence. I  
5 apologize. Yes, sir, any additional  
6 questions for Dr. Johnson, folks?

7 MR. BOWEN: That's all, Your  
8 Honor.

9 THE COURT: Mr. Britt, any  
10 cross-examination?

11 CROSS-EXAMINATION

12 BY MR. BRITT:

13 Q Dr. Johnson, in the second column under the  
14 heading age 13, 12-1986 through 10-1987, you have an  
15 entry, abandoned in park by father in Philadelphia  
16 with Ebony from 2:00 to 8:00 p.m. during winter while  
17 father conducted transaction elsewhere?

18 A Yes.

19 Q From whom did you receive that information?

20 A It's in his records.

21 Q Which records?

22 A The records that I reviewed, there's  
23 thousands of pages there.

24 Q School records?

25 A There are key informant interviews there,

1 school records, and this would most likely be from a  
2 key informant, from someone in the family who would  
3 have had intimate knowledge about that experience.

4 Q Did you also consult any records that  
5 Dr. Rohrer utilized?

6 A Yes, sir.

7 Q And in that same column, you noted that he  
8 began carrying a gun at the age of 13?

9 A Yes, sir. And the significance of that is  
10 that I need to put into context what life is like in  
11 inner city communities. Daniel began carrying a gun  
12 not because he wanted to rob and the like, but rather  
13 for protection.

14 THE COURT: I apologize for the  
15 interruption, but unless you can point to  
16 some data upon which you rely to support  
17 any opinion, that would be inappropriate to  
18 give any --

19 THE WITNESS: Sir, it's in the  
20 record. And this is not something that is  
21 unique to Daniel. We know from the surveys  
22 that we've done in inner city communities  
23 that not all kids that carry guns carry  
24 them because they want to rob and the  
25 like. If you look at school data and the

1 erection of metal detectors and the like,  
2 not every kid that brings a gun to school  
3 is bringing one to rob somebody, but rather  
4 for protection. That's one of the codes of  
5 inner city streets, and it's important for  
6 us to understand that.

7 THE COURT: I certainly  
8 appreciate and understand that, but the  
9 jury's responsibility in this case is to  
10 consider matters relevant to the issues  
11 before us.

12 Mr. Britt.

13 BY MR. BRITT:

14 Q Now, it's your testimony that he carried  
15 this gun not for purposes of committing crimes?

16 A Yes, sir.

17 Q In that same column, as a matter of fact  
18 the next entry beneath the entry about carrying the  
19 gun, you have an entry, exposed during this time to  
20 drug dealers and users?

21 A Yes, sir.

22 Q And then the final entry in this column is  
23 his role models were drug pushers, and he would run  
24 errands for them?

25 A Yes, sir.

1 Q So he was hanging out with drug dealers?

2 A Everybody in inner city communities that  
3 are economically isolated and economically marginally  
4 socially isolated from mainstream avenues of economic  
5 opportunity are exposed to drug dealers and role  
6 models. That's what is unique and different about  
7 inner city communities today than 20 years ago. The  
8 stuff that I was trying to give you yesterday about  
9 jobless communities, jobless ghettos, people turn to  
10 the illegal and underground economy when there are  
11 not mainstream economic opportunities. That's the  
12 crucial thing that distinguishes the 1980s and the  
13 1990s from the 1960s. And kids who grow up in those  
14 environments are exposed to those kind of things  
15 whether we like it or not.

16 Q And this is the same 13 year old kid that  
17 you previously testified tried to avoid gang  
18 activity?

19 A Yes, sir.

20 Q Ran to school because he was afraid of  
21 gangs?

22 A Absolutely.

23 Q But he was running errand for drug dealers  
24 for a period of time?

25 A No. There's something called cumulative

1 causation, and what happens in these environments is  
2 the longer you're there, the more likely you are to  
3 adopt those kinds of modes of behavior. These are  
4 communities that have bereaved of mainstream  
5 institution and role models. And what has happened  
6 in these communities in the post-1980 period that the  
7 kinds of institutions that used to discourage kids  
8 from engaging in disfunctional, antisocial behavior  
9 and encourage them to pursue mainstream avenues of  
10 social and economic mobility have been adversely  
11 affected by the massive cuts in social programs and  
12 revenue sharing programs for cities and communities.

13           If you look at community based  
14 organizations in urban communities, what you will see  
15 is that at the onset of the Regan revolution in the  
16 beginning of the 1980s, these organizations lost  
17 about half of their support precicely at the time  
18 that conditions were getting worse in these  
19 communities. This is a structural problem, it's not  
20 an individual level problem.

21           Q     Now, you've referred to a number of schools  
22 that he attended.

23           A     Yes, sir.

24           Q     Did the data that you reviewed show that  
25 the defendant was expelled from Scotland High School

1 for fighting?

2 A Yes, sir. I addressed that earlier, that I  
3 said that what happens to kids in these environments  
4 when they are not academically challenged, they begin  
5 to act out sometimes, they get in trouble.

6 Q And the data as indicated in the third  
7 column of your typology shows that he was expelled  
8 from school for fighting and then moved to Texas?

9 A Again, it's a function of the way the  
10 school system responded to him and a high degree of  
11 mobility.

12 Q And in the third column, under the category  
13 1990, age 16, he was expelled from West Florence High  
14 School for fighting?

15 A That's correct.

16 Q And in that same category, 1990, age 16,  
17 your data indicated that he received a ten millimeter  
18 gun and two clips of ammo in lieu of \$300 that was  
19 owed him?

20 A That's correct.

21 Q What was that \$300 owed to him for?

22 A I have no idea.

23 Q In that same column, 1990, age 16, you have  
24 an entry Lisa lost baby, brought relationship closer,  
25 continued to sell marijuana to secure funds in lieu

1 of prison. The data that you had indicated that the  
2 defendant was selling marijuana?

3 A Yes. This is a common experience in  
4 communities, again, where there are no jobs, no  
5 experiences, people often turn to the underground or  
6 illegal economy.

7 Q And was the \$300 that was owed to him when  
8 he received the ten millimeter gun, was that a drug  
9 debt?

10 A Sir, in the record, as I indicated before,  
11 it is unclear what the \$300 was for.

12 Q You have an entry at age 16, he made \$400 a  
13 week?

14 A Yes.

15 Q And that was while he was living in  
16 Florence?

17 A Yes.

18 Q But there's no entry in your records  
19 showing that he worked while he was in Florence?

20 A Well, he -- one of the things that Daniel  
21 did was made tapes, and he sold them.

22 Q Is that indicated in your typology?

23 A No, I just indicated that he made money.

24 Q In your last column under the heading 1990  
25 through 1992, age 16 through 18, you have an entry,

1 awaiting incarceration, began to hang out with people  
2 selling rock. You mean crack cocaine?

3 A Yes, sir.

4 Q Kept a gun because robbery?

5 A Yes, sir.

6 Q Do you know what type of gun he was keeping  
7 at that time?

8 A No, sir.

9 Q Data didn't indicate that?

10 A No, sir.

11 Q You indicated that you had reviewed prison  
12 records involving the defendant?

13 THE COURT: Well, you need to  
14 ask --

15 BY MR. BRITT:

16 Q Excuse me. Did you review prison records  
17 involving Daniel Green?

18 A There were some records in there about  
19 disciplinary action and his medical records from  
20 prison.

21 Q And the data that you reviewed in regard to  
22 the prison records indicated that he continued to  
23 fight while in prison?

24 A The data indicates -- well, there are a  
25 series of data, some of it indicates the extent to

1 which he was accosted in prison and the way he  
2 responded to being challenged in prison. You have to  
3 protect yourself. If you've never been in one, I'm  
4 sure you have, I'm sure you understand the rules of  
5 being in prison. You either protect yourself or get  
6 taken advantage of. This is a young kid at age 16 in  
7 that environment. Fresh meat as it were.

8 Q And did the data that you reviewed in  
9 regard to his prison records involve an incident  
10 where he went into the gym unauthorized and attacked  
11 another inmate?

12 MR. THOMPSON: Object.

13 THE COURT: Basis? Overruled.

14 You may answer.

15 THE WITNESS: I don't remember  
16 that specifically.

17 BY MR. BRITT:

18 Q You indicated the defendant went to prison?

19 A Yes, sir.

20 Q And that was as a result of an incident  
21 involving a Robert Ellison?

22 A Yes, sir.

23 Q Where the defendant Daniel Green struck  
24 Robert Ellison in the head with an axe?

25 A Well, Robert Ellison was hit in the head

1 with an axe. I'm not sure he struck him or he walked  
2 into the axe, I mean the records say he walked into  
3 the axe while Daniel was backing up. I wasn't there  
4 so I don't know, can't answer that question.

5 Q But you know that he went to prison for an  
6 incident involving Robert Ellison where Robert  
7 Ellison was struck with an axe?

8 A Yes, sir.

9 Q And the defendant was 16 years old and four  
10 months at the time he went into prison based on your  
11 data?

12 A Yes, that's what his records show.

13 Q And he served two and a half years --

14 A Yes, sir.

15 Q -- in prison. Were you aware that the  
16 defendant was sentenced as a committed youthful  
17 offender?

18 A Yes, sir.

19 Q Do you know what a committed youthful  
20 offender status is?

21 A No, sir.

22 Q Are you aware that the defendant was  
23 eligible to be released --

24 MR. THOMPSON: Object.

25 THE COURT: Overruled.

1 BY MR. BRITT:

2 Q -- from prison as a result of a committed  
3 youthful offender status the day he was  
4 incarcerated?

5 MR. THOMPSON: Objection.

6 THE COURT: Overruled, exception  
7 noted. You may answer, Dr. Johnson.

8 THE WITNESS: The significance  
9 for me, Mr. Britt, is not what he was  
10 eligible for but rather what he  
11 experienced. My whole testimony is about  
12 critical life course events. That's not  
13 about some pie in the sky thing. It's  
14 about real life experiences. There's no  
15 question Mr. Green spent two and a half  
16 years in prison. My argument is that that  
17 was a critical life event, and the kinds of  
18 things that happened to him in prison  
19 shaped his outlook on life. It's that  
20 simple.

21 BY MR. BRITT:

22 Q And in your typology, the last column, the  
23 last category, 1993, age 19, will you read the first  
24 entry there?

25 A 6-4-93, was released from Sand Hills Youth

1 Center.

2 Q June the 4th of '93, he was released from  
3 the North Carolina Department of Corrections?

4 MR. THOMPSON: Well, object.

5 THE COURT: Overruled. You may  
6 answer.

7 THE WITNESS: I don't --

8 MR. THOMPSON: He's already  
9 answered --

10 THE COURT: Overruled. You may  
11 answer.

12 THE WITNESS: What's the  
13 difference between Sand Hills and the North  
14 Carolina --

15 THE COURT: What he is asking  
16 you, are you aware that that's a unit of  
17 the North Carolina Department of  
18 Corrections.

19 THE WITNESS: Yes.

20 BY MR. BRITT:

21 Q And the last entry, you testified yesterday  
22 that Mr. Green was employed as a dishwasher?

23 A Yes, sir.

24 Q And he quit that job, didn't he?

25 A Yes, sir.

1 Q Do you know when he began his employment as  
2 a dishwasher after being released on June the 4th,  
3 1993 from Sand Hills Youth Center?

4 A I don't have the exact date.

5 Q And he was also selling marijuana at that  
6 exact same time, based upon your entries?

7 A Yes, sir.

8 MR. BRITT: I don't have any  
9 other questions.

10 THE COURT: Any redirect  
11 examination?

12 MR. BOWEN: Yes.

13 REDIRECT EXAMINATION

14 BY MR. BOWEN:

15 Q Dr. Johnson, after setting up your typology  
16 of critical life course events on Defense Exhibit  
17 Number 50, did you categorize those life course  
18 events in another graphic as regards the positive and  
19 neutral events versus the negative events?

20 A Yes, sir.

21 MR. BOWEN: May I approach the  
22 witness, Your Honor?

23 MR. BRITT: Objection.

24 THE COURT: The objection is  
25 sustained. Do you want to be heard,

1 Mr. Bowen? Basis as I understand it, it's  
2 outside the scope of cross.

3 MR. BRITT: Yes, sir.

4 THE COURT: You folks want to be  
5 heard?

6 MR. BOWEN: Well, it's -- I guess  
7 we better be heard on it, yes, sir.

8 THE COURT: Folks, let me give  
9 you a break, about 20 minutes. Please  
10 report directly back to the jury room at  
11 12:00 and we'll continue at that time.  
12 Please recall that it is your duty to abide  
13 by all prior instructions of the Court  
14 concerning your conduct. And if we could  
15 assist Ms. Odum. Thank you, folks.

16 (Jury out at 11:42 a.m.)

17 THE COURT: Let the record show  
18 the following is occurring in the absence  
19 of the jury. Mr. Bowen and Mr. Thompson.

20 MR. BOWEN: Your Honor, proposed  
21 Defendant's Exhibit Number 51 actually  
22 contains the exact same entries as  
23 Defendant's Exhibit Number 50, and the only  
24 difference is that it has been  
25 characterized -- or has been categorized as

1 all positives and neutrals in one column  
2 and negatives in the other. Now, we simply  
3 say the State did talk about and infer to  
4 extensively the typology of critical life  
5 course events, and therefore all we're  
6 doing is simply providing a graphic that in  
7 summation divides these things into  
8 columns, same information talked about in  
9 cross.

10 THE COURT: Mr. Britt, do you  
11 want to be heard?

12 MR. BRITT: Other than the  
13 documents contain the same information,  
14 that's --

15 THE COURT: There's a lot of  
16 information in the documents, folks, and I  
17 understand -- I indicated yesterday that I  
18 thought a lot of the information that  
19 Dr. Johnson could share with us would be  
20 valid for the purpose of the consideration  
21 under Skipper and under Lockett.

22 As a side, I'm -- you could change  
23 this name and it will apply to a lot of  
24 folks. I know where 12th and Poplar is, I  
25 know where 17th and Diamond is. I use to,

1 quote unquote, hang out in that area. I  
2 know folks who fall into this category. My  
3 concern was that valid information  
4 pertaining to the defendant in mitigation  
5 might be obscured in a lot of other stuff.  
6 That was my concern that I expressed  
7 yesterday, perhaps inartfully, because the  
8 law requires that the information pertain  
9 to the defendant, and doors have been  
10 opened in that regard.

11 There's information here, folks, that  
12 ought to be considered as it relates to  
13 this defendant. I'm going to let it in,  
14 Mr. Britt. I'm going to note the State's  
15 objection, because bottom line is it cuts  
16 both ways as it is now. And ultimately,  
17 those fact finders have to determine what  
18 value to give it, if any.

19 And to a great extent, that's a result  
20 of how it's presented. But I'm going to  
21 let it in. The State's exception is noted  
22 for the record. Thank you, you can step  
23 down for a moment, please. At ease until  
24 12:00.

25 THE BAILIFF: Court stands at

1 ease until 12:00.

2 (Brief recess.)

3 THE COURT: Mr. Horne, just  
4 indicated to me that Ms. Manuel stuck her  
5 head out the jury room and requested that  
6 he convey to me that she needs to be out of  
7 here by 12:15, 12:30. How much more  
8 additional do you have of Dr. Johnson?

9 MR. BOWEN: Five minutes.

10 THE COURT: We're going to  
11 stop --

12 MR. THOMPSON: Just to introduce  
13 this last document.

14 MR. BOWEN: Introduce it and pass  
15 it.

16 THE COURT: State --

17 MR. BRITT: I don't anticipate  
18 any other cross.

19 THE COURT: How many more  
20 witnesses do you folks have?

21 MR. THOMPSON: One.

22 THE COURT: That ought to take us  
23 two or three days. Bring the jury in,  
24 please.

25 (Jury in at 11:59 a.m.)

1 THE COURT: Ms. Manuel, I  
2 understand that you need to leave within 15  
3 to 30 minutes, is that accurate?

4 JUROR: (Nods head  
5 affirmatively.)

6 THE COURT: As candidly as you  
7 can be, 12:15 or 12:30?

8 JUROR: 12:15.

9 THE COURT: Mr. Bowen.

10 MR. BOWEN: Dr. Johnson -- if I  
11 may approach the witness, Your Honor.

12 THE COURT: Yes, sir.

13 BY MR. BOWEN:

14 Q Defendant's Exhibit Number 51, Dr. Johnson,  
15 what is this, please?

16 A This is entitled life course events of  
17 Daniel Andre Green. What we've done is taken the  
18 materials from the typology and summarized it for the  
19 benefit of the jury into literally two categories,  
20 what has been positive and relatively neutral in his  
21 life, and what has been negative in his life. And  
22 it's just a kind of summary measure of all the things  
23 that we've talked about visually. You can see  
24 there's more negatives than positives. That's the  
25 message that we were trying to convey.

1 Q Does it contain the same data information  
2 as Defense Exhibit Number 50?

3 A That's right. If this is number 50, it  
4 contains the same information, it's just summarized  
5 in a different way.

6 MR. BOWEN: Desire to introduce  
7 it, Your Honor, as substantive evidence.

8 THE COURT: Mr. Britt.

9 MR. BRITT: No objection.

10 THE COURT: Without objection --  
11 is that 51?

12 MR. BOWEN: Yes, sir.

13 THE COURT: -- Defense Exhibit 51  
14 is admitted into evidence.

15 MR. BOWEN: Desire to pass  
16 copies, Your Honor.

17 THE COURT: Yes, sir.

18 (Exhibits passed to the jury.)

19 THE COURT: Any further questions  
20 from Dr. Johnson, Mr. Bowen?

21 MR. BOWEN: No, sir.

22 THE COURT: Any additional  
23 cross-examination on behalf of the State,  
24 Mr. Britt?

25 MR. BRITT: No, sir.

1 THE COURT: Folks, may Dr.  
2 Johnson be released?

3 MR. BOWEN: Yes, sir.

4 THE COURT: Thank you, sir.

5 THE WITNESS: Thank you, sir,  
6 very much.

7 MR. BOWEN: Garth Locklear.

8 THE COURT: I'm sorry, we're  
9 going to stop at this point. We're going  
10 to let Ms. Manuel -- yes, sir, you folks  
11 want to consult?

12 MR. THOMPSON: I'm sorry,  
13 Judge --

14 THE COURT: Well --

15 MR. THOMPSON: I'm trying to find  
16 out what you said because I was talking to  
17 him.

18 THE COURT: If you'll bear with  
19 me. How many additional witnesses do you  
20 have?

21 MR. THOMPSON: One more, very  
22 short, and we would like to --

23 THE COURT: Okay.

24 MR. THOMPSON: -- put that person  
25 on, however, the jury is still looking at

PERSON.  
1 exhibits. That was my problem.

2 THE COURT: Yes, sir. Yes, sir.  
3 Take your time, folks.

4 Folks, take whatever time you need to  
5 examine the exhibits that have been given  
6 to you, but so I will know who has finished  
7 and who has not, when you complete your  
8 examination, again, take whatever time you  
9 need, if you'll raise your hand and let us  
10 know so we can pass the exhibits to  
11 Mr. Horne.

12 Mr. Horne, if you'll approach the  
13 jurors who have their hands raised, please,  
14 sir. Would those of you who have not  
15 completed examination of those exhibits,  
16 again, take whatever time you need.

17 Have all members of the jury examined  
18 the exhibits that have been given to you?  
19 Thank you.

20 Mr. Thompson, Mr. Bowen.

21 MR. THOMPSON: Garth Locklear,  
22 Your Honor.

23 THE COURT: All right. Again, if  
24 you folks wish to hold off until tomorrow,  
25 I'll give you that opportunity. If you

1 wish to go forward now, we'll do that.

2 MR. THOMPSON: I think we'll be  
3 very short.

4 THE COURT: Mr. Locklear, if  
5 you'll come up and be sworn, please, sir.

6 JOEL GARTH LOCKLEAR,  
7 being first duly sworn was examined and testified as  
8 follows:

9 DIRECT EXAMINATION

10 THE COURT: Thank you, sir.  
11 State your full name for the record.

12 THE WITNESS: Joel Garth  
13 Locklear.

14 THE COURT: Spell your name for  
15 the benefit of the court reporter.

16 THE WITNESS: J O E L, G A R T H,  
17 L O C K L E A R.

18 BY MR. THOMPSON:

19 Q Mr. Locklear, where are you employed, sir?

20 A Public Defender's Office here in Lumberton.

21 Q And in what capacity?

22 A Investigator.

23 Q And Mr. Locklear, back on August the 16th  
24 of 1993, did you have an occasion to meet the  
25 defendant?

1 A Yes, sir, I did.

2 Q And where was that?

3 A Here in the courthouse.

4 Q And did you have an opportunity to observe  
5 specifically the defendant's stature or build with  
6 regards to his height and weight?

7 A Yes, sir, I did.

8 Q And Mr. Locklear, in your opinion,  
9 approximately how tall was the defendant back on  
10 August the 16th of 1993?

11 A Approximately 5-11.

12 Q And how much did he weigh?

13 A Approximately a hundred and seventy pounds.

14 Q And did you have an opportunity recently to  
15 measure the defendant's height?

16 A Yes, sir, I did.

17 Q When was that?

18 A Day before yesterday.

19 Q And how tall was the defendant when you  
20 measured him?

21 A 5-11 and a half.

22 Q And is there any -- did you notice any  
23 change in the defendant's weight from August the 16th  
24 of 1993 from the time that you measured his height  
25 the day before yesterday?

1 A Yes, sir, I have.

2 Q What was that change?

3 A He's lost approximately 20 pounds.

4 MR. THOMPSON: That's all.

5 THE COURT: Mr. Britt?

6 MR. BRITT: I don't have any  
7 questions.

8 THE COURT: Thank you,  
9 Mr. Locklear, you may step down.

10 Any additional showing for the  
11 defendant?

12 MR. THOMPSON: Your Honor, may we  
13 approach?

14 THE COURT: Well -- do you  
15 anticipate putting on additional evidence?

16 MR. THOMPSON: No, sir.

17 THE COURT: All right. Is the  
18 State anticipating putting on any rebuttal  
19 evidence?

20 MR. BRITT: No, sir.

21 THE COURT: Members of the jury,  
22 this concludes all of the evidence at this  
23 phase of the proceedings. And as you will  
24 recall, the Court has an obligation at this  
25 point to confer with the attorneys about

1 the law involved in this particular case as  
2 it relates to the issue of sentencing or  
3 punishment. We are going to do that  
4 tomorrow. You folks don't need to come in  
5 tomorrow. I'm going to schedule arguments  
6 in this case for Monday morning. Is that  
7 satisfactory with counsel for the State?

8 MR. BRITT: Yes, sir.

9 THE COURT: Is that satisfactory  
10 with counsel for the defendant?

11 MR. THOMPSON: Yes, sir.

12 THE COURT: Folks, if you will  
13 report directly to the jury room at 9:30 on  
14 Monday morning, we'll go forward with the  
15 arguments of counsel which will be followed  
16 by the Court's instruction on the law as  
17 the law relates to the issue of sentencing  
18 in this case.

19 Now, you've not yet heard the  
20 arguments of the attorneys, you've not yet  
21 heard the Court's instructions on the  
22 applicable law. You have a duty, folks, to  
23 remain open-minded about the issue of  
24 punishment in this matter. Don't talk  
25 about this case among yourselves, don't

1 talk about it with anybody else. Don't  
2 allow anyone to say anything to you or in  
3 your presence about the case. If anyone  
4 communicates with you or in your presence  
5 about the case, it remains your duty to  
6 inform us of that immediately.

7 Don't have any contact or any  
8 communication of any kind with anyone  
9 involved in the case. Don't allow  
10 yourselves to be exposed to any media  
11 accounts which may exist in connection with  
12 this matter, and don't conduct any  
13 independent inquiry or investigation or  
14 research of any kind.

15 Folks, be careful, the roads are kind  
16 of rough out there, so be careful going  
17 home. We'll see you at 9:30 Monday  
18 morning.

19 (Jury out at 12:11 p.m.)

20 THE COURT: Mr. Green, for the  
21 record, sir, I understand from  
22 circumstances that you have made the  
23 decision not to testify on your own behalf  
24 at this phase of the process, is that  
25 accurate, sir?

1 MR. GREEN: Yeah, I guess so.

2 THE COURT: And is that decision  
3 one which you have come to and made  
4 independently after consultation with your  
5 attorneys in this case?

6 Do you understand the question? If  
7 you don't, I'll ask it another way.

8 Basically what I'm asking you is  
9 you've indicated to me that you've elected  
10 not to offer your own testimony in this  
11 phase of the case, which is called the  
12 sentencing and the penalty phase. Is that  
13 correct so far?

14 MR. GREEN: Yes, sir.

15 THE COURT: Have you made that  
16 decision after you talked with Mr. Thompson  
17 and Mr. Bowen?

18 MR. GREEN: Yes, sir.

19 THE COURT: And have you taken  
20 into account any advice that they may have  
21 given you in that regard.

22 MR. GREEN: Yes, sir.

23 THE COURT: Understanding that  
24 they are duty-bound to advise you, do you  
25 also understand that your right is to

1           disregard that advice if you wish to do so,  
2           because this case ultimately is your case,  
3           not there's.

4                       MR. GREEN:  Yes, sir.  I mean,  
5           because I can't testify about -- I mean, I  
6           can't -- I don't understand, be honest with  
7           you, I don't understand.

8                       THE COURT:  I'll take my time,  
9           I'll make sure -- it's absolutely important  
10          that you do understand.  What I'm asking  
11          you is you have a right to testify, you  
12          understand that?

13                      MR. GREEN:  Yes, sir.

14                      THE COURT:  You can give that  
15          right up for tactical reasons, any other  
16          reasons, maybe because you've been advised  
17          by counsel, maybe because as a matter of  
18          tactics you think that's the wise thing to  
19          do, that by not testifying you expose  
20          yourself to less risk because you will not  
21          be exposed to cross-examination.  You  
22          understand all that I've said so far?

23                      MR. GREEN:  Yes, sir.

24                      THE COURT:  Whatever your reason  
25          might be, and I'm not asking you to tell me

1           what your reasons are --

2                   MR. GREEN:   What I don't  
3           understand, this phase of the case --

4                   THE COURT:   First phase is the  
5           jury decides guilt or innocence.  In this  
6           phase, the jury decides punishment.  Life  
7           or death.  That's what I mean by this  
8           phase, the sentencing phase.  Do you  
9           understand me now?

10                   MR. GREEN:   Yes, sir.

11                   THE COURT:   In this second phase  
12           where the only issue before the jury is  
13           whether to impose a sentence of life  
14           imprisonment by unanimous recommendation of  
15           the jury, or whether to recommend  
16           unanimously a sentence of death, that's  
17           what I'm talking about.  This phase.  Do  
18           you understand what I'm saying now, Mr.  
19           Green?

20                   MR. GREEN:   Yes, sir.

21                   THE COURT:   Okay.  Any questions  
22           at all about anything that I have said to  
23           you?

24                   MR. GREEN:   Well, no, sir.

25                   THE COURT:   Because I want to

1           make it absolutely clear to you, in the  
2           first phase of the proceedings, the issue  
3           for the jury to decide is is the defendant  
4           guilty of first degree murder. If the jury  
5           finds that the defendant is guilty of first  
6           degree murder in that first phase, our law  
7           requires that a second phase be held.

8                     In the second phase, which is called  
9           the sentencing or the penalty phase, the  
10          issue for the jury to decide is, having  
11          determined in this first phase that the  
12          defendant is guilty of first degree murder,  
13          now we have to determine whether to  
14          sentence the defendant to life imprisonment  
15          or to sentence the defendant to death.

16                    Do you understand what I've explained  
17          so far?

18                             MR. GREEN: Yes, sir.

19                             THE COURT: In the first phase,  
20          which again was the guilt or innocence  
21          phase, you had the opportunity, you had the  
22          absolute right to testify if you wished to  
23          do so. You understood that?

24                             MR. GREEN: Yes, sir.

25                             THE COURT: And based on your

1 response to my questions on the record in  
2 open court, you indicated that it was your  
3 choice at that point in the process not to  
4 offer your own testimony. Is that  
5 accurate?

6 MR. GREEN: Yes, sir.

7 THE COURT: You also understand  
8 that in the second phase, you have a right  
9 to testify.

10 MR. GREEN: But if I can't  
11 testify against the first phase, I can't  
12 testify against the jury's verdict.

13 THE COURT: Well, simply because  
14 I want to make sure we're communicating --  
15 Mr. Thompson, bear with me. I hear you say  
16 "I can't." Okay. What I want you to  
17 understand is you have a right to do so but  
18 you may elect not to do so because that  
19 poses less risk for you. You understand  
20 that?

21 MR. GREEN: Yes, sir.

22 THE COURT: In your mind. And  
23 are you telling me that in your mind you  
24 believe that it would not be appropriate  
25 for you to testify in this phase?

1 MR. THOMPSON: Your Honor, I want  
2 to consult with my client in response to  
3 that.

4 THE COURT: Yes, sir.

5 (Consultation between defense  
6 counselors and defendant.)

7 MR. THOMPSON: Your Honor, our  
8 advice to the defendant in response to your  
9 last question, "In your mind. And are you  
10 telling me in your mind you believe that it  
11 would not be appropriate for you to testify  
12 in this phase," we've advised -- our advice  
13 to the defendant is not to answer that  
14 question.

15 Your Honor, this is not -- you've  
16 asked the defendant what his decision is  
17 and he stated it to you, and you continued  
18 to ask him questions which elicit, we  
19 contend, the defendant to make comments  
20 concerning perhaps maybe even strategies,  
21 tactics, and the kind of questions that  
22 you've asked him now, "in your mind did you  
23 feel it's appropriate," he's answered the  
24 Court. He does not wish to testify. After  
25 consultation with the defendant, our advice

1 is that he not answer the question.

2 THE COURT: Well, it's abundantly  
3 clear to me that you and I speak a  
4 different English. And I note your  
5 objection, and your exception. My duty is  
6 to make sure that the defendant understands  
7 that he has a right to testify,  
8 Mr. Thompson.

9 MR. THOMPSON: Yes, sir.

10 THE COURT: And may I proceed  
11 with that?

12 MR. THOMPSON: And you've asked  
13 him that several times.

14 THE COURT: Mr. Thompson, may I  
15 proceed with that? Mr. Bowen, do you have  
16 any objection to my proceeding with that?

17 MR. BOWEN: Yes, sir, I'm greatly  
18 disturbed with this. I think -- I  
19 understand the Court's reason for  
20 inquiring, but at this point, Your Honor,  
21 you have seen as part of the sealed record  
22 that we attorneys know the things that we  
23 need to explore with our clients.

24 THE COURT: Folks, I'm not asking  
25 your client to tell me whether he's been

1           advised by you not to testify.

2                   MR. THOMPSON: Well, that's fine,  
3 I don't have any problem with that  
4 question.

5                   THE COURT: Well then sit down.  
6 You too.

7                   MR. BOWEN: That's not the  
8 problem.

9                   THE COURT: Sit down. I'm not  
10 asking you, Mr. Green, whether you have  
11 been advised. You understand that?

12                   MR. GREEN: Yes, sir.

13                   THE COURT: I'm not trying to  
14 solicit any attorney-client privilege  
15 here. I'm doing the best I can to make  
16 myself abundantly clear in plain English.  
17 Do you understand you have a right to  
18 testify?

19                   MR. GREEN: Yes, sir.

20                   THE COURT: Have you elected not  
21 to testify?

22                   MR. GREEN: Yes, sir.

23                   THE COURT: All right. That's  
24 what I'm trying to find out. And do you  
25 understand that that right or that choice

1 can be predicated on anything in the known  
2 universe, I don't care what it is?

3 MR. GREEN: Yes, sir.

4 THE COURT: You understand that?

5 MR. GREEN: Yes, sir.

6 THE COURT: But you've made that  
7 choice, is that accurate?

8 MR. GREEN: Ain't got much choice  
9 in the matter.

10 THE COURT: See, that's the  
11 problem, Mr. Thompson, Mr. Bowen.

12 You do have a choice sir, and I want  
13 you to understand that it is your choice  
14 alone. You understand that?

15 MR. GREEN: Yes, sir. But I  
16 mean, from what my understanding is that --

17 THE COURT: I'm not trying to pry  
18 into your reasons. I simply want to make  
19 you say on the record if this is the  
20 accurate situation as you understand it.  
21 You have that right and for whatever reason  
22 might exist, you have elected not to, but  
23 it's your right and nobody else's. You  
24 understand that?

25 MR. GREEN: Yes, sir.

1 THE COURT: That's all I was  
2 trying to get to.

3 Now, Mr. Bowen, Mr. Thompson, do you  
4 all have anything you want to add to that?  
5 We've got about -- well, it's only 12:20.  
6 Are you sure?

7 MR. BOWEN: You're asking for a  
8 response, and simply --

9 THE COURT: No, I'm just asking  
10 if you want to.

11 MR. BOWEN: Yes, I do want to.

12 MR. THOMPSON: Before you  
13 respond, let me consult with you.

14 MR. BOWEN: That's all.

15 THE COURT: Thank you, folks.  
16 Anything further from counsel for the  
17 State?

18 MR. BRITT: No, sir.

19 THE COURT: Folks, we're going to  
20 be here at 9:30 tomorrow morning. We'll do  
21 the charge conference tomorrow. We'll  
22 discuss arguments. The case law controls.  
23 The defendant has last argument. I  
24 anticipate that both counsel are going to  
25 argue. How many days do we need to set

1           aside? Recognizing that under the case law  
2           you have the right to unlimited argument,  
3           it's not my intent to infringe in any way.  
4           I'm just trying to get a realistic grasp on  
5           where we are.

6                     MR. THOMPSON: Who are you  
7           asking, the State or the defense first?

8                     THE COURT: He's over there. I'm  
9           looking this way.

10                    MR. BOWEN: I anticipate mine  
11           will be shorter than the guilt or  
12           innocence.

13                    MR. THOMPSON: Your Honor, we're  
14           talking about less than a day for the  
15           defense, I anticipate.

16                    THE COURT: I appreciate the  
17           information. Well, basically, folks, I am  
18           counting on possibly getting to the jury  
19           Tuesday or Wednesday. I would like it to  
20           be Tuesday, but I'm not going to impinge on  
21           anybody's right to argue. You folks have  
22           unlimited argument available to you. You  
23           can get up and argue as many times as you  
24           want to under the case law.

25                    Okay.

1           MR. BRITT: Just so that we're  
2 all operating off the same documents  
3 tomorrow, the latest instruction that I  
4 have under North Carolina Pattern  
5 Instruction 150.10 is dated April of 1995.

6           THE COURT: April '95 is the most  
7 recent one I'm aware of. You folks aware  
8 of anything more recent?

9           MR. THOMPSON: No, sir.

10          THE COURT: Okay. All right. I  
11 ask this for whatever it's worth. Counsel  
12 for the State needs to come to court with  
13 proposed aggravating circumstances in  
14 writing.

15          MR. BRITT: Yes, sir.

16          THE COURT: Counsel for the  
17 defendant needs to come to court with  
18 proposed mitigating circumstances,  
19 statutory, broken down, broken down into  
20 statutory, nonstatutory. If you contend  
21 that a peremptory instruction is  
22 appropriate, either as to a statutory  
23 mitigating circumstance or a nonstatutory  
24 mitigating circumstance, you need to  
25 indicated that in writing tomorrow morning.

1           Our function tomorrow will be to work  
2 out what's going to be submitted to the  
3 jury by way of aggravation and mitigation,  
4 so that we can prepare the issues and  
5 recommendations form which will be  
6 submitted to the jury.

7           MR. THOMPSON: He's saying 9:30  
8 tomorrow --

9           THE COURT: 9:30.

10          MR. THOMPSON: Yes, sir.

11          THE COURT: Okay. Any question  
12 about what I've asked for?

13          MR. BRITT: No, sir.

14          THE COURT: Anybody want to  
15 comment on what I've asked for?

16          MR. BRITT: (Shakes head  
17 negatively.)

18          THE COURT: Recess us until 9:30.

19          THE BAILIFF: All rise, please.

20                   (Court adjourned.)

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NORTH CAROLINA                    IN THE GENERAL COURT OF JUSTICE  
ROBESON COUNTY                    SUPERIOR COURT DIVISION  
FILE NO. 93 CRS 15291-93

STATE OF NORTH CAROLINA            )  
  )  
  )  
  ) vs.                    ) VOLUME 46  
  )  
DANIEL GREEN, aka AS-SADDIQ        )  
AL-AMIN SALLAM U'ALLAH,            )  
  )  
  ) DEFENDANT.         )  
  )  
  ) - - -

Transcript of Proceedings before the  
Honorable GREGORY A. WEEKS, Judge Presiding,  
before Steve S. Huseby, Registered Professional  
Reporter and Notary Public, Robeson County  
Courthouse, Lumberton, North Carolina, on  
the 8th day of March, 1996.



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## 1 APPEARANCES OF COUNSEL:

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7 On Behalf of the Defendant:

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10 and

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14

15 (March 8, 1996. Proceedings in open court.)

16

17 THE COURT: Good morning. Let  
 18 the record show all counsel are present,  
 19 the defendant is present in open court.

20 All counsel are present, the defendant  
 21 is present in open court. There's some  
 22 matters I want to put on the record before  
 23 we begin. It was brought to my attention  
 24 yesterday that I had forgotten to put on  
 25 the record the in camera proceedings,

1 in-chambers proceeding held -- today is  
2 Friday, was it Wednesday or Tuesday?  
3 Wednesday, at the defendant's request. The  
4 letter sealed, was that Wednesday?

5 March 4th, 1996.

6 MR. BRITT: I believe it was  
7 Monday. Monday was the day that someone  
8 had doctor's appointments and we were here  
9 part of the day.

10 THE COURT: Monday, March 4th.

11 Let the record reflect that the Court  
12 directed that a transcript of that in  
13 camera in-chambers proceeding be prepared,  
14 placed in the record in a sealed envelope.  
15 It has been placed in a sealed envelope, is  
16 that correct, Ms. Gaines? For potential  
17 appellate review.

18 The Court also wants to put those  
19 notes that I forgot to put in the other day  
20 from Mr. James Cassidy regarding his  
21 doctor's appointment, Mr. Kotai regarding  
22 his doctor's appointment, put everything in  
23 whatever the next numbers are. Court has  
24 directed that the media information request  
25 submitted requesting permission to place a

1 pool camera and still camera, one still  
2 camera in the courtroom be made a part of  
3 the record in this case, and if you'll also  
4 include that as well. All right. I think  
5 that's everything.

6 Court now has before it the State's  
7 proposed aggravating circumstances in  
8 writing. I'm going to direct that this be  
9 marked as an exhibit, placed in the  
10 record. This reads as follows: The State  
11 contends the following aggravating  
12 circumstances are supported by the evidence  
13 during both phases of this trial, 115 A  
14 2000 E-6, the capital felony it was  
15 committed for pecuniary gain, 215 2000 11,  
16 the murder for which the defendant stands  
17 conviction part of a course of conduct in  
18 which the defendant engaged and which  
19 included the commission of the crime by  
20 defendant of other crimes of violence  
21 against person or persons.

22 For the record, the defendant having  
23 been found guilty of first degree murder on  
24 the theory of felony murder, there is no  
25 issue that the underlying felony ought to

1 be submitted.

2 MR. BRITT: No, sir, there's no  
3 issue to that at all.

4 THE COURT: By case law, the  
5 underlying felony is the theory upon which  
6 the defendant was convicted, and therefore  
7 merges with the first degree murder  
8 conviction.

9 Counsel for defendant want to be heard  
10 as to the State's contended aggravating --  
11 E-6 and E-11?

12 MR. BOWEN: First one appears to  
13 be consistent with the State vs. Williams,  
14 and we're not arguing against the  
15 submission of that.

16 THE COURT: Either one?

17 MR. BOWEN: No, sir.

18 THE COURT: All right. I think  
19 both are supported by the case law. It  
20 would be the Court's intention with regard  
21 to aggravating circumstances to submit for  
22 the jury's consideration 15-A 2000, E-6, a  
23 15 thousand 2000 E-11. If you'll mark that  
24 as part of the Court's records. Do you  
25 have any proposed statutory and/or

1 nonstatutory.

2 MR. BOWEN: Yes, sir. May I  
3 approach and also serve the State's --

4 THE COURT: Yes, sir.

5 THE COURT: Do you have a copy of  
6 the -- folks, why don't we -- has everybody  
7 got a copy of the standard issues and  
8 recommendation form?

9 MR. BRITT: Yes, sir, I do.

10 THE COURT: Mr. Thompson, Mr.  
11 Bowen, is there any contention from counsel  
12 for the defendant that issue 1-A ought to  
13 be submitted to the jury under the facts in  
14 this case, what is called the Enmund issue,  
15 E N M U N D?

16 MR. BOWEN: Pattern instructions,  
17 I believe it is required under this  
18 circumstance, the jury doesn't get to  
19 include whether or not those four factors  
20 are present, I would think they would.

21 THE COURT: Just so I don't  
22 misunderstand, is it your contention that  
23 because it's included in the pattern  
24 instruction that 1-A is given in every  
25 case?

1           MR. BOWEN: No, sir, but I think  
2           having read over some of those factual  
3           issues, seems to me that there is evidence  
4           or lack thereof in this case.

5           THE COURT: What factors are you  
6           referring to?

7           MR. BOWEN: Particularly the  
8           fourth one, about the lesser involvement of  
9           the defendant.

10          THE COURT: Well, let's look at  
11          the footnote under that. Footnote says, if  
12          there is no evidence that anyone other than  
13          defendant participated in the killing -- is  
14          that the language you're referring to --  
15          omit the first requirement of proof and  
16          renumber the others. That's loose language  
17          by the pattern jury committee in my view.  
18          Stokes controls, State versus Stokes. I  
19          think what is meant here is if there is  
20          evidence that anyone other than the  
21          defendant committed the killing, omit the  
22          first requirement. "Participated" is in my  
23          view erroneous language under the case  
24          law.

25          Who's got State versus Stokes with

1           them? I've got it in my chambers.

2                   MR. BRITT: Stokes is cited at  
3           319 North Carolina. I can get that.

4                   THE COURT: Mr. Thompson, do you  
5           contend 1-A ought to be given?

6                   MR. THOMPSON: Yes, sir.

7                   MR. BRITT: If I can approach.

8                   THE COURT: Yes, sir. Thank you,  
9           sir.

10                   Have you folks got Oliver and Moore,  
11           one and two?

12                   MR. BRITT: I don't have --

13                   THE COURT: Oliver and Moore I've  
14           got up here, which basically expanded on  
15           Stokes, because Stokes was essentially a  
16           sufficiency of the evidence issue dealing  
17           with whether as a matter of law Edmund  
18           controlled or not. And I've got Oliver  
19           one. And Oliver two is 309, according to  
20           my recollection. I think I've got that in  
21           chambers. Under Oliver and Moore, if all  
22           the evidence shows that the defendant fired  
23           the fatal shot an Edmund issue should not  
24           be submitted.

25                   If all the evidence shows that the

1 defendant's buddy or co-defendant fired the  
2 shot, and that the defendant was present  
3 and supplied the gun, then according to  
4 Oliver, an Enmund issue should not be  
5 submitted. Three, if all of the evidence  
6 as to which one of the co-defendant's fired  
7 the fatal shot is in conflict, an Enmund  
8 issue must be submitted.

9 Four, if all of the evidence shows  
10 that the defendant's role was merely that  
11 of a look out, that he was not present at  
12 the scene of the robbery, that he did not  
13 intend or contemplated that the Clerk would  
14 be shot, neither an Enmund issue nor the  
15 death penalty issue may be submitted to the  
16 jury. It's a matter of pure law. If the  
17 defendant was merely --

18 MR. BRITT: Present.

19 THE COURT: No, participant as a  
20 lookout but was not present, and that he  
21 did not contemplate that a killing would  
22 occur, that's pure Enmund. Arguably that  
23 is the situation that Larry Martin Demery  
24 contended he fell in based on his initial  
25 statement. Arguably, but if he was

1 present, if he contemplated that a killing  
2 would occur, if he intended that a killing  
3 would occur or if he acted with reckless  
4 disregard, then either Enmund and/or Tyson  
5 versus Arizona control. So here we have a  
6 situation where, according to the evidence  
7 presented in this case, Mr. Green more  
8 closely falls in the factual pattern in  
9 Oliver or Moore.

10 And if you'll pull 309, I've got it in  
11 my chambers, it will save us some time.

12 Folks, as you will probably remember  
13 Oliver, Moore dealt with a situation where  
14 there were multiple homicides, there was  
15 evidence that each one of the defendants  
16 committed one of those homicides. It was a  
17 robbery, during the course of the robbery,  
18 a person in the store was killed, and  
19 someone coming to the store apparently as a  
20 customer was also killed in Moore and  
21 Oliver. One defendant killed the  
22 individual in the store. The other  
23 defendant killed the person coming to the  
24 store.

25 In my view, Mr. Green's situation is

1 more closely analogous to the reasoning set  
2 out in Oliver and Moore. Do you folks want  
3 to be heard?

4 MR. BOWEN: Yes, Your Honor. In  
5 some cases -- Oliver Moore was tried right  
6 here in Robeson County, and we've  
7 distinguished that in the sense that here  
8 we had two persons in our case, and for  
9 example, Your Honor mentioned who furnished  
10 the gun. We respectfully contend that that  
11 is an issue which was not entirely clear  
12 from the State's evidence but certainly  
13 there was a counterpoint to that in the  
14 defense evidence.

15 You will recall that the evidence of  
16 the lady talking about Mr. Demery reaching  
17 for the gun and threatening or saying he  
18 ought to shoot the little boy, the evidence  
19 of Ms. Nellie Montes, who saw the gun in  
20 Larry Demery's car, evidence suggesting  
21 that it was Larry Demery that went out to  
22 the scene by himself with the gun.

23 Now, the verdict of the jury actually  
24 does not tell us specifically at what point  
25 they found that Mr. Green had sufficient

1 involvement with this matter to give rise  
2 to their verdict. So we don't know from  
3 their verdict exactly where they placed him  
4 in terms of his involvement.

5 Now, of course they may resolve that  
6 issue if they are submitted these issues  
7 under Enmund and it may be resolved -- may  
8 be resolved beneficially to the State, but  
9 if they don't get the speak on these  
10 particular issues then I think they don't  
11 get to resolve whether they think Mr. Green  
12 furnished the gun or Mr. Demery furnished  
13 the gun.

14 THE COURT: Is that the issue or  
15 is it the issue of who fired?

16 MR. BOWEN: Well, it is the issue  
17 of who fired, and their verdict in and of  
18 itself does not say that. And therefore,  
19 for the issues in this case to be complete,  
20 and I think that's what Enmund and Tyson  
21 contemplated, I believe you have to go  
22 further.

23 Now, the other thing, of course Tyson  
24 gets into the real issue of is there  
25 substantial involvement by the defendant in

1 the whole scheme that's being played out.  
2 I believe in Tyson it was, there was a  
3 kidnapping and the young man who said all  
4 he was doing was holding the gun on the  
5 folks out in the desert.

6 THE COURT: All the evidence in  
7 that case showed those defendants did not  
8 kill.

9 MR. BOWEN: That's right.

10 THE COURT: All the evidence in  
11 Enmund showed that that person, Enmund, the  
12 person on trial, did not kill.

13 MR. BOWEN: Well, that may be,  
14 but still there is --

15 THE COURT: Or at least it was  
16 in --

17 MR. BOWEN: There is evidence in  
18 this case, not all the evidence, no, but  
19 some evidence that this defendant did not  
20 kill.

21 THE COURT: Where is it? Where  
22 is the evidence?

23 MR. BOWEN: The evidence is out  
24 that he was somewhere else, that four  
25 reasonable people have testified.

1 THE COURT: They have rejected  
2 that.

3 MR. BOWEN: All right. But that  
4 still -- no, that does not say -- by their  
5 verdict, I argue to you Your Honor, they  
6 have not said that this man fired the  
7 shot. They can have found their verdict  
8 not necessarily by having concluded that  
9 Daniel Green fired.

10 THE COURT: How could a jury find  
11 the defendant guilty if they accepted the  
12 alibi?

13 MR. BOWEN: I'll tell you very  
14 easily. What they did, they could believe  
15 any, some or all of what a defendant said.  
16 Suppose they didn't believe that the murder  
17 occurred at 3:00 in the morning like Larry  
18 Demery said so. That's what the State was  
19 staked out to. Suppose they believe as we  
20 had to admit even with the alibi that  
21 Demery and Green left at 5:00 in the  
22 morning. The first telephone call did not  
23 occur until 7:00 in the morning. You know  
24 the jury very carefully took those posters,  
25 that evidence on phone calls back there.

1           Suppose they believe that that murder  
2 occurred between 5:00 and 7:00 in the  
3 morning, and so it could have been that he  
4 went and got Green, it could have been that  
5 Larry Demery was the one that actually  
6 still killed him, but that Green was  
7 present during those couple of hours, and  
8 their verdict didn't actually nail that  
9 down for us.

10           THE COURT: Is there any evidence  
11 to support that anyone other than Mr. Green  
12 fired the shot? Evidence, not  
13 speculation. And I don't mean to  
14 characterize it in a negative way, but  
15 that's what it is.

16           MR. BOWEN: I'm saying that  
17 evidence that Larry Demery controlled the  
18 gun or a gun is very prevalent throughout  
19 the evidence as late as the Tedeschi  
20 evidence that suggests --

21           THE COURT: And if Larry Demery  
22 were on trial and if I were submitting  
23 these issues to the jury as to him, I would  
24 accept your argument, but Larry Demery is  
25 not on trial at this time, and the issues I

1 have to submit have to relate to Mr. Green.

2 MR. BOWEN: That's correct, but I  
3 think it is a factual issue. I don't think  
4 that the Court, on this evidence, I would  
5 argue cannot say as a matter of law on this  
6 evidence that Mr. Green fired the shot.

7 THE COURT: Court doesn't say  
8 that in any respect. That's the jury's  
9 determination. But Mr. Bowen, I understand  
10 your position. If I were standing there I  
11 would be arguing the same thing.

12 Folks, in my view there's no evidence  
13 to support submission of 1-A. Let the  
14 record reflect counsel for the defendant  
15 has requested the Court to submit 1-A. The  
16 Court has heard arguments from counsel for  
17 the defendant. Court denies that request  
18 and counsel for the defendant excepts for  
19 the record.

20 First issue to be submitted to the  
21 jury, Ms. Gaines, is Issue 1, which begins  
22 in the pattern jury instruction on page  
23 seven and reads as follows: Do you  
24 unanimously find from the evidence beyond a  
25 reasonable doubt the existence of one or

1 more of the following aggravated  
2 circumstances -- following that sentence is  
3 a parenthetical indicating that the Court  
4 is to state the number of the possible  
5 aggravating circumstances to be listed on  
6 the form. In this case, the Court will  
7 indicate in its instruction that two  
8 possible aggravating circumstances are  
9 listed on the form, and you should consider  
10 each of them before you answer Issue 1.

11 Court will follow that with the  
12 instruction set out on page seven regarding  
13 the burden of proof and the requirement of  
14 unanimity. Court will also define  
15 aggravating circumstances, utilizing the  
16 same language that the Court used during  
17 the jury selection process in this case.

18 Below, ma'am, if you will list the  
19 following aggravating circumstances.  
20 Folks, I'm skipping on in the pattern jury  
21 instruction now to E-6.

22 MR. BRITT: That's on page 18.

23 THE COURT: Yes. One, stating  
24 the ordinal number. Was this murder  
25 committed for pecuniary gain, with the

1 definition set out in the pattern  
2 instruction. Now, there's a parenthetical  
3 there indicating that the Court has  
4 responsibility of describing under the  
5 finding of pecuniary gain. Does the State  
6 have any suggested language for that  
7 parenthetical?

8 MR. BRITT: I've thought about  
9 this since yesterday, and I can't really  
10 get the words, what I think are  
11 appropriate, because it has to deal with  
12 the car. And the car was the object of the  
13 robbery, and the motivating factor for the  
14 subsequent murder.

15 THE COURT: Easy way to do it in  
16 my experience is to go back to the  
17 definition set out in the pattern jury  
18 instruction. A murder is committed for  
19 pecuniary gain if the defendant, when he  
20 commits it, has obtained or expects to  
21 obtain money or some other things which can  
22 be valued in money either as compensation  
23 for the killing or as a result of the death  
24 of the victim. If you find from the  
25 evidence beyond a reasonable doubt that

1 when the defendant killed the victim, the  
2 defendant intended to obtain -- what is it  
3 a 1992 --

4 MR. BRITT: Yes.

5 THE COURT: -- Lexus 400  
6 automobile, picking up on the language in  
7 the bill of indictment.

8 MR. BRITT: Another item for  
9 other personal --

10 THE COURT: And other items of  
11 personal property, comma, you would find  
12 this aggravating circumstance, because in  
13 order for it to be consistent, it has to  
14 track what is alleged in the bill of  
15 indictment and what is presented in the  
16 evidence.

17 MR. BRITT: Yes, sir.

18 MR. THOMPSON: Your Honor.

19 THE COURT: Yes, sir.

20 MR. THOMPSON: This language  
21 about compensation for the killing or as a  
22 result, I would argue to you is a -- speaks  
23 to murder for hire and that kind of thing,  
24 is not appropriate in this case.

25 THE COURT: It's simply a part of

1 the definition, in this case, surplusage in  
2 this case. Doesn't apply on the facts of  
3 this case, so you're moving for the Court  
4 to strike that language?

5 MR. THOMPSON: Yes.

6 THE COURT: All right. Well,  
7 generally that's something that can be  
8 taken care of in argument, Mr. Thompson,  
9 stand up and argue to the jury there's no  
10 evidence in this case that anybody was  
11 killed as a result of any hired killing.  
12 There's no evidence to support that, but  
13 it's part of the definition, and it's not  
14 parenthetical.

15 MR. THOMPSON: Yes, sir, Your  
16 Honor. But regardless, the pattern jury  
17 instructions are available for the Court as  
18 a guide, and we know that. What the Court  
19 must instruct on must be based on the  
20 evidence. There's nothing to require Your  
21 Honor to include in a definition or to use  
22 that definition, it is simply a suggestion,  
23 and we know that, and it's been approved.  
24 But it should conform to the evidence, I  
25 argue to you.

1 THE COURT: I don't have any  
2 serious problem as to omitting that  
3 language.

4 MR. BRITT: I don't have any  
5 problem. As a matter of caution it's  
6 probably the better thing to do.

7 THE COURT: Well, no harm, no  
8 foul, if the evidence doesn't support it,  
9 you can stand up and say so. These folks  
10 know that. But I'll strike it.

11 MR. THOMPSON: Thank you.

12 THE COURT: All right. Do you  
13 have a pencil? Mr. Thompson, what I'm  
14 going to do is use the following language:  
15 Murder was committed for pecuniary gain  
16 when defendant when he commits it has  
17 obtained or intends or expects to obtain  
18 money or some other thing of value which  
19 can be valued or some of thing which can be  
20 valued in money, striking "another" as  
21 compensation for committing it, and the  
22 "or" following the comma, as a result of  
23 the death of the victim.

24 MR. THOMPSON: Yes, sir.

25 THE COURT: Is that

1           satisfactory?

2                   MR. THOMPSON: Thank you.

3                   THE COURT: And I'll utilize the  
4 language that I indicated to counsel for  
5 the State. Do you want to be heard further  
6 as to that language in terms of describing  
7 the facts of the case?

8                   MR. BRITT: No, sir.

9                   THE COURT: Counsel for the  
10 defendant want to be heard further in that  
11 regard? Let me back up to it. If you find  
12 from the evidence beyond a reasonable doubt  
13 that when the defendant killed the victim  
14 the defendant intended to obtain or  
15 expected to obtain a 1992 Lexus 400  
16 automobile and other items of personal  
17 property, you would find this aggravating  
18 circumstance. Anybody want to be heard any  
19 further?

20                   All right. Next aggravating  
21 circumstance is E-11. If you will turn to  
22 page 25 in the pattern jury instructions.  
23 Since this is the final -- second and final  
24 aggravating circumstance to be considered  
25 by the jury, I'm going to use the language

1 set out in the pattern jury instruction.

2 Finally, was this murder part of a

3 course of conduct in which the defendant

4 engaged and did that course of conduct

5 include the commission by the defendant of

6 other crimes of violence against another

7 person or persons. Murder is part of such

8 course of conduct. If you find from the

9 evidence beyond a reasonable doubt that in

10 addition to killing the victim, the

11 defendant on or about the alleged date --

12 my preference is to insert the date in

13 question -- and specifically in this case,

14 July 23rd, 1993, was engaged in a course of

15 conduct which involved the commission of

16 another crime of violence against another

17 person, and that -- two parentheticals,

18 "this," "these." "These" will be used in

19 this case -- other crimes were included in

20 the same course of conduct in which the

21 killing of the victim was also a part, you

22 would find this aggravating circumstance

23 and would so indicate by having your

24 fore -- I'll use foreperson -- write "yes"

25 in the space after this aggravating

1           circumstance on the issues of  
2           recommendation form. If you do not find or  
3           have a reasonable doubt as to one or more  
4           of these things, you will not find this  
5           aggravating circumstance and will so  
6           indicate by having your foreperson write  
7           "no."

8           Now, folks, it is apparent from the  
9           reading of this pattern instruction, or  
10          this portion, there is no requirement to  
11          include in the Court's instructions the  
12          other alleged crime or crimes.

13                   MR. BRITT: Yes, sir.

14                   THE COURT: Does anybody want to  
15          be heard in that respect? Essentially,  
16          it's left to argument for counsel.

17                   MR. BRITT: Yes, sir.

18                   THE COURT: State is free to  
19          argue what the State contends constitutes  
20          the course. The defendant is free to argue  
21          what the defendant contends is not -- or  
22          there is no showing of any course of  
23          conduct. Okay?

24                   MR. BRITT: That's fine. And I  
25          think having worked with the pattern jury

1 instruction committee when I was in law  
2 school, the purpose of leaving that out of  
3 11 is to adhere to the admonition of the  
4 Court not to make a comment on the  
5 evidence.

6 THE COURT: Not to make any  
7 comment on the evidence. Although, most of  
8 these cases dealing with course of conduct  
9 involve necessarily 404(b) matters.

10 MR. BRITT: Yes, sir.

11 THE COURT: And it would be  
12 really cumbersome and really awkward, but  
13 the same instruction given as to the 404(b)  
14 matters could be incorporated as a part of  
15 this for purpose of clarity. My guess is  
16 that it's easier left to argue than to do  
17 that.

18 I'm going to give it as it's set out  
19 in the pattern instructions. You folks  
20 want to be heard in that respect?

21 MR. THOMPSON: No, sir.

22 THE COURT: Let me give you folks  
23 a chance to look at the screen and if  
24 you're not through, I see Mr. Bowen still  
25 looking.

1 MR. THOMPSON: We're through.

2 THE COURT: All right. As is  
3 noted in the pattern jury instructions on  
4 page 26, after the final aggravating  
5 circumstance is instructed upon by the  
6 Court, the Court is required to resume the  
7 instructions at this point. If you  
8 unanimously find from the evidence beyond a  
9 reasonable doubt that one or more of these  
10 aggravating circumstances existed and have  
11 so indicated by writing yes in the space  
12 after one or more of them on the issues and  
13 recommendations form, you would answer  
14 Issue 1 yes. If you do not unanimously  
15 find from the evidence beyond a reasonable  
16 doubt that at least one of these  
17 aggravating circumstances existed, and if  
18 you have so indicated by writing no in the  
19 space -- and in this case I'm going to  
20 insert each of them on that form, you would  
21 answer Issue 1, no.

22 Now, if you answer Issue 1 no, you  
23 would skip Issues 2, 3 and 4, and you must  
24 recommend that the defendant be sentenced  
25 to life in prison. If you answer Issue 1

1 yes, then you would consider Issue 2.

2 Issue Number 2, ma'am, on the form is  
3 to read as follows: Quote, do you find  
4 from the evidence the existence of one or  
5 more of the following mitigating  
6 circumstances. Following that language  
7 there is a parenthetical requiring the  
8 Court to indicate the number of possible  
9 mitigating circumstances to be considered  
10 by the jury. We'll come back to that in a  
11 moment.

12 Court would define mitigating  
13 circumstances, utilizing the same language  
14 that the Court used in jury instruction --  
15 strike that, the jury selection process in  
16 this case, and the instructions regarding  
17 who has the burden and what the burden is.

18 Picking up on page 28, it is your duty  
19 to consider the following mitigating  
20 circumstances and any others you find from  
21 the evidence.

22 Let's go to your proposed mitigating  
23 circumstances now. The defendant has  
24 submitted in open court in writing the  
25 following proposed mitigating

1           circumstances. And this reads as follows:  
2           The defendant respectfully submits to the  
3           Court the following mitigating factors  
4           pursuant to North Carolina general statute  
5           15-A 2000 F. Statutory matters are one,  
6           the defendant has no significant history of  
7           prior criminal activity. That's ordinal  
8           number one on page 28, carrying over to  
9           page 29 with a definition as to what  
10          significant means.

11                 Going to the first full paragraph on  
12          page 29, what language do you contend,  
13          folks, ought to be submitted to the jury  
14          with regard to the parenthetical? And  
15          specifically I'm asking -- let me read it  
16          and then ask you what you contend. You  
17          would find this mitigating circumstance if  
18          you find that, parenthetical, describe all  
19          defendants prior criminal activity. What  
20          do you contend ought to be included there?

21                 MR. BOWEN: We believe that what  
22          the jury must find, the fact that the jury  
23          instruction compels us to in essence  
24          concede something not only that there's  
25          some activity but also that it is criminal

1 activity --

2 THE COURT: No, sir, I think --  
3 what is in evidence as to Mr. Green's prior  
4 convictions or criminal activity?

5 MR. BOWEN: There's an absence of  
6 convictions, and that's what we contend.

7 THE COURT: What language do you  
8 folks want me to include in this  
9 parenthetical?

10 MR. BOWEN: That you find -- if  
11 you find that an absence of convictions  
12 constitutes no significant history of prior  
13 criminal activity.

14 THE COURT: I appreciate what you  
15 folks are saying, but it goes beyond just  
16 convictions.

17 MR. BOWEN: I know, but by the  
18 language, I -- it seems to me we can't be  
19 compelled to concede that any activity is  
20 criminal until it's found by the jury.

21 THE COURT: All right. Let me  
22 propose something, you folks tell me what  
23 you think. You would find this mitigating  
24 circumstance if you find that the defendant  
25 has no prior convictions and has engaged in

1 no prior criminal activity.

2 MR. BOWEN: No, sir, that would  
3 violate State versus Wilson, because here  
4 in State versus Wilson, the defendant had  
5 all kinds of problems, but still the matter  
6 was submitted because it was up to the jury  
7 to decide what constituted criminal  
8 activity.

9 THE COURT: The parenthetical,  
10 sir, says describe all defendant's prior  
11 criminal activity, and then goes down to  
12 cite Fullwood. Have you all looked at  
13 Fullwood in 320 NC 371?

14 (Brief recess.)

15 THE COURT: Back on the record.  
16 Folks, E-11 concerns me, and I'll tell you  
17 why it concerns me. There's evidence in  
18 this case offered by the State that the  
19 defendant, first of all, participated in  
20 two prior robberies. There's evidence in  
21 this case --

22 MR. BRITT: Yes, sir.

23 THE COURT: -- that the defendant  
24 during the course of one of those robberies  
25 committed an assault with a deadly weapon

1           arguably inflicting serious injury. That  
2           is evidence in the case. Under E-11, if  
3           there's any evidence as to any prior  
4           criminal activity, I'm required to instruct  
5           on it. At the same time, my concern is if  
6           I instruct upon that evidence in the  
7           context of E-11, is the Court arguably  
8           commenting on the evidence to one degree or  
9           another.

10                  Further than that, there is evidence  
11           offered during the penalty phase as to an  
12           assault with a deadly weapon, an axe.  
13           There was no evidence as to the nature of  
14           the injuries as I recall the evidence, but  
15           there is evidence of an assault upon  
16           another person with an axe, specifically  
17           Mr. Ellison.

18                          MR. BRITT: Yes, sir.

19                          THE COURT: All right. The  
20           Court's duty under E-11 is to include in  
21           describing all defendant's prior criminal  
22           activity anything supported by the  
23           evidence.

24                          MR. BRITT: You're referring to  
25           F-1?

1 THE COURT: Excuse me, F-1. I'm  
2 saying E-11, but I'm thinking course of  
3 conduct under F-11 and E-1. I apologize.  
4 You folks understand what I'm saying?

5 MR. BOWEN: Yes, sir, and we  
6 object to that for another reason, too, as  
7 to the 404(b) material. And that 404(b)  
8 material was contained for a specific and  
9 limited purpose of showing and so forth.  
10 Now, notwithstanding that instruction to  
11 the jury, now we're broadening the use of  
12 that particular material, and to that we  
13 object.

14 THE COURT: Yes. Well, the  
15 language used consistently by our appellate  
16 courts is as follows. The trial court is  
17 required to determine whether a rational  
18 jury could conclude that defendant had no  
19 significant history of prior criminal  
20 activity. If the trial court makes such a  
21 determination, mitigating circumstances  
22 must then be submitted to the jury. Then,  
23 whether the evidence is sufficient to  
24 constitute a significant history of  
25 criminal activity, thereby precluding a

1 finding of this fact, it's for the jury to  
2 decide.

3 MR. BOWEN: And our objection  
4 goes to, in effect, calling the Court's  
5 attention by -- to the jury's attention by  
6 words of the Court that almost say, folks,  
7 because I'm mentioning this, this is  
8 criminal activity. Now you decide whether  
9 or not in light of that there is a criminal  
10 record. And we think that is light of  
11 burden of proof involved even though --

12 THE COURT: Typically the  
13 situation arises where this is evidence  
14 offered by way of certified record or  
15 testimony of someone who has knowledge  
16 about the record as to specific prior  
17 convictions, that's generally the way it  
18 arises. This is a somewhat different  
19 situation.

20 MR. BOWEN: And also let's keep  
21 in mind this: Your Honor refers to the two  
22 prior armed robberies, Rowland and  
23 Mr. Demery. If you get past the 404  
24 limitation of use argument, then you're  
25 dealing with the fact that one of these

1 jurors, and all it would take in mitigating  
2 factor concept is one of the jurors to  
3 disbelieve that that was Mr. Green, which  
4 given Mr. Demery, a rational person it  
5 seems to me could do, and certainly in  
6 light of Ms. Tedeschi's testimony could  
7 possibly do. So if one of the jurors could  
8 rationally not believe that these were done  
9 by Green, then it certainly wouldn't be  
10 criminal activity held against him. In  
11 addition to the fact that the consideration  
12 was limited in the first place.

13 THE COURT: Well, let me back up  
14 to the first point. Counsel for defendant  
15 is asking that F-1 be submitted.

16 MR. BOWEN: Yes, sir.

17 THE COURT: You're asking that?

18 MR. BOWEN: Without specifically  
19 mentioning any --

20 THE COURT: I'm obligated. If I  
21 give it and don't refer to it, that's  
22 error.

23 MR. BOWEN: Well, I think  
24 Mr. Thompson correctly put it that there's  
25 suggestive language here, when you stop and

1 consider this in light of the burden of  
2 proof, in light of the Court's commentary  
3 on the evidence, that almost if you give it  
4 suggests that the Court is saying that this  
5 is criminal activity from which you could  
6 find, and you're taking away the jury's  
7 responsibility to find from the evidence  
8 any activity, and neither of those cases  
9 has the jury been charged with particular  
10 matters. They are simply invited to look  
11 at the evidence and if they find  
12 significant criminal activity from the  
13 evidence, then they may find against us on  
14 that issue. And seems to me if you do  
15 that, be fair to the State, at the same  
16 time give the jury a chance to fairly  
17 consider that without telling them, hey,  
18 folks, this is criminal activity, now you  
19 find it.

20 THE COURT: I thought about this  
21 for a long time last night. Only thing I'm  
22 comfortable in submitting is the evidence  
23 adduced by the defendant, Ellison assault,  
24 and I'll tell you why. The prior  
25 alleged -- the E-11 stuff was offered for a

1 limited purpose.

2 MR. BRITT: Yes, sir.

3 THE COURT: And to submit that,  
4 as these folks point out, I think that's  
5 problematic because it goes beyond the  
6 scope for which the evidence was admitted.  
7 Also it may arguably comment on the  
8 aggravating circumstance and its existence  
9 being considered by them under E-11.

10 The only evidence not offered for a  
11 limited purpose and not otherwise tied up  
12 with a potential aggravating circumstance  
13 is the Ellison matter.

14 MR. BRITT: Ellison matter.

15 THE COURT: So what do you folks  
16 say about that?

17 MR. BOWEN: We put the Ellison  
18 matter at issue, we don't object to that,  
19 Your Honor.

20 THE COURT: That's the only fair  
21 way I can think of doing it, Mr. Britt, and  
22 not running a risk of commenting on the  
23 evidence.

24 MR. BRITT: And consistent with  
25 the case law, if there's going to be any

1 prejudice, it's better the prejudice be  
2 directed towards the State at this stage.

3 THE COURT: Well, yeah. Two  
4 things: One is that in all candor it was  
5 adduced by defendant, so defendant can't  
6 complain that I instructed on that.

7 MR. BRITT: Yes, sir.

8 THE COURT: And, two, it's the  
9 only thing that I don't see any problems  
10 with. So I'm going to -- I'll include  
11 that. And I'm going to use the following  
12 language. You folks feel free to jump in  
13 with any suggestion. You will find this  
14 mitigating circumstance if you find that  
15 the defendant Daniel Andre Green, also  
16 known as U'Allah, struck another person  
17 with an axe, and that this is not a  
18 significant history of prior criminal  
19 activity.

20 MR. BOWEN: We would ask that in  
21 conformity with the evidence, because if  
22 we're talking out of Dr. Johnson's  
23 presentation, it would need to be "with the  
24 blunt end of an axe in self defense."  
25 That's in his materials, and it's

1 consistent with the findings in the motion  
2 for appropriate relief.

3 THE COURT: No, it's not  
4 consistent with the findings of appropriate  
5 relief.

6 MR. BOWEN: Excuse me, consistent  
7 with some of the evidence.

8 THE COURT: "Struck" in my view  
9 is safe because it's for them to find based  
10 on what limited evidence is before them  
11 whether it was criminal activity or in self  
12 defense. "Struck" denotes neither an  
13 intentional striking in my view, because  
14 logically on cross-examination if I had  
15 been sitting there yesterday and  
16 Dr. Johnson had been testifying about the  
17 man walked into the axe, my question on  
18 cross would have been "Who was holding the  
19 axe when he walked into it according to  
20 your testimony?" But you understand my  
21 point?

22 MR. BOWEN: Yes, sir.

23 THE COURT: What the evidence  
24 tends to show is that you would find this  
25 mitigating circumstance if you find that

1 the defendant Daniel Andre Green, also  
2 known as U'Allah, struck another person  
3 with an axe and that this is not a  
4 significant history of prior criminal  
5 activity.

6 MR. BOWEN: All right.

7 THE COURT: Now, I'm open to any  
8 language that you folks want to suggest.

9 MR. BOWEN: Well, we want to talk  
10 about the "blunt end of the axe," I mean  
11 that's --

12 THE COURT: I don't recall  
13 whether he said "blunt" or not.

14 MR. THOMPSON: He did.

15 MR. BRITT: I think he did.  
16 That's not in dispute.

17 THE COURT: Anything further you  
18 want me to consider, folks?

19 MR. BOWEN: Then you already  
20 indicated that you were going to give the  
21 no prior convictions?

22 THE COURT: Yes, sir, I'll give  
23 that.

24 MR. BOWEN: All right.

25 THE COURT: I'm not going to even

1 say "struck in the head with a blunt end,"  
2 just say "struck with a blunt end." Do you  
3 all want that in the conjunctive,  
4 disjunctive or what, and/or if you find  
5 that the defendant Daniel Andre Green, also  
6 known as U'Allah, struck another person  
7 with a blunt end of an axe and slash or  
8 that he has no prior convictions, or -- how  
9 do you all want it?

10 MR. BOWEN: Disjunctive, or.

11 THE COURT: Could they find that  
12 he has no prior convictions be he still hit  
13 somebody in the head with an axe and in  
14 their view that constitutes criminal  
15 activity?

16 MR. THOMPSON: Yes.

17 THE COURT: Just like -- I mean,  
18 I'm trying to work this out in a way that  
19 you all think is fair. And/or, they could  
20 find that he hit somebody in the head with  
21 an axe, and he has no prior convictions,  
22 and that therefore means in their view that  
23 he has no significant history of criminal  
24 activity. Or they could find that he hit  
25 somebody in the head with an axe --

1 MR. THOMPSON: "Hit somebody with  
2 an axe."

3 THE COURT: Yes, sir, I  
4 apologize. Disjunctive or conjunctive,  
5 what do you want? See, I don't want to  
6 have them link the finding together.

7 MR. THOMPSON: I beg your  
8 pardon?

9 THE COURT: I don't want to have  
10 to have them require to find that both  
11 things occurred.

12 MR. THOMPSON: I don't either.  
13 We just need to consult.

14 THE COURT: Yes, sir. Can I make  
15 another suggestion for you all to think  
16 about? Doing it this way: You would find  
17 this mitigating circumstance if you find  
18 that the defendant Daniel Andre Green, also  
19 known as U'Allah, struck another person  
20 with a blunt end of an axe. Pause. You  
21 would find this mitigating circumstance if  
22 you find that the defendant Daniel Andre  
23 Green, also known as U'Allah, has no prior  
24 convictions and that this is not a  
25 significant history of prior criminal

1 activity.

2 MR. BOWEN: We like that.

3 MR. THOMPSON: That's better.

4 THE COURT: Okay, I'll do it that  
5 way. That eliminates any potential  
6 problems. Is that all right? So I'll  
7 repeat that language as to each of those  
8 possible situations and then pick up, and  
9 that this is not a significant history of  
10 prior criminal activity.

11 All right, I'll do it that way. Let  
12 me make a note to myself. All right.

13 Now, what did I do with your sheet?  
14 Here it is. Number two, the defendant was  
15 an accomplice in and/or accessory to the  
16 capital felony committed by another person  
17 and his participation was relatively  
18 minor. State want to be heard?

19 MR. BRITT: State objects to  
20 that.

21 THE COURT: All right. For the  
22 record you're talking about F-4, right?

23 MR. BOWEN: Yes, I'm sorry --

24 MR. BRITT: Yes, sir, that's the  
25 number in the statute.

1 THE COURT: Yes. Where is the  
2 evidence to support that, folks?

3 MR. BOWEN: Your Honor, again,  
4 the jury did not find that the defendant  
5 intentionally killed, and because they can  
6 accept or reject any part of the evidence  
7 or any combination of even what Larry  
8 Demery said, they may well have found that  
9 if the defendant was too involved in the  
10 act to find him not guilty enough to make  
11 him culpable under the murder felony rule,  
12 but at the same time they may have felt  
13 that Larry Demery was the shooter. Their  
14 verdict does not tell us that.

15 THE COURT: So essentially it's  
16 the same argument that you made earlier,  
17 Mr. Bowen?

18 MR. BOWEN: Yes, sir.

19 THE COURT: Note that objection  
20 of the State is sustained. Defendant's  
21 exception is noted for the record so that  
22 issue is preserved. Court will not  
23 instruct under F-4.

24 Number three, age of the defendant is  
25 F-7. Counsel for the defendant want to be

1 heard as to the submission -- I mean, state  
2 want to be heard as to submission of F-7?

3 MR. BRITT: No, sir, I believe  
4 the evidence shows that numerically he was  
5 18 years old, 18 years and some odd months.

6 THE COURT: Court will instruct  
7 as to F-7, and let me back up for Ms.  
8 Gaines' purposes. Number one is listed on  
9 the defense -- have you got a copy of this,  
10 Ms. Gaines? That would be statutory --  
11 well, mitigating circumstance number one.  
12 Number three as listed on the defense form  
13 would be mitigating circumstance number  
14 two. Number four is the catch-all, which  
15 is statutory, and I will instruct on that.

16 THE CLERK: And that would be  
17 three?

18 THE COURT: That would be number  
19 three. And that would be number nine as  
20 set out in the pattern jury instructions --  
21 strike that. That would not be number two,  
22 that's the one that we end up with.

23 THE CLERK: After the  
24 statutory --

25 THE COURT: Yes, I apologize,

1           because that is the one that gives them the  
2           authority for them to pick up on anything  
3           that they think has mitigating value. So  
4           that would not be number three. We'll pick  
5           up on number three on the nonstatutories.  
6           You folks have got as nonproposed  
7           statutory, the following. One, the  
8           defendant was not convicted of premeditated  
9           murder.

10                   MR. BRITT: State objects.

11                   THE COURT: Any case law, Mr.

12           Thompson, Mr. Bowen?

13                   MR. THOMPSON: Any case law?

14                   THE COURT: Yes, sir, to support  
15           this.

16                   MR. THOMPSON: You know,  
17           mitigating circumstances, Your Honor,  
18           are -- you mean has it ever been submitted  
19           before, is that what you're asking?

20                   THE COURT: No.

21                   MR. THOMPSON: There's nothing  
22           that I read that it's been submitted  
23           before, but as to any mitigating  
24           circumstance, it relates to the  
25           defendant --

1 THE COURT: May I make a  
2 suggestion? Your language is, defendant  
3 Daniel was not convicted of premeditated  
4 murder. If submitted, the defendant did  
5 not premeditate the murder. Isn't that the  
6 same thing?

7 MR. THOMPSON: That's fine.

8 MR. BRITT: I still would object,  
9 the theory under which the defendant was  
10 convicted is not a circumstance for the  
11 jury to consider --

12 THE COURT: That's what the law  
13 says.

14 MR. BRITT: -- in sentence.

15 THE COURT: I'll tell you what,  
16 folks. Let me look at this. I'm going to  
17 have to work out some language as to a  
18 number of these, and then come back and  
19 talk to you all.

20 Number two reads as follows: Although  
21 defendant Daniel has been found guilty  
22 beyond a reasonable doubt of first degree  
23 murder, the evidence does not foreclose all  
24 doubt as to his guilt or degree of  
25 participation in the offense.

1           Number three, the defendant Daniel  
2           received a poor educational background  
3           relative to his abilities.

4           Number four, defendant Daniel has  
5           written songs and poems and has had one  
6           song recorded.

7           Number five, defendant Daniel could  
8           never develop a father/son relationship  
9           with his father.

10          Number six, defendant did not resist  
11          arrest.

12          Number seven, upon his arrest,  
13          defendant Daniel voluntarily consented to a  
14          search of his room in his mother's home.

15          Number eight, defendant Daniel was a  
16          loving and caring son to his mother.

17          Nine, defendant Daniel was a loving  
18          and caring brother to his younger sister  
19          Ebony.

20          Ten, defendant Daniel's general living  
21          conditions were difficult because of so  
22          many moves.

23          11, there is an intergenerational  
24          pattern in defendant Daniel's life of  
25          violent deaths which caused the defendant

1 to become resentful and suspicious of  
2 others.

3 12, there's an intergenerational  
4 pattern in defendant Daniel's life of  
5 family members' substance abuse which  
6 caused those members to be unavailable to  
7 Daniel for support.

8 13, defendant has a speech impediment  
9 as a child which caused him to be teased  
10 and ridiculed.

11 14, because his younger sister had a  
12 serious illness which required much of his  
13 mother's attention, Daniel spent much of  
14 his time with his great grandmother.

15 15, Daniel was targeted as a gifted  
16 and talented student, being enrolled in  
17 college preparatory classes on at least one  
18 occasion and excelled in track, boxing and  
19 wrestling.

20 16, defendant moved at least 13 times,  
21 which caused instability in his life.

22 MR. THOMPSON: Well, there's --

23 MR. BOWEN: Renumber, Your Honor.

24 THE COURT: I'm looking at ten  
25 and six. Ten is defendant Daniel's living

1 conditions were difficult because of so  
2 many moves. 16 is defendant moved at least  
3 13 times, which caused instability.

4 MR. THOMPSON: We'll take 16 and  
5 withdraw --

6 THE COURT: Pardon me?

7 MR. THOMPSON: Submit 16,  
8 withdraw ten.

9 THE COURT: So ten is withdrawn,  
10 although some of that language may be  
11 incorporated in 16, and we will work that  
12 out.

13 17 --

14 MR. THOMPSON: No, sir, Your  
15 Honor --

16 THE COURT: Yes, sir.  
17 Immediately below 16 is Daniel attended at  
18 least 13 different schools, causing  
19 instability in his life.

20 MR. BOWEN: We'll renumber. I  
21 just didn't assign a number.

22 THE COURT: So that should be  
23 17?

24 MR. BOWEN: Yes.

25 THE COURT: All right. And then

1           what you now have written in to 17 I'm  
2           going to mark it as 18. At the age of  
3           three --

4                   MR. THOMPSON: What's happening,  
5           since ten is withdrawn, all of these  
6           numbers are going to be different. You can  
7           substitute it for ten to make it --

8                   THE COURT: Okay.

9                   MR. THOMPSON: Put number 10,  
10          Daniel attended at least 13 different  
11          schools causing instability.

12                   THE COURT: That will work.

13                  17, at the age of three Daniel's  
14          parents' marriage dissolved.

15                  18, Daniel was teased in Philadelphia  
16          as being a southern nerd.

17                  19, because the streets of north  
18          Philadelphia where he lived were so  
19          dangerous, Daniel would literally run to  
20          school daily up to a two hour journey each  
21          way.

22                  20, Daniel did not have a positive  
23          male role model during his formative  
24          years.

25                  21, Daniel witnessed his father being

1 arrested when he was very young.

2 23, when Daniel was young his favorite  
3 uncle Arnold was murdered.

4 24, as a result of the number of  
5 negative life experiences, including his  
6 uncle Arnold's death, Daniel became fearful  
7 he would not live to reach adulthood.

8 25, Daniel grew up without a father  
9 figure in the home.

10 MR. BRITT: Which is similar in  
11 nature to 20.

12 THE COURT: That's what I'm  
13 looking at. Well --

14 MR. BRITT: And also with number  
15 five.

16 THE COURT: That's -- okay. I'm  
17 come back to that. 26, the defendant grew  
18 up in an impoverished urban environment in  
19 the city of Philadelphia where he was  
20 exposed to drug dealers, prostitutes, and  
21 robbers at an early age.

22 27, the defendant has completed his  
23 GED, received some vocational courses, and  
24 has completed some college courses.

25 28, defendant has no substance abuse

1 problem which can be attributed to his  
2 conscious decision not to abuse.

3 29, Daniel and his sister were  
4 abandoned by their father in a park in  
5 Philadelphia, causing lasting effect.

6 30, Daniel was hit with brass knuckles  
7 and knocked unconscious at about 20 years  
8 of age.

9 31, Daniel was robbed of jewelry at  
10 gunpoint. Didn't that happen in connection  
11 with 30?

12 MR. THOMPSON: Separate  
13 incidents.

14 THE COURT: Okay. That's right.  
15 That's where he was stuck up in a phone  
16 booth.

17 32, Daniel's family was robbed while  
18 asleep.

19 All right. Anything possible under  
20 the law in mitigation is required to be  
21 submitted by Locket and by Skipper.

22 MR. BRITT: Yes, sir.

23 THE COURT: Because I believe  
24 it's my obligation, I mean, our law says --  
25 our Supreme Court has said numerous times,

1 death is unique.

2 MR. THOMPSON: Different.

3 THE COURT: Death is different.  
4 Our law has on paper said that the death  
5 penalty is to be imposed not in all first  
6 degree murder cases but only in those few  
7 first degree murder cases where the  
8 circumstances warrant it. I hear that  
9 enunciated in the law. My view is that it  
10 is ignored often in reality, and that the  
11 spectrum that was initially intended in  
12 terms of cases in which the death penalty  
13 would be appropriate has become broadened  
14 to the point where the language set out in  
15 those cases arguably has become meaningless  
16 language, that in the view of many folks  
17 first degree murder death penalty runs  
18 contrary to what our law says is supposed  
19 to be the situation.

20 I want to look at this language and  
21 I'll come back and talk to you folks about  
22 some possible modifications or revisions.

23 MR. BOWEN: Judge, let me say  
24 this: One of these matters, I think could  
25 easily be incorporated, and that is on

1 Number 20. Mr. Britt points out Number 5,  
2 Number 5 is defendant Daniel could not  
3 develop a father/son relationship with his  
4 father. Now, we think that's  
5 distinguishable from what Number 20 says,  
6 which says Daniel did not have a positive  
7 male role model in his formative years  
8 because, as Dr. Johnson points out you  
9 tend, once you lose your father, to turn to  
10 others males, which we contend in Daniel's  
11 case arguably were not there. I do think,  
12 in terms of 25, we could incorporate both  
13 20 and 25 in one mitigating factor to say  
14 that Daniel did not have a positive role  
15 model or a father figure in his home or in  
16 his life during the formative years.

17 MR. THOMPSON: No, no, no.

18 THE COURT: Folks, let me -- why  
19 don't we take about a 15, 20 minute break,  
20 let me look at the items in evidence and  
21 come back and we'll talk about this.

22 (Brief recess.)

23 (Whereupon an in camera proceeding ensued  
24 as follows.)

25 THE COURT: Let the record

1 reflect that this is an informal,  
 2 in-chambers proceeding. Present at this  
 3 time are counsel for the State, Mr. Johnson  
 4 Britt, counsel for the defendant Mr. Angus  
 5 Thompson, Mr. Woodberry Bowen. Did I say  
 6 presiding Judge? Also present defendant  
 7 Mr. Daniel Andre Green, also known as  
 8 U'Allah. Folks, going through your  
 9 mitigating circumstances, I'm also going  
 10 through the --

11 MR. BRITT: Typology.

12 THE COURT: Yes. Trying to put  
 13 it in the correct language so it flows for  
 14 the jury and also includes everything that  
 15 you think -- this is what I've got here.  
 16 I'm working this through in my mind. You  
 17 folks feel free to jump in.

18 Number one, Defendant Daniel Green was  
 19 not convicted of premeditated murder. My  
 20 proposed language, the murder for which the  
 21 defendant has been convicted was committed  
 22 spontaneously and was not premeditated.

23 MR. THOMPSON: That's fine.

24 THE COURT: State want to be  
 25 heard?

1 MR. BRITT: Just note an  
2 objection.

3 THE COURT: Again, this is just  
4 proposed at this point. Your number two is  
5 although defendant Daniel has been found  
6 guilty beyond a reasonable doubt of first  
7 degree murder, the evidence does not  
8 foreclose all doubt as to his guilt or  
9 degree of participation in the offense.  
10 State's objection is sustained as to that.  
11 Defendant's exception was previously noted,  
12 is again noted, exception is noted for the  
13 record.

14 Let me propose this for number two.  
15 Defendant was born, and I don't mean any  
16 disrespect, I'm simply trying to put it in  
17 the context of the evidence. Defendant was  
18 born illegitimate and his parents did not  
19 marry until he was three years of age. The  
20 gist of what Dr. Johnson was trying to  
21 testify to was that from birth, labels were  
22 placed upon the defendant, label number one  
23 being you're an illegitimate child. If  
24 there is any objection, let me know.

25 MR. THOMPSON: Huh-uh.

1 THE COURT: Then I'm going to  
2 include that as number two.

3 MR. BOWEN: Judge, let's go back  
4 to the one that you sustained on. Maybe  
5 that's just our inartful language there,  
6 but certainly I have been able in the past  
7 to submit what's commonly called a residual  
8 doubt mitigator.

9 THE COURT: Let's hold off on  
10 that, and we'll come back and do that  
11 number three. You've got, defendant Daniel  
12 received a poor educational background  
13 relative to his abilities. In my view  
14 that's jumping ahead in the chronology, and  
15 let me tell you what I've got as number  
16 three.

17 Number three, defendant suffered from  
18 stuttering and was involved in therapy  
19 throughout his school years. Now, some of  
20 what I've included encompasses some of the  
21 others, and we will back to that because  
22 I'm making notes. All right. But in my  
23 view, chronologically in terms of factors  
24 that ought to be considered, birth, speech  
25 defect, there's some stuff that comes in in

1           between but I'll deal with that later. All  
2           right.

3                       MR. THOMPSON: Yes, sir.

4                       THE COURT: My Number 4,  
5           defendant was constantly teased and  
6           ridiculed because of his stuttering. There  
7           are two separate issues involved in my view  
8           in that case, the fact that it existed and  
9           the impact on him. All right.

10                      My Number 5 -- your number four is  
11           that the defendant Daniel has written songs  
12           and poems and has had one song recorded.  
13           In my view if that comes in, comes in  
14           later. So what I'm going to propose as the  
15           next potential mitigator, which is my  
16           Number 5, and this is confusing. Your  
17           typology indicates the defendant was born  
18           11-17-74. Father not legally divorced from  
19           his first wife at the time of his birth.  
20           That's between zero and eight ages. Then  
21           you've got 1980, age six, witnessed father  
22           being arrested for probation violation and  
23           driving without license. Somewhere I heard  
24           evidence that Mr. Green's father and mother  
25           did not marry until he was three. Is that

1 accurate?

2 MR. THOMPSON: I don't --

3 MR. GREEN: Yes, sir.

4 MR. BRITT: I think Dr. Roher  
5 testified about that.

6 THE COURT: If they didn't marry  
7 until he was three --

8 MR. THOMPSON: Yeah.

9 THE COURT: Now you've got down  
10 here as post mitigating circumstances that  
11 his parents were divorced when he was  
12 three. Did that happen at three or six?

13 MR. BOWEN: Never happened? I'm  
14 sorry.

15 THE COURT: So they were never  
16 divorced?

17 MR. THOMPSON: I'm trying to find  
18 where that is.

19 THE COURT: Look at number --

20 MR. THOMPSON: 17.

21 MR. BOWEN: Well, okay.

22 MR. BRITT: may be a situation  
23 where, and I'm just guessing, based on what  
24 the testimony was, that his father married  
25 his mother at the time when he was --

1 THE COURT: It was never a valid  
2 marriage.

3 MR. THOMPSON: That's the point.

4 THE COURT: But see my problem  
5 is, the evidence isn't there as to that.

6 MR. BOWEN: That's right. Well  
7 it's really the relationship what little  
8 there was even that dissolved.

9 THE COURT: At what age?

10 MR. THOMPSON: As I recall it was  
11 around three.

12 MR. BRITT: The testimony on the  
13 chart occurred when he was six or eight.

14 THE COURT: Six.

15 MR. BOWEN: And he went to prison  
16 right after Daniel was three, so basically  
17 it did dissolve then what relationship  
18 there was.

19 MR. THOMPSON: I mean, what --

20 THE COURT: We've got.

21 MR. THOMPSON: Excuse me.

22 THE COURT: I'm going to your  
23 chronology, father arrest, age six 1980,  
24 change -- E S slash, spent 15 years in  
25 prison. That's age six.

1                   MR. THOMPSON: And let me say  
2                   that we can say at an early age and go back  
3                   to the record and argue whatever is in the  
4                   record, obviously. The thing about this is  
5                   that many of those, and that's why I had  
6                   the question asked and he's got it in the  
7                   bottom of his chart, these are approximate  
8                   ages and dates, and he realized that. But  
9                   anyway I would just suggest that we use at  
10                  an early age, then we argue what --

11                 MR. BOWEN: At an early age what  
12                  happened?

13                 MR. THOMPSON: The relationship.

14                 MR. BOWEN: Parents  
15                  relationship --

16                 THE COURT: Let me go back to  
17                  number two, defendant was born  
18                  illegitimate, and his parents did not marry  
19                  until he was age three. That's in  
20                  evidence.

21                 MR. THOMPSON: Yes.

22                 THE COURT: Is that accurate? If  
23                  it's in evidence I've got to submit it to  
24                  the jury as it is. Next one, defendant  
25                  suffered from stuttering and was involved

1 in therapy throughout his school years.  
2 Four, my Number 4, defendant was constantly  
3 teased and ridiculed because of his  
4 stuttering. Now what I've got is my Number  
5 5, at age six -- I'm going to change that  
6 to at an early age.

7 Defendant witnessed his father being  
8 arrested for the first time. Wasn't for  
9 the first time. I need to omit for the  
10 first time.

11 MR. BRITT: First time saw his  
12 father arrest was described the defendant's  
13 observation.

14 THE COURT: I'm just going to put  
15 at an early age defendant witnessed his  
16 father being arrested.

17 MR. THOMPSON: All right.

18 THE COURT: My next one would be  
19 the defendant's father was in and out of  
20 prison for the next 15 years which  
21 contributed to the lack of a father/son  
22 relationship between defendant and his  
23 father.

24 MR. BRITT: That's reasonably  
25 related to the evidence.

1 THE COURT: Yes. All right.  
2 Now, you've got next, defendant did not  
3 resist arrest, upon his arrest -- I'm going  
4 to come back to those matters later.

5 Next one I've got, defendant Daniel  
6 was a loving and caring son to his mother.  
7 Your number eight. Next one after that  
8 which is my number seven, I think,  
9 defendant Daniel was a loving and caring  
10 brother to his younger sister Ebony. I  
11 have added the following language: And  
12 sought to protect her from the environment  
13 and circumstances in which they both lived.

14 That's in the evidence.

15 MR. BRITT: that's Dr. Johnson's  
16 testimony.

17 THE COURT: Yes. You folks have  
18 any problem with that?

19 MR. BOWEN: No, sir.

20 THE COURT: My next number, which  
21 the number eight, and actually in  
22 chronology materials it comes earlier, but  
23 I think this is the appropriate place to  
24 put this. There is an intergenerational  
25 pattern in defendant Daniel's life of

1 violent deaths which caused the defendant  
2 to be resentful and suspicious of others.  
3 Your number 12, put as the next one,  
4 there's there is an intergenerational  
5 pattern in Defendant's family members of  
6 substance abuse which caused thos family  
7 members to be unavailable to Daniel for  
8 support during his formative years. Your  
9 number 13 I've already included as number  
10 three and four.

11 MR. THOMPSON: Uh-huh.

12 THE COURT: Next number 14, which  
13 I have number 10, because his younger  
14 sister Ebony had a serious illness which  
15 required much of his mother's attention,  
16 defendant spent much of his time with his  
17 great grandmother. Okay? Your number 15  
18 I'm going to come back to that later.

19 My next number 11, defendant moved at  
20 least 13 times which caused instability in  
21 his life. Your number ten, renumbered ten,  
22 which I have as number 12, defendant  
23 attended at least 13 different schools  
24 which caused instability in his life. Now,  
25 you've got as what is now marked as 17, at

1 the age of three defendant's parents'  
2 marriage dissolved. What do you all want  
3 to say about that?

4 MR. BOWEN: I think at an early  
5 age Daniel's parents' relationship  
6 dissolved.

7 THE COURT: State have any  
8 objection to that?

9 MR. BRITT: (Shakes head  
10 negatively.)

11 THE COURT: Okay. All right.  
12 Now, you've got number 18 on your sheet,  
13 defendant was teased in Philadelphia as  
14 being a southern nerd. My recollection of  
15 the testimony of Dr. Johnson was that  
16 because of the dissolution of the  
17 relationship between his parents, and  
18 because of his father's imprisonment,  
19 economically, they had to move to  
20 Philadelphia to be with family members in  
21 that area.

22 MR. BOWEN: That's correct.

23 THE COURT: Is that what your  
24 recollection is?

25 MR. BRITT: (Nods head

1 affirmatively.)

2 THE COURT: Then that's what I'm  
3 going to put, and then pick up from there.  
4 And that included the defendant, his mother  
5 and his sister. What I've got folks, is  
6 because of the dissolution of his parents'  
7 relationship and because of his fathers  
8 imprisonment, defendant and his mother and  
9 his sister were forced to move to  
10 Philadelphia for economic reasons.

11 MR. BRITT: No objection.

12 THE COURT: All right. Number  
13 19, the defendant and his family lived in  
14 impoverished area of north Philadelphia  
15 where conditions were dangerous.

16 MR. BOWEN: Okay.

17 MR. THOMPSON: That's the one we  
18 were talking about. We like that.

19 THE COURT: Your 201 I've already  
20 included, so I'm going to strike through  
21 that. Number 20, I think we can deal with  
22 in connection with some others now. What  
23 have I got for -- can you -- because the  
24 defendant and his mother and his sister  
25 lived in an impoverished area of north

1 Philadelphia, where conditions were  
2 dangerous. All right all right let me pick  
3 up from there and go logically.

4 The area in which defendant and his  
5 family -- well, the area in which defendant  
6 lived was an area where he was exposed to  
7 drug dealers, prostitutes, and criminal  
8 activity. That would be your number 26.  
9 And that would be my number -- that's  
10 included in number 19, or this would be 20,  
11 I'm sorry.

12 All right. Then I'm coming back to  
13 what you had, which would be 21.

14 MR. BRITT: Your 21.

15 THE COURT: Yes, my 21. During  
16 the time defendant lived in Philadelphia,  
17 he suffered additional teasing and ridicule  
18 because of his stuttering and his southern  
19 speech. During this time period of  
20 defendant's -- or during the period of time  
21 that the defendant lived in Philadelphia  
22 area, he was assaulted physically with  
23 brass knuckles and knocked unconscious at  
24 age 13.

25 Next number, during the period of time

1           that the defendant lived in this area of  
2           Philadelphia, he was robbed of jewelry at  
3           gunpoint.

4                   MR. BRITT: I think that occurred  
5           later on.

6                   THE COURT: But that was in  
7           Philadelphia.

8                   MR. BRITT: Philadelphia or  
9           Florence? If you look at the chronology, I  
10          think it's in the time frames when they  
11          were in Florence.

12                   THE COURT: Was that Philadelphia  
13          or Florence, folks?

14                   MR. THOMPSON: The robbery?

15                   THE COURT: Yes.

16                   MR. THOMPSON: Of the jewelry.

17                   MR. GREEN: It was in Florence.

18                   THE COURT: Strike that last  
19          one. Because I'm trying to stay with  
20          Philadelphia now. Keep all the stuff that  
21          pertains to Philadelphia in one grouping.  
22          Where did the robbery occur where the  
23          family was asleep, in Philadelphia or  
24          what?

25                   MR. THOMPSON: It was in

1 Laurinburg, he says.

2 MR. BRITT: That's when they  
3 moved back.

4 THE COURT: All right. Folks,  
5 have I exhausted all of the Philadelphia  
6 matters as far as you folks are concerned?

7 MR. BRITT: There's some  
8 confusion between Dr. Roher's testimony and  
9 Dr. Johnson's testimony as to where the  
10 family was living at the time that Uncle  
11 Arnold I believe it was.

12 THE COURT: I'm not even going to  
13 deal with that in terms of where they were  
14 living. I'm just going to deal with the  
15 events --

16 MR. BRITT: Because Dr. Johnson  
17 testified they were in Philadelphia and as  
18 a result of that murder they moved back  
19 here.

20 THE COURT: Yes. But I think the  
21 real gist of what they want in terms of  
22 mitigation is that a series of male figures  
23 would come into his life in substitution  
24 for the absent father.

25 MR. BRITT: I understand.

1 THE COURT: And then they would  
2 be taken out. That's essentially what you  
3 all want in.

4 MR. BOWEN: While he was in  
5 Philadelphia, the gifted and talented  
6 designation occurred.

7 MR. THOMPSON: That's what I  
8 thought.

9 THE COURT: That's where what?

10 MR. BOWEN: He ran track.

11 MR. THOMPSON: All that was in  
12 Philadelphia, I think.

13 THE COURT: Can you read back my  
14 last number thing as to Philadelphia? I  
15 think it dealt with being hit in the the  
16 head with brass knuckles.

17 (record was read.)

18 THE COURT: That's where we were,  
19 22, hit in the head with brass knuckles.  
20 Right?

21 23, despite these conditions, during  
22 this time period while defendant was living  
23 in Philadelphia, he was labeled as gifted  
24 and talented. That's Number 23.

25 Number 24, also during this period of

1 time while defendant was living in  
2 Philadelphia, he ran track, boxed and what  
3 else?

4 MR. THOMPSON: And wrestled.

5 THE COURT: And wrestled.

6 MR. BRITT: Was that Philadelphia  
7 or Laurinburg Institute?

8 THE COURT: What is in  
9 Philadelphia, just track?

10 MR. BOWEN: Omit boxing and  
11 wrestling.

12 MR. BOWEN: I'm sorry, track and  
13 boxing is Philadelphia, wrestling -- boxing  
14 and wrestling down here.

15 THE COURT: Track and boxing in  
16 Philadelphia. Go back to 23 so we've got  
17 it in continuity. Also during this time  
18 period while defendant was living in  
19 Philadelphia, the defendant --

20 MR. BOWEN: Ran track and --

21 MR. THOMPSON: Boxing.

22 MR. BOWEN: Engaged in --

23 MR. THOMPSON: In Philadelphia,  
24 all I'm saying is that track and boxing --

25 MR. BOWEN: He wants the wording.

1 MR. THOMPSON: Oh, I'm sorry.

2 Oh, also in Philadelphia.

3 MR. BOWEN: While in high school  
4 or what -- let's put it this way,  
5 participated in organized track and boxing.

6 THE COURT: We'll clean it up.

7 That exhausts I think Philadelphia.

8 (Off-the-record discussion.)

9 (End of in camera proceeding.)

10 THE COURT: Let the record show  
11 all counsel are present, the defendant is  
12 present in open court. We're back on the  
13 record. Let the record further reflect  
14 that the Court has held an informal  
15 in-chambers conference with counsel in this  
16 case. During that informal in-chambers  
17 conference, counsel for the State was  
18 present, counsel for the defendant was  
19 present, defendant was present, presiding  
20 Judge, and the court reporter.

21 Subject of discussion, during that  
22 informal in-chambers conference was  
23 proposed language, suggested change in  
24 language as to mitigating circumstances.  
25 Before we address this, let me go back to

1 something else.

2 Folks, I've been looking at Stokes,  
3 and the record in this case is voluminous,  
4 I think we're eight thousand plus pages  
5 now, somewhere in that neighborhood. State  
6 introduced Mr. Green's statement of August  
7 15th, August 16th, 1993 in rebuttal.  
8 Portion of that statement was a denial by  
9 the defendant Green that he had killed  
10 anybody. Also there was the denial in that  
11 statement that Larry Martin Demery had or  
12 could have killed anybody.

13 There is, I think it's safe to say,  
14 some confusion at least many my mind, and  
15 I'm easily confused, in the evidence in  
16 this case, especially in my mind about what  
17 actually came in before the jury and what  
18 may not have come in before the jury. But  
19 my preference is to try a case one time.

20 Having said that, the Court is  
21 reconsidering the Enmund issue. I don't  
22 think it poses any problem to the State or  
23 any prejudice to the State to submit the  
24 issue. But I'm open to any position the  
25 State wants to take.

1 MR. BRITT: Your Honor --

2 THE COURT: I'll tell you why,  
3 and I apologize for cutting you off, Stokes  
4 was a situation where during the first  
5 trial, co-defendant testified that he had  
6 observed Stokes and others engaged in  
7 conduct which apparently resulted in the  
8 death of that person. The defendant had  
9 given a statement which he repudiated on  
10 the stand and asserted alibi during his  
11 testimony before the jury.

12 Our Supreme Court, in reversing, said  
13 that under Enmund the issue should have  
14 been submitted, and also what should have  
15 been submitted was whether or not the  
16 defendant on trial was made a participant.  
17 Now, there are a lot of folks who would  
18 take the position that that's kind of  
19 repetitive, that to submit both Stokes and  
20 that mitigating circumstance are  
21 inconsistent because if the jury gets  
22 past -- or Stokes, submit Enmund, that that  
23 mitigating circumstance, because once the  
24 jury gets past the Enmund issue they have  
25 already decided that issue of major

1 participation and have already decided to  
2 some extent, depending on what the facts  
3 are, that he's not an accomplice, did not  
4 engage in major participation. Because the  
5 State in this case introduced Mr. Green's  
6 statement, "I did not kill anybody," what  
7 is your position about that?

8 MR. BRITT: Well, my position  
9 would be the evidence that's been presented  
10 to this jury and the State's case in chief  
11 is the defendant is the one who shot and  
12 killed Mr. Jordan.

13 THE COURT: I don't disagree with  
14 that.

15 MR. BRITT: The defense that was  
16 proffered was an alibi, "I was not there,"  
17 a denial.

18 THE COURT: Yes, sir.

19 MR. BRITT: The statement that  
20 was then offered in rebuttal is simply a  
21 denial on the part of the defendant, that  
22 "I did not kill him." As I look at Enmund  
23 and Tyson and Stokes, it focus more on the  
24 role --

25 THE COURT: Uh-huh.

1 MR. BRITT: -- of the  
2 individual. There is no evidence before  
3 the jury that this defendant had any role  
4 other than the fact -- than the one that  
5 the State presented in its case in chief  
6 that he pulled the trigger.

7 THE COURT: That's exactly the  
8 argument that occurred to me on the other  
9 side of the coin when I was laying the pros  
10 and cons. I understand your position, the  
11 introduction of that statement was  
12 essentially a denial and nothing else. Let  
13 me ask you a blunt question. Is that  
14 position worth having to revisit this a  
15 year down the road?

16 MR. BRITT: I don't think, based  
17 on the evidence that's been presented and  
18 the total evidence presented in this case,  
19 that it would be proper to submit an Enmund  
20 issue to this jury.

21 THE COURT: Okay. Do you folks  
22 want to be heard?

23 MR. THOMPSON: No, sir.

24 MR. BRITT: And if I could be  
25 heard further, if you look at the note on

1 page one of the instruction, 150.10 --

2 THE COURT: I've looked at it.

3 MR. BRITT: And I think that  
4 again focuses on the role that an  
5 individual has under Enmund and under  
6 Tyson. And simply so that it's on the  
7 record, says this instruction and verdict  
8 form which follows includes changes  
9 required by Enmund versus Florida, Cabana  
10 versus Bulloch, and Tyson versus Arizona,  
11 which held that the death penalty may not  
12 constitutionally be adjudged against a  
13 defendant convicted of first degree  
14 murder -- first degree felony murder if  
15 that defendant himself did not kill or  
16 attempt to kill or intended to kill the  
17 victim or intended that deadly force would  
18 be used in the course of the felony or was  
19 a major participant in the underlying  
20 felony and exhibited reckless indifference  
21 to human life.

22 I think you have to go back and look  
23 at the facts of Enmund. In essence, Enmund  
24 was a getaway driver of a car, and at the  
25 robbery was not present at the time that

1 the people -- person or persons were killed  
2 in that.

3 Tyson versus Arizona, which in my view  
4 tightens up Enmund but is a unique factual  
5 situation because Tyson helped break two  
6 individuals out of prison, and individuals  
7 were kidnapped, a car was subsequently  
8 taken, and the individuals in that car were  
9 taken out in the desert and killed, and  
10 Tyson was not present at the time.

11 But then we get into a language of  
12 being a major participant in the underlying  
13 felony and exhibiting reckless indifference  
14 to life. I don't think, based on the  
15 evidence, we have an Enmund issue or Tyson  
16 issue as relates to this defendant.

17 THE COURT: What we do have is an  
18 issue or situation where a defendant has  
19 been found guilty under the theory of  
20 felony murder.

21 MR. BRITT: Yes, sir.

22 THE COURT: Not premeditated,  
23 which would knock out Enmund altogether.  
24 Any case where you have a finding of guilty  
25 predicated on felony murder where there are

1 multiple participants in the underlying  
2 felony, then at least for the purposes of  
3 consideration, Enmund and Tyson have to be  
4 looked at. And at least for the purposes  
5 of eliminating potential problems in the  
6 case, the issue whether or not Enmund ought  
7 to be submitted to the jury has to be  
8 decided.

9 Let me read the following language,  
10 talking about Stokes. The Supreme Court  
11 remanded the case for a new sentencing  
12 hearing. Court said that while there was  
13 strong evidence that the defendant himself  
14 robbed the victim and delivered the fatal  
15 blows, the evidence also would have  
16 permitted conviction of a felony murder and  
17 would have supported the imposition of the  
18 death penalty.

19 But, in this case, the State offered  
20 the defendant's, quote unquote, confession  
21 in part. And you can change confession to  
22 admission in part, or you can change  
23 admission to statement in part, stating  
24 that the defendant participated in the  
25 crime only as a lookout, and he did not

1 deliver the fatal blows.

2 Now, that's the gist of your argument,  
3 that in that case there was a confession  
4 and admission as to being present but not  
5 being the person who delivered the fatal  
6 blows. Presumably, that's what the  
7 evidence showed in Tyson, based on my  
8 recollection of Tyson. There is evidence  
9 showing presence and nonparticipation.  
10 Your position is that's not our situation.

11 MR. BRITT: Yes, sir.

12 THE COURT: Our situation is  
13 there's no admission to being present.  
14 There's an absolute denial by way of alibi.

15 MR. BRITT: Yes, sir.

16 THE COURT: And because that  
17 denial, i.e. alibi was rejected by the  
18 jury, we haven't, the State hasn't offered  
19 evidence in contradiction to the evidence  
20 in this case that this defendant was the  
21 one who actually committed the killing.  
22 That's your position?

23 MR. BRITT: Yes, sir.

24 THE COURT: I understand that.  
25 And I think that -- and I'm using this word

1 intentionally, "may be upheld on appeal."  
2 The word I like better is "will be upheld  
3 on appeal." That's the word I like.

4 Issue 1-A reads as follows: I charge  
5 that for you to recommend that the  
6 defendant be sentenced to death, the State  
7 must prove, parens, three, parens, four,  
8 things beyond a reasonable doubt.  
9 Reasonable doubt is then defined, and then  
10 going to the elements set out in issue 1-A  
11 first, that the defendant himself, A,  
12 killed or attempted to kill the victim, or  
13 B, intended to kill the victim, or C,  
14 intended that deadly force would be used in  
15 the course of the felony, or D, was a major  
16 participant in the underlying felony and  
17 exhibited reckless indifference to human  
18 life.

19 Now, our form as I recall the form  
20 doesn't require them to check which one of  
21 those they think applies. Any of those  
22 would suffice for a jury to get past 1-A  
23 and go to 1. Is that correct, Ms. Gaines?

24 THE CLERK: That's correct.

25 THE COURT: All right. So if the

1 jury having found this defendant guilty of  
2 first degree murder on the theory of felony  
3 first degree murder says, yeah, we found  
4 that, we found that he killed, they are  
5 past 1-A and they are at Issue 1.

6 There's no issue that Enmund was not  
7 submitted to the jury for the jury's  
8 consideration. In my mind that leans much  
9 closer to the "will be upheld on appeal,"  
10 much further from the "may be upheld on  
11 appeal" category.

12 I understand your position. Out of an  
13 abundance of precaution, the Court is going  
14 to instruct under 1-A. Note the State's  
15 objection and exception.

16 Now, having said that, moving on from  
17 your aggravating circumstances, because I  
18 don't think we've got any problem there,  
19 folks, you look at -- you have not  
20 requested this, but I want you to look at  
21 Issue 2, mitigating circumstance, statutory  
22 mitigating circumstance Number 2.

23 Statutory mitigating circumstance  
24 Number 2: Consider whether this murder was  
25 committed while the defendant was under the

1 influence of mental or emotional  
2 disturbance. Defendant is under such  
3 influence if he is in any way effected or  
4 influenced by a mental or emotional  
5 disturbance at the time he kills. Two  
6 primary cases that I'm aware of, leading  
7 cases, are Stokes and Moose. Those cases  
8 arguably are in conflict. Stokes was a  
9 situation -- let me find my notes on that.

10 In Stokes there was some evidence or  
11 testimony that when the defendant was  
12 young, he had been treated by a  
13 psychiatrist for mental problems, that he  
14 was minorly retarded and had an antisocial  
15 personality disorder. In Stokes there's no  
16 evidence in my view that he was under the  
17 influence of any mental or emotional  
18 disturbances at the time the killing  
19 occurred. The Court held in Stokes that  
20 F-2 should have been submitted even though  
21 there was no evidence that at the time the  
22 killing occurred he was suffering from any  
23 mental or emotional disturbance, but there  
24 was evidence when he was young he suffered  
25 from a mental or emotional disturbance.

1           See, that's what I'm worried about  
2           Mr. Britt. That's where I worry about the  
3           "may" and the "will," when I read these  
4           kinds of decisions, because in Moose, the  
5           defendant killed a black man and there was  
6           abundant evidence in the case that he had a  
7           pathological hatred of all blacks, and that  
8           the motivation for the killing was this  
9           pathological hatred.

10           In Moose, our Supreme Court said it  
11           was not error to submit F-2 when all of the  
12           evidence showed that at the time of the  
13           killing he was suffering from this  
14           pathological hatred of black males or black  
15           folks in general. Moose seems to stand for  
16           the proposition that despite what the  
17           mitigating circumstance says at the time of  
18           the offense, that you can look back at what  
19           happened when somebody was young, as in  
20           Stokes, and find that that somehow has a  
21           bearing on what he did at the time of the  
22           killing. But whereas in Moose, where all  
23           the evidence shows he has some emotional,  
24           pathological disturbance, hatred, because  
25           there was no evidence that he was treated

1 for it at any time in the past by anybody,  
2 F-2 ought not be submitted. I don't  
3 understand that but that is what the law  
4 is.

5 Isn't there evidence in this case in  
6 the form of the typology -- well, let me go  
7 to your proposed mitigators, did you give  
8 me that back yet? I read something about  
9 "resentful" in something. Maybe that's on  
10 the typology and not on the proposed  
11 mitigators. Didn't Dr. Johnson testify to  
12 something about resentment on the part of  
13 this defendant?

14 MR. THOMPSON: Your Honor,  
15 specifically -- he did, but specifically,  
16 Dr. Rohrer testified that these  
17 intergenerational patterns of violence,  
18 deaths in Daniel's family, caused the  
19 defendant to become resentful and  
20 suspicious of others. Now, that was  
21 Dr. Rohrer --

22 THE COURT: I knew I heard it  
23 somewhere.

24 MR. THOMPSON: Yes, sir.

25 THE COURT: And I'm trying to

1 think back over what is in the evidence,  
2 because that has to determine what I  
3 submit.

4 MR. THOMPSON: And that's 74 -- I  
5 mean, I know the reference, exact page  
6 reference on that if you want to see it.

7 THE COURT: Mr. Britt.

8 MR. BRITT: Your Honor, as I  
9 recall Dr. Rohrer's testimony about the  
10 intergenerational pattern of violence, is  
11 what led the defendant to believe that he  
12 would not --

13 THE COURT: Live long.

14 MR. BRITT: -- live beyond the  
15 age of 21. And then Dr. Johnson testified  
16 as a result of the -- may have been as a  
17 result of Dr. Rohrer -- the defendant  
18 witnessing the Jamaican being shot and that  
19 caused suspicion toward and resentment of  
20 police officers.

21 THE COURT: Folks, I'm going to  
22 be real blunt with you. My responsibility  
23 is to glean the evidence, submit what is  
24 supported in the evidence in aggravation in  
25 mitigation, and I'm going to make sure as

1 best I can that we don't miss anything this  
2 time.

3 MR. THOMPSON: Well --

4 THE COURT: What is your  
5 position, Mr. Thompson; Mr. Bowen, on F-2?  
6 F-2 reads as follows --

7 MR. THOMPSON: Your Honor, I just  
8 want to share -- I mean, I've got whatever  
9 was said, it's right here.

10 THE COURT: F-2 reads as  
11 follows: Consider whether this murder was  
12 committed while the defendant was under the  
13 influence of mental or emotional  
14 disturbance. A defendant is under such  
15 influence if he is in any way affected or  
16 influenced by a mental or emotional  
17 disturbance at the time he kills. And then  
18 there's a parenthetical below: Being under  
19 the influence of mental or emotional  
20 disturbance is similar to but not the same  
21 as being in a heat of passion. Upon  
22 provocation, a person may be under the  
23 influence of mental or emotional  
24 disturbance even if he had no adequate  
25 provocation and even if his disturbance was

1 not so strong as to constitute heat of  
2 passion or to preclude deliberation. For  
3 this mitigating circumstance to exist, it  
4 is enough that the defendant's mind or  
5 emotions were disturbed from any cause and  
6 that he was under the influence of the  
7 disturbance when he killed the victim.

8 Now, that's what it says right there.  
9 Moose and Stokes are to the contrary. You  
10 would find this mitigating circumstance if  
11 you find, and then by way of example it  
12 says, describe source of disturbance, that  
13 the defendant suffered from schizophrenia  
14 or that the victim had evicted the  
15 defendant from his apartment and that this  
16 had enraged the defendant. We don't have  
17 any of that evidence.

18 But I'm scared of Stokes. Because we  
19 do have evidence relating to some earlier  
20 conduct that affected him, arguably,  
21 emotionally. And under Stokes they may  
22 decide that's good enough despite what it  
23 says in the pattern jury instruction.

24 MR. BRITT: But even under  
25 Stokes, in looking at the evidence in this

1 case, there's nothing, absolutely nothing  
2 in this record to suggest anything  
3 influenced his decision as it related to  
4 the murder of James Jordan.

5 THE COURT: Well, that's the  
6 difference. In Stokes there is psychiatric  
7 testimony about that earlier --

8 MR. BRITT: But we don't have  
9 that.

10 THE COURT: We don't have that.

11 MR. BRITT: Nor do we have any  
12 testimony from anyone that --

13 THE COURT: Well, frankly what  
14 bothers me is that Stokes did turn on  
15 medical testimony, but there was absolutely  
16 no evidence that I could find in Stokes  
17 that at the time of the killing that  
18 affected him. But it didn't make any  
19 difference. You understand my point? It  
20 didn't make any difference in the Court  
21 saying it should have been submitted.

22 MR. BRITT: The -- and I  
23 understand what you're saying, but I think  
24 we've got to look at it in context. With  
25 all due respect, the former Chief Justice,

1 there was some strange decisions that came  
2 out during the time.

3 THE COURT: Let the record  
4 reflect that the Court didn't say that.

5 MR. BRITT: Specifically in  
6 regard to, and we will go back to their  
7 first proposed mitigating circumstance  
8 about no prior criminal history, where I  
9 think in one case they said it was up to  
10 the jury to determine whether or not  
11 kidnapping, robbery and some other crimes  
12 constituted a prior --

13 THE COURT: Bottom line is we  
14 don't have any control over that anyway.

15 MR. BRITT: Oh, I realize that.  
16 But I think -- my position is that it  
17 should not be submitted because there's  
18 absolutely no evidence to support the  
19 submission.

20 THE COURT: What's defendant's  
21 position?

22 MR. BOWEN: Judge, we've been in  
23 a quandary about this for days. But bottom  
24 line, we request it.

25 THE COURT: What do you contend

1 the Court, if given, ought to instruct upon  
2 with regard to the specific source of  
3 emotional or mental disturbance?

4 MR. BOWEN: Well, at least that  
5 language that Mr. Thompson just handed up  
6 to you.

7 THE COURT: Authority figures?  
8 That's what is handed up.

9 MR. BOWEN: That's what is before  
10 you, I understand. I mean, in anticipation  
11 of this, we could add other suggestions.

12 THE COURT: Well, folks, I'm  
13 going to do the best I can to make it  
14 right. Dr. Johnson, my recollection, has  
15 testified in the presence of the jury that  
16 the incarceration for the Ellison matter  
17 made the defendant resentful, did he not?

18 MR. BRITT: I don't think he said  
19 that in front of the jury.

20 THE COURT: It's hard to tell  
21 because they were in and out, but my  
22 recollection is that he did.

23 MR. BOWEN: It's in -- I believe  
24 it's on the sheet.

25 MR. BRITT: My recollection is

1           when that was asked, you asked him if he  
2           had any background as a psychologist, and  
3           he said no, and then you went on and ruled  
4           that because that was outside the scope of  
5           his expertise, he would not be allowed to  
6           state that opinion in front of the jury.

7                         THE COURT: Well, I know a safe  
8           way of doing it if it's done. You would  
9           find this mitigating circumstance if you  
10          find that as a result of any of the life  
11          experiences described in the testimony in  
12          this case that the defendant was under the  
13          influence of a mental and/or emotional  
14          disturbance when he killed the victim.

15                        Do you folks want to be heard? And  
16          that gives the jury the freedom to examine  
17          the evidence that's been presented in this  
18          case and decide from that whether this  
19          exists.

20                        MR. BOWEN: Yes, sir, we approve  
21          of that.

22                        THE COURT: Mr. Britt, do you  
23          want to be heard in opposition?

24                        MR. BRITT: Yes, sir. I would  
25          renew my objection that there's absolutely

1 no evidence before this jury to support the  
2 submission of that mitigating circumstance.

3 MR. BOWEN: Well, I just started  
4 doing the word string search on  
5 "resentment" for example, and one of  
6 these, I believe this is Dr. Rohrer's  
7 testimony, I think there's an element of  
8 resentment in that, losing people who are  
9 close and not having a dad and all that  
10 stuff, so there's all kinds of emotional  
11 outcroppings in there, and I think it's  
12 safe to let the jury decide what they think  
13 is pertinent.

14 THE COURT: With all due respect,  
15 Mr. Britt, I understand your position, I  
16 know you're doing your job, and you're  
17 doing it well. Every prosecutor has got  
18 reversed on appeals, and I wish I hadn't  
19 taken that position way back when. I can  
20 think of one in particular up in Little  
21 Washington, because he asked me for it and  
22 I gave it to him, and they kicked it back,  
23 which doesn't bother me, but I like to do  
24 things the right way the first time.

25 Give me a moment, folks.

1 (Brief pause.)

2 THE COURT: All right. If you  
3 folks would give me your attention. As to  
4 F-2, you would find this mitigating  
5 circumstance if you find that as a result  
6 of any instability, dysfunctional family  
7 life, exposure to violence, neglect, or any  
8 of the defendant's life experiences as  
9 described in the testimony in this case,  
10 the defendant was mentally or emotionally  
11 disturbed and that as a result the  
12 defendant was under the influence of mental  
13 or emotional disturbance when he killed the  
14 victim. Anybody want to be heard?

15 MR. BOWEN: The only other  
16 language, and we're remembering again that  
17 he was convicted not of intentional killing  
18 but of murder felony, and I would pin the  
19 phrase "if he in fact killed" --

20 MR. THOMPSON: "If you find."

21 MR. BOWEN: Or "if you find that  
22 he in fact killed."

23 THE COURT: This is issue what?

24 MR. BRITT: Two.

25 THE COURT: Then they have

1 already gotten past that. If they get this  
2 far, they have already answered that.

3 MR. BOWEN: Okay.

4 THE COURT: Under the Enmund  
5 issue, under the 1-A issue. State want to  
6 be heard in opposition?

7 MR. BRITT: Yes, sir, I would  
8 renew my objection. The wording is  
9 contrary to what both Dr. Johnson and  
10 Dr. Rohrer said in regard to his level of  
11 intelligence, he was a bright young man.

12 THE COURT: Let's stop for a  
13 moment. I'll give you an opportunity. Do  
14 you contend there is no evidence that this  
15 defendant had an unstable family life?

16 MR. BRITT: No, the evidence  
17 supports that.

18 THE COURT: Do you contend there  
19 is no evidence that this defendant's family  
20 life was dysfunctional?

21 MR. BRITT: No.

22 THE COURT: Do you contend there  
23 is no evidence that the defendant was  
24 exposed to violence?

25 MR. BRITT: No.

1 THE COURT: Do you contend there  
2 is no evidence to support the contention  
3 that this defendant was exposed to neglect?

4 MR. BRITT: No.

5 THE COURT: Do you contend that  
6 there's no evidence totality of his life  
7 experience upon which a jury could find an  
8 emotional disturbance if not a mental  
9 disturbance?

10 MR. BRITT: Yes, sir.

11 THE COURT: How?

12 MR. BRITT: While we have the  
13 evidence about these things, we don't have  
14 any evidence to support the effect that  
15 they may have had. I think you're asking,  
16 by submitting in this fashion, you're  
17 asking the jury to guess and to speculate  
18 as to the effect because in terms of  
19 Dr. Johnson, he labeled them as positive  
20 and negative. Positive and negative have  
21 different connotations than mental and/or  
22 emotional defect or disturbance.

23 THE COURT: Yes, sir.

24 MR. BRITT: I think you're asking  
25 the jury to interpret the negative, because

1 we've all had negative experiences in  
2 life. I mean, I could argue because my  
3 father died when I was age 18 and I went  
4 out and did something as a result of his  
5 death, that's what caused me to do it. I  
6 don't buy that argument. I mean, you have  
7 Dr. Rohrer saying he made a conscious  
8 decision as a result of his exposure to  
9 substance abuse not to use. And then you  
10 have Dr. Johnson who comes in behind and  
11 said while he didn't use he was selling.  
12 Those are conscious decisions as they both  
13 opined he is a bright and intelligent  
14 individual.

15 THE COURT: I don't disagree with  
16 your argument, and what I would suggest to  
17 you, ask Mr. Huseby to write it up, because  
18 that's what I would give to the jury.

19 MR. BRITT: Oh, I intend to.

20 THE COURT: I don't mean that  
21 facetiously. I think that's a valid  
22 position to take. Don't leave any stone  
23 unturned. You folks disagree with this  
24 language as proposed?

25 MR. BOWEN: No, sir.

1 THE COURT: Mr. Britt, your  
2 argument is a strong argument, it's a  
3 compelling argument, one that probably  
4 needs to be made to the jury. They can  
5 decide yes or no on anything I submit to  
6 them. They don't get to answer yes or no  
7 if it's not submitted to them. I'm going  
8 to give F-2. Okay?

9 MR. THOMPSON: And I don't think  
10 that -- well, I don't know. Actually, the  
11 kind of argument that Mr. Britt -- we  
12 anticipated that could be made, but he  
13 brought in a personal experience which is  
14 not in evidence, and I certainly hope he  
15 wouldn't --

16 THE COURT: Come on, Mr.  
17 Thompson.

18 MR. THOMPSON: Yes.

19 THE COURT: Come on.

20 MR. THOMPSON: But you were  
21 telling him it was such a good argument, I  
22 just wanted to make sure we're on the  
23 same --

24 THE COURT: We are.

25 MR. THOMPSON: -- sheets.

1                   THE COURT: We are, yes, sir, we  
2 are. All right. F-2 is over with. All  
3 right.

4                   I looked at the others. See, because  
5 whether this thing goes up, folks, they  
6 won't say counsel didn't ask for this.  
7 What they will say is the evidence is  
8 before the Court, the Court's  
9 responsibility to determine from the  
10 evidence what ought to be submitted.

11                   Going now to mitigating circumstances,  
12 and Mr. Huseby, you performed a yeoman's  
13 work as usual, we very much appreciate  
14 that. Going to your proposed mitigating  
15 circumstances, folks, as I indicated to you  
16 the Court makes the following suggestion,  
17 you folks take it for what it's worth. As  
18 to number one, you have defendant Daniel  
19 was not convicted of premeditated murder.  
20 Court would propose the murder for which  
21 the defendant has been convicted was  
22 committed spontaneously and was not  
23 premeditated. Anybody object?

24                   MR. BRITT: State does.

25                   THE COURT: State's objection is

1 noted for the record. Objection is  
2 overruled. Exception is noted for the  
3 record. Counsel for defendant agree?

4 MR. THOMPSON: Yes, sir.

5 THE COURT: Your number two as  
6 requested, reading as follow, although  
7 defendant Daniel has been found guilty  
8 beyond a reasonable doubt of first degree  
9 murder, the evidence does not foreclose all  
10 doubt as to his doubt or degree of  
11 participation. State objects to that,  
12 Court sustained that objection. Counsel  
13 for defendant's exception is noted.

14 In lieu of your proposed instruction,  
15 Court will give the following instruction  
16 if requested to do so. The defendant was  
17 born illegitimate and his parents did not  
18 marry until he was three years old.  
19 Counsel for the defendant?

20 MR. BOWEN: We would agree with  
21 that suggested mitigating factor, however  
22 we would still like to be heard later on a  
23 proposed residual doubt issue.

24 THE COURT: We'll come back to  
25 that. Your proposed number three is

1 defendant Daniel received a poor  
2 educational background relative to his  
3 abilities. Court proposes the following  
4 language as has previously been proposed  
5 for counsel for the defendant as follows:  
6 For number three, the defendant suffered  
7 from stuttering and was involved in therapy  
8 throughout his school years. Counsel for  
9 the defendant want to be heard?

10 MR. THOMPSON: No, sir.

11 THE COURT: Counsel for the  
12 State?

13 MR. BRITT: No, sir.

14 THE COURT: All right. Proposed  
15 number four, the defendant was constantly  
16 teased and ridiculed because of his  
17 stuttering, which subsumes your number 13.  
18 Counsel for the defendant want to be heard?

19 MR. THOMPSON: No, sir.

20 THE COURT: All right. Court's  
21 proposed number five, the defendant  
22 witnessed his father being arrested at an  
23 early age. You folks want to be heard?

24 MR. THOMPSON: No, sir.

25 THE COURT: Number six, the

1 defendant's father was in and out of prison  
2 for the next 15 years which contributed to  
3 the lack of a father/son relationship  
4 between defendant and his father. Counsel  
5 for the defendant want to be heard?

6 MR. THOMPSON: No, sir.

7 THE COURT: State want to be  
8 heard?

9 MR. BRITT: No, sir.

10 THE COURT: And that was Number  
11 six, I think.

12 Number seven, the defendant was a  
13 loving and caring son to his mother, which  
14 is your --

15 MR. THOMPSON: Number eight.

16 THE COURT: Number eight.

17 Proposed number eight, the defendant was a  
18 loving and caring brother to his younger  
19 sister Ebone and sought to protect her from  
20 the environment and circumstances in which  
21 they both lived.

22 Counsel for defendant want to be  
23 heard?

24 MR. THOMPSON: No, sir.

25 THE COURT: This is what I was

1 talking about, I knew it was there  
2 somewhere, I knew I hadn't absolutely lost  
3 my mind. Next number will be number nine,  
4 you folks have, there is an  
5 intergenerational pattern in defendant's  
6 life of violent deaths which caused the  
7 defendant to become resentful and  
8 suspicious of others. I knew I had seen  
9 that language somewhere, as to F-2. All  
10 right. And that would be number nine.

11 Number ten, there is an  
12 intergenerational pattern in defendant's  
13 family members of substance abuse which  
14 caused those family members to become  
15 unavailable to defendant for support.  
16 Court proposes the following additional  
17 language -- during his formative years.

18 MR. THOMPSON: Yes, we agree with  
19 that. Your Honor, may I retrieve that  
20 transcript that I gave you?

21 THE COURT: Yes, sir, if I can  
22 find it here.

23 Again, your number 13 has been  
24 subsumed in number three and four. Next  
25 number would be 11. Because his younger

1 sister had a serious illness which required  
2 much of his mother's attention Daniel spent  
3 much of his time with his great  
4 grandmother.

5 Next number 12, the defendant moved at  
6 least 13 times which caused instability in  
7 his life.

8 Next number, 13, the defendant  
9 attended at least 13 different schools  
10 causing instability in his life.

11 What is now marked as your number 17  
12 which reads as follows: At the age of  
13 three, defendant's parents' marriage  
14 dissolved. Based on matters discussed in  
15 the informal in-chambers conference, the  
16 Court proposes the following language. At  
17 an early age, the defendant's parents'  
18 relationship dissolved. You folks agree?

19 MR. BOWEN: Yes.

20 THE COURT: That would be number  
21 13 -- excuse me, 14.

22 All right. Number 15, because of the  
23 dissolution of his parents' relationship  
24 and because of his father's imprisonment,  
25 the defendant and his mother -- strike

1 that, defendant and his mother and sister  
2 were forced to move to Philadelphia for  
3 economic reasons.

4 That's where we stopped so that we  
5 could try to get this stuff organized. Let  
6 me pick up where we were there.

7 Number 16, the defendant and his  
8 family lived in and impoverished area of  
9 north Philadelphia where conditions were  
10 dangerous.

11 Number 17, the area of Philadelphia in  
12 which the defendant and his family lived  
13 was an area where he was exposed to drug  
14 dealers, prostitution and criminal  
15 activity.

16 19, during the time the defendant  
17 lived in Philadelphia, he suffered  
18 additional teasing and ridicule because of  
19 his stuttering and his southern speech.

20 MR. THOMPSON: 18.

21 THE COURT: 18, I'm sorry.

22 Okay. So we're on 19 now. During the  
23 period of time that the defendant lived in  
24 Philadelphia, he was assaulted physically  
25 with brass knuckles and knocked unconscious

1 at the age of 13. That's where there was  
2 some confusion about what happened next in  
3 terms of the evidence that's been  
4 presented.

5 20, while living in Florence, South  
6 Carolina, the defendant was robbed of his  
7 jewelry at gunpoint.

8 I think that may be where we -- all  
9 right. Next number, 21. Despite  
10 defendant's circumstances and conditions,  
11 the defendant was labeled as a gifted and  
12 talented student while living in  
13 Philadelphia.

14 22, the defendant participated in  
15 organized track and boxing while living in  
16 Philadelphia.

17 23, the defendant's favorite uncle  
18 Arnold was a murder victim, an incident  
19 which affected the defendant greatly  
20 throughout the remainder of his life. You  
21 folks disagree with that language?

22 MR. BOWEN: No, sir.

23 THE COURT: State.

24 MR. BRITT: As to the fact that  
25 he was a murder victim, because as I recall

1 Dr. Johnson's testimony, the individual who  
2 may have been charged was found -- was  
3 acquitted.

4 THE COURT: Thank you very much.

5 MR. BRITT: If I remember what he  
6 said correctly.

7 MR. THOMPSON: That's true.

8 MR. BRITT: I think you could say  
9 was killed in an incident.

10 THE COURT: Killed violently.  
11 Substitute killed violently. Defendant's  
12 favorite uncle was killed violently, and  
13 the remainder is the same. All right.  
14 That takes care of that one.

15 Next number, a number of other family  
16 members suffered violent deaths which  
17 caused the defendant to become fearful --  
18 strike that -- which caused the defendant  
19 to fear that he would not live to reach  
20 adulthood. Is that language satisfactory  
21 with all counsel?

22 MR. THOMPSON: Yes, sir.

23 THE COURT: Next number,  
24 throughout the defendant's life, the  
25 defendant has never had a stable father

1 figure. Anybody object to that language?  
2 That takes care of your Number 25 and some  
3 others.

4 Can we back up? Which is the number  
5 where he was robbed at gunpoint at the  
6 telephone booth in Florence, South  
7 Carolina?

8 MR. BRITT: Number --

9 MR. THOMPSON: About 20.

10 MR. BRITT: About 20 or 21,  
11 somewhere in that area.

12 THE CLERK: 20.

13 THE COURT: Folks, because as I  
14 indicated to you in chambers, from a point  
15 of view of coherency, it's my belief that  
16 matters ought to be to the extent possible  
17 chronological and grouped. I'm going to go  
18 back, once we get this transcript this  
19 morning, and I'm going to group some of the  
20 latter things dealing with the  
21 Philadelphia, the boxing and the track  
22 there, so we may renumber. I'm going to  
23 group the gifted and talented determination  
24 there so that we can be consistent, and  
25 then I'm going to put after what is now

1           Number 20, because that's what I understand  
2           now is what and where it occurred, the  
3           defendant's family was burglarized --  
4           wasn't it a burglary in the home, folks?

5           MR. BRITT: Yes, sir, it was in  
6           Laurinburg, I believe.

7           THE COURT: In Laurinburg, North  
8           Carolina while family members were present  
9           and asleep. Or was that in Florence, South  
10          Carolina?

11          MR. THOMPSON: Excuse me. We  
12          were dealing, and I wasn't quite -- wasn't  
13          listening, because the incident I had asked  
14          about where -- which was number 20 where  
15          the defendant was robbed of jewelry, that,  
16          and you mentioned about phone booth --

17          THE COURT: Brass knuckles, phone  
18          booth, is that what happened?

19          MR. THOMPSON: He was robbed at  
20          gunpoint of jewelry and a coat while on the  
21          pay phone. Now, that's the one incident.  
22          That is one incident, and that's why I was  
23          backing up. Because you said jewelry. He  
24          was robbed of jewelry and a coat at the pay  
25          phone.

1 THE COURT: We'll include the  
2 coat.

3 MR. THOMPSON: Brass knuckles is  
4 Philadelphia.

5 MR. BRITT: Brass knuckles is  
6 Philadelphia.

7 MR. THOMPSON: That's why I  
8 wasn't listening because I was going back  
9 in response to your question number 20,  
10 defendant was robbed of jewelry and his  
11 coat at the phone booth.

12 THE COURT: Okay. All right.  
13 We'll take care of that.

14 MR. THOMPSON: I'm sorry, now,  
15 you were asking --

16 THE COURT: Where did the burglar  
17 take place of the home while people were  
18 asleep?

19 MR. THOMPSON: That was in  
20 Laurinburg.

21 THE COURT: Yes, sir. So we've  
22 taken care of that. And that would be  
23 included following Philadelphia, following  
24 Florence, South Carolina, that would be the  
25 next incident numerically that we'll deal

1 with. Okay. I hope we're down to the last  
2 two or three because I think we've dealt  
3 with everything else.

4 Whatever the next number is, way back.

5 THE CLERK: 26.

6 THE COURT: Is that the one we've  
7 done or about to do? Number 26, okay. The  
8 defendant has completed his GED, received  
9 some vocational courses, and has completed  
10 some college courses.

11 Next number, 27, the defendant has no  
12 substance abuse problem which can be  
13 attributed to his conscious decision not to  
14 abuse. You all want to use that language,  
15 right?

16 MR. THOMPSON: Yes, sir, Your  
17 Honor, just state that he has no substance  
18 abuse problem, because that was in the --

19 THE COURT: Testimony is that he  
20 made a conscious decision.

21 MR. THOMPSON: And he -- exactly.

22 THE COURT: So you want me to use  
23 your language?

24 MR. THOMPSON: No, that -- what,  
25 the language that we would ask that you use

1 is that the defendant has no substance  
2 abuse problem. Now, it's in the evidence  
3 and the District Attorney can argue as  
4 he -- as the evidence would support, but  
5 that's the way --

6 THE COURT: You want me to omit  
7 "which can be attributed to his conscious  
8 decision not to abuse"?

9 MR. THOMPSON: Yes.

10 THE COURT: Okay. I'll do that.

11 Next number, is that 28? Only thing  
12 that is remaining that I can glean from  
13 what you've set up, folks, is the incident  
14 involving the defendant and the sister in  
15 the park in Philadelphia.

16 MR. THOMPSON: Right.

17 THE COURT: Sue and I are going  
18 to get together, we're going to be finished  
19 by 2:00 today with this stuff. We're going  
20 to be finished. Sue and I are going to get  
21 together, we're going to renumber, and  
22 we're going to have a final number of all  
23 mitigators. Between 16 and 17, 16 now  
24 reads, the defendant and his family lived  
25 in an area of north Philadelphia where

1 conditions were dangerous. 17 reads, the  
2 area of Philadelphia in which the defendant  
3 and his family lived was exposed to drug  
4 dealers, prostitutes and robbers. Between  
5 those two I'm going to put the defendant's  
6 father took defendant and his younger  
7 sister to a park in this area of north  
8 Philadelphia where he left them for --  
9 unattended for a number of hours. Is that  
10 language satisfactory with you folks?

11 MR. BOWEN: Never returned.

12 MR. THOMPSON: Left them.

13 MR. BOWEN: Abandoned them.

1           either.

2                   THE COURT: I recall some  
3 evidence that they were left there six or  
4 eight hours.

5                   MR. BRITT: What's in evidence  
6 from Dr. Rohrer is they were left there  
7 while he transacted some type of business,  
8 and then from Dr. Johnson he left them to  
9 take care of a transaction.

10                  MR. THOMPSON: And didn't say how  
11 long, that's my point, so he just left  
12 them.

13                  THE COURT: Read the modification  
14 so I can modify the modification based on  
15 what is in evidence.

16                  THE CLERK: Me?

17                  MR. THOMPSON: You said "left for  
18 a few hours."

19                  THE COURT: What do you folks  
20 want in?

21                  MR. THOMPSON: What you said  
22 except at the end --

23                  THE CLERK: Father took defendant  
24 and his younger sister to park where he  
25 abandoned them.

1 THE COURT: Does "abandoned"  
2 cover it?

3 MR. THOMPSON: Yes, sir.

4 THE COURT: Do I need to modify  
5 that in any way?

6 MR. THOMPSON: No, sir.

7 THE COURT: Okay. That will be  
8 between 16 and 17. Now, I think that takes  
9 care of all the stuff that you folks have  
10 proposed with different language, and as I  
11 say what I'm going to do is get with Sue  
12 and Mr. Huseby, and some of the stuff has  
13 been disconnected in terms of chronology or  
14 place, and I'm going to put it together in  
15 terms of, to the extent that I can,  
16 chronology or place. Is that agreeable  
17 with all counsel?

18 MR. THOMPSON: Yes, sir.

19 THE COURT: It should take us  
20 maybe 15 minutes at the most to come back  
21 and do that. We will come back, put on the  
22 record specifically how the mitigators are  
23 going to be presented to the jury. State  
24 want to be heard in any respect at this  
25 time?

1 MR. BRITT: No, sir. Will we be  
2 provided a copy of that before --

3 THE COURT: We're going to give  
4 everybody a copy of it today.

5 MR. BRITT: That's fine. Are we  
6 at ease?

7 THE COURT: We're at ease.

8 (Lunch recess.)

9 THE COURT: Let the record  
10 reflect all counsel are present, the  
11 defendant is present. We are continuing  
12 now with the charge conference as is  
13 required by law.

14 Folks, all of us have before us I  
15 believe a rough draft of an issue of  
16 recommendation as to punishment which, when  
17 corrected, will be submitted to the jury in  
18 this case. If you'll look at the first  
19 page, issues beginning with Issue 1-A, let  
20 me give you folks an opportunity to examine  
21 the language relating to Issue 1-A and hear  
22 from anyone.

23 MR. BRITT: I would, for the  
24 purposes of the record, renew my objection.

25 THE COURT: Renewed objection by

1 the State is timely made. It's overruled,  
2 exception is noted for the record.

3 Everyone finished with 1-A?

4 MR. THOMPSON: Yes, sir.

5 THE COURT: If you'll turn to the  
6 next page, issue -- well, first of all,  
7 let's back up. The instructions to the  
8 jury are in bold face. Anybody have any  
9 comment or objection as to the instructions  
10 as set out on the bottom of page one, top  
11 of 1-A?

12 MR. BRITT: None from the State.

13 THE COURT: Other than the  
14 objection previously noted.

15 MR. BRITT: And I then, for the  
16 purposes of the record, I think that it's  
17 wise to differentiate between the  
18 instructions and the issues.

19 THE COURT: Yes.

20 MR. BRITT: In terms of the type  
21 of print used.

22 THE COURT: Issue 1 --

23 THE CLERK: Is there a  
24 correction?

25 THE COURT: Issue 1, dealing with

1 the existence of aggravating circumstances,  
2 if you'll look at the language and the  
3 instructional language in bold print. Two  
4 potential aggravating circumstances track  
5 the language in 15-A 2000. Any comment as  
6 to Issue 1 or the instructions representing  
7 Issue 1?

8 MR. BRITT: None from the State.

9 THE COURT: All right. Now is  
10 where we get in to some corrections. Issue  
11 2, beginning on the third page, do you find  
12 from the evidence the existence of one or  
13 more of the following circumstances with  
14 provision for the answer, as to the general  
15 issue, and then following that the  
16 instructions in bold print requiring the  
17 jury, before answering Issue 2, to consider  
18 each of the following mitigating  
19 circumstances, and then the space after  
20 each mitigating circumstance write yes if  
21 one or more of you find mitigating  
22 circumstance exist by a preponderance of  
23 the evidence, no if they do not so find,  
24 and with instructions as to what they are  
25 to do as to each individual potential

1 mitigating circumstance.

2 All right. One, two, and three are  
3 statutory. The language of one, two, and  
4 three track the language in 15-A 2000-F.  
5 Four is the beginning of the nonstatutory  
6 mitigating circumstances. Is there's a  
7 correction that has to be made with regard  
8 to the answer as written in or space for  
9 answer as written in as to number four?  
10 Number four being nonstatutory, jury has to  
11 find two things, one that it exists, two  
12 that it is deemed by one or more members of  
13 the jury having mitigating value. So the  
14 answer has to be corrected. The answer  
15 after number four should read, one or more  
16 of us finds this circumstance to exist and  
17 deem it to have mitigating value.

18 MR. THOMPSON: Right.

19 THE COURT: Can we go ahead and  
20 do that now?

21 MR. BRITT: Can we make the  
22 language, one or more of us finds the  
23 existence of this mitigating circumstances  
24 and deems it -- this circumstance and deems  
25 it to have mitigating value?

1 THE COURT: That's what I thought  
2 I said.

3 MR. BRITT: All right.

4 THE COURT: Well, it's not  
5 mitigating unless it exists and has value.

6 MR. BRITT: That's what I'm  
7 saying. Could it be worded, one or more of  
8 us finds the existence of this circumstance  
9 and deems it to have mitigating value. I  
10 think the language you had used was, one or  
11 more of finds this circumstance to exist.  
12 It just shortens the language a little bit.

13 THE COURT: You want it which way  
14 now?

15 MR. BRITT: One or more of us  
16 finds --

17 THE COURT: Let me back up  
18 because she's got about 28 changes to make  
19 as to that.

20 MR. BRITT: What I would propose,  
21 one or more of you finds the existence of  
22 this circumstance and deems it to have  
23 mitigating value.

24 THE COURT: You folks want to be  
25 heard?

1                   MR. BOWEN: Like it the way it  
2 is, except we do have to take the "and has  
3 mitigating value --" I think he's  
4 objecting to the description of the  
5 circumstance as mitigating circumstance,  
6 because it implies certain things. It is a  
7 mitigating circumstance.

8                   THE COURT: All right. Draw a  
9 line through "mitigating" right now. That  
10 word is not there. Read it without  
11 "mitigating" there and tell me what you  
12 got.

13                   MR. BRITT: Okay.

14                   THE COURT: "One or more of us  
15 finds this circumstance to exist and deem  
16 it to have mitigating value." That's --

17                   MR. BRITT: That's fine.

18                   THE COURT: Look on the next  
19 page, that's what we've got. Is there a  
20 problem with that?

21                   MR. BRITT: No, sir, that's  
22 fine. Just that one, number four -- just  
23 number four has to be corrected.

24                   THE COURT: That's the only one  
25 that has to be corrected.

1 MR. BRITT: That's no problem.

2 THE COURT: All right.

3 MR. BRITT: Again, for the  
4 purposes of the record, I would object to  
5 the submission of number two.

6 THE COURT: Yes, sir. That's  
7 noted for the record, timely made, excepted  
8 to. It's overruled. Now, go to number --

9 MR. THOMPSON: Your Honor, you  
10 indicated that you were going to put for --  
11 back on Issue 1, aggravating circumstance  
12 number two -- no, no, that's wrong.

13 We're fine. We're fine.

14 THE COURT: Okay. Going again to  
15 number five under mitigating circumstances,  
16 which is the second nonstatutory, should  
17 read "the defendant was born  
18 illegitimate." Initially I had included  
19 language "and his parents' relationship  
20 dissolved --" we've got "resolved" and  
21 should be dissolved. That's duplicitous  
22 because we deal with that in another  
23 circumstance. What I'm going to --

24 MR. THOMPSON: I'm -- you know,  
25 the defendant has some questions. You're

1 talking and I'm sorry, but I mean he does  
2 have some concerns and I do need to listen  
3 to those.

4 THE COURT: Yes, sir.

5 MR. THOMPSON: Okay. Your Honor,  
6 may I be heard? With respect to the Issue  
7 2, the first three are statutory and of  
8 course number four begins the  
9 nonstatutory. For a manner of clarity, are  
10 you going to delineate? You mentioned some  
11 change, but are you going to set forth  
12 language with respect to identifying first  
13 one, two and three the statutory?

14 THE COURT: No, sir. Look at  
15 paragraph nine.

16 MR. THOMPSON: Paragraph --

17 THE COURT: Number nine, in the  
18 pattern jury instruction, mitigating  
19 circumstances Issue Number 2. Got your  
20 pattern jury instruction 150.10?

21 MR. THOMPSON: Yes, sir.

22 THE COURT: Turn to that. Let me  
23 find mine, I can get it faster. Here it  
24 is.

25 MR. BOWEN: I got it, Judge.

1 THE COURT: All right. Are we on  
2 the same note?

3 MR. BOWEN: I think. What page?

4 THE COURT: Page 40, paragraph  
5 nine. You should also consider the  
6 following circumstances arising from the  
7 evidence which you find to have mitigating  
8 value. If one or more of you find by a  
9 preponderance of the evidence that any of  
10 the following circumstances exist and also  
11 are deemed by you to have mitigating value,  
12 you would so indicate by having your  
13 foreperson write yes in the space  
14 provided. If none of you find the  
15 circumstance to exist or if none of you  
16 deem it to have mitigating value, you would  
17 so indicate by having your foreperson write  
18 no in that space.

19 MR. THOMPSON: Yes, sir.

20 THE COURT: That instruction is  
21 given at the conclusion of the instruction  
22 as to the statutory aggravating -- or  
23 mitigating circumstances, prior to number  
24 four.

25 MR. THOMPSON: And that's what we

1           were concerned with, and he was concerned  
2           with, because we told him, and I think he  
3           understands correctly, meaning the  
4           defendant, that the statutory mitigating  
5           circumstances are deemed by law to have  
6           mitigating value. And he knew that, and  
7           that was his concern and I've explained  
8           that is a part of the instruction, but this  
9           is an issue that recommendation should --

10                   THE COURT: This instruction is  
11           given to the jury. I'll tell the jury what  
12           is statutory and what is nonstatutory. You  
13           folks are free to argue what is statutory  
14           and what is nonstatutory. Typically, a DA  
15           will tell the jury this is statutory, that  
16           means legislature has deemed it to have  
17           some mitigating value. Now, these are what  
18           those folks over there contend are  
19           mitigating circumstances. You got to find  
20           two things, that they exist, and that they  
21           have mitigating value.

22                   MR. THOMPSON: We understand.

23                   THE COURT: Can we move on?

24                   MR. THOMPSON: Yes, sir.

25                   THE COURT: All right. Number

1 five, it now reads the defendant was born  
2 illegitimate and his parents' relationship  
3 "resolved," should be "dissolved" when he  
4 was three years old. I'm proposing that we  
5 eliminate "and the relationship dissolved  
6 when he was three years of age," that  
7 number five read, the defendant was born  
8 illegitimate, period. In that regard, look  
9 at 17, mitigating circumstances.

10 MR. BRITT: Yes, sir.

11 THE COURT: At the age of three  
12 the defendant's parents' relationship  
13 dissolved. It being brought to the  
14 attention of the Court in chambers that the  
15 defendant's father and mother were never  
16 legally married, that the defendant's  
17 father in fact was married to someone else,  
18 I thought we agreed that the change in the  
19 language would be "relationship" as opposed  
20 to "marriage."

21 MR. BRITT: Yes, sir.

22 THE COURT: And that makes this  
23 language on number five incorrect. You  
24 folks satisfied with five reading, the  
25 defendant was born illegitimate, period,

1 and then picking up on the dissolution of  
2 the relationship in number 17?

3 MR. THOMPSON: Yes, sir.

4 THE COURT: So five will read --  
5 can you correct that right now? The  
6 defendant was born illegitimate period.

7 MR. THOMPSON: All right.

8 THE COURT: Everybody agree?

9 MR. THOMPSON: Yes, sir.

10 THE COURT: Five will read, the  
11 defendant was born illegitimate. Again,  
12 because it's nonstatutory instructions,  
13 answer provided requires a finding that it  
14 exists and it has mitigating value, as is  
15 true with all others as to Issue Number 2.

16 Folks, if you will look at six, seven,  
17 eight, nine, ten, and 11. Anybody want to  
18 be heard as to any of those?

19 MR. BRITT: In number 11, when  
20 you turn the page, top of the page there's  
21 a typo.

22 THE COURT: That's where we're  
23 coming, we're coming to that.

24 MR. BRITT: Okay.

25 THE COURT: Should be L I V E D.

1 We're got L I V I E D. Okay. Anything as  
2 to six through 11?

3 12 -- I'm sorry, are we all on 12  
4 now?

5 MR. THOMPSON: Yes, sir.

6 THE COURT: All right. Court's  
7 grammar needs to be corrected. 12, there  
8 is an intergenerational pattern, it now  
9 reads in the defendant's life of violent  
10 deaths which caused the defendant to be  
11 resentful and suspicious of others. What  
12 I'm proposing is as follows: There is an  
13 intergenerational pattern of violent deaths  
14 in the defendant's life which caused the  
15 defendant to be resentful and suspicious of  
16 others. "Of violent deaths" should follow  
17 pattern.

18 MR. BRITT: Yes, sir.

19 THE COURT: Anybody got any  
20 problem with that?

21 All right. As to number 13, same  
22 thing, there is an intergenerational  
23 pattern -- I would include after pattern,  
24 "of substance abuse in the defendant's  
25 family which caused --" eliminating

1 "members" because that is redundant --  
2 "which caused those family members  
3 suffering from substance abuse to be  
4 unavailable to defendant --" well, that's  
5 more awkward than it was before. Somebody  
6 suggest something to me because my mind is  
7 gone.

8 MR. THOMPSON: "There is an  
9 intergenerational pattern of substance  
10 abuse in the defendant's family."

11 THE COURT: "Causing those family  
12 members to be unavailable to provide  
13 support to defendant during his formative  
14 years," how is that?

15 MR. BRITT: That's fine.

16 THE COURT: There is an  
17 intergenerational pattern of substance  
18 abuse in the defendant's family causing  
19 those family members to be unavailable,  
20 or -- what did I say?

21 MR. THOMPSON: To be unavailable  
22 during the defendant's family years.

23 THE COURT: There it is.

24 THE CLERK: There is an  
25 intergenerational pattern of substance

1 abuse in the defendant's family causing  
2 those family members to be unavailable to  
3 the defendant for support during the  
4 formative years.

5 THE COURT: Causing those family  
6 members to be unable to provide support for  
7 the defendant in -- or during his formative  
8 years, instead of unavailable.

9 Is that a problem?

10 MR. THOMPSON: No.

11 THE COURT: Unable to provide  
12 support for defendant during his formative  
13 years. I'm sorry.

14 THE CLERK: For the defendant?

15 MR. BRITT: Yes.

16 THE COURT: Yes. I'm sorry about  
17 that Sue, it was my fault.

18 We've got a correction on 14. Serious  
19 is misspelled, that's the only thing. If  
20 you folks will look through 16, anybody got  
21 anything to take about 16 while Sue takes  
22 this call?

23 MR. BRITT: No, sir.

24 THE COURT: Sue, while they are  
25 doing, that if you'll go to "Philadelphia,"

1 I A. 21, omit the comma, first comma after  
2 "dangerous area." 22, first sentence  
3 "Philadelphia," I A. 22 is structurally  
4 awkward. During the time -- let me suggest  
5 this, folks: During the time the defendant  
6 lived in Philadelphia, he was teased and  
7 ridiculed because of his stuttering and  
8 southern speech. That's simpler, cleaner.

9 MR. BRITT: Remove the word  
10 "additional." You're on 22, right?

11 THE COURT: Yes.

12 MR. BRITT: Taking out the word  
13 "additional."

14 THE COURT: Yes.

15 MR. BRITT: That's fine.

16 THE COURT: Beginning on whatever  
17 page because it is not numbered here, 17,  
18 first correction I see is in the bottom of  
19 third sentence in 18, "Philadelphia," I A.  
20 Going down to 21, we've got the defendant's  
21 father took the defendant and his younger  
22 sister to a park in Philadelphia, comma,  
23 where he abandoned them. I'm suggesting  
24 omitting the commas.

25 THE CLERK: Both of them?

1 THE COURT: Yes. 22,  
2 "Philadelphia," I A. And what I'm  
3 proposing is, during the time defendant  
4 lived in Philadelphia he was teased and  
5 ridiculed because of his stuttering and  
6 southern speech, no comma after  
7 "ridiculed." During the time the  
8 defendant lived in Philadelphia, he was  
9 teased and ridiculed because of his  
10 southern speech. Top of page, the next  
11 page beginning with 23, "Philadelphia," I  
12 A. No comma after "Philadelphia."

13 THE COURT: He was assaulted  
14 physically, C A L L Y, no I, with brass  
15 knuckles and knocked unconscious at age  
16 13. And 24, we don't need that comma after  
17 "conditions" either.

18 25, no comma after "Philadelphia," I  
19 A. 26, no comma after the defendant. Now,  
20 it was Florence, South Carolina where the  
21 jewelry and the coat were lost, right?

22 MR. THOMPSON: (Nods head  
23 affirmatively.) While in a phone booth.

24 THE COURT: Do you want the phone  
25 booth?

1 MR. THOMPSON: This is all right.

2 THE COURT: If you all want the  
3 phone booth, you all can have the phone  
4 booth.

5 MR. THOMPSON: No, this is fine.

6 THE COURT: All right. 30, omit  
7 the comma after "life." In fact, just  
8 restructure it, the defendant never had a  
9 stable father figure throughout his life.  
10 That's clean. Is that a problem, Sue?

11 THE CLERK: No, sir.

12 THE COURT: Defendant never had a  
13 stable -- let me quote from a very esteemed  
14 judge in North Carolina, Charlotte area,  
15 because you all may want to consider this,  
16 plus it makes good reading.

17 Going back to Stokes, which has given  
18 rise to a lot of stuff. Requested  
19 instruction in Stokes was under F-9, and  
20 there was an instruction that the defendant  
21 was illegitimate, comma, and that he never  
22 experienced a relationship with his natural  
23 father. This judge said the defense  
24 counsel who drafted this issue was  
25 obviously not familiar with Gilbert and

1 Sullivan's HMS Pinafore, for if he had been  
2 he would have substituted "hardly ever" for  
3 "never." That's instructional. "Never"  
4 may be too broad. What do you folks want?

5 I know I lost you all. I bored you  
6 all, I apologize.

7 30 reads now, throughout the  
8 defendant's life, the defendant never had a  
9 stable relationship. What I suggested was  
10 cleaning up the language and put the  
11 defendant (word) had a stable father figure  
12 throughout his life. What word do you want  
13 me to insert in there?

14 MR. THOMPSON: "Seldom."

15 THE COURT: Makes it easier for  
16 the purpose of finding.

17 MR. THOMPSON: Never say never.

18 THE COURT: So what we will use  
19 then, folks, is the defendant seldom had a  
20 stable father figure throughout his life.  
21 Is that agreeable -- or "during his life"  
22 is better.

23 MR. THOMPSON: That's agreeable.

24 THE COURT: Change that, please,  
25 ma'am. 30 will read, the defendant seldom

1 had a stable father figure during his  
2 life.

3 31, the defendant has complete his  
4 GED, received some vocational courses and  
5 completed some college. "Courses" is  
6 misspelled.

7 32, defendant has no substance abuse  
8 problem.

9 33 is the number, paragraph number 10  
10 in the pattern jury instruction, the  
11 catch-all, which you'll find on page 41.  
12 That instruction, Mr. Green, is -- this is  
13 the instruction I will give as to what is  
14 now 33 on your form:

15 Finally, you may consider any other  
16 circumstance or circumstances arising from  
17 the evidence which you deem to have  
18 mitigating value. If one or more of you so  
19 find by a preponderance of the evidence,  
20 you would so indicate by having your  
21 foreperson write yes in the space provided  
22 after listing the circumstance on the issue  
23 and recommendation form. If none of you  
24 find any such circumstance to exist, you  
25 would so indicate by having your foreperson

1 write no in that space, and then I would  
2 pick up with the instructions following  
3 that.

4 Have we dealt with Issue Number 2?

5 MR. THOMPSON: Yes, sir.

6 MR. BOWEN: Well, Your Honor,  
7 we -- one second. Your Honor, we had  
8 talked about appropriate language for a  
9 residual doubt mitigating factor, and I  
10 wanted to propose something.

11 THE COURT: Okay.

12 MR. BOWEN: And it would be  
13 this. Any residual doubt arising from the  
14 evidence or lack thereof, whether before,  
15 during or after deliberations in the guilt  
16 or innocence phase of the trial, that the  
17 defendant is guilty of murder under the  
18 felony murder rule.

19 THE COURT: I'm listening.

20 MR. BOWEN: That would be the  
21 proposed instructions, because at least my  
22 somewhat limited experience has been before  
23 that the Court, other courts have  
24 entertained something that allows at least  
25 one or more jurors to voice, not that they

1           have any reasonable doubts anymore  
2           regarding guilt or innocence but they have  
3           some doubt which would mitigate the  
4           imposition of a death penalty, and that's  
5           the sense we want to convey. It may be  
6           inarticulately drawn, but if that  
7           sentence --

8                         THE COURT: Well, folks, I looked  
9           at what authority I had available to me,  
10          and almost everything that's ever been in  
11          my car has worked its way into the  
12          courtroom -- well, not everything; and in  
13          all honestly I can't find any authority to  
14          give. I mean, there's no law --

15                        MR. BOWEN: Then let me suggest  
16          the logic, if I may. Not unusually, and I  
17          don't have any evidence to think that it  
18          happened in this case, but it has happened  
19          in many ways where a juror will come back  
20          and render a verdict in the guilt or  
21          innocence phase or generally in a trial  
22          itself and then upon reflection after a few  
23          days, be less sure than they were when they  
24          actually unanimously returned their  
25          verdict. Of course, they can't go back.

1           But here we are proceeding on with  
2           this trial, and there may have been  
3           something presented in the presentation of  
4           both sides of this case in the sentencing  
5           phases which causes a juror to either be  
6           more convinced that they were right or less  
7           convinced that they were right in the guilt  
8           or innocence phase. And if that has  
9           happened, it certainly would have a  
10          mitigating effect against the imposition of  
11          the death penalty. And all we want is some  
12          language that triggers them to think about  
13          these things, as to whether or not there is  
14          some doubt not sufficient to have made them  
15          vote not guilty on guilt or innocence, but  
16          some doubt of some description, residual  
17          doubt that would cause them to think the  
18          death penalty is less appropriate. And I  
19          think on these facts with, may I argue, a  
20          relatively closer case than one normally  
21          sees in this type of situation, there  
22          certainly could be some reason to allow  
23          them to think about it.

24                   THE COURT: Well, the Court  
25          denies that request. Defendant's objection

1 and exception is noted for the record. I  
2 think that issue is really taken care of in  
3 number 10.

4 Nobody has raised the issue of -- or  
5 requested any preemptory instructions as to  
6 mitigating circumstances.

7 MR. THOMPSON: Yes, sir.

8 THE COURT: Yes, sir. Of the  
9 mitigating circumstances or potential  
10 mitigating circumstances now set out on the  
11 rough draft as the -- does the defendant  
12 contend that the Court is obligated to give  
13 under the facts and the law in this case a  
14 preemptory instruction as to any of the  
15 mitigating circumstances listed, statutory  
16 or nonstatutory?

17 MR. THOMPSON: Well, as to the  
18 nonstatutory --

19 THE COURT: I don't mean to  
20 interrupt, but are you contending as to the  
21 statutory a preemptory instruction is not  
22 required by the facts, the evidence and the  
23 law?

24 MR. THOMPSON: If at all, Your  
25 Honor, it would be as to age, the --

1                   THE COURT:   Okay.   So that  
2                   everybody is clear before we get into it, I  
3                   don't mean to interrupt but I'm just trying  
4                   to tell you what our language is going to  
5                   be if given, this is language I give as  
6                   prefatory instruction.   All of the evidence  
7                   tends to show that whatever circumstance is  
8                   involved -- let me give you an example that  
9                   ties to your case.

10                  Consider whether the defendant Daniel  
11                  Andre Green, also known as U'Allah, seldom  
12                  had a father figure during his life.   And  
13                  all of the evidence tends to show that  
14                  Daniel Andre Green, also known as U'Allah,  
15                  seldom had a stable father figure during  
16                  his life.   If one or more of you finds --  
17                  now, that's the preemptory language that  
18                  has been approved by our courts, where the  
19                  Court in a preemptory instruction as to the  
20                  existence of a mitigating circumstance  
21                  tells the jury that the evidence tends to  
22                  show is uncontradicted, and that gives rise  
23                  to your argument.

24                  Now, I have gone beyond that and said,  
25                  and all of the evidence does tend to show.

1           Okay? Our law is that if the evidence as  
2           to the existence of a mitigating  
3           circumstance, statutory or unstatutory, is  
4           uncontradicted, a preemptory instruction is  
5           required.

6                       MR. THOMPSON: Yes, and as I was  
7           about --

8                       THE COURT: Go ahead.

9                       MR. THOMPSON: You -- you were  
10          saying -- I was referring to the  
11          nonstatute -- to the statutory mitigating  
12          circumstance as to age, as to  
13          nonstatutory. Our position is that the  
14          preemptory instruction should be given as  
15          to each and all, every one of those.

16                      THE COURT: Let's go through  
17          them, Mr. Thompson.

18                      MR. THOMPSON: And we had a  
19          proposed instruction. The instruction that  
20          you have is fine, and since you've --

21                      THE COURT: That's why I wanted  
22          to say it right then. Hated to interrupt  
23          you, I didn't want to see that look of  
24          consternation because I was interrupting  
25          you but I wanted you to understand what

1 language.

2 MR. THOMPSON: Yes, sir.

3 THE COURT: Beginning with number  
4 four, the murder for which the defendant  
5 was convicted was committed spontaneously  
6 and was not premeditated. You're  
7 contending I'll preemptorily instruct as to  
8 that?

9 MR. THOMPSON: Yes, sir.

10 THE COURT: I understand. State  
11 want to be heard as to number four?

12 MR. BRITT: Yes, sir. I would  
13 object. And if the Court would look at  
14 pattern instruction 150.10 under preemptory  
15 instruction, the language in the note deals  
16 specifically with statutory mitigating  
17 circumstances, because those are ones that  
18 by law are deemed to have mitigating  
19 value. And it would be my position that  
20 the preemptory instruction applies only to  
21 those statutory --

22 THE COURT: Did you talk to your  
23 counterpart in Little Washington?

24 MR. BRITT: No, I haven't talked  
25 to Mr. Norton. And the latest one I have

1 is from October of 1991.

2 THE COURT: Mr. Norton argued  
3 that in State versus Gate, cited case law  
4 for that proposition. I said I understand  
5 the case law. Among the cases he cited  
6 were Oliver and Moore and others. I said I  
7 understand the case law, I know what you're  
8 talking about. I think there's some  
9 constitutional problems with that. Supreme  
10 Court kicked it back and said it should  
11 have been instructed on. Stuff like the  
12 defendant found God while in jail.  
13 Subjective stuff.

14 MR. BRITT: Oh, I understand.

15 MR. THOMPSON: It's been decided.

16 THE COURT: That's State versus  
17 Gate. And I said okay, you want it I'll  
18 give it to you.

19 THE COURT: 150.11.

20 MR. THOMPSON: That's what -- and  
21 I'm familiar with that.

22 THE COURT: Yes. And that's  
23 language that we essentially, accordingly,  
24 as to this, I charge if one or more of you  
25 find the fact that all the evidence tends

1 to show, you will answer yes. I use the  
2 language "and all of the evidence in this  
3 case does tend to show," and incorporate  
4 that language.

5 MR. THOMPSON: Yes, sir.

6 THE COURT: My concern is, is  
7 there any dispute that the defendant was  
8 born illegitimate?

9 MR. BRITT: No.

10 THE COURT: There's no evidence  
11 to the contrary.

12 MR. BRITT: No.

13 THE COURT: Preemptory will be  
14 given as to number five.

15 Is there any contradiction or dispute  
16 that the defendant suffered from stuttering  
17 and was involved in therapy throughout his  
18 school years? Is that in conflict in  
19 evidence?

20 MR. BRITT: Well, it's  
21 Dr. Johnson's opinion, but then when  
22 pressed he doesn't know where he got the  
23 information from.

24 THE COURT: Okay. Court will  
25 preempt on that. Seven, Court will preempt

1 on. Eight, nine, ten, 11. Folks, so  
2 you'll know in context what I'm going to  
3 do, let me just point out one in random,  
4 one that's already indicated to you so  
5 you'll know what I'm going to do.

6 Number five. Consider whether the  
7 defendant Daniel Andre Green, also known as  
8 U'Allah, was born illegitimate. All of the  
9 evidence does tend to show that the  
10 defendant Daniel Andre Green, also known as  
11 U'Allah, was born at -- strike that --  
12 illegitimate. If one or more of you,  
13 picking up from the language in the pattern  
14 jury instructions as to that, finds that  
15 the defendant was born illegitimate and  
16 deem it to have mitigating value, then you  
17 would so indicate by having your foreperson  
18 answer yes. All right? That's the  
19 language that I would use.

20 And the Court will use that language  
21 in connection with five, six, seven, eight,  
22 nine, ten, 11, 12, 13, 14, 15, 16, 17, 18  
23 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29,  
24 30, 31, 32. As to number four, and number  
25 33, 33 would be inappropriate.

1                   MR. BOWEN: May we be heard on  
2                   number four before you decide, Judge?

3                   THE COURT: Yes.

4                   MR. BOWEN: Judge, I know this is  
5                   not fitting language here, but were we in  
6                   civil court, I think I would be arguing  
7                   something like collateral estoppel in  
8                   number four, because basically this an  
9                   issue that the jury has decided by  
10                  rendering the verdict in the way they  
11                  have. They have, if you will, spoken the  
12                  law of this case, that this was not a  
13                  premeditated murder, which is the same as  
14                  saying that it is a spontaneous killing,  
15                  and seems to me that it would be  
16                  appropriate to preempt on that based on the  
17                  jury's decision.

18                  THE COURT: Mr. Britt?

19                  MR. BRITT: Your Honor, I think  
20                  that's subject to debate, because I can  
21                  just as easily argue that he killed him for  
22                  the sake of killing him. I mean, I can  
23                  argue that he killed him simply for the  
24                  sake of killing him, under the felony  
25                  murder rule, which could be interpreted by

1           some people to be worse. I don't think  
2           they are entitled to a preemptory  
3           instruction on that; it was a spontaneous  
4           murder therefore it was not premeditated.

5                   THE COURT: Well, separate and  
6           apart from argument, the only evidence as  
7           to how the killing occurred came in through  
8           Larry Martin Demery. Anybody disagree?

9                   MR. THOMPSON: Yes, sir.

10                   THE COURT: Larry Martin Demery,  
11           according to my recollection, testified  
12           that while there on the passenger side of  
13           the vehicle, crouched down, giving each  
14           other encouragement, they both rose up,  
15           that as they rose up, the person in the car  
16           began to rise from his reclining position.  
17           The man uttered words to the effect of  
18           "what's going on," and as those words came  
19           out of his mouth, the shot was fired,  
20           almost at the same time, as I recall. As a  
21           matter of fact, when he said it on the  
22           stand it struck me, he said it was almost  
23           before the words were out of the man's  
24           mouth, he shot him.

25                   Any disagreement as to that?

1 MR. BOWEN: That is the  
2 evidence. And that is consistent with the  
3 language of number four. Therefore, it's  
4 uncontroverted.

5 THE COURT: Mr. Britt?

6 MR. BRITT: I don't think they  
7 are entitled to it. I would note my  
8 objection, and I would note my objection to  
9 preemptory challenge five through 32.

10 THE COURT: I understand, sir.  
11 Court will peremptorily instruct on number  
12 four. Court will not peremptorily instruct  
13 on number 33. Call Mitchell Norton.

14 MR. BRITT: I'll see him on the  
15 22nd.

16 THE COURT: Because, folks,  
17 that's what the evidence tends to show.  
18 And that's what I'm going to instruct on.  
19 Court will instruct peremptorily on four  
20 through 32. State's objections to those  
21 matters are noted. Exceptions are noted  
22 for the record to the Court's ruling.

23 Issue 3, standard, anybody got  
24 anything to say about Issue 3?

25 MR. BRITT: No, sir.

1 MR. THOMPSON: Your Honor, I  
2 wanted to go back to the statutory --

3 THE COURT: Mitigating?

4 MR. THOMPSON: -- mitigator with  
5 regard to age. What was your decision on  
6 that?

7 THE COURT: What am I going to  
8 tell them? Everybody has got some age, and  
9 all the evidence tends to show that  
10 Mr. Green is of some age? I mean, is that  
11 what I'm going to do?

12 MR. THOMPSON: 18, he was 18.

13 THE COURT: Okay. So what is it  
14 that you want me to instruct on?

15 MR. THOMPSON: Want a preemptory  
16 instruction on 18.

17 THE COURT: What do you want me  
18 to tell them, Mr. Thompson?

19 MR. THOMPSON: Being a  
20 mitigating -- statutory mitigating  
21 circumstance.

22 THE COURT: Mr. Thompson --

23 MR. THOMPSON: That's what I want  
24 you to tell them.

25 THE COURT: You want me to tell

1           them that all the evidence tends to show  
2           that Mr. Green was 18 at the time in  
3           question?

4                       MR. THOMPSON: Yes, sir. That's  
5           what he wants.

6                       THE COURT: Look at the pattern  
7           jury instructions.

8                       MR. THOMPSON: Judge, I've seen  
9           the pattern jury instructions.

10                      THE COURT: I'm trying to figure  
11           out what it is your asking me,  
12           Mr. Thompson? Look at the pattern jury  
13           instruction on age.

14                      MR. THOMPSON: It's relative,  
15           Judge. You asked me -- we -- you're not  
16           going to do it, okay.

17                      THE COURT: Okay.

18                      MR. THOMPSON: He was 18.

19                      THE COURT: I'm 49. I mean, if  
20           you just want me to tell him them he was 18  
21           years of age, I don't understand what  
22           that's going to do for the case but it's  
23           got to be articulated to me.

24                      MR. THOMPSON: That's a statutory  
25           mitigating circumstance.

1 THE COURT: The fact that he's 18  
2 is a statutory mitigating circumstance?

3 MR. THOMPSON: Because age --

4 MR. BRITT: Age is more than  
5 chronological age, and for the record  
6 there's a case now pending before the North  
7 Carolina Supreme Court entitled State  
8 versus Curtis Ray Womble. He was 17 years  
9 old at the time he committed a first degree  
10 murder, and in that case age was submitted  
11 as a mitigating circumstance, and no  
12 members of the jury found it as such.

13 THE COURT: I was simply trying  
14 to understand. That's denied, to which the  
15 defendant objects and excepts for the  
16 record.

17 MR. THOMPSON: I understood it  
18 was denied.

19 THE COURT: Well, I wasn't going  
20 to if there was something articulately put  
21 before me that I could accept, but I didn't  
22 know.

23 MR. BOWEN: Only thing I would  
24 say, Your Honor, is that you don't  
25 necessarily have to preempt on the whole

1           enchilada of factual information, but that  
2           which is disputed can be part of it,  
3           leaving that which may be deliberated on to  
4           the jury. So you could tell him he's 18  
5           and let them decide --

6                         THE COURT: There you go. All  
7           you can say is, all we want you to do,  
8           Judge, is say is all the evidence is  
9           uncontradicted that at the time of the  
10          offense or alleged offense in this case the  
11          defendant was 18 years of age, and let them  
12          decide consistent with your instruction  
13          what if anything that means in mitigation.

14                        MR. BOWEN: That would be --

15                        THE COURT: I'll do that. State  
16          want to be heard? Is there any dispute  
17          that he was 18 years of age?

18                        MR. BRITT: Oh, there's no  
19          dispute that he was 18, but I think the  
20          dispute would be in whether or not that  
21          should be in the preempt.

22                        THE COURT: I'm not telling them  
23          that. All right. I will instruct as  
24          follows as to age: Consider whether the  
25          age of the defendant at the time of this

1 murder is a mitigating circumstance. I  
2 instruct you that all of the evidence --  
3 and this is my language -- I instruct you  
4 that all of the evidence in this case does  
5 tend to show that the defendant Daniel  
6 Andre Green, also known as U'Allah, was 18  
7 years of age at the time of this murder. I  
8 further instruct you that the mitigating  
9 effect of the age of the defendant is for  
10 you to determine from all of the evidence  
11 and circumstances which you find from the  
12 evidence.

13 MR. BRITT: That's satisfactory.

14 THE COURT: You folks want to be  
15 heard? All right. I'll do that.

16 Anything further as to Issue 3, Issue  
17 4, or the recommendation language set out  
18 on the thing?

19 MR. BRITT: No, sir.

20 THE COURT: Folks, any other  
21 matters related to the Court's  
22 instructions?

23 MR. BRITT: I've got a question  
24 so that we don't run in to any problems on  
25 Monday. As it relates to the mitigating



1 to argue if you disagree. Yes is my answer  
2 to him.

3 MR. THOMPSON: That he can do  
4 what, argue those --

5 THE COURT: July 4th, July 15th.

6 MR. THOMPSON: Prior criminal  
7 history?

8 THE COURT: No, sir, as course of  
9 conduct.

10 MR. THOMPSON: Okay.

11 THE COURT: Same thing.

12 MR. BOWEN: The only concern that  
13 I have is this: He can argue anything  
14 legitimately from either phase of the  
15 trial, of course. But he is limited for  
16 the specific purpose that it came in, and  
17 he was limited for showing common scheme or  
18 design.

19 THE COURT: Guilt or innocence.

20 MR. BOWEN: Guilt or innocence  
21 and --

22 THE COURT: Doesn't apply to  
23 sentencing.

24 MR. BOWEN: Hasn't been  
25 reintroduced in this part.

1 MR. BRITT: Doesn't have to.

2 MR. BOWEN: Is it not limited for  
3 the same limitation?

4 THE COURT: Doesn't have to be  
5 reintroduced. Now we have dealt with the  
6 course of conduct thing and I've answered  
7 your question indirectly, because your  
8 question was, can I use it to negate --

9 MR. BRITT: (Nods head  
10 affirmatively.)

11 THE COURT: -- their contention  
12 of lack of significant prior criminal  
13 activity.

14 MR. BRITT: Yes, sir.

15 THE COURT: I haven't answered  
16 that yet. I came at it from the back end.  
17 Course of conduct, yes. Do you folks want  
18 to be heard as to his contention that he  
19 can argue to negate significant prior  
20 history of significant prior criminal  
21 activity, and if so how, why?

22 MR. BOWEN: Well, I think he's  
23 limited to fashion his argument, if he can,  
24 so that it touches and concerns only those  
25 permissible areas in which that evidence

1           came in. Identity, those things.

2                   THE COURT: I'd agree with you if  
3 we were getting ready to go to the jury on  
4 guilt or innocence. We are beyond guilt or  
5 innocence. We're at a sentencing phase.  
6 You folks want to be able to argue to the  
7 jury that if your client has no history of  
8 significant criminal activity, right?

9                   MR. BOWEN: Yes, sir.

10                   THE COURT: Okay. Why can't he  
11 argue that the evidence in this case  
12 negates that, contradicts that?

13                   MR. BOWEN: If he confines it to  
14 the specific reasons that the evidence came  
15 in, I don't think simply because we're in  
16 phase two that it makes that evidence be  
17 other than what it was when it came in in  
18 phase two, unless it's reintroduced or  
19 unless we revisit it for some reason to  
20 expand the issues.

21                   THE COURT: I understand your  
22 position. I disagree with it. I think  
23 he's entitled to use it, he can argue it.  
24 Defendant's objection and exception are  
25 noted for the record. Out of an abundance

1 of precaution I'm not going to refer to it  
2 in the context of the instruction that I  
3 give.

4 MR. BRITT: And that's why I  
5 asked, because it is the only thing that's  
6 going to be referred to is the incident  
7 involving hitting Mr. Ellison with the  
8 axe. And again, that's why I inquired  
9 because --

10 THE COURT: I'm just not  
11 comfortable in doing it because of the risk  
12 that it's comment from the bench.

13 MR. BRITT: Yes, sir.

14 MR. BOWEN: Let me inquire, since  
15 we're talking about that particular issue  
16 and something where I encourage the Court  
17 to desire about before --

18 THE COURT: I appreciate you  
19 bringing it to my attention.

20 MR. BOWEN: This is what I want  
21 to argue, something to the effect that they  
22 have been peremptorily instructed that the  
23 defendant has no prior record of  
24 convictions. It is also in evidence that  
25 he was in prison for a period of time. It

1 is further in evidence that whatever  
2 Dr. Johnson's specific notation about  
3 Ms. Black, she was hasty to deal with his  
4 case, and also there was evidence of self  
5 defense. And I would like to argue that,  
6 members of the jury, this shows that at  
7 some point there is no underlying  
8 conviction --

9 THE COURT: He said that in front  
10 of the jury.

11 MR. BOWEN: Exactly. -- to  
12 support his incarceration, and therefore --

13 THE COURT: He said that in front  
14 of the jury. My recollection is that at  
15 the time I sent them out, there was either  
16 a question or a response about conviction  
17 being vacated in the presence of the jury.  
18 No instruction was ever given to  
19 disregard. If it's in the evidence, you  
20 can argue it.

21 MR. BOWEN: All right, sir.

22 THE COURT: You can argue that  
23 the conviction was vacated without getting  
24 into -- what is not in evidence are his  
25 opinions that it was an unjust

1 conviction --

2 MR. THOMPSON: I understand.

3 THE COURT: -- that he was  
4 wrongfully convicted.

5 MR. BOWEN: That was given to  
6 explain his reaction.

7 THE COURT: Well, you can argue  
8 that the conviction was vacated, you can  
9 argue anything on the frowny face/smiley  
10 face chart. That has not been objected to  
11 because that came in without objection.

12 MR. BRITT: And I can argue  
13 anything with a frown on it.

14 THE COURT: Bingo, there it is.  
15 You can argue anything on that, because  
16 that's in. And you won't have problems  
17 from me. All right?

18 Any other matters?

19 MR. BRITT: No, sir.

20 THE COURT: All right.

21 MR. BRITT: 9:30?

22 THE COURT: I think I said 9:30  
23 Monday morning?

24 MR. THOMPSON: Yes.

25 THE COURT: Folks, hopefully we

1 can get issues and recommendations form,  
2 I'm confident we can, to you folks right at  
3 9:30.

4 THE CLERK: I've got the  
5 corrections.

6 THE COURT: You do? Great. If  
7 you'll give everybody a copy. Thank you,  
8 ma'am.

9 MR. THOMPSON: May the defendant  
10 have one?

11 THE CLERK: Yes.

12 THE COURT: We're ready to go.

13 Any other matters, folks?

14 MR. BRITT: Have a good weekend.

15 THE COURT: You too. Have a good  
16 weekend, folks, see everybody at 9:30  
17 Monday morning.

18 (Court adjourned.)

19

20

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22

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25

Sentencing  
(Life or DP)

NC  
COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 93 CRS 15291-93

4 STATE OF NORTH CAROLINA )  
 5 )  
 6 vs. ) VOLUME 47  
 7 DANIEL GREEN, aka AS-SADDIQ )  
 8 AL-AMIN SALLAM U'ALLAH, )  
 9 DEFENDANT. )

10

11 Transcript of Proceedings before the  
 12 Honorable GREGORY A. WEEKS, Judge Presiding,  
 13 before Steve S. Huseby, Registered Professional  
 14 Reporter and Notary Public, Robeson County  
 15 Courthouse, Lumberton, North Carolina, on  
 16 the 11th day of March, 1996.

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and

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14

15 (March 11, 1996. Proceedings in open court.)

16

17

THE COURT: Good morning,

18

everyone.

19

20 Let the record show all counsel are  
21 present, the defendant is present in open  
22 court. Mr. Horne, do we have all members  
of the jury secured in the jury room?

23

THE BAILIFF: Yes, we do.

24

25 THE COURT: Quick matters. I  
understand there's some confusion about

1 what is going to be the designated camera,  
2 who is going to be the designated still  
3 person. I'm announcing in open court that  
4 anybody interested in media is to  
5 coordinate through Kim Tucker who is the  
6 trial court administrator in Cumberland  
7 County. If it can't be worked out they  
8 won't come in, period. Ready to go?

9 MR. BRITT: Yes, sir.

10 THE COURT: We've got a problem,  
11 as you folks will recall, with one of our  
12 jurors, Mr. Cassidy has a medical  
13 appointment at 3:00 this afternoon. I  
14 don't know to what extent that will effect  
15 argument. Anybody want to be heard in that  
16 regard?

17 MR. THOMPSON: No, sir.

18 THE COURT: State has first  
19 argument; counsel for defendant last  
20 argument. I need to inquire of Mr. Cassidy  
21 when he needs to leave to make his medical  
22 appointment, and we will take it from  
23 there. If we don't complete the arguments  
24 today, we'll complete them tomorrow.  
25 Anything further from either counsel?

1 MR. BRITT: No, sir.

2 THE COURT: Folks, we have made  
3 some corrections on the issues of  
4 recommendation form for aesthetics sake and  
5 also for the purpose of eliminating some  
6 matters that were repeated when it came  
7 out. She's provided me with a new copy of  
8 that, and you need to make copies for all  
9 counsel.

10 MR. BRITT: Does not change the  
11 number of anything?

12 THE COURT: Doesn't change the  
13 number. There is some typos, some matters  
14 that were repeated. For example, on Issue  
15 2, number 13 and number 14, or number 12  
16 and 13 had some language repeated. For  
17 example, 13, as it was on the copy that was  
18 created Friday, it read there is an  
19 intergenerational pattern of substance  
20 abuse in the defendant's family which  
21 caused those family members to be  
22 unavailable to the defendant for support  
23 during his formative years. And then that  
24 last sentence was repeated again.

25 MR. BRITT: I see, okay.

1 THE COURT: So that was  
2 corrected. Some spacing was put on, and  
3 some other matters were corrected. She's  
4 got the original, she's making copies of  
5 that for all counsel at this time. But  
6 otherwise it remains as it was,  
7 substantive. Both counsel ready to go  
8 forward?

9 MR. BOWEN: Yes, sir.

10 THE COURT: Mr. Horne, if you'll  
11 bring our jury in, please, sir.

12 (Jury in at 9:35 a.m.)

13 THE COURT: Good morning, ladies  
14 and gentlemen.

15 Mr. Cassidy, we are aware that your  
16 appointment is at 3:00 this afternoon, is  
17 that correct, sir?

18 JUROR: Yes.

19 THE COURT: When did you need to  
20 leave in terms of making your appointment?

21 JUROR: The latest?

22 THE COURT: Yes, sir.

23 JUROR: I would say 2:30.

24 THE COURT: We'll accommodate you  
25 in that respect. May be that we will not

1 complete all the argument given that  
2 situation, and we'll come back tomorrow  
3 morning with arguments, followed by the  
4 Court's instructions.

5 Ladies and gentlemen of the jury, as  
6 you are aware all the evidence relating to  
7 your recommendation as to sentence has been  
8 presented, and it is now time for the final  
9 arguments of the attorneys as it relates to  
10 your recommendation as to sentence. At the  
11 conclusion of these arguments, I will  
12 instruct you on the law in this case and  
13 then you will be taken to the jury room to  
14 begin your deliberations as to your  
15 recommendation as to punishment.

16 Now, again, I instruct you that final  
17 arguments of the attorneys are not evidence  
18 but they are given to assist you in  
19 evaluating the evidence that has been  
20 presented. And again, I instruct you that  
21 the lawyers are permitted in their final  
22 statements to argue to you, to characterize  
23 the evidence and to attempt to persuade you  
24 to a particular recommendation as to  
25 punishment. Now, it is improper for a

1 lawyer in final argument to become abusive,  
2 to express a personal belief as to a matter  
3 at issue regarding your recommendation as  
4 to punishment, or to make any argument on  
5 the basis of matters outside of the record  
6 in this case.

7 A lawyer may, however, on the basis of  
8 the lawyer's analysis of the evidence  
9 presented argue any position or conclusion  
10 with respect to your recommendation as to  
11 punishment. Now, if in the course of  
12 making a final argument a lawyer attempts  
13 to restate a portion of the evidence  
14 presented, again, I instruct you that in  
15 your deliberations you are to rely solely  
16 on your recollection of the evidence and  
17 not that of counsel in reaching your  
18 recommendation as to punishment in this  
19 matter.

20 Now, under our rules of procedure, the  
21 State, through the District Attorney, will  
22 have the first argument, and counsel for  
23 the defendant, Mr. Daniel Green, also known  
24 as U'Allah, will have final argument.  
25 Mr. Britt, ready to go forward with your

1 argument at this time?

2 MR. BRITT: Yes, sir.

3 THE COURT: Yes, sir.

4 MR. BRITT: May it please the  
5 Court, good morning, ladies and gentlemen  
6 of the jury. During jury selection, we  
7 spent a great deal of time talking about  
8 the phase of the trial at which we find  
9 ourselves this morning. And that was we  
10 talked a lot about punishment. We talked  
11 about the legal process that the jury must  
12 go through before the death sentence can  
13 ever become a reality for anyone convicted  
14 of first degree murder.

15 Well, in this case we are now at that  
16 phase, because Daniel Green has been  
17 convicted of first degree murder. Your  
18 verdict did that. Now it is your  
19 responsibility to determine what the  
20 appropriate punishment should be for Daniel  
21 Green for the acts that occurred on July  
22 23rd, 1993 when he shot and killed James  
23 Jordan while he slept in his Lexus  
24 automobile beside U.S. 74 here in Robeson  
25 County.

1           The issue as we talked about in the  
2 process during jury selection is what is  
3 the appropriate punishment. Is it life in  
4 prison or is it death. And if you recall  
5 from jury selection, we talked about this  
6 process, the four stage process the jury  
7 must go through before a death sentence can  
8 ever be the recommendation of any jury.  
9 What is that process?

10           One, are there aggravating  
11 circumstances that exist in the evidence  
12 that the State has proven beyond a  
13 reasonable doubt that all 12 of you agree  
14 upon. If you find that there are, you go  
15 to the second stage in the process and that  
16 is whether or not there are mitigating  
17 circumstances that any one or more of you  
18 find exist in the evidence based on a  
19 preponderance of the evidence as proven by  
20 the defendant.

21           Third, are the mitigating  
22 circumstances that you found insufficient  
23 to outweigh the aggravating circumstance or  
24 circumstances that you may have found. If  
25 the answer to that question is yes, that --

1 the mitigating circumstances don't outweigh  
2 the aggravating circumstances, then you  
3 answer that question in the process yes,  
4 and you go to the fourth step.

5 The fourth step is based upon the  
6 evidence that's presented, are the  
7 aggravating circumstances sufficiently  
8 substantial, significant enough, to call  
9 for the imposition of the death penalty  
10 when considered with the totality of the  
11 mitigating circumstance or circumstances in  
12 the case and the totality of those  
13 aggravating circumstances. Are they great  
14 enough to justify the imposition of the  
15 death penalty in this case.

16 The evidence that you've been  
17 presented both through the trial, through  
18 the nine weeks that we've presented  
19 evidence as to the guilt or innocence of  
20 Mr. Green, and the one week from last week,  
21 you consider all of the evidence that's  
22 been presented, both in the guilt phase and  
23 now in this punishment phase in determining  
24 whether or not there are aggravating  
25 circumstances and whether or not there are

1 mitigating circumstances and how you weigh  
2 those two.

3 His Honor, at the conclusion of this  
4 trial, will give you give you  
5 instructions. The State contends there are  
6 two aggravating circumstances that exist in  
7 this evidence. Those are that the murder  
8 for which Mr. Green has been convicted was  
9 committed for pecuniary gain. I'll come  
10 back to that in a little while. The other  
11 aggravating circumstance is that the State  
12 contends, based upon the evidence that's  
13 presented to you, that the defendant was  
14 engaged in a course of conduct, that this  
15 murder for which you have convicted him of  
16 is part of that same course of conduct, and  
17 that conduct included the commission of  
18 other crimes of violence against other  
19 people, and that the murder was included in  
20 that.

21 Those other crimes of violence are the  
22 July 4th, 1993 robbery of the Tedeschis at  
23 the Rowland Motel, and the July 15th, 1993  
24 robbery and assault of Clewis Demory. And  
25 interwoven in that course of conduct is the

1 issue of pecuniary gain. Because what was  
2 the motivating factor that led Daniel Green  
3 to commit the murder on July the 23rd,  
4 1993. The motivating factor was simply he  
5 wanted an item that he could not otherwise  
6 obtain except by robbing and stealing. He  
7 wanted that car, that \$40,000 Lexus  
8 automobile that was parked along U.S. 74 in  
9 the still of the night, he wanted it. And  
10 the only way he could get it was to take it  
11 from the individual who happened to be  
12 there.

13 This is not a case where the victim in  
14 any way contributed to what happened. This  
15 is a case based purely and simply on greed  
16 and someone's desire to obtain items that  
17 can be valued in money or could obtain --  
18 where he could obtain money. That was true  
19 on July the 4th when he robbed the  
20 Tedeschis and their brother-in-law and  
21 sister-in-law in that motel parking lot in  
22 Rowland. Same was true on July 15th, 1993  
23 when they robbed and shot Clewis Demory at  
24 Lowry's Texaco. Money. Money. You've  
25 heard it over and over and over again.

1 Money is the root of all evil. Money.  
2 Monetary gain. Possessing nice things.  
3 It's what landed him in this courtroom.  
4 It's what now led to him being convicted of  
5 first degree murder, and it's one of those  
6 factors that you have to consider in  
7 determining whether the death penalty is  
8 the appropriate punishment for him in this  
9 case.

10 His Honor is going to instruct you on  
11 the law. As he said, the State arrests  
12 first. When I sit down, Mr. Bowen and  
13 Mr. Thompson will argue. And when they  
14 complete their arguments, it will be your  
15 responsibility to determine the appropriate  
16 punishment in this case. So much of my  
17 argument will deal with what I contend the  
18 evidence supports and what I contend the  
19 evidence does not support. I have to  
20 anticipate things that Mr. Thompson or  
21 Mr. Bowen may argue to, because as I said  
22 earlier, when I sit down, I don't talk  
23 again. That's the way our law is written.  
24 The defendant gets the last word in this  
25 phase of the trial.

1           Let's talk about a few of the things  
2           that I anticipate Mr. Bowen and  
3           Mr. Thompson discussing with you. And  
4           those are these things called mitigating  
5           circumstances. There will be 32 mitigating  
6           circumstances submitted for your  
7           consideration. And they range from one  
8           thing to another. They cover the spectrum.

9           And in that regard, let's talk about  
10          the proposed mitigating circumstances that  
11          you will receive and be asked to consider.  
12          The first mitigating circumstance that you  
13          will be asked to consider is that the  
14          defendant has no significant history of  
15          prior criminal activity. Not prior  
16          criminal record or prior criminal  
17          convictions, but prior criminal activity.  
18          What's the evidence in this case show you?  
19          What was the prior criminal activity of  
20          Daniel Andre Green prior to the murder of  
21          James Jordan on July 23rd, 1993? You  
22          recall Dr. Johnson's testimony and the  
23          typology of critical life course events of  
24          Daniel Green. Stuck over here in the last  
25          column, one of these little brown frowny

1 faces on it, was an entry. Robert was hit  
2 in head with blunt end of an axe.

3 Further down, in that same column,  
4 awaiting incarceration, began to hang out  
5 with people selling rock. Kept gun because  
6 of robbery. And further down, while  
7 incarcerated, received 12 infractions  
8 consisting of 17 offenses. One of those,  
9 if you recall from Dr. Johnson's testimony,  
10 involved an incident where the defendant  
11 attacked another inmate in a gym and choked  
12 him. And in the bottom corner, June 4th,  
13 1993, was released from Sand Hills Youth  
14 Prison.

15 Prior criminal activity. Dr. Johnson  
16 said it's in the record, it's in the record  
17 on their own exhibit. Defendant hit Robert  
18 Ellison in the head with the blunt end of  
19 an axe. Spent two and a half years in  
20 prison. Prior criminal activity.

21 While in prison, the defendant attacks  
22 another inmate and chokes him. That's  
23 prior criminal activity. June the 4th,  
24 1993, he's released from prison. 30 days.  
25 30 days later. July the 4th, 1993, the

1 defendant robs the Tedeschis and their  
2 family members in the motel parking lot in  
3 Rowland, stealing their money, stealing  
4 their video camera, stealing their camera.

5 That's prior criminal activity to the  
6 July 23rd, 1993 murder of James Jordan. 11  
7 days later, July the 15th, 1993, Daniel  
8 Green and Larry Demery go to Lowry's  
9 Texaco. For what? To rob. To rob. And  
10 as a result of that robbery, Clewis Demory  
11 is shot three times. That's prior criminal  
12 activity on the part of the defendant prior  
13 to the July 23rd, 1993 murder of James  
14 Raymond Jordan.

15 And when you consider those factors,  
16 July 15th, July the 24th, the incident  
17 involving Robert Ellison, and the incident  
18 involving prison, there are four acts of  
19 violence for which the defendant has been  
20 engaged. So when you get to this  
21 mitigating circumstance that the defendant  
22 has no significant history of prior  
23 criminal activity, I would argue to you  
24 that the answer to that is no. That he  
25 does have a significant history of prior

1 criminal activity.

2 The second mitigating circumstance  
3 that will be submitted to you for your  
4 consideration is that the murder was  
5 committed while the defendant was under the  
6 influence of a mental or emotional  
7 disturbance. There's been no psychologist,  
8 no psychiatrist to testify before you that  
9 he suffered from any type of psychological  
10 or psychiatric problem. They may argue to  
11 you that the cumulative effect of his life  
12 experiences has caused him some type of  
13 mental or emotional disturbance and he was  
14 acting under the influence of that.

15 I would argue to you that the answer  
16 to that mitigating circumstance is no,  
17 because the evidence before you by  
18 Dr. Rohrer, by Dr. Johnson, is that he was  
19 a bright, he was a smart, he was an  
20 intelligent young man. He made choices.  
21 This smart, this bright, this intelligent  
22 young man has been portrayed to you, he  
23 made choices. Those choices when  
24 considered with the evidence that they  
25 presented to you about his upbringing,

1 about his experiences, I would argue to you  
2 would lead a bright, smart, intelligent  
3 young man to choose a different path, a  
4 path separate from violence, a path  
5 separate from crime.

6 But that's not the path that Daniel  
7 Green chose. Daniel Green chose a path of  
8 violence. Daniel Green chose a path of  
9 murder. Why? Not because of the  
10 influences from his past, but because he's  
11 a bright, he's an intelligent, he's a smart  
12 young man. He made an intellectual and  
13 conscious choice to do what he was doing.  
14 He was not led to do these things because  
15 he had these murders in his family. He is  
16 not led to do these things because he had  
17 come from a broken home. He had not led to  
18 do these things because he had been the  
19 victim of a crime, because that's what is  
20 on there. On their own exhibit it shows  
21 that Daniel Green at some point was  
22 robbed. Daniel Green's home was broken  
23 into. He was desensitized. He had no  
24 feeling for what he was doing. Because he  
25 made the conscientious choice to follow

1           this path. And that path has landed him  
2           here in this courtroom. And that path is  
3           what has gotten him into trouble. So I  
4           would argue to you when you consider that  
5           the murder was committed while he was under  
6           the influence of a mental or emotional  
7           disturbance, the answer to that would be  
8           no.

9           The third mitigating circumstance for  
10          you to consider is the age of the defendant  
11          at the time of the crime. Evidence in this  
12          case show you that the defendant was 18  
13          years old, almost 19, when James Jordan was  
14          killed. So His Honor will give you  
15          instruction on what age is. And he'll tell  
16          you that age is a flexible concept, that  
17          chronological age in and of itself is not  
18          determinative. Look at his experience,  
19          look at his life history, look at what he  
20          did. 18 years old, you can enlist in the  
21          Army. You can vote. For all practical  
22          purposes, you are considered an adult in  
23          today's society. You make critical life  
24          course decisions that will effect you then  
25          and for the remainder of your life.

1           At age 18, Daniel Green made a  
2           decision as to what he wanted to do with  
3           the rest of his life. And from those 30  
4           days from June the 4th, 1993 to July the  
5           4th, to July the 15th, to July the 23rd, he  
6           was following the course that he had set  
7           out for himself. And that was he had  
8           chosen this life of crime, and he had  
9           chosen this life of violence. So his age,  
10          I would argue to you, is not a mitigating  
11          circumstance in this case.

12           The fourth mitigating circumstance for  
13          you to consider will be that the  
14          defendant -- the murder for which the  
15          defendant was convicted was committed  
16          spontaneously and was not premeditated. By  
17          your verdict, you found the defendant  
18          guilty of felony murder. And if you recall  
19          when we were in jury selection, we talked  
20          about how the theory of the murder is  
21          relevant for the purposes of the guilt of  
22          an individual. Is he guilty of first  
23          degree premeditated murder, guilty of first  
24          degree felony murder? In the end, it's the  
25          same, guilty of first degree murder. It's

1           that simple. It's spontaneous therefore it  
2           was not premeditated. If you find that  
3           that has mitigating value, one or more of  
4           you do, you may find that. But when is the  
5           death of anyone spontaneous or planned or  
6           premeditated ever a mitigating  
7           circumstance? I would argue to you,  
8           never. This was killing for the sake of  
9           killing. There was no need to pull that  
10          trigger and shoot James Jordan. James  
11          Jordan wasn't armed. James Jordan didn't  
12          do anything to resist. He simply woke up  
13          in the middle of the night on the side of  
14          the road and found two individuals standing  
15          beside the car, one of whom had a gun, one  
16          of whom, before James Jordan could utter a  
17          complete sentence, shot him for no reason  
18          at all. And that person who shot James  
19          Jordan for no reason at all except to kill  
20          him for the sake of killing him was Daniel  
21          Green. So I would argue to you that number  
22          four on the mitigating circumstance list  
23          you should not find.

24                 Number five, that the defendant was  
25          born illegitimate. You may find that as a

1 mitigating circumstance does it reduce his  
2 morale culpability as relates to this  
3 killing.

4 JUROR: Let me get some water.

5 Okay.

6 THE COURT: Let us know when  
7 you're ready.

8 JUROR: You can go ahead.

9 MR. BRITT: Number five, that the  
10 defendant was born illegitimate. You may  
11 find that has some mitigating value. You  
12 may find, one or more of you, that that  
13 does somehow reduce his morale culpability  
14 for this crime. I would argue to you that  
15 it does not. It does not because every day  
16 of ever year, there are children born into  
17 this world who are illegitimate. That has  
18 some social stigma, but in terms of morale,  
19 reducing his morale culpability for killing  
20 James Jordan, I would argue to you that it  
21 does not serve that purpose, and I would  
22 ask you not the find that mitigating  
23 circumstance.

24 The sixth mitigating circumstance,  
25 that the defendant suffered from stuttering

1 and was involved in therapy throughout his  
2 school years. Does the fact that someone  
3 has a speech impediment excuse or in any  
4 way reduce or lessen his responsibility for  
5 pulling the trigger of a gun and shooting  
6 anyone? No.

7 Number seven, that the defendant was  
8 constantly teased and ridiculed because of  
9 his stuttering. Again, does that lessen  
10 what his role was in killing James Jordan?  
11 Does that somehow reduce his morale  
12 culpability for this murder? No, because  
13 there's no evidence to suggest that. On  
14 July the 23rd, was anyone ridiculing him  
15 because of his stuttering? Was anyone  
16 teasing him because of his speech  
17 impediment? Did that cause him to go out  
18 there in the shadows along U.S. 74 on that  
19 night to rob and steal and to kill? No.

20 Eight, that the defendant witnessed  
21 his father being arrested at an early age.  
22 It may have been a traumatic experience for  
23 him to witness that. But again, does that  
24 somehow come in to play on July the 23rd,  
25 1993? Absolutely not. It has no

1 mitigating value as it relates to the  
2 murder of James Jordan.

3 Nine, that the defendant's father was  
4 in and out of prison for the next 15 years  
5 which contributed to the lack of a  
6 father/son relationship between he and his  
7 father. Again, does that reduce his  
8 responsibility, his role in the death of  
9 James Jordan? I would argue to you no.

10 Ten, that the defendant was a loving  
11 and caring son to his mother. And 10 and  
12 11 kind of go hand in hand because 11 is  
13 the defendant was loving and caring to his  
14 younger sister Ebone and sought to protect  
15 her from the environment and circumstances  
16 in which they both lived.

17 If he was such a loving and caring  
18 person, why in the world was he out there  
19 robbing and stealing randomly? Why was he  
20 out there victimizing individuals for no  
21 reason at all except he wanted their  
22 belongings? Did he care about the  
23 Tedeschis? No. Did he care about Clewis  
24 Demory? No. He shot Clewis Demory three  
25 times, and he ran out the door and jumped

1 in a car and high tailed it down the road.

2 Did he care about James Jordan?

3 Absolutely not. He shot James Jordan one  
4 time in the chest, killing him. Took his  
5 belongings, took the body and dumped it in  
6 a creek in South Carolina and left it there  
7 to rot and let the maggots eat on it. Is  
8 that the mark of a loving and caring  
9 individual? No, that's the mark of someone  
10 who doesn't care, who is desensitized to  
11 what's going on around him. So as to  
12 numbers 10 and 11, I would argue to you  
13 they have no mitigating value as it relates  
14 to the murder of James Jordan.

15 Number 12, there's an  
16 intergenerational pattern of violent deaths  
17 in the defendant's life which caused the  
18 defendant to be resentful and suspicious of  
19 others. Resentful and suspicious of others  
20 because of these deaths? Was there any  
21 evidence that the defendant witnessed any  
22 single death of any member of his family?  
23 No. Everything that the defendant knows  
24 about any death that occurred in his family  
25 is by word of mouth, it's by secondhand

1 information. But yet with his history of  
2 violence, with this long history of  
3 violence within this family, what path does  
4 the defendant take. He takes the same  
5 path, a path of violence, except he's not  
6 on the receiving end of that violence as  
7 his family members were, he's on the doling  
8 out end. He's the one that's doling out  
9 the violence. He's the one that hit Robert  
10 Ellison in the head with an axe. He's the  
11 one that robbed the Tedeschis. He's the  
12 one who robbed Clewis Demory and shot  
13 Clewis Demory. He's the one that robbed  
14 James Jordan and shot and killed him. He  
15 reverses the role.

16 And I will argue to you that that,  
17 that this intergenerational pattern of  
18 violence, has no effect on what he's done  
19 in terms of mitigating, and it may arguably  
20 go hand in hand with the course of conduct  
21 that I will talk about a little later,  
22 because it's this constant pattern, from  
23 the 4th to the 15th to the 23rd that he has  
24 followed. And at each step, the violence  
25 is greater and greater and greater. So I

1 would ask that you not find as a mitigating  
2 circumstance that there was an  
3 intergenerational pattern of violent deaths  
4 in his family.

5 Number 13, that there is an  
6 intergenerational pattern of substance  
7 abuse in the defendant's family causing  
8 those family members to be unable to  
9 provide support for the defendant during  
10 his formative years. The evidence, and  
11 there's another mitigating circumstance  
12 that corresponds with that, is that he has  
13 no substance abuse problem, and I believe  
14 that's number 32. So 32 and 13 I will  
15 argue to you go hand in hand.

16 What was the effect? Dr. Rohrer  
17 testified that the defendant made a  
18 conscientious decision not to use drugs.  
19 But at the same time that he's making the  
20 decision not to use drugs, back to the  
21 typology of critical life course events of  
22 Daniel Green, Daniel Green selling weed  
23 making \$300 a week. Daniel Green hanging  
24 out with people selling rock cocaine.  
25 Daniel Green choosing drug dealers, pushers

1 as his role model, running errands for drug  
2 dealers. While he made a decision not to  
3 use, he made the greater decision and the  
4 more adverse decision, and that was to  
5 provide it to people, to sell it. Which is  
6 worse, using or selling and allowing other  
7 people to ruin their lives because of  
8 drugs?

9 So when they argue to you that that  
10 has mitigating value that he was not a drug  
11 user, and that this substance abuse in his  
12 family that affected him growing up and  
13 left these people absent from him during  
14 his formative years is mitigating, ask them  
15 if he was so concerned about substance  
16 abuse, about people using drugs, why in the  
17 world was he out on the street selling it,  
18 doing the very thing to other people that  
19 had done to his family. And I will argue  
20 to you that they have no mitigating value.  
21 This intergenerational pattern of substance  
22 abuse, this decision of his not to abuse  
23 controlled substances, because he made a  
24 decision that was worse than had he  
25 actually used those substances.

1           Number 14, because his younger sister  
2           Ebony had a serious illness which required  
3           much of his mother's attention, the  
4           defendant spent much of his time with his  
5           great grandmother. We've all had  
6           situations where we've been separated from  
7           individuals that we love and that we care  
8           about through no fault of our own, through  
9           the events that occur, with all the illness  
10          involving death. There may be some  
11          mitigating value in proposed mitigating  
12          circumstance number 14. That's for you to  
13          decide. I'm not going to tell you it  
14          doesn't, but it's for you individual  
15          members of the jury to determine the  
16          mitigating value of any circumstance.  
17          Number 14 may have some mitigating value.  
18          But in the end, whatever you find as it  
19          relates to mitigating circumstance, I'll  
20          argue to you will not outweigh the two  
21          aggravating circumstances that will be  
22          submitted to you.

23                 Number 15, the defendant moved at  
24                 least 13 times which caused instability in  
25                 his life, and Number 16, that the defendant

1 attended these 13 schools which caused  
2 instability in his life.

3 That instability, if in fact it  
4 existed, did not, did not cause him to  
5 choose the life and the path that he  
6 chose. It did not cause him to hide in the  
7 woods in the darkness along U.S. 74 and rob  
8 and kill James Jordan. It did not cause  
9 him to rob and shoot Clewis Demery. It did  
10 not cause him to rob the Tedeschis. And I  
11 will argue to you that Number 15 and Number  
12 16 have absolutely no mitigating value as  
13 it relates to this case.

14 Number 17, at the age of three, the  
15 defendant's parents' relationship  
16 dissolved. Whether it was by divorce or  
17 whatever means, there may be, again, there  
18 may be some mitigating value in the fact  
19 that a family breaks down, but did the  
20 family break down cause Daniel Green to  
21 commit these crimes? No, it did not.

22 Number 18, because of the dissolution  
23 of his parents' relationship and because of  
24 his father's imprisonment, the defendant,  
25 his mother and sister were forced to move

1 to Philadelphia for economic reasons. All  
2 we know is they moved from Robeson County  
3 to Philadelphia and stayed there for some  
4 period of time. Did the move to  
5 Philadelphia in any way cause what occurred  
6 on July 23rd, 1993? No. And I would argue  
7 to you that that has no mitigating value.

8 Number 20, the area in which the  
9 defendant lived was an area where he was  
10 exposed to drug dealers, prostitutes, and  
11 criminal activity. That may be true, but  
12 Philadelphia is not the only community  
13 that's affected by crime. It's not the  
14 only community that's affected by drug  
15 dealers. It's not the only community  
16 that's affected by prostitutes. Every  
17 community in the country could lay claim to  
18 that dubious distinction. To the mere fact  
19 that he moved to a high crime area, I would  
20 argue to you has no mitigating value, does  
21 not reduce his morale culpability for what  
22 happened to him and what happened on July  
23 23rd.

24 Number 21, the defendant's father took  
25 the defendant and his younger sister to a

1 park in a dangerous area in Philadelphia  
2 where he abandoned them.

3 If you recall Dr. Rohrer said it  
4 occurred when he was approximately six.  
5 His sister was two. Dr. Johnson said that  
6 it occurred later, that he was 11 or 12,  
7 and his sister was seven or eight. The  
8 question that comes to mind is when did it  
9 happen if at all. Because they were  
10 relying, Dr. Johnson and Dr. Rohrer were  
11 supposedly relying on the same information,  
12 but yet their testimony conflicts as to  
13 what involves that incident. What effect  
14 did it have on him? We absolutely know of  
15 no effect it had on him. We can speculate,  
16 we can guess about what he may have felt if  
17 in fact he had been left in that park, but  
18 neither Dr. Johnson or Dr. Rohrer told you  
19 what if any effect it had on the defendant.

20 22, that during the time the defendant  
21 lived in Philadelphia, he was teased and  
22 ridiculed because of his stuttering and his  
23 southern speech. Again, his stuttering,  
24 his speech impediment has absolutely  
25 nothing to do with the murder of James

1 Jordan. Has no mitigating value to the  
2 murder of James Jordan. His southern  
3 speech, we're all guilty of that I would  
4 argue to you. It's inherent in the  
5 community in which we live. No different  
6 if someone from New York, Chicago, Los  
7 Angeles, moved to Robeson County. They  
8 would talk differently than we would. And  
9 just the same if one of us moved from  
10 Robeson County to New York, Chicago, Los  
11 Angeles, Philadelphia, we would talk  
12 differently.

13 And sure, there's going to be some  
14 kidding about the way you talk slow, or the  
15 way you talk fast, or you talk with that  
16 Yankee accent or you talk with that  
17 southern accent, but does that somehow  
18 reduce or justify what happened on July  
19 23rd? No. No. Doesn't matter how  
20 somebody talks. Doesn't matter if they  
21 talk differently than me, doesn't matter if  
22 I talk differently from them. What matters  
23 is the events of July 23rd, the fact that  
24 he may have been teased about the way he  
25 talked didn't put him there at that window

1 of that Lexus with that .38 revolver in his  
2 hand. If that's the case, then anybody  
3 who's ever been teased about the way they  
4 talk could somehow say, well, my role  
5 should be reduced, my culpability should be  
6 reduced because I talk funny in the eyes of  
7 someone else. And I argue to you that you  
8 should not find that mitigating  
9 circumstance.

10 Number 23 is that during the time the  
11 defendant lived in Philadelphia, he was  
12 assaulted physically with brass knuckles  
13 and knocked unconscious at the age of 13.  
14 That's five years before the murder of  
15 James Jordan. That's some three years  
16 before Robert Ellison is hit in the head  
17 with an axe. But yet they will argue to  
18 you that that has some mitigating value,  
19 that that somehow reduces his morale  
20 culpability in your eyes for the murder of  
21 James Jordan.

22 He was 13, allegedly, when he was  
23 assaulted. He was 18 on June the 4th, 1993  
24 when he was released from prison for  
25 hitting Robert Ellison in the head. It's

1           been two and a half years in prison for  
2           hitting Robert Ellison in the head with  
3           that axe. So at age 15, when he hit Robert  
4           Ellison in the head with that axe, that  
5           event that supposedly occurred to him some  
6           two years earlier when he was struck and  
7           rendered unconscious had no effect on him.  
8           It had no effect on him on July the 4th  
9           when he robbed the Tedeschis, had no effect  
10          on him when he shot Clewis Demory on July  
11          the 15, and had no effect on him on July  
12          23rd when he shot James Jordan. And I  
13          would argue to you that you should not and  
14          you must not find that as a mitigating  
15          circumstance.

16                 Number 24, that despite the  
17          defendant's circumstances and conditions,  
18          he was labelled a gifted and talented  
19          student while living in Philadelphia. He  
20          told you, he's bright, he's smart, he's  
21          intelligent. They also told you that he  
22          made choices, he made critical choices. If  
23          he was so bright, if he was so smart as  
24          they want you to believe that he is, why,  
25          why did he choose the path that he chose?

1 Not because he was gifted and talented  
2 student. That's someone who's labeled as  
3 being exceptional. They have a lot of  
4 promise. And he may have had some promise,  
5 but he threw it all out the window when he  
6 decided he wanted to go down this road of  
7 crime.

8 Gifted and talented, yes. Not as a  
9 student, but as a robber, thief, and a  
10 murderer, if you can call such a person  
11 gift and talented.

12 Number 25, during the period of time  
13 the defendant lived in Philadelphia, he  
14 participated in organized track and  
15 boxing. That has nothing to do with James  
16 Jordan's murder.

17 Number 26, that while living in  
18 Florence, South Carolina, the defendant was  
19 robbed of his jewelry and his coat. Robbed  
20 of his jewelry. That's having a familiar  
21 ring. Very familiar ring. Who else was  
22 robbed of their jewelry? Who else was  
23 robbed of their possessions?

24 27, while living in Laurinburg, North  
25 Carolina the defendant's home was

1           burglarized while he and other family  
2           members were present and asleep. Well, if  
3           they were present and -- if they were  
4           asleep when this burglary occurred, any  
5           effect it had on him is minimized because  
6           he wasn't aware of it until after the  
7           fact. It would have a greater effect on  
8           him if he would have awoken and found a  
9           stranger in his house robbing them and  
10          taking their goods. But that wasn't the  
11          testimony. That they were asleep. So if  
12          any effect that it had on him is minimal.

13                 Number 28, that the defendant's  
14          favorite uncle Arnold was the victim of a  
15          violent death, a fact which affected him  
16          greatly throughout his life. Well, didn't  
17          affect him so greatly that he didn't choose  
18          the same path that led to his uncle  
19          Arnold's death. A path of violence, a path  
20          of death and destruction.

21                 29, a number of defendant's other  
22          family members suffered violent deaths,  
23          which caused the defendant to feel he would  
24          not live a long life. He may not live a  
25          long life because of the decision this jury

1           may make, and that decision that you make  
2           is not based upon anything but what the  
3           defendant chose to do himself. The  
4           evidence in this case doesn't show that  
5           anyone held the gun to Daniel Green's head,  
6           that anyone forced him to do the things  
7           that he did. He did it of his own  
8           volition. He did it because he wanted to  
9           do it. He has written this page in the  
10          book of his life. He has to answer for his  
11          actions.

12                 Number 30, that the defendant seldom  
13          had a stable father figure during his  
14          life. That may have some mitigating value,  
15          but aren't there a number of other people  
16          who have succeeded in life who have not had  
17          a stable father figure? Who have not had  
18          someone to turn to for guidance? Who have  
19          not had someone there to turn to for  
20          stability or hope and for strength and  
21          support?

22                 31, that the defendant has completed  
23          his GED, received some vocational courses,  
24          and completed some college courses. Again,  
25          that relates to this person being smart,

1 being bright, and being intelligent. But  
2 yet this smart, bright, intelligent person  
3 is out there robbing, killing.

4 32 is, the defendant has no substance  
5 abuse problem, I've already talked with you  
6 about that.

7 And 33 is any other circumstance or  
8 circumstances arising from the evidence  
9 which one or more of you deems to have  
10 mitigating value. And if you'll recall  
11 from jury selection, both sides, both the  
12 State and the defense talked about  
13 aggravating circumstance, talked about  
14 mitigating circumstances, and I believe it  
15 was Mr. Bowen who did most of the jury  
16 selection for the defense, talked about  
17 this catch-all, could you look at the  
18 evidence and from that evidence glean  
19 whether or not there is there's any other  
20 mitigating circumstance that you feel  
21 exists in this evidence and that has value.  
22 That's what number 33 is about.

23 There are two types of mitigating  
24 circumstances. There are what are called  
25 statutory mitigating circumstances and

1 nonstatutory mitigating circumstances.  
2 Statutory mitigating circumstances are  
3 those that are printed in our law that our  
4 legislature, people that we send to Raleigh  
5 have said these particular circumstances  
6 have mitigating value. Nonstatutory  
7 mitigating circumstances are those that are  
8 not printed but can -- that can be  
9 considered by you. And there's a twofold  
10 test with nonstatutory mitigating  
11 circumstances.

12 One, first part of the test is that  
13 one of more of us must find that it exists  
14 based upon the evidence that's been  
15 presented. Second is that it has  
16 mitigating value. In the statutory  
17 mitigating circumstances, you don't have  
18 that twofold test. Statute says these have  
19 mitigating value, and if you find them,  
20 they are deemed to have value.

21 So you may find a nonstatutory  
22 mitigating circumstance or a circumstance,  
23 nonstatutory circumstance and say yes it  
24 exists, but then you have to take that next  
25 step and say does it have any value. What

1 weight do I want to give it. And if you  
2 don't want to give it any weight or you  
3 find that it has no weight, then it does  
4 not become a mitigating circumstance  
5 because it has to have mitigating value,  
6 something that lessens his role, reduces  
7 his morale culpability for this murder.

8 So yes, he may be illegitimate, but  
9 that doesn't have mitigating value. Yes,  
10 he may have been labeled as a gifted and  
11 talented student, but as it relates to this  
12 case, that doesn't have any mitigating  
13 value.

14 There are, of the 33 mitigating  
15 circumstances that will be submitted to  
16 you, only the first three are statutory in  
17 nature. The remaining 30 are what are  
18 referred to as nonstatutory mitigating  
19 circumstances. And for those remaining 30,  
20 from four through 33, what you have to do  
21 is this twofold or two-part test. Does it  
22 exist and does it have mitigating value.  
23 And one and one has to equal two before you  
24 can find that it is a nonstatutory  
25 mitigating circumstance. If you have one,

1 the first part, but not the second part of  
2 the test, it's not a mitigating  
3 circumstance. If you don't find it at all,  
4 none of you find that it exists, then it's  
5 not for your consideration in terms of how  
6 we go through the process.

7 Aggravating circumstances are those  
8 things that are listed in our statute which  
9 the law says by their very nature are  
10 aggravating circumstances, and if found by  
11 a jury and after going through this process  
12 that the Judge will instruct you on, can  
13 result in someone receiving the death  
14 penalty. There are two aggravating  
15 circumstances that are being submitted to  
16 you. One is that the murder was committed  
17 for pecuniary gain. We talked a little  
18 about that in jury selection.

19 What that means is this: A murder is  
20 committed for pecuniary gain if the  
21 defendant, when he commits it, has obtained  
22 or intends or expects -- intends or expects  
23 are the two key words, as it relates to the  
24 James Jordan murder -- money or some other  
25 thing which can be valued in money either

1 as compensation for committing it, that is  
2 being paid to commit the crime, and there's  
3 no evidence to suggest that in this case,  
4 or, and this is the key language, or as a  
5 result of the death of the victim.

6 What was it that Daniel Green wanted  
7 and what was it that Daniel Green got as a  
8 result of killing James Jordan? What did  
9 he intend to get? What did he expect to  
10 get? 1992 Lexus 400 automobile valued at  
11 over \$40,000, and other items of personal  
12 property. Well, that car and those other  
13 items of personal property, that watch,  
14 those rings, those are things which can be  
15 valued in money. Those are things which  
16 the evidence shows you Daniel Green tried  
17 to sell the car. Why? He wanted money.  
18 He tried to sell the rings in Fayetteville  
19 and the watch in Fayetteville. Why?  
20 Because he wanted money.

21 So when you examine the evidence and  
22 you examine the evidence supporting this  
23 aggravating circumstance, it's what is in  
24 his mind, it's what made him tick, what was  
25 his motive for killing James Jordan. The

1 motive was to gain things of monetary  
2 value. That car. Those rings. That  
3 watch, but primarily that car. That was  
4 the subject of his intention on July 23rd,  
5 1993, because it was that car. That car  
6 that resulted in James Jordan being shot  
7 and killed.

8 You can't put a price on a human  
9 life. Human life is only worth the value  
10 of that car to Daniel Green on July the  
11 23rd, 1993, simply to have a piece of metal  
12 that runs on four wheels and goes fast was  
13 the reason that Daniel Green killed James  
14 Jordan. He wanted nice things. And what  
15 was it that Dr. Johnson included in his  
16 typology of critical life course events of  
17 Daniel Green? Under the column 1990, age  
18 16, drastic change in lifestyle, hanging  
19 out, having fun, wardrobe conscious and  
20 purchased hot items. That was more than  
21 two years before James Jordan got killed.

22 Who was it that was caught up in that  
23 high type of lifestyle? Who was it caught  
24 up in the fast lifestyle, where arguably  
25 it's important, it's fashionable to have

1 nice things, to have expensive things? The  
2 defendant. And because he was caught up in  
3 that lifestyle, I want, I want, I want, I  
4 want, James Jordan is dead today. It's not  
5 a situation where I need, I need, I need.  
6 It's plain and simple, a case of I want, I  
7 want, I want, I must have, I'm going to  
8 have, I've got it, and look what I did to  
9 get it. No thought about the  
10 consequences. No thought about the damage  
11 that he had done. No thought. Carefree.  
12 Rode around from July the 23rd until July  
13 the 26th living the high life, living the  
14 big life, being the big man, talking on the  
15 telephone, bragging to people about how he  
16 had gotten the car.

17 What was it, I'm a recording star in  
18 New York. I've hit the big time. That's  
19 what he told Ms. Thomas over in  
20 Laurinburg. Told the girls down in South  
21 Carolina, oh, this is my car from  
22 Philadelphia, I bought it, it's been up  
23 there in the shop. And I'm a recording  
24 star. Get to Fayetteville, oh, man, I got  
25 this, I'm a drug dealer, I traded this guy

1 two rocks of cocaine for this car. The big  
2 life. The fast life. And that big and  
3 that fast life have got him in this  
4 courtroom now with the decision of what  
5 will happen to the remainder of his life in  
6 his hands. So was the murder committed for  
7 pecuniary gain? Absolutely. Absolutely.  
8 And I will ask that all 12 of you when you  
9 go back and deliberate on these issues find  
10 that yes, this aggravating circumstance  
11 exists.

12 Second aggravating circumstance that's  
13 being submitted to you is what I referred  
14 to in jury selection as the course of  
15 conduct. And that is defined as this: Was  
16 this murder part of a course of conduct in  
17 which the defendant engaged, and did that  
18 course of conduct include the commission by  
19 the defendant of other crimes of violence  
20 against another person or persons. A  
21 murder is part of such of course of conduct  
22 if you find from the evidence beyond a  
23 reasonable doubt that in addition to  
24 killing the victim, the defendant on or  
25 about the alleged date was engaged in a

1 course of conduct which involved the  
2 commission of another crime of violence  
3 against another person and that these other  
4 crimes were included in the same course of  
5 conduct in which the killing of the victim  
6 was also a part.

7 What's the evidence? What's the  
8 evidence? June the 4th, 1993, Daniel Green  
9 gets out of prison. July the 4th, 1993,  
10 Daniel Green and Larry Demery are in  
11 Rowland hanging out in the motel parking  
12 lot, have conspired to commit a robbery.  
13 They don't care who it is. They just know  
14 they want to rob somebody. It doesn't  
15 matter who, it doesn't matter where, and it  
16 doesn't matter on what circumstances. They  
17 are going to rob somebody simply for the  
18 sake of robbing them and because they want  
19 to. And what do they do? Wandering  
20 through that parking lot in Rowland on July  
21 the 4th, 1993. And what do they find? Two  
22 elderly couples leaving at 4:00, 4:30 in  
23 the morning, packing their car, going back  
24 and forth to their room. They come up,  
25 Larry Demery has got the gun. And they

1 demand their money, they demand their  
2 personal property. Demery is on one side  
3 of the car, Green is on the other. Demery  
4 helps himself to Mr. Tedeschi's wallet and  
5 his money. His sister-in-law is behind --  
6 Mr. Tedeschi's sister-in-law on that side  
7 of the car, Mr. Green on the other side.  
8 He takes Mrs. Tedeschi's pocketbook, helps  
9 himself to everything in that car.

10 They'll argue to you that Larry Demery  
11 was the one that was the dominant person in  
12 this robbery. There's something called  
13 acting in concert that exists in our life.  
14 Two people committing a crime together. If  
15 there's a common goal or objective, one  
16 person doesn't have to commit all of the  
17 elements of the crime if he's acting with  
18 someone else. What's the evidence show  
19 you? The evidence showed on July the 4th,  
20 1993, he was acting together with Larry  
21 Demery. They only had one gun. Who had  
22 the gun? Demery. Demery is the one that  
23 walked up to the car, said give me your  
24 money. Green was there. Green didn't say  
25 a whole lot. But what did he do? He took

1 people's property without their permission  
2 while his partner in crime was holding a  
3 gun on them.

4 They may argue to you he wasn't there,  
5 Mr. Tedeschi identified the wrong person.  
6 That's why they put Garth Locklear on the  
7 stand the other day for Garth Locklear to  
8 stand up say Daniel Green is five-nine,  
9 five-ten, weighs 179 pounds when he was  
10 arrested. And Ms. Tedeschi has described  
11 someone who was five-five, five-six,  
12 weighed 145 to 150 pounds. Therefore, it  
13 could not have been Daniel Green.

14 But what was it that Ms. Tedeschi  
15 said? What was it she said? I was as  
16 close from the witness stand to the end of  
17 this table to the person that was taking my  
18 purse and that person I was talking to. Do  
19 you understand what you're doing, do you  
20 know what you're doing to yourself. Do you  
21 know what you're doing to your family? And  
22 what did he say? Just give me your  
23 pocketbook. Just give me your pocketbook.  
24 I looked at him in the face, I know the  
25 face. That's the face of the man who took

1 my belongings. That's the face of the man  
2 who was going in our car and taking our  
3 property. That's the face of the man that  
4 ran off first, those eyes, that stare. I  
5 could see his face, there was a light. I  
6 had my glasses on, the hood didn't cover  
7 his face. It outlined his face. And I saw  
8 him.

9 She saw him so well that when she saw  
10 the news story after he was arrested for  
11 killing James Jordan, what did she do? She  
12 called the authorities down here. Those  
13 are the two people who robbed us. And to  
14 follow up on that, the police put together  
15 State's Exhibits 68 and 69. If you  
16 remember Tony Underwood's testimony as it  
17 related to how these photographic lineups  
18 were used, why they were put together, Tony  
19 Underwood testified they were put together  
20 to send off out of state because of a  
21 robbery that occurred in Rowland on July  
22 the 4th, 1993. July the 4th, 1993 in  
23 Rowland. Who was robbed? The Tedeschis  
24 and their in-laws. July the 4th, 1993.  
25 Who's at State's Exhibit Number 68? Third

1 photograph. Daniel Green. Who's in  
2 State's Exhibit Number 69? Photograph  
3 number eight. Larry Demery. Both Mrs.  
4 Tedeschi and Mr. Tedeschi picked them out  
5 of these lineups based upon their  
6 remembrance, their memory of what happened  
7 on July the 4th, 1993. Picked Daniel Green  
8 and Larry Demery out of the total of 16  
9 photographs as the two people that robbed  
10 them.

11 July the 15th, 1993, because what was  
12 it that Larry Demery said? They were out  
13 to rob people. July the 15th, they were  
14 going to go to RJ's on 72 because they cash  
15 checks. Too many people. They cased it  
16 out, too many people. They were going to  
17 go to the BP station further up 72. Too  
18 many people. They go to Lowry's Texaco.  
19 Nobody there except the Pepsi Cola man and  
20 the elderly man that works inside. They  
21 case it out, they leave, they come back,  
22 put their plan into effect, and boom, they  
23 go in and do it. This time they got two  
24 guns, two guns.

25 Recall Mr. Marrs' testimony, the gun

1           that Daniel Green had in his hand on July  
2           the 15th, 1993 was the very gun that was  
3           used to shoot Clewis Demory. Didn't shoot  
4           him once, shot him three times. And they  
5           may try to argue again, well, that's not  
6           Daniel Green, that was somebody else that  
7           Larry Demery was hanging out with. But  
8           Clewis Demory took that stand and he told  
9           you, he told them, he told everybody, I  
10          know the face of the man that shot me, and  
11          he's sitting right there.

12                 11 days earlier they had robbed the  
13          Tedeschis, the 15th they robbed Clewis  
14          Demory, and they shoot Clewis Demory and  
15          leave them all but for dead. I would  
16          submit to you we're lucky only one person  
17          got killed as a result of the rampage that  
18          Daniel Green and Larry Martin Demery were  
19          on. Clewis Demory could have very easily  
20          died. He was shot once in the neck, twice  
21          in the shoulder, with one bullet going all  
22          the way through him.

23                 A week later, July the 23rd, what are  
24          they doing? Still robbing people. Still  
25          want to rob people. We go out to the

1 hotel, why? Busy time of the year on  
2 I-95. Lots of folks going up and down the  
3 highway, both 95 and 74. Hotel right  
4 there, that's a good place to commit a  
5 robbery. We go and we wait, nobody is  
6 there. We go back to the car, there's that  
7 Lexus, or there's that car parked on the  
8 road. We don't pay much attention to it.  
9 But we go back to the motel and we don't  
10 have any luck, nobody is in the parking  
11 lot. Can't rob anybody at the parking lot  
12 of a motel this time. There's that car.  
13 And now it has their attention, it has  
14 their full attention. They go over, they  
15 check it out. It's a Lexus. Expensive.  
16 Hot. Flashy. Fits right in to somebody's  
17 lifestyle, doesn't it?

18 They talk about what they want to do,  
19 they come back and they do it. This time  
20 there's only one gun, and that's the gun  
21 that Daniel Green took from Clewis Demory  
22 one week earlier. That's the gun that  
23 Daniel Green has had in his possession,  
24 that he bought the bullets for, and that he  
25 pulled the trigger of on July the 23rd,

1 1993.

2 Daniel Green, who shot and killed  
3 James Jordan. It was Daniel Green who got  
4 everything there was to get from that  
5 robbery. He got the car, he got the rings,  
6 he got the watch, he got the clothes. He  
7 got everything. Why? Because he was the  
8 dominant player, he played the major role  
9 in the death of James Jordan, in the  
10 robbery of James Jordan. And what's  
11 interwoven, July the 24th to -- excuse me,  
12 July the 4th to July the 23rd, total of 19  
13 days. 19 days. Three armed robberies.  
14 And did they know any of them? Absolutely  
15 not. These were random acts of violence  
16 against anybody that happened to be there.  
17 There's absolutely nothing, I would argue  
18 to you, that's involved in these cases  
19 except for pure meanness, meanness and  
20 greed. Why else would you shoot an old  
21 unarmed man three times on July 15th? Does  
22 Clewis Demory ever get his hands on his  
23 gun? Did Clewis Demory ever shoot or try  
24 to shoot Daniel Green? No. Daniel Green  
25 shot him at point blank range. Why? I

1 would argue to you because he wanted to.  
2 Why did Daniel Green shoot James Jordan?  
3 Did James Jordan point a gun at them? Did  
4 he try to resist them? No. Daniel Green  
5 didn't give him that opportunity. He shot  
6 him because he wanted to. Because the gun  
7 was there. Because he was the dominant  
8 person in this role on July 23rd. He was  
9 the one who was the, quote unquote,  
10 mastermind, if there is such a thing in  
11 this type of case. He was the one who  
12 wanted the items that were taken from  
13 Mr. Jordan. He was the one that got all  
14 the items that were taken from Mr. Jordan.  
15 For 19 days, 19 days, they committed a  
16 violent crime spree within the confines of  
17 Robeson County. Resulted in one man being  
18 killed, another man being seriously shot  
19 and wounded and another couple who just  
20 happened to be traveling through here, as  
21 was Mr. Jordan, who was robbed of their  
22 worldly possessions. So when you go back  
23 in to the jury room and you consider the  
24 aggravating circumstances, the second one  
25 that will be submitted is was this murder a

1 part of a course of conduct in which the  
2 defendant engaged in and caused and  
3 included the commission of other crimes of  
4 violence against other people.

5 There is only one answer to that  
6 question, and that is yes. And I will  
7 argue to you that you should find, and  
8 based upon the evidence that you must find  
9 that both aggravating circumstances in this  
10 case exist beyond a reasonable doubt. And  
11 when you find the aggravating circumstance,  
12 you then move on to the second step of the  
13 process, and that's the mitigating  
14 circumstances that I've talked about  
15 earlier.

16 And I'm kind of jumping around and I  
17 don't mean to be real disorganized but  
18 there's an issue before you you'll have to  
19 discuss before you ever get to the issue of  
20 aggravating circumstances and that was,  
21 what is the defendant's role in this  
22 murder. What was the defendant's role?  
23 And these questions are formed this way,  
24 and you're going to get a copy of the  
25 issues and recommendations form to help

1 guide you through your deliberations.

2 The question is, do you unanimously  
3 find from the evidence beyond a reasonable  
4 doubt that the defendant himself, one,  
5 killed or intended to kill the victim, or  
6 intended to kill the victim, or intended  
7 that deadly force would be used in the  
8 course of the underlying felony, or was a  
9 major participant in the underlying felony  
10 and exhibited reckless indifference to  
11 human life. You've got to answer that  
12 question set out as Issue 1-A before you  
13 get to the issue of aggravating  
14 circumstances which is Issue 1.

15 Did the defendant himself kill James  
16 Jordan? Yes. Did the defendant intend to  
17 kill the victim James Jordan? I would  
18 argue to you yes. Did the defendant intend  
19 that deadly force would be used in the  
20 course of the underlying felony? By its  
21 very definition, armed robbery involves the  
22 use of deadly force. It involves the use  
23 of a deadly weapon. That weapon as a  
24 matter of law will kill and inflict serious  
25 injury to an individual. So the answer to

1 that one would be yes.

2 Four, was the defendant a major  
3 participant, a major player in the  
4 underlying felony and exhibited reckless  
5 indifference to human life. If you get  
6 that far, I would argue to you the answer  
7 to that is yes as well. Was he a major  
8 participant? Who got the items that  
9 belonged to James Jordan? Daniel Green.  
10 Did he exhibit reckless indifference to  
11 human life? Go back to July 15th, 1993,  
12 Clewis Demory. Clewis Demory who was shot  
13 three times. Clewis Demory's robbery  
14 serves as notice that the defendant would  
15 and did exhibit reckless indifference to  
16 human life, that he would use deadly force  
17 to achieve his means.

18 So when you get through your Issue  
19 1-A, the answer at the bottom of 1-A should  
20 be yes. Then you go to Issue 1, and that's  
21 the aggravating circumstances. Pecuniary  
22 gain, yes, course of conduct, yes. And  
23 when you answer one, you go to two. And  
24 those are those 33 mitigating circumstances  
25 that I went through earlier.

1           It's a different standard. If you  
2 will recall, the State has to prove the  
3 existence of any aggravating circumstances  
4 to the satisfaction of all 12 jurors and  
5 must prove it beyond a reasonable doubt.  
6 Mitigating circumstance, the defendant has  
7 the burden of proving by a preponderance of  
8 the evidence, a much lower standard, the  
9 existence of any mitigating circumstance in  
10 the evidence to any one or more members of  
11 the jury. His Honor will give you further  
12 instructions on what that means.

13           You go through Issue Number 2, and  
14 let's just say you go through Issue Number  
15 2 and you don't find any mitigating  
16 circumstances, you answer no, that not a  
17 single one of you finds any of the 33  
18 listed mitigating circumstances to exist or  
19 to have mitigating value, and you answer  
20 that no, the instructions say skip Issue  
21 Number 3 because there's nothing there for  
22 you to balance in terms of whether the  
23 mitigating circumstances are insufficient  
24 to outweigh the aggravating circumstances,  
25 so you go to Issue Number 4. And Issue

1           Number 4 is are the aggravating  
2           circumstances sufficiently substantial,  
3           significant enough to call for the death  
4           penalty when considered with the totality  
5           that may exist in the case.

6           But say you find a mitigating  
7           circumstance, what do you do? Instructions  
8           will tell you to turn to Issue Number 3,  
9           and that's that weighing and that balancing  
10          process that I talked about. If you recall  
11          in jury selection I used an example of a  
12          set of scales. Two armed scale, one on this  
13          side, one on this side, with a dish on each  
14          side. Both dishes are empty. You go  
15          through the first step. If you find the  
16          aggravating circumstances, you put them in  
17          that dish, and that scale tips.

18          You go through and you find the  
19          mitigating circumstance, and say you find  
20          them. You start putting them on the other  
21          side. And depending on the weight that you  
22          give to those mitigating circumstances,  
23          that scale may start to balance, it may  
24          start to rise, it may teeter. And if you  
25          recall, if the aggravating circumstances

1 are still heavier, weigh more than the  
2 mitigating circumstances, then the answer  
3 to Issue Number 3 is yes, the mitigating  
4 circumstances are insufficient to outweigh  
5 the aggravating circumstances. And you  
6 would go on to Issue Number 4.

7 But as you go through this process,  
8 what happens if you put the aggravating  
9 circumstances in the scale, the mitigating  
10 circumstances in the scale, and they  
11 balance? They weigh the same? Then the  
12 answer is still yes, the mitigating  
13 circumstances are insufficient to outweigh  
14 the aggravating circumstances, because what  
15 has to happen in order for you to answer  
16 Issue Number 3 no, you must find that the  
17 mitigating circumstances after placing them  
18 on that balance, on that scale, tip those  
19 scales in favor of the mitigating  
20 circumstances. If that doesn't happen, if  
21 they balance or if they are tipped in favor  
22 of the aggravating circumstances, then the  
23 answer to Issue Number 3 is yes, they are  
24 insufficient. They don't outweigh the  
25 aggravating circumstances. And you go to

1 Issue Number 4.

2 And that is, are the aggravating  
3 circumstances sufficiently substantial to  
4 call for the imposition of the death  
5 penalty when considered with any mitigation  
6 in the case. And again, that requires you  
7 to weigh the aggravating circumstances to  
8 determine the significance, the totality of  
9 those aggravating circumstances,  
10 considering that with any mitigation any  
11 one more of you might find in the case.

12 And after you go through and you weigh  
13 and you balance those aggravating  
14 circumstances during the fourth stage of  
15 this process, and you find that yes, those  
16 aggravating circumstances are significant  
17 enough, they are bad enough to call for the  
18 death penalty, then your answer to Issue  
19 Number 4 is yes. And if you answer issue  
20 number 1-A yes, if you answer Issue Number  
21 1 yes, you may answer Issue Number 2 yes or  
22 no, that's not an area where the State has  
23 to prove anything to you.

24 But if you answer the issues that the  
25 State has the burden of proving, yes,

1 that's 1-A, 1, 3, and 4. If you answer all  
2 four of those with a yes answer, then it's  
3 your duty, your obligation under our law to  
4 recommend that Daniel Green be sentenced to  
5 death. Because that's the law. If the  
6 State fails in carrying its burden as to  
7 any of those issues, 1-A, 1, 3 or 4, then  
8 it's your duty to answer that the defendant  
9 should be sentenced to life in prison. And  
10 the instructions will tell you how you are  
11 to proceed. If you get to Issue Number 3,  
12 and you find that the answer there is no,  
13 then you skip Issue 4 and you impose law.  
14 If you get passed 3 and you get into 4, and  
15 you find that the answer is no, then you  
16 impose or recommend a life sentence.

17 But if you go through each of these  
18 issues and you say yes, the State as proved  
19 beyond a reasonable doubt that Daniel Green  
20 killed or attempted to kill, intended that  
21 deadly force be used, was a major  
22 participant in the underlying felony and  
23 exhibited reckless indifference to life,  
24 and you find that there are aggravating  
25 circumstances, you find that those

1           aggravating circumstances outweigh the  
2           mitigating circumstances, and you find that  
3           those aggravating circumstances are  
4           sufficiently substantial to call for the  
5           death penalty, then it's your duty as a  
6           juror in this case in applying the law to  
7           recommend that Daniel Green be sentenced to  
8           die. That is, he receives the death  
9           penalty for the murder of James Jordan.

10                   And I would argue to you ladies and  
11           gentlemen that after you find that yes, the  
12           answer to question 1-A yes, and you answer  
13           question one, Issue 1 yes, that there are  
14           aggravating circumstances, that as you  
15           proceed through Issue 2, 3, and 4, you'll  
16           still keep coming back to Issue 1. You'll  
17           still keep coming back to the significance,  
18           the strength of the evidence that supports  
19           those aggravating circumstances. And when  
20           you look at those aggravating  
21           circumstances, that he killed him for  
22           pecuniary gain, that he killed him as a  
23           part of a course of conduct in which he  
24           engaged and involved the commission of  
25           other crimes of violence against other

1 people, you'll keep coming back, because  
2 it's strong, and it speaks, and it speaks  
3 very loud. Speaks overwhelmingly as to  
4 what your recommendation ought to be in  
5 this case. It overshadows, outweighs any  
6 mitigating circumstances that you may  
7 find.

8 Because in the end, it's that random  
9 course of violence, that crime spree, his  
10 want for things of money, his want for  
11 nice, flashy things that will keep coming  
12 back to your thoughts. Because they are  
13 great, they are significant, and they are  
14 so great and they are so significant that  
15 when you go through this process, you will  
16 find after applying the law that yes, they  
17 are significant enough, they are great  
18 enough to call for the death penalty in  
19 this case, and that the death penalty is  
20 the appropriate punishment in this case,  
21 because Daniel Green wrote this in his book  
22 of life. He set it out. Nobody is to  
23 blame for what Daniel Green finds himself  
24 facing today except Daniel Green.

25 As Dr. Johnson sat there on that

1 witness stand and testified, over and over  
2 and over again, the picture that kept  
3 coming to mind is that somehow society is  
4 at fault for Daniel Green committing this  
5 murder, that somehow society is at fault  
6 for Daniel Green committing these two armed  
7 robberies, that somehow society is at fault  
8 for Daniel Green shooting Clewis Demory.  
9 Nobody in society put a gun in his hand on  
10 July the 15th and told him to go shoot and  
11 rob Clewis Demory. Nobody put a gun in his  
12 hand on July the 23rd, 1993 and told him to  
13 go rob and shoot and kill James Jordan.  
14 Daniel Green did that. Daniel Green made  
15 the decisions that affect him today.  
16 Daniel Green is the one who is responsible  
17 for his own actions.

18 By their own testimony, his expert  
19 witnesses have told you he is smart. He  
20 has made conscientious decisions to do one  
21 thing or another. He is bright. He made  
22 the decision to pull the trigger on July  
23 15th. He made the decision to shoot and  
24 kill James Jordan on July the 23rd. No one  
25 in society and society itself cannot be

1 held accountable for Daniel Green's  
2 actions. Daniel Green must be held  
3 accountable for his own actions, and that's  
4 why we're in this courtroom today, because  
5 he's setting the course for the events that  
6 have landed him where he is. He's setting  
7 the course and the events that can result  
8 in him either spending the rest of his life  
9 in prison or receiving the maximum  
10 punishment for killing someone else. And  
11 that is death.

12 Murder is the worst crime that man has  
13 ever known. Murder carries the maximum  
14 punishment that the law recognizes. Why?  
15 Because life has value. But to Daniel  
16 Green, James Jordan's life had no value.  
17 To Daniel Green, Clewis Demory's life had  
18 minimal value. And to Daniel Green, the  
19 Tedeschis and their inlaw's lives had  
20 minimal value.

21 Daniel Green is accountable for his  
22 actions, and your verdict will speak how he  
23 is to answer for his actions. Mr. Bowen  
24 and Mr. Thompson, as I said earlier, have  
25 the last argument to you. So at this point

1 let me try to anticipate some of the things  
2 that they may argue to you.

3 As I said, the law recognizes that the  
4 punishment for first degree murder is  
5 either life imprisonment or death, death  
6 being the maximum punishment known under  
7 our law. They may argue to you that death  
8 is not appropriate. They may argue to you  
9 based on our Judah Christian principle,  
10 that somehow the death penalty is contrary  
11 to the Bible, that somehow the -- that the  
12 Bible states thou shall not kill. That  
13 includes the State, that includes you the  
14 members of this jury, that includes  
15 everybody. And it does state in Exodus,  
16 thou shall not kill. And Mr. Smith's  
17 exhibit, the oath that he follows, the  
18 theory that he follows in his first degree  
19 murder investigations, big heading, thou  
20 shall not kill, and goes through and talks  
21 about a murder investigation.

22 But you have to read, and I don't mean  
23 to imply or infer in any way that capital  
24 punishment in any way is somehow Divinely  
25 inspired, because we are a society of laws

1 based upon decisions that we make as  
2 individuals and that humans make. But in  
3 Exodus it says thou shall not kill. But in  
4 the next chapter it says, and I'm  
5 paraphrasing, if you kill, then you must  
6 die.

7 That's not what our law is based  
8 upon. That's not the process that you're  
9 getting ready to go through is based upon.  
10 Our process is based upon something called  
11 due process. This legal process that we  
12 follow, it's based upon something called  
13 due process. You're given notice, you have  
14 a hearing prior to any type of sentencing.

15 Did James Jordan receive any type of  
16 notice? Did James Jordan receive any type  
17 of hearing? No. Because Daniel Green was  
18 James Jordan's judge, he was his jury, and  
19 he was his execution. James Jordan didn't  
20 get process that Daniel Green has  
21 received.

22 A wise man once wrote, there is a time  
23 for every season, there's a reason for  
24 every purpose under the sun. There's a  
25 time to die, there's a time to live,

1           there's to time to be born. Natural law.  
2           Comes out of the Book of Ecclesiastes in  
3           the Bible. You apply that to our everyday  
4           lives. There's a time when each of us is  
5           born. There's a time when we live, and  
6           there's a time when we die. And if natural  
7           law follows its uninterrupted course,  
8           things fall into place.

9                     But for James Jordan, there was an  
10           interruption. That interruption came in  
11           the form of Daniel Green. James Jordan was  
12           born, James Jordan lived, but before he was  
13           able to fulfill his life, that interruption  
14           came in the form of Daniel Green, and  
15           Daniel Green killed him.

16                     Do not be persuaded by arguments based  
17           upon sympathy, arguments based upon mercy.  
18           Yours is the job to look at the evidence,  
19           apply the evidence as it relates to  
20           sentencing, to the law that's given, and  
21           make a decision from there. You're not  
22           here to please anyone. You're here to do  
23           your jobs as jurors, to be the fact finders  
24           in this case and apply those facts to the  
25           law and to render a verdict, or in this

1 case a recommendation as to what should  
2 happen to Daniel Green.

3 There is another old saying, another  
4 adage from the Bible, that the thief comes  
5 during the night to kill, steal and  
6 destroy. The thief in this case is two  
7 people. Daniel Green and Larry Demery.  
8 The evidence shows that on July the 23rd,  
9 1993, they were there at that intersection  
10 for one purpose, and that was to steal.  
11 There's one killer in the sense of one  
12 person pulled the trigger on that gun. And  
13 that's Daniel Green. And there's one  
14 person that's been destroyed, and that's  
15 James Jordan.

16 So after you evaluate this evidence,  
17 after you listen to the Judge's instruction  
18 on the law, you'll render your verdict.  
19 You don't have anyone to answer to. What  
20 the community thinks is of no consequence.  
21 What the spectators in this courtroom think  
22 are of no consequence. Yours is a duty to  
23 speak to truth, speak the truth in terms of  
24 what is appropriate punishment for Daniel  
25 Green. You are to be guided by the

1 evidence, and you are to be guided by the  
2 law. And in the end, it will be the  
3 evidence and the law that will lead you to  
4 your conclusion that the death penalty is  
5 the appropriate and is the only appropriate  
6 punishment in this case for someone who has  
7 committed the crimes and committed the  
8 violence that Daniel Green has done.

9 Study the evidence, study the Judge's  
10 instruction, follow the issues of  
11 recommendation on the form, and you will  
12 find that the death penalty is the only  
13 appropriate punishment in this case.

14 Thank you.

15 THE COURT: All right. Members  
16 of the jury, before counsel for the  
17 defendant argues, I'm going to give you a  
18 15 minute break. During the break, please  
19 recall all prior instructions concerning  
20 your conduct. Those instructions remain in  
21 effect. Folks, please reassemble in the  
22 jury room at 25 after and we will go  
23 forward at that time. Everyone else please  
24 remain seated, the members of the jury are  
25 excused until 11:25.

1 (Jury out at 11:06 a.m.)

2 THE COURT: In the absence of the  
3 jury, folks, under our rules in a capital  
4 case or case where a capital punishment is  
5 a potential punishment, counsel for both  
6 sides have unlimited argument. I don't  
7 mean to impinge on anybody's right to  
8 argue. Folks, do you intend to split your  
9 arguments today and tomorrow?

10 MR. THOMPSON: (Shakes head  
11 negatively.)

12 THE COURT: Do both intend to try  
13 to get them in by 2:30?

14 MR. BOWEN: We can do that.

15 THE COURT: Okay. We're at ease  
16 until 11:25.

17 THE BAILIFF: Court stands at  
18 ease until 11:25.

19 (Brief recess.)

20 THE COURT: All counsel are  
21 present, the defendant is present in open  
22 court. Mr. Thompson.

23 MR. THOMPSON: Your Honor, you  
24 asked us before lunch about whether we  
25 anticipated that we could get both

1 arguments in today. One juror having  
2 indicated that he needs to leave at 2:30,  
3 and assuming that we don't have a lunch  
4 hour, that we work --

5 THE COURT: Straight through.

6 MR. THOMPSON: -- straight  
7 through, I felt that we could. And again,  
8 you know, in these kind of instances,  
9 sometimes when we get in to arguing it  
10 takes much longer. I thought my jury  
11 argument was going to take 45 minutes, and  
12 I recall going up to the very point where  
13 we had to break because of another -- it  
14 was longer than what I thought.

15 But at any event, Mr. Bowen would  
16 argue first and I would argue second. And  
17 if I feel that I'm not going to have enough  
18 time to do it, I'm going to ask to approach  
19 the bench. Again, after Mr. Bowen argues,  
20 we feel that those jurors are going to need  
21 a break, and that's further going to take  
22 some time.

23 THE COURT: No problem. Anything  
24 else before we bring the jury in?  
25 Mr. Horne, if you'll bring the jury in,

1 please, sir.

2 (Jury in at 11:28 a.m.)

3 THE COURT: Members of the jury,  
4 so you will be aware of our schedule, as I  
5 indicated to you counsel for the State  
6 having completed his argument, we will now  
7 go forward with the argument by counsel for  
8 defendant. My understanding is Mr. Bowen  
9 will argue first on behalf of the  
10 defendant. It is my intent to take a short  
11 break after Mr. Bowen's argument.  
12 Depending on where we are time-wise at that  
13 juncture, it may be that we will complete  
14 the arguments tomorrow morning given  
15 Mr. Cassidy's previous medical  
16 appointment.

17 Again, if anyone on the jury feels the  
18 need for a break at any time, don't  
19 hesitate to let me know that. Members of  
20 the jury, the jury is now with counsel for  
21 defendant, Mr. Bowen, for the purposes of  
22 final argument.

23 MR. BOWEN: Thank you, Your  
24 Honor.

25 THE COURT: Yes, sir.

1                   MR. BOWEN: In ancient days,  
2                   there was a man who was jealous of the  
3                   wisest of all men in that area of the  
4                   world. And he wanted to take the place of  
5                   that wise man, and so he decided that if he  
6                   could fool that wise man, then he would  
7                   become the wisest man of all. And so he  
8                   set about to do so. He set about to fool  
9                   the old wise man as follows:

10                   He took a bird and he put the bird in  
11                   his hand, and he came before the wise old  
12                   man with the notion that he would ask the  
13                   old man to -- who always was supposed to be  
14                   wise and always spoke the truth, and he  
15                   would asked ask the old man, old man, I  
16                   have a bird in my hand. Is this bird  
17                   living or is this bird dead.

18                   And as the heart of the little bird  
19                   fluttered in his hands, he resolved that if  
20                   the old man said the bird is dead, that he  
21                   would open his hands and the bird would fly  
22                   away, and the old man would be wrong. And  
23                   he would then assume the position of the  
24                   wisest man. Conversely, if the old man  
25                   said the bird is alive, with his lower hand

1 he would squeeze the life out of the little  
2 bird whose heart palpitated in his hand,  
3 and he will render up to the old man a dead  
4 bird. And the old man would be wrong  
5 again. We will return to that story.

6 But first I want to say to you members  
7 of the jury that as counsel for Daniel  
8 Green, known also as U'Allah, unlike the  
9 State, I do not stand here to tell you what  
10 to do. We will have probably in our lives  
11 few actual life or death decisions to make,  
12 and certainly you have one ahead of you.  
13 My role as advocate here is to suggest and  
14 share with you some things that the defense  
15 suggests may guide you in the momentous  
16 decision that you make since we and you and  
17 the State and Daniel Green must live or die  
18 with the decision that you make, and you  
19 must live and die, as must we all, with the  
20 decision that you have made upon your heart  
21 and your conscious.

22 Ultimately, the consideration of the  
23 appropriateness of the death penalty has  
24 been with men and women from ages of old.  
25 If you journey to Williamsburg, Virginia

1 and you study the colonial United States,  
2 you will go into an actual enactment of a  
3 true story from true records from our  
4 earliest colonial times, where an English  
5 style judge in his long wig sits at a long  
6 table in a court parlor and hears the case  
7 of a young woman whom he convicts of  
8 stealing a spoon from the household in  
9 which she lives and works as a servant.

10 In those days, in the early part of  
11 our country, the sentence for stealing that  
12 spoon was death. And because it was the  
13 law, the representative of the king meted  
14 out that punishment accordingly. Later in  
15 our history, a person who stole a horse was  
16 hanged and it was the law. And the law was  
17 carried out. Later in our history, a  
18 person who fed or gave comfort or housing  
19 to a slave on his way to the railroad of  
20 freedom, a person who harbored or fed or  
21 gave any kindness to that person in quest  
22 of his freedom could be and was executed.  
23 It was the law. And it was carried out.

24 At a point in North Carolina law,  
25 every person convicted of first degree

1 murder was executed under the law. There  
2 was a period of time under the law of the  
3 lands as handed down by the Supreme Court  
4 of the United States, for a time during a  
5 period in North Carolina when a person was  
6 convicted of first degree murder, nobody  
7 was executed.

8 And with that background, we have now  
9 arrived at the day where it is presently  
10 our law that upon consideration of  
11 aggravating and mitigating circumstances or  
12 factors, in keeping with the law as it will  
13 be instructed to you by the Court, you are  
14 to consider the life or death decision.

15 Mr. Britt has certainly well predicted  
16 that I would talk to you about the Bible  
17 and other works of literature in my  
18 argument in an effort to set in perspective  
19 what you are about to do.

20 I would like to fast-forward if I  
21 could, although we will be talking a lot  
22 about the Old Testament to fast-forward  
23 into the New testament. You will recall  
24 that there is a story where Jesus of  
25 Nazareth arrives at a place where a death

1 sentence by stoning is about to be meted  
2 out to a woman who has committed adultery.

3 Now, what is important about this  
4 story is the fact that Jesus does not argue  
5 with the law of the government, for indeed  
6 to commit adultery did at that time require  
7 the death penalty by stoning, a horrible  
8 and painful death. Jesus did not condemn  
9 or even criticize the government's law.  
10 Elsewhere in the Bible he had said render  
11 unto Cesar what is Cesar's and unto God  
12 what is God's. I was not there to quarrel  
13 with the government having set the death  
14 penalty. In fact, he never told anybody  
15 there not to inflict that penalty. But  
16 what he did say to those who were there to  
17 inflict the death penalty was this: Let  
18 him among you who is without any sin cast  
19 the first stone.

20 That phrase did not say, let him among  
21 you who has never committed adultery cast  
22 the first stone. I argue if he had meant  
23 to say that he would have. He said, let  
24 him among you who is without any sin carry  
25 out the government's prescribed

1 punishment. And what did the people do  
2 that day? They turned away and they laid  
3 down their stones. And Jesus of Nazareth  
4 said to the woman, go and sin no more. Did  
5 she go unpunished?

6 Dr. Johnson used a metaphor that was  
7 very interesting. He said that having  
8 served any time in prison was the scarlet  
9 letter of unemployment for a young minority  
10 male coming back into the work force. And  
11 that recalls, of course, Hawthorne's book  
12 about the Scarlet Letter, where the scarlet  
13 letter involved the badge of adultery. Did  
14 the woman go unpunished? Certainly not.  
15 She had been publicly exposed for her sin,  
16 and she suffered much, no doubt. But those  
17 who had it within their power to justly and  
18 lawfully impose the government's punishment  
19 turned away upon the gentle words of the  
20 master.

21 The aggravating factors that the State  
22 talks about do not require that you impose  
23 a death penalty. In fact, as the language  
24 that His Honor will give you, our law  
25 identifies the aggravating circumstances

1           which might, does not say must, does not  
2           say shall, does not say should, it says  
3           might justify a sentence of death. And  
4           then our law identifies mitigating  
5           circumstances as facts.

6           And get this, because the State wants  
7           to say that something that we're going to  
8           say about mitigating circumstances somehow  
9           justifies or excuses or blames society or  
10          does anything other than what the law  
11          says. And that's not it. Here's what the  
12          law says that you can consider these  
13          mitigating circumstances for: The law says  
14          a mitigating circumstance is a fact or a  
15          group of facts which do not constitute a  
16          justification or an excuse for killing, or  
17          reduce to a lesser degree of crime than  
18          first degree murder, but which may be  
19          considered as extenuating or reducing the  
20          morale culpability, that is the guiltiness  
21          of the killing or make it less deserving of  
22          the extreme punishment than other first  
23          degree murderers.

24                 Now, about mitigating factors,  
25          Mr. Thompson will talk to you more fully

1 and His Honor will talk to you. But the  
2 mitigating factor you have to understand  
3 must be found only by one of you. And if  
4 you're back in the jury room and you're  
5 talking about number five, number 10,  
6 whatever number it is, and you feel in your  
7 heart your conscious says this mitigating  
8 factor exists -- and by the way, members of  
9 the jury, His Honor as to most of these  
10 mitigating factors will give you what's  
11 called a preemptory instruction. In other  
12 words, the Court will say to you on just  
13 about all these mitigating factors that all  
14 of the evidence tends to show, and then he  
15 will give the proposed mitigating factors.

16 So in other words, there's not much  
17 question, and most of these mitigating  
18 factors or circumstances, that the  
19 circumstances exists, that will be  
20 preemptory instructed to you. The only  
21 other matter for you to consider is does  
22 this circumstance have some mitigating  
23 value. And remember, to have mitigating  
24 value, it does not excuse or justify the  
25 killing, not at all. It only reduces the

1 morale culpability or makes it less  
2 deserving of the extreme punishment of  
3 death compared to other first degree  
4 murderers.

5 That's what the mitigating factor or  
6 circumstance is for. So if one of you is  
7 persuaded, even if none of the 11 persons  
8 is so persuaded as you are, the mere fact  
9 that your hand goes up on this mitigating  
10 factor, that you find that it exists and  
11 that you find that it has mitigating value,  
12 then the answer to that mitigating factor  
13 is yes. Just one of you. And not beyond a  
14 reasonable doubt either. You must be  
15 convinced only that a preponderance of the  
16 evidence. Put it on the scale, if it  
17 slightly tilts in your view toward having  
18 some mitigating or lessening value, then it  
19 is your duty under the law to find it.  
20 Even if you're the only one. And even if  
21 there's only one for that particular  
22 mitigating factor, then that factor is  
23 checked or marked yes or marked in the way  
24 that the Court will tell you to mark it  
25 when you find that a factor both exists and

1 that it has mitigating value.

2 We're here to examine Daniel Green's  
3 life. I did a little simple arithmetic  
4 here before I came to argue. We knew that  
5 Daniel was about 19 and a half when these  
6 events that are the subject matter of our  
7 cause occurred, and I multiplied 19 by 365  
8 days and came up with almost 7000 days. So  
9 Daniel Green had lived about 7000 days.  
10 And it's about these 7000 days that we want  
11 to talk, we want to put some of this  
12 information into perspective.

13 THE COURT: Mr. Bowen, do you  
14 mean 18, sir?

15 MR. BOWEN: Did I mean 18?  
16 Excuse me if I've done my math wrong. Let  
17 me see here. What are you saying?

18 THE COURT: You may want to talk  
19 to Mr. Thompson.

20 MR. BOWEN: All right, sir. I'm  
21 looking at the chart here.

22 At any rate, roughly 7000. Let's make  
23 it 5000, make it for certain. We're  
24 talking about 7000 days, 5000 or 6000  
25 days. And what you find, I argue to you,

1 is that every one of us would, if we could  
2 take back at least just a few of the days  
3 that we had lived if we could, there is  
4 something in the background of everyone of  
5 us that would make us take back just a few  
6 hours or a few days if we could.

7 But as the old Persian poet said, the  
8 moving finger writes, and having writ, it  
9 moves on. Nor all our wit and propriety  
10 can lure it back to cancel half a line nor  
11 all our tears wash out a word. Or in long  
12 fellow's words, in a poem called Mull  
13 Miller: Of all sad words of tongue or pin,  
14 the saddest of these it might have been.

15 We can't take those days back. Daniel  
16 Green can't take those days back. But what  
17 of the other days? What of the other days  
18 that comprise Daniel Green's book of life?  
19 The State has its own view of Daniel  
20 Green's life and it argues it to you in a  
21 certain way. And you're entitled to accept  
22 that argument completely and totally.

23 But I propose to you and I contend to  
24 you that that same representative of the  
25 State has come before you saying that

1 Daniel Green was the mastermind of  
2 everything that occurred. Never mind Larry  
3 Demery. The evidence says that Larry  
4 Demery, whether you found that Larry Demery  
5 pushed Daniel Green at 1:30 in the morning  
6 to go with him or whether you found from  
7 the evidence that he pushed him at 5:00 in  
8 the morning, nevertheless, Mr. Demery was  
9 there pushing Daniel Green to leave the  
10 comforts of his lady and go with him.

11 The State says that it was Larry  
12 Demery who was the follower, who was the  
13 one masterminded and led by Daniel Green,  
14 yet at the same time they want you to  
15 believe that that black individual out  
16 there on July the 3rd or so with the  
17 Tedeschis was Daniel Green, talking to Mrs.  
18 Tedeschi, interestingly.

19 It is now in evidence that Daniel  
20 Green has had a lifelong stuttering  
21 problem. I need not argue to you for you  
22 to think that when one is nervous,  
23 stuttering tends to increase. I need not  
24 argue to you that when one would be in the  
25 midst of committing a crime, one would tend

1 to be more nervous. Did you hear Mrs.  
2 Tedeschi ever say anything about the  
3 individual whom she saw and who spoke to  
4 her ever stuttering once? Did you hear  
5 Mr. Clewis Demory who heard some words come  
6 out of the mouth of the black individual  
7 that he saw, did you ever hear Mr. Demory  
8 observe that this individual was  
9 stuttering?

10 The mastermind, according to the  
11 State, is Daniel Green. Do you recall Mrs.  
12 Tedeschi's testimony? This black  
13 individual who she encountered and didn't  
14 stutter and who was several inches taller  
15 it turns out -- or several inches shorter  
16 than Mr. Green was, she said about  
17 five-five in her statement to the police  
18 right after it occurred. Mrs. Tedeschi  
19 said it was Larry Demery who had the  
20 weapon, it was Larry Demery who threatened  
21 to shoot her if she did not simply get into  
22 the car. And what did the black individual  
23 do upon hearing, I'll argue to you, the  
24 first utterance of threat of real violence,  
25 of real bloodshed? He ran just as fast as

1 he could go away from that situation.  
2 Willing to take property, yes, but at the  
3 first hint of bloodshed, ran away.

4 That is the perspective that the State  
5 would give you. The State says believe our  
6 view of it, believe our version of it, and  
7 then do what we, the State, tell you to do,  
8 and send this man to death because he was  
9 the mastermind, not Larry Demery.

10 Even though in the statement put on by  
11 the State, tape-recorded by the State's  
12 officers, offered up through the testimony  
13 of the State's officers, Mr. Don Smith, the  
14 language to Daniel Green, look at this law  
15 book, look at this law book, we know that  
16 you didn't kill this man. We know that  
17 Larry Demery did. Now, don't you want to  
18 tell us about it. Don't you know that  
19 accessory after the fact if you only helped  
20 dispose of the body and rode around in the  
21 car and had some of the jewelry, don't you  
22 understand that's only a ten year felony.  
23 Tell on Larry Demery.

24 State wants to tell you that Daniel  
25 Green has no morals no scruples, no worth,

1 no value, no nothing. If he is accurately  
2 describing this man, what kept him from  
3 taking that deal that night? I argue to  
4 you who's taking the deal, and you know who  
5 it is. Larry Demery. That officer went so  
6 far as to tell Daniel Green that if he  
7 would accept accessory after the fact, he  
8 probably wouldn't pull but a total of 40  
9 days. Says he doesn't have a morale fiber  
10 in his body.

11 Well, two things, members of the  
12 jury: Either he wouldn't tell on his  
13 friend or he couldn't tell on his friend  
14 because he wasn't there and didn't see what  
15 happened. Daniel Green wouldn't say it was  
16 Larry Demery, however easy it might have  
17 been to walk out of this whole thing in 40  
18 days.

19 Who was the one arranging to take the  
20 car to Huntington, New York? Not Daniel  
21 Green; it was Larry Demery. Who was the  
22 one that chose the spot at which the body  
23 was to be disposed? Oh, sure, Larry Demery  
24 came up with a story suggesting that  
25 somehow that Daniel Green had said let's

1 take it down to Rowland. But Stevenson and  
2 Rumfelt, Rumfelt, a prison guard, he works  
3 for the State. He's a Department of  
4 Correction official.

5 Do you think Mr. Rumfelt would have  
6 come up here like Mr. Britt suggests in his  
7 closing argument on phase one, and just  
8 completely misunderstand and come up here  
9 and testify and put his hand on the Bible  
10 and tell you something was wrong, something  
11 happened but on a different date? I argue  
12 to you not.

13 He told you they came back a day early  
14 from Wrightsville Beach. He told you why,  
15 because his mother was having an  
16 operation. He knows when he came. He  
17 would not have testified. What benefit  
18 would it be to him? He works for the  
19 State. He's in law enforcement. He  
20 wouldn't have any incentive to come here.  
21 But they testified, and what you found out  
22 from that testimony was that they never  
23 went to Rowland. They never went to any  
24 waste treatment plant. They never came up  
25 Highway 501. They went exactly and

1 straight where Larry Demery had them go. A  
2 couple of hundred yards from Crestline  
3 Mobile Homes, where he worked, where he was  
4 familiar with the area. And the State  
5 stands here and says, but Daniel Green was  
6 the mastermind. He was calling all the  
7 shots, members of the jury.

8 They want to suggest to you that  
9 Daniel Green was doing all the driving or  
10 most of it. And yet, guess who the only  
11 fingerprint in the whole car is of either  
12 of the two of them? Even though we concede  
13 Daniel was in the car, the only fingerprint  
14 was Larry Demery. But he's just the  
15 follower, members of the jury, State says  
16 to you. State wants you to accept that,  
17 and then accept their recommendation as  
18 being just and fair and right under the  
19 facts and under the law.

20 Let's take a quick trip through Daniel  
21 Green's life. And as you look at these  
22 things, perhaps you as I were reminded of  
23 the words from Thomas Wolfe's, Of Time And  
24 The River, and particularly the book, You  
25 Can't Go Home Again.

1           I argue to you that Daniel Green never  
2           could go home again but for a different  
3           reason than Thomas Wolfe. Daniel Green  
4           could never go home again because he was  
5           never in one place long enough to have a  
6           home in the first place. And the book, You  
7           Can't Go Home Again, Eugene Gant so often  
8           stops at the first of a paragraph to give a  
9           refrain and a lament: Oh, lost. He again  
10          and again describes his loneliness and his  
11          desperation through life with this sigh of  
12          oh, lost. Oh, lonely. Oh, lonesome.

13                 Hank Williams, Sr. said it: Hear that  
14                 lonesome whippoorwill; he sounds too blue  
15                 to fly; the midnight train is whining low,  
16                 and I'm so lonesome I could cry. Daniel  
17                 Green never stayed long enough to put down  
18                 roots. If he did, they were very shallow  
19                 roots, and when the big storm came, his  
20                 tree of character, his tree of life was  
21                 easy to blow down. Didn't take much to  
22                 offer Daniel in the way of friendship, for  
23                 he had little or no friendship. People who  
24                 teased him, people who fought him, people  
25                 who were jealous of him. He was new. He

1 spoke funny. If he was in Philadelphia, he  
2 was a southern nerd who couldn't learn the  
3 language of the street and was laughed at.  
4 If he came home, he was the kid who talked  
5 with that northern accent and the street  
6 language that nobody really understood.

7 Look at his life. He stayed with his  
8 mother and his grandmother. His great  
9 grandmother was his primary caretaker.  
10 Why? Because his sister was sick, and his  
11 mother had to spend most of his time with  
12 her. You'll come through the mitigating  
13 factors as you begin to see that the  
14 defendant was born illegitimate. I love  
15 what an old judge who's now dead, Ed  
16 Preston used to say. He says, there's no  
17 such thing as an illegitimate child. There  
18 are only illegitimate parents. The child  
19 has no responsibility for how he was born  
20 or by whom or under what circumstances.  
21 Yet it's the child unfairly in our society  
22 that bears the stigma of something that he  
23 had absolutely no control over.

24 You think it doesn't make a  
25 difference? The State thinks it didn't

1           make a difference. It makes a difference.  
2           In many of the things that a person thinks  
3           and does and acts. In many of the  
4           attitudes. Do I say that because someone  
5           is born without parents of wedlock that  
6           therefore they will go out and kill  
7           somebody? Of course not.

8                     That is not what the mitigating factor  
9           is. It is placed there that you might  
10          understand and know the individual and  
11          decide whether or not that is an individual  
12          more deserving of a life or death sentence  
13          in your view. There were many problems in  
14          Daniel Green's life. He suffered from the  
15          stuttering. He was involved in speech  
16          therapy throughout his school years, it was  
17          so bad. Everything has turned on his  
18          difficulty in speaking.

19                    And yet no victim in this case has yet  
20          said that they heard the first syllable  
21          stumbled upon by persons that they have  
22          identified as Daniel Green. He was  
23          constantly teased, ridiculed because of  
24          this stuttering. Kids are mean. You know  
25          they can be. Can be very sweet. But they

1 can be just as mean as anybody.

2 He saw his father being arrested at an  
3 early age, and a number of these mitigating  
4 factors consider his lack of a father  
5 figure in his home. How important is a  
6 father? Well, very important. Not  
7 impossible to grow up fine without a father  
8 in the home, many folks do. But in most  
9 cases, you'll find that they did have a  
10 strong mother figure. But in Daniel's  
11 case, she was absent because she was  
12 nursing young Ebone, because Ebone was  
13 sick.

14 Daniel had an uncle. And he affixed  
15 his attention on the uncle. That was his  
16 substitute father figure. That was Arnold,  
17 if you recall. But Arnold was killed.  
18 There were other uncles, other males in the  
19 family. Seven people, according to the  
20 research of Dr. Rohrer, seven people out of  
21 his family circle were killed. Did that  
22 make him run out and kill somebody? No,  
23 but it deprived him of the morale compass  
24 that might have been provided by, if not a  
25 father then at least a father substitute.

1           And women can be a father substitutes and  
2           are all the time in countless single parent  
3           homes throughout the country. But his  
4           mother had to nurse and look after the  
5           ailing child, Ebone.

6           No to the State, the defense is not  
7           arguing that society or we are to blame for  
8           Mr. Green. Maybe nobody is to blame.  
9           Maybe these circumstances just are. And  
10          maybe it doesn't say that we have to fix  
11          the blame on anybody. But all the law  
12          requires us to consider if the mere  
13          existence of these circumstances say not  
14          this young man, not death for this young  
15          man, who because of circumstances has  
16          hardly lived, and the quality of which he  
17          has lived has been so poor.

18          What's important about a father? This  
19          poem is by Edgar Guest and comes from  
20          William Bennett's Book of Virtues: Only a  
21          dad with a tired face from coming home from  
22          the daily race, bringing little of gold or  
23          fame to show how well he's played the game,  
24          but glad in his heart, that his own rejoice  
25          to see him come and to hear his voice.

1           Only a dad. With a brood of four, one of  
2           ten million men or more, plotting along in  
3           the daily strife, bearing the whips and the  
4           scorns of life, with never a whimper of  
5           pain or hate, for the sake of those who at  
6           home wait. Only a dad. Neither rich nor  
7           proud. Nearly one of the surgeon crowd,  
8           tolling, striving from day to day, facing  
9           whatever may come his way. Silent whenever  
10          the harsh condemn and bearing all for the  
11          love of them. Only a dad. But he gives  
12          his all to smooth the way for his  
13          children's small, doing the courage  
14          stern -- doing with courage, stern and  
15          grin, the deeds that his father did for  
16          him. This is the line that for him I pin,  
17          only a dad but the best of men.

18                 Does the lack of one of those make a  
19                 difference? Look at it if you will from a  
20                 child's perspective. Again, from William  
21                 Bennett, there are two things I'll share  
22                 with you, one from Aesop's Fables. It's a  
23                 very short story of the crab and its mother  
24                 by Aesop.

25                 A mother crab and her son were

1 scurrying over the sand. The mother  
2 chastised her son, stop walking sideways.  
3 It's much more becoming to stroll straight  
4 forward. And the young crab replied, I  
5 will mother dear, just as I see how. Show  
6 me the straight way and I'll walk in it  
7 behind you.

8 In all of his family history, all of  
9 this uncontroverted by the State, all of it  
10 developed by individuals who incidently  
11 worked for the State, one from East  
12 Carolina University, one from the  
13 University of North Carolina, who have done  
14 extensive cross-check, triangular research  
15 to best they can to verify the truthfulness  
16 of it all. Dr. Johnson was so careful to  
17 make sure his information came from  
18 independent sources. He didn't even talk  
19 to Mr. Green himself, he got it from other  
20 sources. He has told you of a family  
21 history, who like the mother crab, did  
22 Daniel Green ever have a chance to walk  
23 behind for any significant period of time?  
24 Was there a teacher, was there a mentor,  
25 was there a father, was there a substitute

1 father figure, was there an uncle who  
2 managed to stay alive long enough to do him  
3 any good? Was his mom available to be that  
4 substitute father as so many moms have and  
5 are? Not because of Ebone's illness.

6 Does the fact that Daniel never had  
7 this change make him a little less  
8 accountable in his book of life for the  
9 horrible deed for which you found him  
10 guilty?

11 I'll tell you how important a dad is  
12 from the perspective of little eyes. Once  
13 upon a time Daniel was not the six feet  
14 tall he is now or the five-11 and a half  
15 that Garth measured him. He was but a  
16 little child with little eyes, and little  
17 eyes were on that father whom he had for  
18 such a fleeting time. And maybe Daniel,  
19 the poet, the song writer, would like to  
20 have said something like this:

21 There are little eyes upon you, and  
22 they are watching day and night. There are  
23 little ears that quickly take in every word  
24 you say. There are little hands all eager  
25 to do anything you do, and a little boy

1           who's dreaming of the day he'll be like  
2           you. You're the little fellow's idol.  
3           You're the wisest of the wise. In his  
4           little mind about you no suspicions ever  
5           arise. He believes in you devoutly, and  
6           holds all that you say and do, and he will  
7           say and do in your way when he's grown up  
8           like you.

9                     There's a wide eyed little fellow who  
10           believes you're always right, and his eyes  
11           are always open and he watches day and  
12           night. You are setting an example every  
13           day in all you do, for the little boy who's  
14           waiting to grow up to be like you.

15                    And what was Daniel's father like?  
16           Daniel saw him arrested at an early age.  
17           His father was in and out of prison for the  
18           next 15 years. Contributed to the lack of  
19           the father/son relationship. Nevertheless,  
20           Daniel was caring and loving to his mother  
21           when he saw her and when he was available  
22           to her. Even though the illness of young  
23           Ebony had in effect caused him separation  
24           from his own mom, and even though you might  
25           have expected some sibling rivalry or

1 jealousy there, the defendant was a loving  
2 and caring person to his younger sister  
3 Ebone, and sought to protect her from the  
4 environment and the circumstances in which  
5 they both lived. That's what all of the  
6 evidence shows about Daniel and his  
7 relationship with his family.

8 There were deaths, numerous deaths in  
9 the family, intergenerational deaths in the  
10 defendant's family, that had almost an  
11 indescribable impact on this young man.

12 There was substance abuse all over the  
13 family. And although Daniel was not able  
14 to resist all temptation as you would  
15 expect he would not, in other areas he was  
16 able to stay away from the substance  
17 abuse. The illness of Ebone is  
18 uncontroverted.

19 The move 13 times, can anybody ever  
20 remember what it was like to go to a new  
21 school? Most of us only got thrown into  
22 that once or twice or maybe three times in  
23 a lifetime. Can you remember the first  
24 time you were told, maybe your school  
25 wasn't a few blocks from the old one or

1 half way across town, or maybe on a bus  
2 over in a different part of the county.  
3 But do you remember what it felt like to be  
4 new, brand new? Remember how terrified you  
5 were? What if you stuttered? What if you  
6 were teased? What if kids were mean to you  
7 when you got there to the new school? How  
8 would it effect you? May be unfathomable  
9 exactly.

10 These are all the schools. The young  
11 man had potential. And please, I'm not  
12 here to say that the school system should  
13 have done this or done that. How could the  
14 school system do anything, because his  
15 records were moving so fast, it was like  
16 the incident down in Laurinburg, he sat in  
17 the principal's office two weeks before the  
18 records caught up with him. That wasn't  
19 the school system's fault. It was the mere  
20 fact that his family was moving. Did  
21 Daniel Green cause or orchestrate those  
22 moves? Certainly not. Would he have  
23 rather stayed in one place and had a loyal  
24 group of friends? Of course.

25 What kind of friendships could you

1 possibly create or maintain in this type of  
2 atmosphere? Look back on your teenage  
3 years and ask yourself how important was  
4 the formation and the keeping and the  
5 nurturing of friendships in those days?  
6 Who were Daniel's friends? There's nothing  
7 in the literature to indicate except that  
8 he did know Larry Demery. Larry Demery.

9 Those moves caused him instability in  
10 his life. A lack of friends. He was not  
11 able to be selective about his friends. He  
12 took whoever was with him. And  
13 unfortunately, the only one that was very  
14 willing was Larry Demery.

15 His parents' relationship dissolved  
16 when he was three. He saw his father some  
17 after that but it was seldom. Because of  
18 his dissolution of his parents'  
19 relationship, because of his father's  
20 imprisonment, his mother, his sister and he  
21 were forced to move to Philadelphia.  
22 Completely different environment. Where  
23 crime, where drugs, where prostitutes,  
24 where all manner of negative influences  
25 existed. Through no fault of Daniel

1 Green's, they were there when they got  
2 there, they are there today, and they were  
3 there when he left.

4 His mother still had the  
5 responsibility to the sick child. And  
6 Daniel didn't have the crab's footsteps to  
7 follow in to learn to walk as straight as  
8 he could or should, and I argue to you  
9 would, if he had had that influence.

10 He continued to be teased this time  
11 because of his southern speech. The  
12 southern nerd this time. How devastating  
13 can you recall any criticism at all can be  
14 to a kid in the teenage years, yes, even a  
15 male child.

16 Sure, boys have feelings, too, and  
17 sometimes they don't show it as much, but  
18 they can hurt inside. He was labeled  
19 gifted and talented while he was living in  
20 Philadelphia, but somehow the school system  
21 was not able to track him properly,  
22 probably because of the moving records and  
23 the lack of records.

24 Nevertheless, he excelled in organized  
25 track and boxing. He was a good athlete.

1 He did some things that were positive. He  
2 was the victim of a crime. And yes, it  
3 does have a desensitizing influence when  
4 someone is burglarized when his family is  
5 asleep, robbed of his material  
6 possessions. Uncle Arnold was killed in a  
7 violent death. Others in the family  
8 suffered violent deaths, and seldom did he  
9 ever have a stable father figure.

10 And then the matter of Ellison.  
11 You'll see from the chart as you look back  
12 over Dr. Johnson's typology that way early  
13 in life he was teased and bothered by  
14 Mr. Ellison. Later on, when he was about  
15 16 in his formative years, just a little  
16 bit after 16th birthday, came this matter  
17 about Robert Ellison.

18 You can tell from the frowny faces  
19 there there was some jealousy by Ellison  
20 over a girl that perhaps Daniel was  
21 seeing. Daniel was cornered on the girl's  
22 porch by Robert Ellison. Several times,  
23 Daniel had run away. Witnesses, including  
24 Cedric Pate, JD Blue, and Bobby Reeves, all  
25 three saw Robert Ellison walk into the

1 swinging axe as Daniel backed away. That  
2 is the number two finding on Dr. Johnson's  
3 sheet.

4 Now, you understand that that is the  
5 matter for which Daniel Green went to  
6 prison, not a juvenile facility, but that  
7 youth correctional prison which actually  
8 comes under the designation of adult  
9 prison. He went in and he stayed a couple  
10 of years for this incident. That  
11 conviction after he had served his time was  
12 later vacated under the law. Thrown out.  
13 And you get a clue from what Dr. Johnson  
14 has found as to why.

15 Freda Black, the public defender  
16 represented Daniel, always rushed, did not  
17 want to talk to Ann Green, defendant's  
18 mother, for more than a few minutes. Freda  
19 Black suggested that Daniel plead guilty  
20 and accept no more than ten years. He was  
21 16 years old and four months when he  
22 entered prison in the axe incident. And it  
23 wasn't long at all before he was stabbed by  
24 another inmate with a pencil.

25 Oh, yes, oh, yes, we acknowledge to

1 the State that yes, he was involved in some  
2 infractions in prison. We don't know, we  
3 don't know the rest of the story or all the  
4 facts about those incidents. Things happen  
5 to people in prison. We don't know what  
6 the circumstances were. We don't know  
7 whether as to this incident when he was  
8 stabbed with a pencil by another inmate, we  
9 don't know whether he retaliated, or  
10 whether we would justify his retaliation  
11 under those circumstances.

12 Melvin Ellison, Robert's adopted  
13 father wanted money as a result of this  
14 incident. Nevertheless, while in prison,  
15 Daniel succeeded in getting a GED, finished  
16 high school. He added some college  
17 courses. It's not totally clear from this  
18 sheet, but it may have been in prison he  
19 also got his certificate in woodworking and  
20 hand tools. Young man was not idle. He  
21 did some good things, some worthwhile  
22 things, and he got out with a high school  
23 degree. Because he had been promised if  
24 you go to school and you do what you're  
25 supposed to do, you get a good job.

1 Daniel Green bought in to that. He  
2 did what he was supposed to do. And what  
3 did he do when he got out? He had to take  
4 a job as a dishwasher. I say that's not an  
5 honorable job. Not saying that some people  
6 have to start being dishwasher. Wash  
7 dishes or bus tables as we've started up  
8 the ladder of employment. But you do agree  
9 with me that somebody must have said if you  
10 get a good education, you complete high  
11 school and you get some of these college  
12 courses, you can be better than a  
13 dishwasher.

14 And yeah, Daniel Green supplemented  
15 his income as dishwasher by selling some  
16 weed, marijuana. That's true. It's not  
17 pretty. Nobody has white-washed this  
18 report. It's all in there, the bad and the  
19 good. Dr. Johnson didn't come in here to  
20 gloss over any of the warts or scars on  
21 Daniel Green's life. He's just like every  
22 other human being, he's got some good  
23 points, some bad points. What will be in  
24 our book of life? Some smiley faces and  
25 some frowny faces. But Daniel was trying.

1           When he got out of jail, he came back  
2           to the community. Not only is Dr. Johnson  
3           right when he says that a prison record,  
4           never mind that it was vacated and he was  
5           vindicated later on, the mere fact that he  
6           had been in prison served as the scarlet  
7           letter of unemployment for a young minority  
8           person.

9           There was Daniel, back out of prison.  
10          The world had passed him by. He was alone  
11          again. A teenager, a young adult, old  
12          enough to be a father himself, old enough  
13          to find someone and hopefully be the kind  
14          of person that this literature we talked  
15          about would be to some young child. But  
16          this time, his background was haunting him,  
17          his loneliness, his isolation, his despair,  
18          his having been subject of all kinds of  
19          violence, violence all around him. His  
20          abandonment.

21          His own father left him and his little  
22          sister in a Philadelphia park in a  
23          dangerous neighborhood and abandoned them.  
24          How exactly they got home is not clear in  
25          the evidence. But he left them.

1 Coolridge. Talks about the lonesomeness of  
2 a road, and Daniel was on the road all the  
3 time. No roots, no friends. Daniel Green,  
4 as Coolridge said, like one that on a  
5 lonesome road doeth walk in fear and dread,  
6 and having once turned round walks on and  
7 turns no more his head, because he knows a  
8 frightful fiend doeth close behind them  
9 trees.

10 One of the statutory mitigating  
11 factors is age. Mr. Britt told you the  
12 first three mitigating factors are  
13 statutory mitigating factors and they do  
14 not require that you find that they have  
15 mitigating value. They merely find, those  
16 three merely require that you find that  
17 they exist. And if they exist, then your  
18 legislature has already determined that  
19 they do in fact have mitigating value.

20 One of those, and it's -- I say --  
21 it's actually -- one of those is the age of  
22 the defendant at the time of the crime.  
23 Actually, there's four. Statutory  
24 mitigating factors, and they are identified  
25 here. --

1 THE COURT: Mr. Bowen.

2 MR. BOWEN: Excuse me, yes.

3 THE COURT: Rephrase.

4 MR. BOWEN: Excuse me. Number  
5 three is the age of the defendant at the  
6 time of the crime. Yes, I beg your  
7 pardon. First three, I was right to start  
8 with. The age of the defendant at the time  
9 of the crime. Now, do you think in your  
10 consideration of this case that age is a  
11 factor? I looked up age in Bartlett's  
12 familiar quotations and found some  
13 interesting things.

14 In Proverbs 22:15, it says foolishness  
15 is bound in the heart of a child. But the  
16 rod of correction shall drive it far from  
17 him. And there we get back to the notion  
18 of the father figure. Somebody there for  
19 the individual to correct him, to show him  
20 the way, like the mother crab, to let him  
21 walk in the straight way. And for Daniel  
22 Green, there was no such person.

23 Proverbs 3:12, for whom the Lord  
24 loveth, he correct, even as a father, the  
25 son in whom he delighted. There was no

1           correcting person in Daniel's life. Do we  
2           learn? Are we less knowledgeable in youth  
3           than we are in later adulthood? There's no  
4           absolute. But would you agree with me that  
5           most of the time this is true? I think  
6           Mark Twain put it the best of all, and I  
7           couldn't find the exact quotation so I  
8           won't give it to you word for word, I'll  
9           just give it to you the best that I  
10          recall.

11                 But Mark Twain said something like  
12           this: I thought my father was awfully  
13           foolish and stupid when I was 17 years old,  
14           but by the time I was 21, I was amazed at  
15           how much he had learned. And I think we  
16           tend to look at our parents that way.  
17           We're amazed at just how wise and wonderful  
18           they really are when we have had a chance  
19           to grow up a little bit ourselves. So does  
20           age have an effect? You better believe it.

21                 Would you like to take back just a few  
22           of the things that you did when you were  
23           16, 17, 18, and maybe 19 years old, before  
24           you had gone, as my father used to say,  
25           over fool's hill, these things, age, other

1 factors, must, must effect our lives. They  
2 must be factored in as we determine whether  
3 or not our lives are eligible to be snuffed  
4 out.

5 Let me now talk about the ultimate  
6 punishment of death as it is dealt with in  
7 the Old Testament. Think of the Old  
8 Testament as a very unremittingly  
9 unforgiving text that says what Mr. Britt  
10 suggests it says. Let's see what else it  
11 says and see if you come away with the same  
12 notion.

13 First premeditated murder that you can  
14 actually find, and this is not the one like  
15 the one you found here which was a murder  
16 committed in the act of another felony.  
17 This was an actual intentional premeditated  
18 murder, and it was committed by one of the  
19 sons of Adam and Eve. If you'll recall the  
20 story of Cain and Abel. And the book tells  
21 us that Cain and Abel offered up sacrifices  
22 to the Lord, and Abel's sacrifice was a  
23 little more pleasing to the Lord. And Cain  
24 was jealous. And Cain said to his brother  
25 Abel, let us go into the fields, and when

1 they were out in the field, Cain turned to  
2 his brother and killed him. Cain lured  
3 Abel into the field. He was jealous. He  
4 had plotted it. He planned it. He  
5 intended it. He killed his own brother.

6 Now, then, what was to be done with  
7 Cain? Cain even foresaw his own execution,  
8 his own destruction. And yet what we see  
9 is a very miraculous thing here even in the  
10 first book of Bible in Genesis, we see  
11 something that resulted called the Mark of  
12 Cain. Do you remember what it was? The  
13 Mark of Cain was that Cain was driven off  
14 the land and became a homeless wanderer on  
15 the earth and was cast out in to the land  
16 east of Eden called Wandering, but the Mark  
17 of Cain was that no man was to kill Cain.  
18 He was not marked for execution. He was  
19 marked by the Lord to be spared.

20 Our next example is with Moses. He  
21 was a prophet in the Judah Christian bible,  
22 also a prophet in Islam, Mr. Green's  
23 religion.

24 Moses killed an Egyptian. And in the  
25 Book of Exodus, we hear that he saw an

1 Egyptian kill a Hebrew, one of Moses' own  
2 people. Moses looked around, and when he  
3 saw no one was watching he killed the  
4 Egyptian and hid his body in the sand.  
5 Next day he went back and saw two Hebrew  
6 men fighting. Said to one of them who was  
7 in the wrong, why were you beating up a  
8 fellow Hebrew. And the man answered, who  
9 made you our ruler and our judge? Are you  
10 going to kill me just as you killed that  
11 Egyptian? And then Moses was afraid, and  
12 said to himself, people have found out what  
13 I have done.

14 Now, that's in the second verse of  
15 Exodus. Did you know what occurs in the  
16 third verse? In the third verse, in the  
17 second -- I'm sorry, the third chapter,  
18 excuse me, in the second verse, the angel  
19 of the Lord appears to Moses, and the third  
20 verse deals with the Lord calling Moses to  
21 be a prophet. Moses -- in the Jewish  
22 religion and the Christian religion and the  
23 Islamic religion, Moses is the second  
24 murderer in the Bible, and he's chosen to  
25 lead the children of Israel out of

1           bondage. The Egyptians.

2           The State contends to you that  
3 background and things that happen to you as  
4 a child don't matter. Shouldn't have any  
5 consideration whatsoever here. Come with  
6 me to the book of Samuel, and the story of  
7 David the King. You recall David's father  
8 was Saul, and you recall that David slew  
9 Goliath and he caused the people of the  
10 land and the Israelites in that land to  
11 respect him and greatly admired and loved  
12 David. And what that happened, do you know  
13 what effect that had on Saul? Saul became  
14 very, very paranoid about David. Scared of  
15 David. What was in David's heart was good  
16 and pure. He was not going to kill God's  
17 anointed. He would never kill his father  
18 the king.

19           But the king sat around and thought of  
20 things, what, to kill David, to plot David,  
21 because he was scared David was going to  
22 kill him. And David didn't have any idea  
23 in the world of that. In fact, it all came  
24 to a head one time when King Saul was out  
25 in the field fighting and David and his

1 soldiers were coming near. And King Saul I  
2 believe was near a cave or in a cave. And  
3 David came right up to where he was, and  
4 took the King's spear, and he was  
5 encouraged by his own men to kill the King  
6 right then, pin him to the ground with the  
7 spear.

8 And David said he wouldn't do it. And  
9 cut a portion of the King's clothing. And  
10 then later on they got up on a mountain and  
11 they yelled at Saul and his people and woke  
12 them up. And David said look to Saul,  
13 look, I could have killed you. I have no  
14 intentions of killing you. Why are you  
15 trying to chase me down and kill me. And  
16 they finally began to make a little bit of  
17 peace with that. But David went through  
18 his early life being pursued, being  
19 tormented, his own life being threatened by  
20 his own father, Saul. Did it have an  
21 effect? Let's look.

22 Later on in the Bible, it is the  
23 Ammonite who comes to David and says, your  
24 father was in a battle, he was about to be  
25 overcome by the Ammonites. Although I'm an

1 Ammonite living in your country, in other  
2 words I'm loyal to you. And I saw your  
3 father there, and he was about to be  
4 overturned and tortured by the oncoming  
5 enemy. And he asked me that I kill him,  
6 and I obliged to your King and I killed him  
7 because he was about to be tortured and  
8 would have died anyway. And I've come to  
9 you, oh, king, to bear you this news.  
10 David instantly had the Ammonite killed,  
11 right on the spot, boom. David had been in  
12 a violent world, and violence was nothing  
13 to good King David.

14 Then, probably the most treacherous,  
15 the most vile of murders anywhere in the  
16 Bible takes place next. David has  
17 matured. And I want to read you this  
18 story, because David is probably the most  
19 significant murderer in the Bible.

20 The following spring at the time of  
21 the year when kings usually go to war,  
22 David sends to out Joab with his officers,  
23 the Israelite army, who defeated the  
24 Ammonites and besieged the City of  
25 Rabbath. And David himself stayed in

1 Jerusalem.

2 One day late in the afternoon, David  
3 got up from his nap and went to his palace  
4 roof. He walked around up there and he saw  
5 a woman taking a bath in her house. She  
6 was very beautiful. So he sent a messenger  
7 to find out who she was. He learned she  
8 was Bathsheba, wife of Uriah the Hitite.  
9 David sent messengers to get her and they  
10 brought him to her, and he made love to  
11 her. And she had just finished her monthly  
12 ritual of purification, and then she went  
13 back home. And afterwards, and discovered  
14 she was pregnant. And she sent a message  
15 to David to tell him.

16 David then sent a message to Joab, the  
17 general in the field. Send me Uriah the  
18 Hitite. So Joab said to him, send him to  
19 David. And when Uriah arrived, David asked  
20 him if Joab and the troops were well and  
21 how the fighting was going. Then he said  
22 to Uriah, go on home and rest for a while.

23 Uriah left and David had a present  
24 sent to his home. But Uriah did not go  
25 home. Instead, he slept at the palace gate

1 with the King's guards. When David heard  
2 that Uriah did not go home, he asked him,  
3 you have just returned after a long  
4 absence. Why didn't you go home. Uriah  
5 answered, the men of Israel and Judah are  
6 away in battle, and the covenant box is  
7 with them. My commander Joab and his  
8 officers are camping out in the open. How  
9 could I go home, eat and drink and sleep  
10 with my wife? By all that's sacred, I  
11 swear that I could never do such a thing.  
12 So David said, then stay here and rest the  
13 rest of the day and tomorrow, and I'll send  
14 you back.

15 You see, he couldn't get Uriah to go  
16 home and sleep with his wife, who was going  
17 to be the embarrassment of the child,  
18 couldn't be explained. So David then  
19 plotted as follows: So Uriah stayed in  
20 Jerusalem that day and the next. David  
21 invited him to supper, got him drunk, but  
22 again that night Uriah did not go home.  
23 Instead, he slept on his blanket in the  
24 palace garden.

25 Next morning, David wrote a letter to

1 Joab and sent it by Uriah. David wrote,  
2 put Uriah in the front line where the  
3 fighting is the heaviest and then retreat  
4 and let him be killed. So while Joab was  
5 besieging the city, he sent Uriah to a  
6 place where he knew the enemy was strong.  
7 Enemy troops came out of the city and  
8 fought Joab's forces and some of David's  
9 officers were killed, and so was Uriah.  
10 David thought that he had plotted in  
11 secret. Thought that he had gotten away  
12 with this crime. But the prophet Nathan,  
13 the judge of the court, in David's court,  
14 knew better. This is what Nathan did.

15 Nathan began to tell David shortly  
16 after this incident a paragraph. David  
17 said, talking to Nathan, there were two men  
18 who lived in the same town. One was rich,  
19 the other poor. The rich man had many  
20 cattle and sheep, while the poor man had  
21 one lamb which he had bought. He took care  
22 of it. It grew up in his home with his  
23 children. He would feed it some of his own  
24 food, let it drink from his own cup. The  
25 lamb was like a daughter to him.

1           One day a visitor arrived in the rich  
2 man's home. The rich man didn't want to  
3 kill one of his own animals to fix a meal  
4 for him. Instead, he took the poor man's  
5 lamb and prepared a meal for his guests.  
6 David became very angry at the rich man and  
7 said, I swear by the living Lord that the  
8 man who did this ought to die. For having  
9 done such a cruel thing, he must pay back  
10 four times as much as he took.

11           And Nathan looked at his king -- must  
12 have taken a lot of courage to say this --  
13 Nathan, the prophet, the judge, said, oh,  
14 King, you are the man. And this is what  
15 the Lord God of Israel says: I made you  
16 King of Israel. I rescued you from Saul.  
17 I gave you his kingdom and his wives. I  
18 made you King over Israel and Judah. If  
19 this had not been enough, I would have  
20 given you twice as much. Why then, have  
21 you disobeyed my commandments? Why did you  
22 do this evil thing? You had Uriah killed  
23 in battle. You let the Ammonites kill  
24 him. And then you took his wife.

25           And then Nathan goes on to describe

1 the punishment. Nathan says that some of  
2 his descendants will die in violent death.  
3 Somebody from your own family will bring  
4 trouble. You will see that I will take  
5 your wives from you and give them to other  
6 men. And they will have intercourse with  
7 other men in broad daylight. You have  
8 sinned in secret, but I will make this  
9 happen in broad daylight for all Israel to  
10 see.

11 And then Nathan said, but you will not  
12 die. Of all the murders where a man had  
13 everything, he was the king, had all the  
14 wives, all the riches, all the education,  
15 all the advantages, Nathan the prophet  
16 foretold what would later happen in the  
17 pages of first and second Samuel. All  
18 those things came to pass for David.

19 He did have members of his own family  
20 turn on him, absolutely. He did have many  
21 disappointments, many lamentations. He  
22 hurt, he was punished. But he was not made  
23 to die. One could argue that he was made  
24 to stay around and suffer as a display to  
25 the world of what suffering is meted out to

1           those who prepare a dastardly murder in  
2           secret as David had been found out to have  
3           done.

4                    What is the lesson? These murderers  
5           in the Bible were not destroyed. They were  
6           not killed, they were not stoned. They  
7           were not hanged. They were not beheaded.  
8           They were punished. They were punished.  
9           By your verdict, both now and earlier in  
10          this trial, you have seen that Daniel Green  
11          will be punished, and I don't mean just a  
12          life sentence. Remember, you convicted him  
13          of three things. You convicted him of  
14          felony murder. You convicted him of armed  
15          robbery, and you convicted him of  
16          conspiracy. Now, armed robbery and  
17          conspiracy of the type that you have  
18          convicted him carries up to an additional  
19          50 years.

20                   Now, those particular sentences under  
21          our law will not be meted out by you. The  
22          consideration of those sentences is with  
23          the Court. And the Court will decide what  
24          if any sentences to impose on those  
25          matters. But my argument to you is that

1 Mr. Green is exposed not only to the life  
2 sentence but potentially in the discretion  
3 of the Court existing additional sentences,  
4 and I will further argue to you that the  
5 mandatory minimal sentence for armed  
6 robbery is 14 years.

7 MR. BRITT: Objection.

8 THE COURT: Do you want to be  
9 heard?

10 MR. BRITT: Yes, sir.

11 THE COURT: This is probably a  
12 good point for me to give the members of  
13 the jury a break. Ladies and gentlemen,  
14 please reassemble in the jury room at five  
15 after by the clock on the wall. And we  
16 will continue at that time. Please recall  
17 that it is your duty to abide by all prior  
18 instructions of the Court concerning your  
19 conduct. Everyone else please remain  
20 seated, the members of the jury are excused  
21 until 1:05.

22 (Jury out at 12:44 p.m.)

23 THE COURT: Let the record  
24 reflect the following is being heard in the  
25 absence of the jury. What's the basis of

1 the objection?

2 MR. BRITT: Your Honor, while  
3 there is a minimum mandatory sentence of 14  
4 years for armed robbery, under these  
5 circumstances that's an incorrect  
6 statement. The defendant, having been  
7 convicted of the first degree felony  
8 murder, the underlying felony being armed  
9 robbery, it merges with the murder charge  
10 and as such double jeopardy prevents him  
11 from being sentenced on that charge. It's  
12 an incorrect argument.

13 THE COURT: Mr. Thompson.

14 MR. THOMPSON: The potential  
15 though, Your Honor, is still there. As I  
16 understand the law, it's sort of like the  
17 situation we had with consolidation. Now,  
18 a number of things may happen with regard  
19 to the murder charge. As far as it could  
20 be set aside, the armed robbery or robbery  
21 with a dangerous weapon, through an  
22 appellate court may still stand, and so --

23 THE COURT: Mr. Bowen's argument,  
24 the gist of his argument is that in  
25 addition to a minimum life sentence on the

1 murder charge, the defendant could receive  
2 50 years on top of that minimum life  
3 sentence. That's the argument. And that  
4 there's a mandatory minimum 14 years on the  
5 armed robbery. Implication being that at  
6 least 14 years potentially on top of the  
7 minimum sentence of life imprisonment  
8 should the jury impose that minimum  
9 sentence. That's the argument.

10 MR. THOMPSON: Well, maybe the  
11 "in addition to" may give a -- "in  
12 addition" to the Court may mean on top of  
13 or consecutive to. But in addition to may  
14 also mean in addition to, as a possibility  
15 of another sentence. And I'm not --

16 THE COURT: Legally what way  
17 could your client get life plus 14, life  
18 plus 50 under any set of law?

19 MR. THOMPSON: He's subject to,  
20 we know that because of the felony murder,  
21 that the armed robbery merges.

22 THE COURT: Merges.

23 MR. THOMPSON: But --

24 THE COURT: How could he get life  
25 plus 14, how could he get up to life plus

1 50?

2 MR. THOMPSON: Well, if, for  
3 example, the murder charge at some  
4 subsequent date were to be set aside, I  
5 don't -- my contention is that the armed  
6 robbery --

7 THE COURT: Would that mean, if  
8 the murder were to be set aside by some  
9 stretch of the imagination, how could he  
10 get life plus 14 or up to life plus 50?

11 MR. THOMPSON: I don't know about  
12 life plus 14, but I know that the maximum  
13 punishment for robbery with a dangerous  
14 weapon is 50 years.

15 THE COURT: Yes, sir.

16 MR. THOMPSON: The mandatory  
17 punishment for robbery with a dangerous  
18 weapon is life plus 14 years, and I'm  
19 saying to you, I think -- it's clear that  
20 he can't get it as a concurrent, as a  
21 consecutive sentence, however, he's  
22 convicted of the robbery with a dangerous  
23 weapon, and I think it's proper for him to  
24 at least argue the maximum sentences under  
25 that, striking the "in addition to" if

1           that's --

2                   THE COURT:   The objection is  
3           sustained.   Court will instruct the jury to  
4           disregard that comment by counsel for the  
5           defendant, that that comment is not to take  
6           any part in their deliberations in any way.

7                   MR. THOMPSON:   Yes, sir.   But as  
8           a matter of clarity, it would still be  
9           proper to argue what the maximum  
10          punishment --

11                   THE COURT:   When there's a  
12          merger, when there's merger, no, sir.   No,  
13          sir.   We're at ease.

14                   THE COURT:   Court stands at  
15          ease.

16                   (Brief recess.)

17                   THE COURT:   While we've got this  
18          opportunity, there was some question  
19          Mr. Britt had about the nature of the  
20          conspiracy to commit robbery with a  
21          dangerous weapon under the fair sentencing  
22          law, which was the law which was in effect  
23          at the time in question.   I told him my  
24          understanding is under the old law that  
25          would be a class H felony.   Under our old

1 statutory scheme, if it was an A, if it was  
2 conspiracy to commit an A through a G  
3 felony, then the conspiracy would be a  
4 class H felony. If there was a conspiracy  
5 to commit anything less than a G felony, H,  
6 I, J felony, then the conspiracy itself  
7 would be a J felony. But my understanding  
8 of the old law is that the conspiracy that  
9 this defendant was convicted of would have  
10 been a class H felony with a maximum term  
11 of prison of ten years and a presumptive  
12 term of three years.

13 Anybody disagree, we can talk about it  
14 at the appropriate time. But the  
15 underlying charge of robbery with a  
16 firearm, this defendant having been  
17 convicted of felony murder, merges with the  
18 murder charge for the purpose of  
19 punishment. And I will sustain the State's  
20 objection on that basis. Any other matters  
21 before we bring the jury in?

22 MR. THOMPSON: I just need to  
23 consult with him before.

24 THE COURT: Mr. Horne, if you'll  
25 bring the jury in, please, sir.

1 (Jury in at 1:07 p.m.)

2 THE COURT: Members of the jury,  
3 if you'll bear with me for one second,  
4 please.

5 Members of the jury, I instruct you  
6 that you are to disregard Mr. Bowen's  
7 argument insofar as it pertains to any  
8 punishment for the offense of robbery with  
9 a firearm. You are not to consider that  
10 argument. That is not to take any part in  
11 your deliberations as to your  
12 recommendation as to punishment in any  
13 respect. Do each of you understand that  
14 instruction? If so, please so indicate by  
15 raising your right hands at this time.

16 Let the record reflect that all 13  
17 members of the jury have responded  
18 affirmatively.

19 Mr. Bowen, you may continue your  
20 argument.

21 MR. BOWEN: Thank you, Your  
22 Honor.

23 The conspiracy for which you have  
24 convicted the defendant carries up to ten  
25 years in -- ten years in prison, according

1 to the law. Members of the jury, what I  
2 would like to do is talk to you a little  
3 bit, and I won't press much past your lunch  
4 hour, I'm about to finish, but there is one  
5 mitigating factor that bears some  
6 explaining, and that's number 33 on your  
7 sheet. And it reads, any other  
8 circumstance or circumstances arising from  
9 the evidence which one or more of you deems  
10 to have mitigating value, there may be many  
11 things in the evidence of this case that  
12 you have recalled from the presentation  
13 whether the evidence came from the  
14 defendant, whether the evidence came from  
15 the State's witnesses, which in your view  
16 would have that mitigating or lessening  
17 value that should be considered here.

18 When you get to number 33, I propose  
19 to you that that may be a time to kind of  
20 stop and draw a breath and everybody sort  
21 of have some input, because it may be that  
22 a lot of you have some notions about this  
23 evidence that there are mitigating factors  
24 here that are not set out anywhere on the  
25 statutory mitigating factors or

1 nonstatutory factors. This is a time for  
2 you to think of those other things. You  
3 don't have to name what they are. But to  
4 the extent that you all do see things in  
5 the evidence that have not gone over here  
6 that you think should go under number 33,  
7 it may be a very large and important one  
8 for you.

9 Members of the jury, if you will  
10 recall part one of our evidence, the guilt  
11 or innocence phase of this case, you will  
12 recall that there was evidence both about  
13 the death of James Jordan which in its most  
14 important parts came virtually all from  
15 Mr. Larry Demery, who had a very great  
16 amount at stake in this case concerning his  
17 own life or his own potential punishment.  
18 You will recall that, although I heard  
19 Mr. Britt say a little earlier that  
20 Mr. Clewis Demory had earlier said in this  
21 courtroom and pointed out Mr. Green and  
22 said that is the person sitting right there  
23 who robbed me, I propose to you that  
24 although our hearts went out certainly to  
25 Mr. Demory, that that is not what

1 Mr. Demory said. What Mr. Demory said was  
2 he looked at Mr. Green and he said, that  
3 looks just like the fellow that I saw. But  
4 and then he opened up on cross-examination  
5 and he said, but I have seen scores of  
6 young black men that look just like him in  
7 my community. And on top of that, he  
8 agreed that right after the matter had  
9 happened and Mr. James Carter visited him  
10 in the hospital, he told Mr. Carter  
11 virtually exactly these words, "I wouldn't  
12 know him if he walked through the door."

13 Now, members of the jury, you've also  
14 got the evidence from Mrs. Tedeschi who  
15 feels that she's sure that she saw who she  
16 saw, that she had also seen a picture on  
17 TV, and whether or not that picture on TV  
18 confirmed who she had seen in person or  
19 suggested to her who she identified in the  
20 lineup, it's not certain. We must say that  
21 in her heart she feels she's sure, but the  
22 height of the person she saw is not quite  
23 right for Daniel Green. And in neither  
24 instance did Mr. Green stutter.

25 And the question is this, question is

1           this: Ultimately, if you get to the point  
2           on this sheet, and we argue that you should  
3           not even get this far, but should you get  
4           far enough to say whether or not the  
5           aggravating factors are substantially  
6           sufficient, if you find that they call for  
7           the imposition of the death penalty, you've  
8           got to think of what level of evidence  
9           you're satisfied with when it deals with  
10          life or death. What does "beyond a  
11          reasonable doubt" mean to you when the  
12          result is not just conviction but a  
13          recommendation to the Court that the Court  
14          must accept and mete out, which would be a  
15          death sentence.

16                 Now, in your hands in just a minute  
17          more is going to come this case, and then  
18          after Mr. Thompson's argument and the  
19          instructions of the Court, you're going to  
20          get to talk. This case is being handed to  
21          you very much like that bird in the young  
22          man's hands who went out to try to fool the  
23          old and wise man. You probably wondered  
24          what has been happening to that bird in his  
25          hands. It's been sitting there and its

1 little heart has been racing.

2 And what finally happened in that  
3 story is that remember the young man was  
4 going to say to the old man, is the bird  
5 alive or dead. If he said it was dead, he  
6 was going to release it, let it fly away.  
7 If he said it was alive, he was going to  
8 smother it in his hands and render it up to  
9 the old man dead. Either way, the old man  
10 was going to lose. There was no way that  
11 the old man could answer the question and  
12 not lose. And this was how the old man  
13 proved his wisdom: When the young man  
14 said, old man, is the bird alive or dead,  
15 the old man said, son, young man, the  
16 answer is in your hands.

17 As is true in this case, the answer is  
18 in your hands. And I commend you with one  
19 last verse from the book of Mica in the  
20 Bible. As you consider this case, do  
21 justice, love mercy and walk humbly with  
22 your God as you decide the fate of a fellow  
23 human being.

24 MR. THOMPSON: May we approach?

25 THE COURT: Yes, sir. May I see

1 all counsel, the defendant, the court  
2 reporter, please

3 (Whereupon a bench conference ensued  
4 as follows.)

5 THE COURT: Let the record  
6 reflect that this is a bench conference.  
7 Present at this time are the presiding  
8 Judge, the court reporter, counsel for the  
9 State, counsel for the defendant Mr.  
10 Thompson, Mr. Bowen. Also present is the  
11 defendant.

12 MR. THOMPSON: Your Honor, going  
13 to 230, and I think that it's possible that  
14 I can actually finish before 2:30, but  
15 there's a possibility that I may not.  
16 Still, the defendant has something that he  
17 wants to consult with me before I make my  
18 argument, and because of that, he's  
19 desirous that I not try and make the  
20 argument --

21 THE COURT: Until tomorrow  
22 morning?

23 MR. THOMPSON: Yes.

24 THE COURT: Mr. Britt, do you  
25 have any problem with that?

1 MR. BRITT: No, sir.

2 THE COURT: I'm inclined to allow  
3 Mr. Green that. Also, I want to apprise  
4 Mr. Green at this time, in the absence --  
5 outside the hearing of the jury, of his  
6 right of allocution. And it may be a good  
7 time for us to do that now and take up with  
8 argument for State --

9 MR. BRITT: Yes, sir. We can do  
10 that outside the presence of the jury.

11 THE COURT: Do you want me to  
12 send the jury home?

13 MR. THOMPSON: Yes, sir.

14 THE COURT: All right.

15 (Bench conference concluded.)

16 THE COURT: Ladies and gentlemen  
17 of the jury, rather than interrupt the  
18 remaining argument in this case, I am going  
19 to allow you folks to go home at this time  
20 and come back at 9:30 tomorrow morning. At  
21 that time, you will hear the final argument  
22 in this matter, and that final argument  
23 will be followed by the Court's  
24 instructions relating to your  
25 recommendation as to punishment.

1           Folks, you've not yet heard all of the  
2 arguments in this case. You've not yet  
3 heard the Court's instruction on the law  
4 relating to your recommendation as to  
5 punishment, and therefore it's imperative  
6 that you folks remain open-minded about  
7 this matter. Don't talk among yourselves  
8 about this matter. Don't talk with anyone  
9 else including members of your own  
10 families. Don't allow anyone to say  
11 anything to you or in your presence about  
12 this matter. If anyone communicates with  
13 you, attempts to do so, or says anything  
14 about this case in your presence, it  
15 remains your duty to inform the Court of  
16 that immediately. Don't form or express  
17 any opinions at all on the issue of your  
18 recommendation as to punishment. Don't  
19 have any contact or communications of any  
20 kind with anyone involved in this matter.  
21 Avoid any exposure to any media accounts  
22 which might exist in connection with this  
23 proceeding, and don't conduct any  
24 independent inquiry or investigation or  
25 research of any kind. Everyone else,

1 please remain seated, all members of the  
2 jury are excused -- Mr. Cassidy, hopefully  
3 this also gives you ample opportunity to  
4 make your appointment -- until 9:30. Thank  
5 you, folks, you're free to go at this  
6 time.

7 (Jury out at 1:19 p.m.)

8 THE COURT: If you'll close that  
9 door, please, sir.

10 All right. For the record,  
11 Mr. Thompson has asked for the opportunity  
12 to confer. That being requested by his  
13 client, Mr. Green, with his client prior to  
14 Mr. Thompson's final argument. Court also  
15 indicated to Mr. Green at the bench  
16 conference that the Court was going to go  
17 into the question of Mr. Green's right as  
18 it may exist under our law regarding  
19 allocution. State also wanted an  
20 opportunity to be heard in that regard.

21 Mr. Britt, let me give you the chance  
22 to be heard regarding allocution.

23 MR. BRITT: Yes, sir. As it  
24 relates to the right of allocution, and I  
25 cannot cite you the most recent case on it,

1 I have read it, it is not an absolute  
2 right.

3 THE COURT: Yes, sir.

4 MR. BRITT: It would be the  
5 State's position that any allocution that's  
6 to be made in this case should have  
7 occurred before the State made its  
8 argument. In the event --

9 THE COURT: So the State could  
10 respond.

11 MR. BRITT: Yes, sir. And to  
12 allow Mr. Green at this juncture to  
13 exercise any right of allocution that he  
14 may have after the State has concluded its  
15 remarks to the jury forecloses the  
16 possibility of the State responding to  
17 anything that Mr. Green might have to say.

18 THE COURT: Well, if I let, in my  
19 discretion to allow allocution by  
20 Mr. Green, I'll give the State the  
21 opportunity to respond and additional  
22 opportunity to respond by counsel for the  
23 defendant.

24 Folks, let me give the following  
25 citation. State versus Johnson, 67 NC 55,

1 an 1872 case. And general statute 4-1.  
2 Argument can be made that 15 A 2000 A-4 may  
3 have repealed the common law right to  
4 allocution even for capital cases.

5 There is, I think all of us are aware,  
6 the practice of allowing allocution by the  
7 defendant prior to imposition of sentence.  
8 Traditionally, what happens is prior to the  
9 imposition of the sentence, the Court looks  
10 upon the defendant and asks whether there's  
11 anything that the defendant wants to say.  
12 That is different from what is commonly  
13 referred to as the right of allocution,  
14 especially as it relates to capital cases,  
15 which relates to a broader opportunity on  
16 the part of the defendant to address the  
17 jury without cross-examination. And an  
18 instruction I've used in the past reads as  
19 follows. And if you'll bear with me.

20 I apologize, I pulled it out.  
21 Essentially what it relates to is the Court  
22 instructs the jury that they are to give  
23 whatever credit they think it's worth, that  
24 it's the defendant's opportunity to address  
25 the jury in an unsworn manner and without

1 the benefit of any cross-examination, that  
2 they are free to attach whatever  
3 significance they think is deserving. And  
4 if I could find the exact -- I pulled it to  
5 read it to you and I can't find it. I'll  
6 find it, Mr. Britt, and we will discuss it  
7 before tomorrow morning. I apologize.

8 You folks want to be heard any further  
9 as to the right of allocution?

10 MR. THOMPSON: Yes, sir, Your  
11 Honor. And I realize that in exercising  
12 that right, if the Court were to allow it,  
13 there may be things that --

14 THE COURT: That's -- here it  
15 is. Bear with me. In a capital trial, the  
16 accused may elect to testify under oath,  
17 remain silent, or address the jury without  
18 having been sworn.

19 The decision as to which approach the  
20 accused will follow does not itself  
21 constitute any evidence. It may not be  
22 considered as a circumstance against him or  
23 used for any purpose whatsoever during your  
24 deliberations. You may give whatever  
25 weight you determine appropriate to the

1 defendant's unsworn statement in this case,  
2 and consider both the content of the  
3 statement and the defendant's demeanor in  
4 addressing you in reaching your verdict.

5 Now, Mr. Green, ordinarily after I  
6 apprise the defendant of the instruction  
7 that I intend to give, I also apprise a  
8 defendant that on occasion, defendants may  
9 say things that may enure to the  
10 defendant's detriment. In other words, a  
11 defendant may stick his foot in his mouth,  
12 in a very blunt and very direct way. And  
13 that usually if a defendant wishes to  
14 exercise in the discretion of the Court the  
15 right to allocution, and the Court allows  
16 it, I advise defendants to discuss with  
17 counsel at length what it is that the  
18 defendant contends to say so that counsel  
19 can give that defendant the benefit of  
20 advice regarding the content of any  
21 statement that might be made.

22 Oftentimes in an effort to say  
23 something that will benefit that defendant,  
24 that defendant ends up doing more harm than  
25 good. That's not always the case, but it

1 is a very significant possibility. So  
2 great care has to be given to what if  
3 anything is said, if anything is permitted  
4 by the Court, and that needs to be  
5 discussed with counsel before that decision  
6 is made by a particular defendant, again,  
7 if the Court does exercise its discretion  
8 and I allow it. You understand what I've  
9 said, sir?

10 MR. GREEN: Yes, sir.

11 THE COURT: I'm going to give you  
12 an opportunity to confer with Mr. Thompson  
13 and Mr. Bowen. I want the record to  
14 reflect that if the Court does in its  
15 discretion allow allocution before this  
16 jury by you, that I will give the State the  
17 opportunity to respond to anything that you  
18 say, and give your counsel the last  
19 opportunity to be heard as is required by  
20 statute. Anyone want to be heard in that  
21 respect?

22 MR. THOMPSON: Your Honor, and  
23 again, that decision -- the decision has  
24 not yet been made, but if he were to  
25 exercise the right to -- excuse me,

1 exercise any rights to allocution or  
2 privileges to allocution as the Court in  
3 its discretion would grant him, we would  
4 desire that it be done prior to my  
5 closing. If the State is going to  
6 respond. I mean, and that I'm sure would  
7 be based on what he says, whether the  
8 State --

9 THE COURT: Let me give you all  
10 the following citation so you all come and  
11 argue what you want. State versus McNeill,  
12 324 NC 32, 1989 case. An argument was made  
13 by the Attorney General in North Carolina  
14 as follows: There's a strong argument made  
15 that the common law right of allocution has  
16 no place in a modern capital punishment  
17 statute such as we have in North Carolina.  
18 Sentencing a person convicted of a capital  
19 felony is entirely a statutory scheme  
20 enacted to protect fully the rights of  
21 defendants to commit a felony punishable by  
22 death. Statute provides the Court may  
23 receive any evidence that it deems to have  
24 probative value. The defendant has a right  
25 to testify and present evidence in

1 mitigation, whether or not he presented any  
2 evidence in the guilt phase.

3 The defendant's evidence in the second  
4 stage is entirely of an allocutory nature  
5 in that its whole purpose is to convince  
6 the jury to exercise leniency. Therefore,  
7 it is questionable whether there is any  
8 need for allocution under our statutory  
9 scheme in sentencing those convicted of a  
10 capital felony.

11 Now, in support of this argument, the  
12 AG argued 15-A 2000 A-4, which provides  
13 that the defendant or defendant's counsel  
14 have the right to make the last argument in  
15 a sentencing hearing. The argument  
16 implicit in that is that if defendant's  
17 counsel exercises the right under the  
18 statute to last argument, then that  
19 forecloses the defendant's right to  
20 allocution as it existed under the common  
21 law.

22 But there's a counter argument that  
23 super due process, which applies in a  
24 capital case, extends in corporation of the  
25 right to allocution and the due process

1 causes of the 14th Amendment to the United  
2 States Constitution. Several states and  
3 four federal have already held allocution  
4 to be constitutionally guaranteed in  
5 certain circumstances. Federal cases cited  
6 Borgman versus Austell, 957 Fed. 2nd, 1523,  
7 Ninth Circuit. Ash versus North Carolina,  
8 586 Fed. 2nd 334, Fourth Circuit, 1978  
9 case. A Fifth Circuit case and an Eleventh  
10 Circuit cases. If you folks are interested  
11 in those, I'll give them to you, but I  
12 think the pertinent is the Fourth Circuit.

13 And two state supreme courts have  
14 dealt with this. The California Supreme  
15 Court has held that the right of allocution  
16 is unavailable in California under their  
17 capital penalty scheme. And People versus  
18 Braggo, Colorado Supreme Court rejected the  
19 State's argument that capital sentences  
20 statute set forth the exclusive procedures  
21 and held that a defendant's right to  
22 allocution is even more pronounced. So  
23 there is a division in the states, division  
24 in the circuit courts of appeal.

25 I think essentially what it comes down

1 to is the court's discretion. There is  
2 almost no case law that I'm aware of which  
3 guides the Court's discretion in terms of  
4 the content of allocution or what if  
5 anything may be said or responded to by the  
6 parties.

7 I do think that Locket versus Ohio,  
8 Skipper versus South Carolina, all relate  
9 to allocution as it does to anything else  
10 in the sentencing arena. So I think for  
11 the purpose of consideration, the factors  
12 set forth under our statute, allocution  
13 must represent to something involving the  
14 defendant or the client and nothing else.  
15 Okay? Matters related to the defendant or  
16 the crime, and nothing else.

17 Anything further from either counsel?

18 MR. BRITT: No, sir.

19 THE COURT: Folks, I would like  
20 to know for our purpose what your decision  
21 is going to be. How long are you going to  
22 be consulting?

23 MR. THOMPSON: I don't think too  
24 long on this.

25 THE COURT: I would like to know

1 so that I can give the State notice and I  
2 can decide what I'm going to do.

3 MR. THOMPSON: Just give us a  
4 moment.

5 THE COURT: You need to go back  
6 there Mr. Thompson, Mr. Bowen?

7 MR. THOMPSON: Yes, sir.

8 THE COURT: Okay. We'll be at  
9 ease. While we're doing that, there were  
10 some folks in the media that said we might  
11 be able to address some of the matters  
12 here, while we're at ease.

13 (Brief recess.)

14 THE COURT: Let the record show  
15 all counsel are present, the defendant is  
16 present in open court. All members of the  
17 jury are absent. Mr. Thompson.

18 MR. THOMPSON: Yes, sir.

19 THE COURT: Yes, sir.

20 MR. THOMPSON: Again, Your Honor,  
21 we -- Mr. Bowen and I and the defendant  
22 have consulted. First of all, we advised  
23 Mr. Green not to exercise any such right.  
24 Quite frankly --

25 THE COURT: Well --

1 MR. THOMPSON: We --

2 THE COURT: "Right" is the word  
3 Mr. Britt is going to respond to in a  
4 minute.

5 MR. THOMPSON: Exactly.

6 THE COURT: Not the request.

7 MR. THOMPSON: Yes, sir. And to  
8 be honest with you, I read the recent  
9 decision I think Mr. Britt is referring to,  
10 and counsel and I had discussed this early  
11 on and actually thought that we were not  
12 entitled to it anyway.

13 THE COURT: I don't think there's  
14 any disagreement that there's no right  
15 to --

16 MR. THOMPSON: Yes, yes. And  
17 anything that Mr. Green, U'Allah would do  
18 at this point by way of making a statement  
19 other than through counsel we feel would  
20 just be maybe appear to be self serving,  
21 and also may give the State an opportunity  
22 to respond and open doors. If we could --  
23 if we could, say, contain, for example,  
24 what was being said, that would be maybe  
25 one thing. But I just do not feel very

1 comfortable with this. It was not  
2 something we anticipated. His wanting to  
3 consult with us was not with respect to any  
4 right to allocution. It was with respect  
5 to things that he wanted me to respond to.  
6 And only when we had the bench conference  
7 did this come up. I think it's a tactical  
8 decision to be made by counsel.

9 THE COURT: I'm understanding you  
10 folks have advised Mr. Green not to request  
11 the right to allocution.

12 MR. THOMPSON: Yes, sir.

13 THE COURT: Mr. Green, anything  
14 you want to say in that regard?

15 MR. GREEN: I request the right  
16 to allocution.

17 THE COURT: You understand that  
18 you have no right to allocution as it  
19 exists under North Carolina law, that if  
20 allowed, would be in the discretion of the  
21 Court?

22 MR. GREEN: Yes, sir.

23 THE COURT: You understand that  
24 if the Court were to exercise its  
25 discretion, the State would be given an

1 opportunity to respond to any statements  
2 that you make?

3 MR. GREEN: Yes, sir.

4 THE COURT: There's a case  
5 Mr. Britt brought to the attention of the  
6 Court, I indicated to him I'm familiar with  
7 Green, it's State versus Green, which is a  
8 North Carolina Supreme Court case which  
9 basically said there is no right to  
10 allocution, which is what we discussed  
11 earlier, under North Carolina law as it  
12 exists right now, no statutory right. The  
13 argument also has been made that the common  
14 law has been abrogated by the imposition or  
15 the enactment, pardon me, of the statute.

16 Contrary to your lawyer's advice, you  
17 are asking the Court to exercise, to allow  
18 you to exercise to speak to the jury?

19 MR. GREEN: Yes, sir.

20 THE COURT: Understanding that  
21 that could have negative consequences for  
22 you?

23 MR. GREEN: Yes, sir.

24 THE COURT: State want to be  
25 heard?

1                   MR. BRITT: Your Honor, I just  
2 stand by what is cited there in Green.

3                   THE COURT: All right. Let me  
4 read the pertinent language out of Green.  
5 The defendant contends by another  
6 assignment of error that the trial court  
7 erred in denying his motion for  
8 allocution. The defendant argues that this  
9 was harmful because it denied him the right  
10 to offer evidence in mitigation to show he  
11 was remorseful. He contends he was  
12 entitled to do this by personally making  
13 unsworn statements of fact to the jury  
14 without cross-examination during the  
15 closing arguments.

16                   The Supreme Court of North Carolina  
17 disagreed with that contention. My concern  
18 is that exercising whatever discretion I do  
19 have, and I think it is discretionary with  
20 the Court, we set off a whole new round of  
21 arguments. That's my concern. And I don't  
22 know whether this jury can deal with that,  
23 to be quite candid.

24                   The Court declines to exercise its  
25 discretion. The Court abides by 15-A 2000

1 A-4, which gives either the defendant or  
2 defense counsel the right to final argument  
3 with the jury. Court notes the opinion of  
4 the North Carolina Supreme Court in State  
5 versus Green, however the Court did feel  
6 obligated to raise the issue because in my  
7 view, the Constitutional ramifications of  
8 the issue have not been fully decided yet  
9 and may give rise down the road to some  
10 further appellate relief. I felt obligated  
11 to raise it for that reason.

12 I told you folks a long time ago, if  
13 you didn't make the record, I would. For  
14 whatever it's worth, if there is any  
15 constitutional argument, due process  
16 argument of the right to allocution, you  
17 now preserved that argument.

18 Okay?

19 MR. GREEN: Yes, sir.

20 THE COURT: Defendant's exception  
21 is noted for the record.

22 Any other matters?

23 MR. BRITT: No, sir.

24 THE COURT: See you folks at 9:30  
25 tomorrow morning. If you'll recess us

1           until 9:30.

2                           THE BAILIFF: All rise, please.

3                           (Court adjourned.)

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Sentencing  
(Lit or DP)

A

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 93 CRS 15291-93

3 ROBESON COUNTY

4

STATE OF NORTH CAROLINA )

5

)

6

vs.

)

VOLUME 48

7

DANIEL GREEN, aka AS-SADDIQ )

8

AL-AMIN SALLAM U'ALLAH, )

9

DEFENDANT. )

- - -

10

11

Transcript of Proceedings before the

12

Honorable GREGORY A. WEEKS, Judge Presiding,

13

before Steve S. Huseby, Registered Professional

14

Reporter and Notary Public, Robeson County

15

Courthouse, Lumberton, North Carolina, on

16

the 12th day of March, 1996.

17

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- - -



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8

9 On Behalf of the Defendant:

10

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and

16

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20 Lumberton, North Carolina 28359

21

- - -

22

23 (March 12, 1996. Proceedings in open court.)

24

25 THE COURT: Good morning, folks.

26

27 Let the record reflect that all  
28 counsel are present, let the record further  
29 reflect that the defendant is present in  
30 open court. All members of our jury are  
31 secured in the jury room, is that accurate,  
32 Mr. Horne .

33

34

THE BAILIFF: Yes, sir, it is.

35

THE COURT: Folks, one procedural

1 matter I'm going to bring up before we  
2 bring the jury in. In Issue 1-A on the  
3 recommendation of punishment form, I have  
4 just directed the clerk, Ms. Sue Gaines, as  
5 to the possible findings of the jury with  
6 regard to Issue 1-A to insert the word  
7 "answer" and a space for entry of the  
8 answer after each of the four  
9 alternatives. For example, as to the  
10 following language, "Do you unanimously  
11 find from the evidence that the defendant  
12 intended to kill the victim," semicolon,  
13 and I have instructed her after the  
14 semicolon to write in the word "answer" and  
15 a space for entry of the answer. Or  
16 "intended to kill the victim," semicolon,  
17 I have instructed her to write in the word  
18 "answer," and a space for the answer. Or  
19 "intended that deadly force would be used  
20 in the course of the underlying felony," I  
21 have instructed her to write the word  
22 following that, "answer," and entry for or  
23 space for entry of an answer. Same thing  
24 as to fourth possible alternative. She's  
25 doing that right now. Either counsel want

1 to be heard?

2 MR. BRITT: No, sir.

3 MR. BOWEN: Yes, sir. We would  
4 interpose an objection to that and would  
5 say that since this is, after all, a sheet  
6 dealing with aggravating mitigating factors  
7 and the number of answers in the particular  
8 part of the document can mean something to  
9 the jury, we argue that the legal effect  
10 would be that one answer at the end of all  
11 four choices indicating one or more of the  
12 choices would be legally sufficient and  
13 there's possibly a prejudicial effect of  
14 putting the four answers in there so that  
15 the jury gets some notion that numbers  
16 count. We know you're going to instruct  
17 them otherwise, but it's a dangerous thing,  
18 we think, and would be legally sufficient  
19 one answer.

20 THE COURT: Objection is  
21 overruled. Exception is noted for the  
22 record. Anything further?

23 Bring the jury in, please, Mr. Horne.

24 I understand your position, but for  
25 the purpose of clarity in the findings of

1 the jury as to their recommendation as to  
2 punishment, I think it's appropriate to  
3 provide them with an opportunity to answer  
4 each specific alternative.

5 Now, Mr. Thompson, you all ready to go  
6 forward, sir?

7 MR. THOMPSON: Yes, sir.

8 (Jury in at 9:34 a.m.)

9 THE COURT: Good morning, ladies  
10 and gentlemen.

11 Mr. Thompson, the jury at this time is  
12 with counsel for the defendant for final  
13 arguments, sir.

14 MR. THOMPSON: May it please the  
15 Court, Mr. Britt, ladies and gentlemen of  
16 the jury. This will be the last time that  
17 I'll have an opportunity to talk to you.  
18 And first of all, on behalf of the  
19 defendant, we want to thank you. Thank you  
20 for not finding the defendant guilty of  
21 first degree premeditated murder.

22 Now, however, having found the  
23 defendant guilty of felony first degree  
24 murder and robbery with a dangerous weapon  
25 and conspiracy to commit robbery with a

1 dangerous weapon, you get to write yet  
2 another chapter in the defendant's life.

3 At the age of 21, when this young man  
4 should really just begin to live, he is now  
5 faced with the death penalty, a possibility  
6 of the death penalty. He's faced with 12  
7 individuals who actually hold the balance  
8 of life and death in their hands.

9 Now, in the context of this young  
10 man's life experience and the circumstances  
11 surrounding the commission of these  
12 offenses for which you found him guilty and  
13 his life experiences, the question that  
14 ultimately arises is whether, in this case  
15 of first degree murder, the death penalty  
16 is appropriate.

17 Defense suggests to you that the  
18 answer to that should be a resounding no.

19 You recall during jury selection, each  
20 of you were asked questions concerning your  
21 feelings about the death penalty, how long  
22 you had held those beliefs, whether they  
23 were strong or moderate. Particularly the  
24 Judge instructed you and both counsel, but  
25 the State and the defendant talked with you

1 and told you that all first degree murder  
2 cases do not warrant the death penalty.  
3 You all understood that, and each of you  
4 actually indicated that that was your  
5 belief, otherwise you would not have been  
6 qualified to sit on this case, that you  
7 understand that the death penalty is not  
8 the appropriate punishment for all first  
9 degree murder cases.

10 There's a procedure which you must go  
11 through, and we talked about that procedure  
12 with you during jury selection, and you  
13 were told that in fact our laws in the  
14 State of North Carolina and with the  
15 legislative scheme of things, our law  
16 really contemplates that life imprisonment  
17 is the appropriate penalty for first degree  
18 murder unless the State proves, and in this  
19 case as His Honor will instruct you, four  
20 things. There will be an issues and  
21 recommendation sheet, and I'm holding a  
22 copy of it in my hand.

23 Issue 1-A on this issues and  
24 recommendation as to punishment will read:  
25 "Do you unanimously find from the evidence

1           beyond a reasonable doubt that the  
2           defendant himself killed or attempted to  
3           kill the victim?" And there's an answer on  
4           this sheet that will be a place for you to  
5           answer yes or no. And I suggest to you  
6           that your -- by your not finding the  
7           defendant guilty of premeditated murder,  
8           that the answer -- you should be satisfied  
9           that the answer should be no, or intended  
10          to kill the victim, satisfied that -- and  
11          you have to unanimously, in order for you  
12          to answer this, you have to unanimously  
13          agree. And I suggest to you that your  
14          answer should be no.

15                 "Intended that deadly force would be  
16          used in the course of the underlying  
17          felony," I suggest to you that your answer  
18          should be no. Or "was a major participant  
19          in the underlying felony and exhibited  
20          reckless indifference to human life,"  
21          again, I suggest to you that your answer  
22          should be no.

23                 Now, ladies and gentlemen of the jury,  
24          your verdict in this case is clear that you  
25          found the defendant guilty of three

1 offenses. There's no way for the defense  
2 or the State to know at this point, you  
3 know, what part of the evidence you  
4 believe, what you disbelieve.

5 For example, it would not be  
6 necessary, or you could find -- you could  
7 have found the defendant guilty, not  
8 believing that he was involved in the  
9 Clewis Demory robbery or not involved in  
10 the Tedeschi robbery. I don't know. But  
11 -- and we won't know. But nevertheless,  
12 these are the kind of things that your  
13 verdict really, we can't tell from your  
14 verdict. And so I'm not trying to insult  
15 your intelligence, we simply don't know.  
16 And because of that, "we," meaning  
17 Mr. Bowen and I, argue or submit to you  
18 again with respect to these issues, that  
19 the answer should be no.

20 This is Issue 1-A. And you'll have --  
21 there's an instruction which says that if  
22 you answer Issue 1-A no, you skip issues 1,  
23 2, 3, and you'll impose a sentence of life  
24 imprisonment. And where you would indicate  
25 that will be on the back sheet, whatever

1           your verdict, whether it's the death,  
2           sentence of death or life in prison.

3           Now, issue -- that's Issue 1-A. Issue  
4           1, 2, 3, and 4 are really the issues that  
5           we talked about so much during jury  
6           selection. You know, the State had to  
7           prove to you -- will have to prove to you  
8           beyond a reasonable doubt in addition to  
9           the issue of 1-A. If they get past this  
10          Issue 1-A, they have to prove to you  
11          unanimously beyond a reasonable doubt the  
12          existence of one or more aggravating  
13          circumstances. And it's been mentioned to  
14          you already what the State has contended,  
15          contends the aggravating circumstances to  
16          be, that capital felony was committed for  
17          pecuniary gain and the murder for which the  
18          defendant was convicted was part of a  
19          course of conduct.

20          Now, the weight that you give, if you  
21          find those aggravating circumstances to  
22          exist, it's up to you to give it whatever  
23          weight you decide. For example, I mean,  
24          you found the defendant guilty of robbery  
25          with a dangerous weapon. And the first

1 issue is the capital felony was committed  
2 for pecuniary gain. Now, if you find that  
3 to exist, I suggest to you that it should  
4 not be -- you should not give it great  
5 weight, having already found the defendant  
6 guilty of felony murder.

7 Is this the kind of first degree  
8 murder that warrants the death penalty? I  
9 say to you, again, your answer should be a  
10 resounding no.

11 Now, if you answer, find one or more  
12 aggravating circumstances, which will mean  
13 that you, if you find them, you will write  
14 yes. If you don't find them, you're going  
15 to write no. And if you write no, you  
16 always -- you'll go to the -- and the  
17 instructions are there to the last page of  
18 this issues and recommendation form, and  
19 you will be instructed to write in, and the  
20 proper sentence will be a sentence of life  
21 in prison.

22 If you answer either one of these  
23 issues yes in Issue 1, then you're  
24 instructed to go to Issue 2. And Issue 2  
25 is "Do you find from the evidence the

1           existence of one or more mitigating  
2           circumstances?" And you'll also be  
3           instructed, and we talked about this, as to  
4           Issue 2, the burden of proof is on the  
5           defendant to prove to you by the  
6           preponderance of the evidence one or more  
7           mitigating circumstances.

8           The big difference, though, in Issue  
9           2, if you recall from Issue 1 and any of  
10          the other issues, Issue 3 or 4, is that the  
11          State has the burden of proving beyond a  
12          reasonable doubt, and they must prove it  
13          unanimously. In other words, all 12 of you  
14          have to agree. But as to Issue 2, as to  
15          any one of these mitigating circumstances,  
16          Mr. Bowen has gone through them and I'm not  
17          going to go back through them. But they  
18          are indicated here with a place for you to  
19          answer yes or no. The difference is, if  
20          one of you find a mitigating circumstance  
21          to exist, then you must write yes whether  
22          others of you may not find it to exist or  
23          may not give it any value, mitigating  
24          value.

25                           And while we're talking about

1           mitigating value, you will be instructed  
2           peremptorily by the Court that as to  
3           mitigating circumstances 4 through 32, that  
4           all the evidence, the evidence in this case  
5           tends to show that in fact these mitigating  
6           circumstances exist.

7                   Now, in other words, it's  
8           uncontroverted, there is no evidence, we  
9           suggest to you, which does not -- which  
10          negates that it does not exist. The thing,  
11          though, that you're going to have to do and  
12          what we urge you to do is to give these  
13          mitigating circumstances value. We suggest  
14          to you that they do have value as you've  
15          heard through Dr. Johnson and Dr. Rohrer.

16                   Now, ladies and gentlemen of the jury,  
17          I find it somewhat inartful that the State  
18          would argue to you, well, none of these  
19          things should really make a difference, is  
20          no excuse. They are not offered to be an  
21          excuse for the defendant having committed  
22          these offenses. That's not what mitigating  
23          circumstances are offered for. But our  
24          law, our law says, our legislature has  
25          said, and our courts have said that you

1           must consider these mitigating  
2           circumstances in determining whether the  
3           death penalty is appropriate or not because  
4           the death penalty is not appropriate in all  
5           cases.

6                     Now, obviously it is the very -- it's  
7           the kind of circumstances that you see here  
8           that our law says that you should and --  
9           should consider and must consider. It's  
10          the frailties of human character or the  
11          defects and flaws in human character which  
12          have mitigating value. But there are also  
13          personal triumphs in a person's life which  
14          you may deem to have mitigating value.

15                    And Dr. Johnson talked about -- and so  
16          did Dr. Rohrer, talk about these personal  
17          triumphs and these personal crises. We all  
18          have them, I mean, triumphs and crises.  
19          But in this defendant's life, what you will  
20          find are mitigating circumstances, we  
21          submit to you, should be considered and do  
22          have mitigating value, not to offer them as  
23          an excuse but as extenuating circumstances  
24          as something to show you in some aspect of  
25          this man's life that you would find

1 mitigating, and that you would consider in  
2 reaching your decision as to what the  
3 appropriate punishment is in this case.

4 Now, so we ask that you find and  
5 answer yes on each of the mitigating -- as  
6 to each of the mitigating circumstances.  
7 If one or more of you feel that it has  
8 mitigating value and there is one or more  
9 mitigating circumstances that you've  
10 answered yes to, then you will go to Issue  
11 3, and that's what this sheet instructs you  
12 to do. Issue 3 will read, "Do you  
13 unanimously find beyond a reasonable doubt  
14 that the mitigating circumstances or --  
15 circumstance or circumstances found is or  
16 are insufficient to outweigh the  
17 aggravating circumstances that you would  
18 have found in Issue 1?" Otherwise you  
19 wouldn't be to step 3 or you wouldn't even  
20 get to step 2.

21 Now, as to Issue 3, again the State  
22 has to satisfy you unanimously beyond a  
23 reasonable doubt that the mitigating  
24 circumstance or circumstances are  
25 insufficient to outweigh the aggravating

1           circumstances. What the defense urges and  
2           what we submit to you is that you should  
3           find that these mitigating circumstances,  
4           the one or more, and we've asked that you  
5           find them all, that they are sufficient.  
6           And so we ask again, if you get to Issue 3,  
7           no, we ask that you answer it no. If you  
8           answer it no, then you go to the back of  
9           the sheet and you're instructed to do that,  
10          and life imprisonment would be the  
11          appropriate penalty.

12                 If you answer it yes, then you get to  
13          Issue 4. And we suggest to you that there  
14          is sufficient mitigating circumstances that  
15          would be so imposing that you would not get  
16          to Issue 4. But if you do, it reads, "Do  
17          you unanimously find beyond a reasonable  
18          doubt that the aggravating circumstance or  
19          circumstances found is or are sufficiently  
20          substantial to call for the imposition of  
21          the death penalty when considered with the  
22          mitigating circumstance or circumstances  
23          found by one or more of you?"

24                 And so, ladies and gentlemen of the  
25          jury, what you -- what we want you to

1 understand is that you can't even consider  
2 the death penalty until -- as the  
3 appropriate penalty until, unless you get  
4 to Issue 4 and unless you answer Issue 4  
5 yes. Because only if you get to Issue 4  
6 can you consider the death penalty. And if  
7 you answer Issue 4 yes, then you will be  
8 instructed to write in the death sentence  
9 as the appropriate sentence. And we urge  
10 you again that you find the mitigating  
11 circumstances in this case to be of  
12 sufficient value to spare this defendant's  
13 life.

14 You know, the State has argued that  
15 we're trying to blame everything on  
16 society. That's not what Dr. Johnson has  
17 said, and that's not what Dr. Rohrer has  
18 said. You heard him testify, you heard  
19 them testify. It's just, I submit to you,  
20 a simple fact that we are oftentimes -- we  
21 are the products of our environment. Now,  
22 of course we make choices, but we are also  
23 -- every human being has defects. We're  
24 not perfect.

25 And what Dr. Johnson and Dr. Rohrer

1           have said to you is that the societal  
2           forces, external forces for which this  
3           young man as a child had no choice, he was  
4           thrusted. He had no choice about when the  
5           number of times he moved, the number of  
6           schools he had to go to at that early age.  
7           The environment in Philadelphia, he had no  
8           choice about that environment. And I would  
9           suggest to you that the testimony of  
10          Dr. Johnson and Dr. Rohrer, again, is not  
11          to -- and they have said that, not to  
12          offer -- not to say this is an excuse to  
13          kill anybody, but it does have some effect  
14          and explain perhaps why an individual of  
15          the forces in an individual life that may  
16          cause him at one time, or her, or the  
17          other, to have and exhibit these character  
18          flaws and character defects, the frailties  
19          of life.

20                 Now in this final chapter, at this  
21          final stage, all 12 of you, and you will be  
22          instructed, must agree as to your  
23          recommendations. And it will be binding,  
24          whatever you recommend, it will be binding  
25          on the Court. If you recommend a life

1 sentence, a sentence of life imprisonment  
2 will be imposed. If you recommend a death  
3 sentence, a sentence of death will be  
4 imposed.

5 You know, the typology chart, exhibit  
6 of Dr. Johnson, and the exhibits of  
7 Dr. Rohrer, they simply tell you critical  
8 life events in this defendant's life.

9 Now, they tell you that he came from  
10 an unstable family. You saw vividly the  
11 mobility, the chronic mobility in this  
12 young man's life. 13, at least, moves, 13,  
13 at least, schools, when the average person  
14 in the lifetime only moves five times.  
15 These are the critical life events in the  
16 defendant's life.

17 Now, ladies and gentlemen, there's one  
18 more area that I feel I need to deal with,  
19 and that is, you know, we talk about --  
20 well, the State indicated the defense  
21 putting Garth Locklear on the stand. And  
22 Garth Locklear simply told you the truth, I  
23 suggest to you, that this defendant is  
24 5-11, was 5-11 three years ago, when Mrs.  
25 Tedeschi gave a description of the

1 individual being 5-4, 5-5.

2 Now, that's just a fact. Now, what  
3 you do with that or what weight you give to  
4 any of that is your province. But it's a  
5 cause of some consternation, I suggest to  
6 you, because identification,  
7 misidentification, I suggest to you is one  
8 of the most fertile grounds for a  
9 miscarriage of justice. Ladies and  
10 gentlemen of the jury, you know yourself  
11 that people -- you have mistaken  
12 individuals for people that you've known  
13 all your life. I mean, it happens.

14 Now, whether you decide this is, and  
15 whether you've already decided, again, we  
16 don't know by your verdict, but it  
17 happens. Fertile ground. What would have  
18 been the case if we brought 17 witnesses in  
19 here who had seen James Jordan after the  
20 23rd of July of 1993 --

21 MR. BRITT: Objection.

22 MR. THOMPSON: I suggest to you  
23 it would have been --

24 THE COURT: Complete your  
25 statement, I'll rule on the objection.

1                   MR. THOMPSON: -- based on your  
2 verdict a case of misidentification.

3                   THE COURT: Objection is  
4 sustained. Members of the jury, disregard  
5 the last argument for counsel for the  
6 defendant, Mr. Thompson. That matter is  
7 not to take any part in your deliberation  
8 in this case in any respect.

9                   MR. THOMPSON: In any event,  
10 ladies and gentlemen of the jury, what  
11 weight you give to that evidence, and I  
12 suggest to you that, again, it ought to  
13 cause you some problems. And one or more  
14 of you may believe, all 12 of you may  
15 believe that the defendant was in fact the  
16 black male engaged in these robberies.  
17 Don't know. But I suggest to you that the  
18 evidence ought to cause you some problems.

19                   The defense is asking that your final  
20 chapter in this case reads life  
21 imprisonment. The young man who had to run  
22 to school out of fear, we're asking that  
23 you let him live. The young man who saw  
24 police shoot a Jamaican kid in the back, we  
25 ask that you let this young man live. The

1 young man whose father abandoned him in the  
2 park with his sister, we ask that you let  
3 this young man live. The young man who  
4 moved at least 13 times, who went to at  
5 least 13 different schools, we ask that you  
6 let this young man live.

7 The young man who has been teased and  
8 ridiculed all of his life because of a  
9 speech impediment, a stutter, we ask that  
10 you let this young man live. The young man  
11 who's lived in an area of crime, of crime  
12 and drugs and prostitution and where  
13 violence was the order of the day as  
14 opposed to the exception of the day, we ask  
15 that you let this young man live. And yes,  
16 the young man who has been identified as  
17 gifted and talented, has ability, and smart  
18 people do stupid things, we ask that you  
19 let him live. He's a young man who at the  
20 age of 16 went into a prison environment  
21 only for about 40 days, 45 days out of that  
22 environment, and has since been in prison.  
23 And yes, we want you to impose a life  
24 imprisonment term and where he'll have to  
25 find meaning, within that environment, of

1           life. But we ask that you let him live.

2                     This mother's child, we ask that you  
3 let him live. Thank you.

4                     THE COURT: Members of the jury,  
5 having found the defendant guilty of murder  
6 in the first degree, it is now your duty to  
7 recommend to the Court whether the  
8 defendant should be sentenced to death or  
9 to life imprisonment. Now, I instruct you  
10 that your recommendation will be binding  
11 upon the Court. If you unanimously  
12 recommend that the defendant be sentenced  
13 to death, the Court will impose a sentence  
14 of death. If you recommend a sentence of  
15 life imprisonment, the Court will impose a  
16 sentence of life imprisonment.

17                     Now, folks, all of the evidence  
18 relevant to your recommendation has been  
19 presented, and I instruct you that there is  
20 no need or no requirement to re-submit  
21 during the sentencing procedure any  
22 evidence which was submitted during the  
23 guilt phase of this case. All of the  
24 evidence which you hear in both phases of  
25 the case is competent for your

1 consideration in recommending punishment.

2 Now, members of the jury, I instruct  
3 you that it is now your duty to decide from  
4 the evidence presented in both phases what  
5 the facts are. You must then apply the law  
6 which I am about to give you concerning  
7 punishment to those facts. It's absolutely  
8 necessary that you understand and apply the  
9 law exactly as I give it to you and not as  
10 you think the law is or as you might like  
11 the law to be. And again folks, I instruct  
12 you that this is absolutely important  
13 because justice requires that everyone who  
14 was sentenced for first degree murder have  
15 the sentence recommendation determined in  
16 the same manner and have the same law  
17 applied in every such case.

18 Now, you members of the jury are the  
19 sole judges of the credibility of each  
20 witness called to testify before you. And  
21 you must decide for yourselves whether to  
22 believe the testimony of any witness. You  
23 may believe all or any part or none of what  
24 a witness has said on the stand.

25 In determining whether to believe any

1 witness, you should apply the same test of  
2 truthfulness which you apply in your  
3 everyday affairs. And as I have previously  
4 instructed you as applied to this trial,  
5 these tests may include the opportunity of  
6 the witness to see, hear, know, or remember  
7 the facts or occurrence about which the  
8 witness testified; the manner and patterns  
9 of the witness; any interest or bias or  
10 prejudice that you find that a witness may  
11 have; the apparent understanding and  
12 fairness of the witness; whether the  
13 testimony is reasonable; and whether the  
14 testimony is consistent with other  
15 believable evidence in the case.

16 Now, folks, you are the sole judges of  
17 the weight to be given any evidence. By  
18 this I mean that if you decide that certain  
19 evidence is believable, you must then  
20 determine the importance of that evidence  
21 in light of all other believable evidence  
22 in the case.

23 Members of the jury, I instruct you  
24 and I charge you that for you to recommend  
25 that the defendant be sentenced to death,

1           the State must prove four things, each  
2           beyond a reasonable doubt. Now, a  
3           reasonable doubt is a doubt based on reason  
4           and common sense arising out of some or all  
5           of the evidence that is presented, or it  
6           may arise out of the lack or the  
7           insufficiency of the evidence, as the case  
8           may be.

9           Members of the jury, I instruct you  
10          that proof beyond a reasonable doubt is  
11          proof that fully satisfies or entirely  
12          convinces you of each of the following  
13          things: First, that the defendant himself,  
14          the defendant, Daniel Andre Green, also  
15          known as U'Allah, himself, A, killed or  
16          attempted to kill the victim; or B,  
17          intended to kill the victim; or C, intended  
18          that deadly force would be used in the  
19          course of the felony; or D, was a major  
20          participant in the underlying felony and  
21          exhibited reckless indifference to human  
22          life. Second, the State must prove beyond  
23          a reasonable doubt that one or more  
24          aggravating circumstances existed. Third,  
25          the State must prove beyond a reasonable

1           doubt that the mitigating circumstances are  
2           insufficient to outweigh any aggravating  
3           circumstances you have found. And fourth,  
4           that any aggravating circumstances you have  
5           found are sufficiently substantial to call  
6           for the imposition of the death penalty  
7           when considered with any mitigating  
8           circumstances.

9           Members of the jury, if you  
10          unanimously find all four of these things  
11          beyond a reasonable doubt, it would be your  
12          duty to recommend that the defendant be  
13          sentenced to death. If you do not so find  
14          or if you have a reasonable doubt as to any  
15          one or more of these things, it would be  
16          your duty to recommend that the defendant  
17          be sentenced to life imprisonment.

18          Now, when you retire to deliberate  
19          your recommendation as to punishment, you  
20          will take with you a form entitled Issues  
21          and Recommendation As To Punish. And that  
22          forms contains a written list of five  
23          issues, four of which relate to aggravating  
24          and mitigating circumstances. I will now  
25          take up with you each of these five issues

1 in greater detail one by one.

2 Now, folks, in order to enable you to  
3 follow me more easily, I'm going to ask the  
4 bailiff at this time, Mr. Horne, to give  
5 each of you a copy of the form entitled  
6 Issues and Recommendation As To Punishment.

7 Mr. Horne.

8 Now, you will take this form with you  
9 when you retire to deliberate. And I  
10 instruct you that you should not read  
11 ahead on this form but refer to it as I  
12 instruct you on the law in this case.

13 (Issues and recommendations forms  
14 passed to jurors.)

15 THE COURT: Does each member of  
16 the jury have a copy of the issues and  
17 recommendation form? If so, please  
18 indicate by raising your right hand.

19 Folks, if you will turn with me to  
20 Issue 1-A. Issue 1-A reads, "Do you  
21 unanimously find from the evidence beyond a  
22 reasonable doubt that the defendant himself  
23 killed or attempted to kill the victim?"  
24 And there is provision for the entry of  
25 your answer, either yes or no; or B,

1           intended to kill the victim, and again  
2           there is provision for the entry of your  
3           answer, either yes or no; or C, intended  
4           that deadly force would be used in the  
5           course of the underlying felony, again,  
6           there is provision for the entry of your  
7           answer, either yes or no; or D, was a major  
8           participant in the underlying felony and  
9           exhibited reckless indifference to human  
10          life. Again there is provisions for entry  
11          of your answer, either yes or no.

12                 Members of the jury, I instruct you  
13          that if you find from the evidence and  
14          beyond a reasonable doubt that the  
15          defendant Daniel Andre Green, also known as  
16          U'Allah, killed or attempted to kill the  
17          victim, or intended to kill the victim, or  
18          intended that a deadly force would be used  
19          in the course of the robbery with a  
20          firearm, or was a major participant in the  
21          underlying felony and exhibited a reckless  
22          indifference to human life, you would  
23          answer accordingly on the issues and  
24          recommendation form, and then you would  
25          answer Issue 1-A yes.

1           Now, if you do not unanimously find  
2           beyond a reasonable doubt that one of these  
3           facts existed, you would answer Issue 1-A  
4           no. And I instruct you that if you answer  
5           Issue 1-A no, you would skip issues 1, 2,  
6           3, and 4 and recommend that the defendant  
7           be sentenced to life imprisonment.

8           Now, if you answer Issue 1-A yes, then  
9           you would consider Issue 1. And Issue 1  
10          is, "Do you unanimously find from the  
11          evidence beyond a reasonable doubt the  
12          existence of one or more of the following  
13          aggravating circumstances?"

14          Members of the jury, two possible  
15          aggravating circumstances are listed on the  
16          form. And you should consider each of them  
17          before you answer Issue 1. And I instruct  
18          you that the State must prove from the  
19          evidence and beyond a reasonable doubt the  
20          existence of any aggravating circumstance.  
21          And before you may find any aggravating  
22          circumstance, you must agree unanimously  
23          that it has been so proven. I instruct you  
24          that an aggravating circumstance is a fact  
25          or group of facts which tend to make a

1           specific murder particularly deserving of  
2           the maximum punishment prescribed by law.

3           Our law identifies the aggravating  
4           circumstances which might justify a  
5           sentence of death. Only those  
6           circumstances identified by statute may be  
7           considered by you as aggravating  
8           circumstances. Again, under the law and  
9           the evidence in this case, two possible  
10          aggravating circumstances may be  
11          considered. The following are the  
12          aggravating circumstances which might be  
13          applicable to this case:

14                 First, was this murder committed for  
15                 pecuniary gain? I instruct you that a  
16                 murder is committed for pecuniary gain if  
17                 the defendant, when he commits it, has  
18                 obtained or intends or expects to obtain  
19                 money or some other thing which can be  
20                 valued in money as a result of the death of  
21                 the victim. If you find from the evidence  
22                 and beyond a reasonable doubt that when the  
23                 defendant killed the victim, the defendant  
24                 intended to obtain or expected to obtain a  
25                 1992 Lexus automobile, 400 automobile, and

1 other items of personal property, you would  
2 find this aggravating circumstance and  
3 would so indicate by having your foreperson  
4 write yes in the space after this  
5 aggravating circumstance on the issues and  
6 recommendation form.

7 If you do not so find or have a  
8 reasonable doubt as to any one or more of  
9 these things, you will not find this  
10 aggravating circumstance and will so  
11 indicate by having your foreperson write no  
12 in that space.

13 Now, second and finally, was this  
14 murder part of a course of conduct in which  
15 the defendant engaged, and did that course  
16 of conduct include the commission by the  
17 defendant of other crimes of violence  
18 against another person or persons? I  
19 instruct you that a murder is part of such  
20 a course of conduct, if you find from the  
21 evidence beyond a reasonable doubt that in  
22 addition to killing the victim, the  
23 defendant on or about the alleged date,  
24 July 23rd, 1993, was engaged in a course of  
25 conduct which involved the commission of

1 another crime or crimes of violence against  
2 another person or persons and that this  
3 other crime or these other crimes were  
4 included in the same course of conduct in  
5 which the killing of the victim was also a  
6 part, you would find this aggravating  
7 circumstance and would so indicate by  
8 having your foreperson write yes in the  
9 space after this aggravating circumstance  
10 on the issues and recommendation form. If  
11 you do not so find or have a reasonable  
12 doubt as to any one or more of these  
13 things, you will not find this aggravating  
14 circumstance and will so indicate by having  
15 your foreperson write no in that space.

16 Now, members of the jury, I instruct  
17 you that if you unanimously find from the  
18 evidence beyond a reasonable doubt that one  
19 or more of these aggravating circumstances  
20 existed, and have so indicated by writing  
21 yes in the space after one or more of them  
22 on the issues and recommendation form, you  
23 would answer Issue 1 yes. And I instruct  
24 you that if you do not unanimously find  
25 from the evidence beyond a reasonable doubt

1           that at least one of these aggravating  
2           circumstances existed and if you have so  
3           indicated by writing no in the space after  
4           each one of them on that form, you would  
5           answer Issue 1 no.

6                   Now, if you answer Issue 1 no, you  
7           would skip issues 2, 3, and 4, and you must  
8           recommend that the defendant be sentenced  
9           to life imprisonment. If you answer Issue  
10          1 yes, then you would consider Issue 2.

11                   Issue 2 is, "Do you find from the  
12          evidence the existence of one or more of  
13          the following mitigating circumstances." I  
14          instruct you that 33 possible mitigating  
15          circumstances are listed on the form. And  
16          you should consider each one of them before  
17          answering Issue 2.

18                   Now, members of the jury, I instruct  
19          you that a mitigating circumstance is a  
20          fact or a group of facts which do not  
21          constitute a justification or an excuse for  
22          a killing or reduce it to a lesser degree  
23          of crime than first degree murder, but  
24          which may be considered as extenuating or  
25          reducing the moral culpability of the

1           killing or making it less deserving of  
2           extreme punishment than other first degree  
3           murders. Our law identifies several  
4           possible mitigating circumstances.  
5           However, in considering Issue 2, it would  
6           be your duty to consider as a mitigating  
7           circumstance any aspect of the defendant's  
8           character or record and any of the  
9           circumstances of this murder that the  
10          defendant contends is the basis for  
11          sentence less than death and any other  
12          circumstances arising from the evidence  
13          which you deem to have mitigating value.

14                 I instruct you that the defendant has  
15          the burden of persuading you that a given  
16          mitigating circumstance exists. The  
17          existence of any mitigating circumstance  
18          must be established by a preponderance of  
19          the evidence. That is, the evidence taken  
20          as a whole must satisfy you not beyond a  
21          reasonable doubt but simply satisfy you  
22          that any mitigating circumstance exists.  
23          If the evidence satisfies any one or more  
24          of you that a mitigating circumstance  
25          exists, you would indicate that finding on

1 the issues and recommendation form.

2 Now, ladies and gentlemen, I instruct  
3 you that a single juror may find that any  
4 mitigating circumstance exists by a  
5 preponderance of the evidence whether or  
6 not that circumstance was found to exist by  
7 all of the jurors. In any event, you would  
8 move on to consider the other mitigating  
9 circumstances and continue in like manner  
10 until you have considered all of the  
11 mitigating circumstances listed on the form  
12 and any others which you deem to have  
13 mitigating value. Now, it is your duty to  
14 consider the following mitigating  
15 circumstances and any others which you find  
16 from the evidence: First, consider whether  
17 the defendant has no significant history of  
18 prior criminal activity before the date of  
19 the murder.

20 Now, "significant" means important or  
21 notable. Whether any history of prior  
22 criminal activity is significant is for you  
23 to determine from all the facts and  
24 circumstances which you find from the  
25 evidence. However, you should not

1           determine whether it is significant only on  
2           the basis of the number of convictions, if  
3           any, in the defendant's record, rather you  
4           should consider the nature and quality of  
5           the defendant's history, if any, in  
6           determining whether it is significant.

7           Now, you would find this mitigating  
8           circumstance if you find that the defendant  
9           in this action, Daniel Andre Green, also  
10          known as U'Allah, struck another person  
11          with the blunt end of an axe, and that this  
12          is not a significant history of prior  
13          criminal activity.

14          Now, if one or more of you finds by a  
15          preponderance of the evidence that this  
16          circumstance exists, you would so indicate  
17          by having your foreperson write yes in the  
18          space after this mitigating circumstance on  
19          the issues and recommendation form. If  
20          none of you finds this circumstance to  
21          exist, you would so indicate by having your  
22          foreperson write no in that space.

23          Now, second, consider whether the  
24          murder was committed while the defendant  
25          was under the influence of a mental or

1 emotional disturbance. I instruct you that  
2 a defendant is under such influences if he  
3 is in any way affected or influenced by a  
4 mental or emotional disturbance at the time  
5 he kills. Now, being under the influence  
6 of mental or emotional disturbance is  
7 similar to but not the same as being in a  
8 heat of passion upon adequate provocation.  
9 A person may be under the influences of  
10 mental or emotional disturbances even if he  
11 had no adequate provocation and even if his  
12 disturbance was not so strong as to  
13 constitute heat of passion or preclude  
14 deliberation. For this mitigating  
15 circumstance to exist, it is enough that  
16 the defendant's mind or emotions were  
17 disturbed from any cause and that he was  
18 under the influence of the disturbance when  
19 he killed the victim.

20 Now, you would find this mitigating  
21 circumstance if you find that as a result  
22 of any instability or dysfunctional family  
23 life or exposure to violence or neglect or  
24 any of the defendant's life experiences,  
25 the defendant was caused to be mentally or

1           emotionally disturbed; as a result, the  
2           defendant was under the influence of a  
3           mental or emotional disturbance when he  
4           killed the victim. Now, if one or more of  
5           you finds by a preponderance of the  
6           evidence that this circumstance exists, you  
7           would so indicate by having your foreperson  
8           write yes in the space provided after this  
9           mitigating circumstance on the issues and  
10          recommendation form. If none of you finds  
11          this circumstance to exist, you would so  
12          indicate by having your foreperson write no  
13          in that space.

14                 Now, third, consider whether the age  
15          of the defendant at the time of this murder  
16          is a mitigating factor. Now, I instruct  
17          you that all of the evidence in this case  
18          tends to show that the defendant was 18  
19          years of age at the time of the murder.  
20          And I further instructed you that the  
21          mitigating effects of the defendant's age  
22          is for you to determine from all of the  
23          facts and circumstances which you find from  
24          the evidence.

25                 Now, folks, age is a flexible and

1 relative concept. The chronological age of  
2 a defendant is not always the determinative  
3 factor. If one or more of you finds by a  
4 preponderance of the evidence that this  
5 circumstance exists, you would so indicate  
6 by having your foreperson write yes in the  
7 space provided after this mitigating  
8 circumstance on the issues and  
9 recommendation form. If none of you finds  
10 this circumstance to exist, you would so  
11 indicate by having your foreperson write no  
12 in that space.

13 Now, ladies and gentlemen, you should  
14 also consider the following circumstances  
15 arising from the evidence which you find to  
16 have mitigating value. If one or more of  
17 you find by a preponderance of the evidence  
18 that any of the following circumstances  
19 exist and also are deemed by you to have  
20 mitigating value, you would so indicate by  
21 having your foreperson write yes in the  
22 space provided. If none of you find the  
23 circumstance to exist or if none of you  
24 deem it to have mitigating value, you would  
25 so indicate by having your foreperson write

1           no in that space.

2           Fourth, consider whether the murder  
3           for which the defendant was convicted was  
4           committed spontaneously and was not  
5           premeditated, and whether you deem this to  
6           have mitigating value. Now, all of the  
7           evidence in this case does tend to show  
8           that the murder for which the defendant was  
9           convicted was committed spontaneously and  
10          was not premeditated. If one or more of  
11          you find by a preponderance of the evidence  
12          that this circumstance exists and also is  
13          deemed mitigating, you would so indicate by  
14          having your foreperson write yes in the  
15          space provided after this mitigating  
16          circumstance on the issues and  
17          recommendation form.

18          If none of you find this circumstance  
19          to exist or if none of you deem it to have  
20          mitigating value, you would so indicate by  
21          having your foreperson write no in that  
22          space.

23          Fifth, consider whether the defendant  
24          was born illegitimate. And whether you  
25          deem this to have mitigating value. Now,

1 all of the evidence in this case does tend  
2 to show that the defendant was born  
3 illegitimate. And I instruct you that if  
4 one or more of you find by a preponderance  
5 of the evidence that this circumstance  
6 exists and also is deemed mitigating, you  
7 would so indicate by having your foreperson  
8 write yes in the space provided after this  
9 mitigating circumstance on the issues and  
10 recommendation form. If none of you find  
11 the circumstance to exist or if none of you  
12 deem it to have mitigating value, you would  
13 so indicate by having your foreperson write  
14 no in that space.

15 Sixth, consider whether the defendant  
16 suffered from stuttering and was involved  
17 in therapy throughout his school years and  
18 whether you deem this to have mitigating  
19 value. Now, all of the evidence does tend  
20 to show that the defendant suffered from  
21 stuttering and was involved in therapy  
22 throughout his school years. If one or  
23 more of you finds by a preponderance of the  
24 evidence that this circumstance exists and  
25 also is deemed mitigating, you would so

1           indicate by having your foreperson write  
2           yes in the space provided after this  
3           mitigating circumstance on the issues and  
4           recommendation form. If none of you find  
5           this circumstance to exist or if none of  
6           you deem it to have mitigating value, you  
7           would so indicate by having your foreperson  
8           write no in that space.

9                         Seventh, consider whether the  
10           defendant was constantly teased and  
11           ridiculed because of his stuttering and  
12           whether you deem this to have mitigating  
13           value. All of the evidence does tend to  
14           show that the defendant was constantly  
15           teased and ridiculed because of his  
16           stuttering. If one or more of you find by  
17           a preponderance of the evidence that this  
18           circumstance exists and also is deemed  
19           mitigating, you would so indicate by having  
20           your foreperson write yes in the space  
21           provided after this mitigating circumstance  
22           on the issues and recommendation form. If  
23           none of you find this circumstance to exist  
24           or if none of you deem it to have  
25           mitigating value, you would so indicate by

1           having your foreperson write no in that  
2           space.

3           Eighth, consider whether the defendant  
4           witnessed his father being arrested at an  
5           early age and whether you deem this to have  
6           mitigating value. If one or more of you  
7           find by a preponderance of the evidence  
8           that this circumstance exists and also is  
9           deemed mitigating, you would so indicate by  
10          having your foreperson write yes in the  
11          space provided after this mitigating  
12          circumstance on the issues and  
13          recommendation form. If none of you find  
14          this circumstance to exist or if none of  
15          you deem it to have mitigating value, you  
16          would so indicate by having your foreperson  
17          write no in the space provided.

18          Ninth, consider whether the  
19          defendant's father was in and out of prison  
20          for the next 15 years, which contributed,  
21          pardon me, to the lack of a father/son  
22          relationship between he and his father.  
23          Now, all of the evidence in this case does  
24          tend to show that the defendant's father  
25          was in and out of prison for the next 15

1           years, which contributed to the lack of a  
2           father/son relationship between he and his  
3           father. If one or more of you finds by a  
4           preponderance of the evidence that this  
5           circumstance exists and also is deemed  
6           mitigating, you would so indicate by having  
7           your foreperson write yes in the space  
8           provided after this mitigating circumstance  
9           on the issues and recommendation form. If  
10          none of you find this circumstance to exist  
11          or if none of you deem it to have  
12          mitigating value, you would so indicate by  
13          having your foreperson write no in that  
14          space.

15                 Tenth, consider whether the defendant  
16          was a loving and caring son to his mother  
17          and whether you deem this to have  
18          mitigating value. Now, all of the evidence  
19          does tend to show that the defendant was a  
20          loving and caring son to his mother. And I  
21          instruct you that if one or more of you  
22          finds by a preponderance of the evidence  
23          that this circumstance exists and also is  
24          deemed mitigating, you would so indicate by  
25          having your foreperson write yes in the

1 space provided after this mitigating  
2 circumstance on the issues and  
3 recommendation form. If none of you find  
4 this circumstance to exist or if none of  
5 you deem it to have mitigating value, you  
6 would so indicate by having your foreperson  
7 write no in that space.

8 Eleventh, consider whether the  
9 defendant was loving and caring to his  
10 younger sister Ebone and sought to protect  
11 her from the environment and circumstances  
12 in which they both lived. Now, all of the  
13 evidence does tend to show that the  
14 defendant was loving and caring to his  
15 younger sister Ebone and that he sought to  
16 protect her from the environment and the  
17 circumstances in which they both lived. If  
18 one or more of you finds by a preponderance  
19 of the evidence that this circumstance  
20 exists and also is deemed mitigating, you  
21 would so indicate by having your foreperson  
22 write yes in the space provided after this  
23 mitigating circumstance on the issues and  
24 recommendations form. If none of you find  
25 this circumstance to exist or if none of

1           you deem it to have mitigating value, then  
2           you would so indicate by having your  
3           foreperson write no in that space.

4           Twelfth, consider whether there is an  
5           intergenerational pattern of violent deaths  
6           in the defendant's life which caused the  
7           defendant to be resentful and suspicious of  
8           others and whether you deem this to have  
9           mitigating value. Now, all of the evidence  
10          in this case does tend to show that there  
11          is an intergenerational pattern of violent  
12          deaths in the defendant's life which caused  
13          the defendant to be resentful and  
14          suspicious of others. If one or more of  
15          you finds by a preponderance of the  
16          evidence that this circumstance exists and  
17          also is deemed mitigating, you would so  
18          indicate by having your foreperson write  
19          yes in the space provided after this  
20          mitigating circumstance on the issues and  
21          recommendation form. If none of you find  
22          the circumstance to exist or if none of you  
23          deem it to have mitigating value, you would  
24          so indicate by having your foreperson write  
25          no in that space.

1           Thirteenth, consider whether there is  
2           an intergenerational pattern of substance  
3           abuse in the defendant's family causing  
4           those family members to be unable to  
5           provide for support for the defendant  
6           during his formative years and whether you  
7           deem this to have mitigating value. Now,  
8           all of the evidence does tend to show that  
9           there is an intergenerational pattern of  
10          substance abuse in the defendant's family  
11          causing those family members to be unable  
12          to provide support for the defendant during  
13          his formative years. If one or more of you  
14          finds by a preponderance of the evidence  
15          that this circumstance exists and also is  
16          deemed mitigating, you would so indicate by  
17          having your foreperson write yes in the  
18          space provided after this mitigating  
19          circumstance on the issues and  
20          recommendation form. If none of you find  
21          this circumstance to exist or if none of  
22          you deem it to have mitigating value, you  
23          would so indicate by having your foreperson  
24          write no in that space.

25                 Fourteenth, consider whether because

1 his younger sister Ebone had a serious  
2 illness which required much of his mother's  
3 attention, the defendant spent much of his  
4 time with his great-grandmother, and  
5 whether you deem this to have mitigating  
6 value. Now, all of the evidence in this  
7 case does tend to show that because his  
8 younger sister Ebone had a serious illness  
9 which required much of his mother's  
10 attention, the defendant spent much of his  
11 time with his great-grandmother. And I  
12 instruct you that if one or more of you  
13 finds by a preponderance of the evidence  
14 that this circumstance exists and also is  
15 deemed mitigating, you would so indicate by  
16 having your foreperson write yes in the  
17 space provided after this mitigating  
18 circumstance on the issues and  
19 recommendation form. If none of you find  
20 this circumstance to exist or if none of  
21 you deem it to have mitigating value, you  
22 would so indicate by having your foreperson  
23 write no in that space.

24 Fifteenth, consider whether the  
25 defendant moved at least 13 times which

1           caused instability in his life, and whether  
2           you deem this to have mitigating value.  
3           Now, all the evidence does tend to show  
4           that the defendant moved at least 13 times,  
5           which caused instability in his life.  If  
6           one or more of you finds by the  
7           preponderance of the evidence that this  
8           circumstance exists and also is deemed  
9           mitigating, you would so indicate by having  
10          your foreperson write yes in the space  
11          provided after this mitigating circumstance  
12          on the issues and recommendation form.  If  
13          none of you find the circumstance to exist  
14          or if none of you deem it to have  
15          mitigating value, you would so indicate by  
16          having your foreperson write no in that  
17          space.

18                 Sixteenth, consider whether the  
19          defendant attended at least 13 different  
20          schools which caused instability in his  
21          life and whether you deem this to have  
22          mitigating value.  Now, all of the evidence  
23          does tend to show that the defendant  
24          attended at least 13 different schools  
25          which caused instability in his life.  If

1           one or more of you finds by a preponderance  
2           of the evidence that this circumstance  
3           exists and also is deemed mitigating, you  
4           would so indicate by having your foreperson  
5           write yes in the space provided after this  
6           mitigating circumstance on the issues and  
7           recommendation form. If none of you find  
8           the circumstance to exist or if none of you  
9           deem it to have mitigating value, you would  
10          so indicate by having your foreperson write  
11          no in that space.

12                       Seventeenth, consider whether at the  
13          age of three, the defendant's parents'  
14          relationship dissolved and whether you deem  
15          this to have mitigating value. All of the  
16          evidence in this case does tend to show  
17          that at the age of three the defendant's  
18          parents' relationship dissolved. If one or  
19          more of you finds by a preponderance of the  
20          evidence that this circumstance exists and  
21          also is deemed mitigating, you would so  
22          indicate by having your foreperson write  
23          yes in the space provided after this  
24          mitigating circumstance on the issues and  
25          recommendation form. If none of you find

1           this circumstance to exist or if none of  
2           you deem it to have mitigating value, you  
3           would so indicate by having your foreperson  
4           write no in that space.

5           Eighteenth, consider whether because  
6           of the dissolution of his parents'  
7           relationship and because of his father's  
8           imprisonment, the defendant, his mother,  
9           and sister were forced to move to  
10          Philadelphia for economic reasons and  
11          whether you deem this to have mitigating  
12          value. Now, all of the evidence in this  
13          case does tend to show that because of the  
14          dissolution of his parents' relationship  
15          and because of his father's imprisonment,  
16          the defendant, his mother, and sister were  
17          forced to move to Philadelphia for economic  
18          reasons. If one or more of you finds by a  
19          preponderance of the evidence that this  
20          circumstance exists and also is deemed  
21          mitigating, you would so indicate by having  
22          your foreperson write yes in the space  
23          provided after this mitigating circumstance  
24          on the issues and recommendation form. If  
25          none of you find this circumstance to exist

1 or if none of you deem it to have  
2 mitigating value, you would so indicate by  
3 having your foreperson write no in that  
4 space.

5 Nineteenth, consider whether the  
6 defendant and his family lived in an  
7 impoverished area of Philadelphia where  
8 conditions were dangerous and whether you  
9 deem this to have mitigating value. Now,  
10 all of the evidence does tend to show that  
11 the defendant and his family lived in an  
12 impoverished area of Philadelphia where  
13 conditions were dangerous. If one or more  
14 of you finds by a preponderance of the  
15 evidence that this circumstance exists and  
16 also is deemed mitigating, you would so  
17 indicate by having your foreperson write  
18 yes in the space provided after this  
19 mitigating circumstance on the issues and  
20 recommendation form. If none of you find  
21 this circumstance to exist or if none of  
22 you deem it to have mitigating value, you  
23 would so indicate by having your foreperson  
24 write no in that space.

25 Twentieth, consider whether the area

1           in which the defendant lived was an area  
2           where he was exposed to drug dealers,  
3           prostitutes, and criminal activity and  
4           whether you deem this to have mitigating  
5           value. All of the evidence does tend to  
6           show that the area in which the defendant  
7           lived was an area where he was exposed to  
8           drug dealers, prostitutes and criminal  
9           activity. If one or more of you finds by a  
10          preponderance of the evidence that this  
11          circumstance exists and also is deemed  
12          mitigating, you would so indicate by having  
13          your foreperson write yes in the space  
14          provided after this mitigating circumstance  
15          on the issues and recommendation form. If  
16          none of you find this circumstance to exist  
17          or if none of you deem it to have  
18          mitigating value, you would so indicate by  
19          having your foreperson write no in that  
20          space.

21                 Twenty-first, consider whether the  
22          defendant's father took the defendant and  
23          his younger sister to a park in a dangerous  
24          area of Philadelphia where he abandoned  
25          them and whether you deem this to have

1           mitigating value. Now, all of the evidence  
2           does tend to show that the defendant's  
3           father took the defendant and his younger  
4           sister to a park in a dangerous area of  
5           Philadelphia where he abandoned them. If  
6           one or more of you finds by a preponderance  
7           of the evidence that this circumstance  
8           exists and also is deemed mitigating, you  
9           would so indicate by having your foreperson  
10          write yes in the space provided after this  
11          mitigating circumstance on the issues and  
12          recommendation form. If none of you find  
13          the circumstance to exist or if none of you  
14          deem it to have mitigating value, you would  
15          so indicate by having your foreperson write  
16          no in that space.

17                 Twenty-second, consider whether during  
18          the time the defendant lived in  
19          Philadelphia, he was teased and ridiculed  
20          because of his stuttering and his Southern  
21          speech and whether you deem this to have  
22          mitigating value. Now, all of the evidence  
23          does extend to show that during the time  
24          the defendant lived in Philadelphia, he was  
25          teased and ridiculed because of his

1           stuttering and Southern speech. If one or  
2           more of you finds by a preponderance of the  
3           evidence that this circumstance exists and  
4           also is deemed mitigating, you would so  
5           indicate by having your foreperson write  
6           yes in the space provided after this  
7           mitigating circumstance on the issues and  
8           recommendation form. If none of you find  
9           this circumstance to exist or if none of  
10          you deem it to have mitigating value, you  
11          would so indicate by having your foreperson  
12          write no in that space.

13                 Twenty-third, consider whether during  
14          the period of time the defendant lived in  
15          Philadelphia, he was physically assaulted  
16          with brass knuckles and knocked unconscious  
17          at age 13, and whether you deem this to  
18          have mitigating value. Now all the  
19          evidence does tend to show that during the  
20          period of time the defendant lived in  
21          Philadelphia, he was physically assaulted  
22          with brass knuckles and knocked unconscious  
23          at the age of 13. If one or more of you  
24          finds by a preponderance of the evidence  
25          that this circumstance exists and also is

1           deemed mitigating, you would so indicate by  
2           having your foreperson write yes in the  
3           space provided after this mitigating  
4           circumstance on the issues and  
5           recommendation form. If none of you find  
6           the circumstance to exist or if none of you  
7           deem it to have mitigating value, you would  
8           so indicate by having your foreperson write  
9           no in that space.

10                   Twenty-fourth, consider whether  
11           despite the defendant's circumstances and  
12           conditions he was labeled a gifted and  
13           talented student while living in  
14           Philadelphia, and whether you deem this to  
15           have mitigating value. Now all of the  
16           evidence does tend to show that despite the  
17           defendant's circumstances and conditions,  
18           he was labeled a gifted and talented  
19           student while living in Philadelphia. If  
20           one or more of you finds by a preponderance  
21           of the evidence that this circumstance  
22           exists and also is deemed mitigating, you  
23           would so indicate by having your foreperson  
24           write yes in the space provided after this  
25           mitigating circumstance on the issues and

1            recommendation form.  If none of you find  
2            this circumstance to exist or if none of  
3            you deem it to have mitigating value, you  
4            would so indicate by having your foreperson  
5            write no in that space.

6                       Twenty-fifth, consider whether during  
7            the period of time the defendant lived in  
8            Philadelphia, he participated in organized  
9            track and boxing and whether you deem this  
10           to have mitigating value.  All of the  
11           evidence does tend to show that during the  
12           period of time the defendant lived in  
13           Philadelphia, he participated in organized  
14           track and boxing.  If one or more of you  
15           finds by a preponderance of the evidence  
16           that this circumstance exists and also is  
17           deemed mitigating, you would so indicate by  
18           having your foreperson write yes in the  
19           space provided after this mitigating  
20           circumstance on the issues and  
21           recommendation form.  If none of you find  
22           this circumstance to exist or if none of  
23           you deem it to have mitigating value, you  
24           would so indicate by having your foreperson  
25           write no in that space.

1           Twenty-sixth, consider whether while  
2 living in Florence, South Carolina, the  
3 defendant was robbed of his jewelry and his  
4 coat, and whether you deem this to have  
5 mitigating value. Now, all of the evidence  
6 does tend to show that while living in  
7 Florence, South Carolina, the defendant was  
8 robbed of his jewelry and his coat. If one  
9 or more of you find by a preponderance of  
10 the evidence that this circumstance exists  
11 and also is deemed mitigating, you would so  
12 indicate by having your foreperson write  
13 yes in the space provided after this  
14 mitigating circumstance on the issues and  
15 recommendation form. If none of you find  
16 the circumstance to exist or if none of you  
17 deem it to have mitigating value, you would  
18 so indicate by having your foreperson write  
19 no in that space.

20           Twenty-seventh, consider whether while  
21 living in Laurinburg, North Carolina,  
22 defendant's home was burglarized while he  
23 and other family members were present and  
24 asleep and whether you deem this to have  
25 mitigating value. Now, all of the evidence

1           does tend to show that while living in  
2           Laurinburg, North Carolina, defendant's  
3           home was burglarized while he and other  
4           family members were present and asleep. If  
5           one or more of you find by a preponderance  
6           of the evidence that this circumstance  
7           exists and also is deemed mitigating, you  
8           would so indicate by having your foreperson  
9           write yes in the space provided after this  
10          mitigating circumstance on the issues and  
11          recommendation form. If none of you find  
12          this circumstance to exist or if none of  
13          you deem it to have mitigating value, you  
14          would so indicate by having your foreperson  
15          write no in that space.

16                 Twenty-eighth, consider whether the  
17          defendant's favorite uncle, Arnold, was the  
18          victim of a violent death a fact which  
19          affected him greatly throughout his life  
20          and whether you deem this to have  
21          mitigating value. Now, all of the evidence  
22          does tend to show that the defendant's  
23          favorite uncle, Arnold, was the victim of a  
24          violent death, a fact which affected him  
25          greatly throughout his life. Now, if one

1           or more of you finds by preponderance of  
2           the evidence that this circumstance exists  
3           and also is deemed mitigating, you would so  
4           indicate by having your foreperson write  
5           yes in the space provided after this  
6           mitigating circumstance on the issues and  
7           recommendation form. If none of you find  
8           this circumstance to exist or if none of  
9           you deem it to have mitigating value, you  
10          would so indicate by having your foreperson  
11          write no in that space.

12                   Twenty-ninth, consider whether a  
13          number of the defendant's other family  
14          members suffered violent deaths which  
15          caused the defendant to feel that he would  
16          not live a long life and whether you deem  
17          this to have mitigating value. Now, all of  
18          the evidence does tend to show that a  
19          number of the defendant's other family  
20          members suffered violent deaths, which  
21          caused the defendant to feel that he would  
22          not live a long life. If one or more of  
23          you find by a preponderance of the evidence  
24          that this circumstance exists and also is  
25          deemed mitigating, you would so indicate by

1           having your foreperson write yes in the  
2           space provided after this mitigating  
3           circumstance on the issues and  
4           recommendation form. If none of you finds  
5           the circumstance to exist or if none of you  
6           deem it to have mitigating value, you would  
7           so indicate by having your foreperson write  
8           no in that space.

9           Thirtieth, consider whether the  
10          defendant seldom had a stable father figure  
11          during his life and whether you deem this  
12          to have mitigating value. Now, all of the  
13          evidence does tend to show that the  
14          defendant seldom had a father -- strike  
15          that, a stable father figure during his  
16          life. If one or more of you finds by a  
17          preponderance of the evidence that this  
18          circumstance exists and also is deemed  
19          mitigating, you would so indicate by having  
20          your foreperson write yes in the space  
21          provided after this mitigating circumstance  
22          on the issues and recommendation form. If  
23          none of you find this circumstance to exist  
24          or if none of you deem it to have  
25          mitigating value, you would so indicate by

1           having your foreperson write no in that  
2           space.

3           Thirty-first, consider whether the  
4           defendant has completed his GED, received  
5           some vocational courses, and completed some  
6           college courses, and whether you feel this  
7           to have mitigating value. Now all of the  
8           evidence does tend to show that the  
9           defendant has completed his GED, received  
10          some vocational courses, and completed some  
11          college courses. If one or more of you  
12          finds by a preponderance of the evidence  
13          that this circumstance exists and also is  
14          deemed mitigating, you would so indicate by  
15          having your foreperson write yes in the  
16          space provided after this mitigating  
17          circumstance on the issues and  
18          recommendation form. In none of you find  
19          this circumstance to exist or if none of  
20          you deem it to have mitigating value, you  
21          would so indicate by having your foreperson  
22          write no in that space.

23          Thirty-second, consider whether the  
24          defendant has no substance abuse problem  
25          and whether you deem this to have

1 mitigating value. Now all of the evidence  
2 does tend to show that the defendant has no  
3 substances abuse problem. If one or more  
4 of you finds by a preponderance of the  
5 evidence that this circumstance exists and  
6 also is deemed mitigating, you would so  
7 indicate by having your foreperson write  
8 yes in the space provided after this  
9 mitigating circumstance on the issues and  
10 recommendation form. If none of you find  
11 this circumstance to exist or if none of  
12 you deem it to have mitigating value, you  
13 would so indicate by having your foreperson  
14 write no in that space.

15 Now, thirty-third and finally, you may  
16 consider any other circumstance or  
17 circumstances arising from the evidence  
18 which you deem to have mitigating value.  
19 If one or more of you so find by a  
20 preponderance of the evidence, you would so  
21 indicate by having your foreperson write  
22 yes in the space provided after this  
23 mitigating circumstance on the issues and  
24 recommendation form. If none of you finds  
25 any such circumstance to exist, you would

1           so indicate by having your foreperson write  
2           no in that space.

3           Now, if one or more of you finds by a  
4           preponderance of the evidence one or more  
5           mitigating circumstances and have so  
6           indicated by writing yes in the space  
7           provided after this mitigating circumstance  
8           on the issues and recommendation form, you  
9           would answer Issue 2 yes. If none of you  
10          find any of these mitigating circumstances  
11          to exist and have so indicated by writing  
12          no in the space after every one of them on  
13          the issues and recommendation form, you  
14          would answer Issue 2 no.

15          Now, if you answer Issue 2 yes, you  
16          must consider Issue 3. If you answer Issue  
17          2 no, do not answer Issue 3. Instead, skip  
18          Issue 3 and answer Issue 4.

19          Now, Issue 3 is, "Do you unanimously  
20          find beyond a reasonable doubt that the  
21          mitigating circumstance or circumstances  
22          found is or are insufficient to outweigh  
23          the aggravating circumstance or  
24          circumstances found by you?" Now, if you  
25          find from the evidence one or more

1 mitigating circumstances, you must weigh  
2 the aggravating circumstances against the  
3 mitigating circumstances. When deciding  
4 this issue, each juror may consider any  
5 mitigating circumstance or circumstances  
6 that the juror determined to exist by a  
7 preponderance of the evidence in Issue 2.

8 In so doing, you are the sole judges  
9 of the weight to be given to any individual  
10 circumstance which you find, whether  
11 aggravating or mitigating. Now, members of  
12 the jury, you should not merely add up the  
13 number of aggravating circumstances and  
14 mitigating circumstances, rather you must  
15 decide from all of the evidence what value  
16 to give to each circumstance and then weigh  
17 the aggravating circumstances so valued  
18 against the mitigating circumstances so  
19 valued. And finally, determine whether the  
20 mitigating circumstances are insufficient  
21 to outweigh the aggravating circumstances.

22 Now, if you unanimously find beyond a  
23 reasonable doubt, if you unanimously find  
24 beyond a reasonable doubt that the  
25 mitigating circumstances found are

1           insufficient to outweigh the aggravating  
2           circumstances found, you would answer Issue  
3           3 yes. If you do not so find or if you  
4           have a reasonable doubt as to whether they  
5           do, you would answer Issue 3 no. Now, if  
6           you answer Issue 3 no, it would be your  
7           duty to recommend that the defendant be  
8           sentenced to life imprisonment.

9           If you answer Issue 3 yes, you must  
10          consider Issue 4. Now, Issue 4 is "Do you  
11          unanimously find beyond a reasonable doubt  
12          that the aggravating circumstance or  
13          circumstances you found is or are  
14          sufficiently substantial to call for the  
15          imposition of the death penalty, when  
16          considered with the mitigating circumstance  
17          or circumstances found by one or more of  
18          you?"

19          In deciding this issue, you are not to  
20          consider the aggravating circumstances  
21          standing alone. You must consider them in  
22          connection with any mitigating  
23          circumstances found by one or more of you.  
24          When making this comparison, each juror may  
25          consider any mitigating circumstance or

1           circumstances that juror determined to  
2           exist by a preponderance of the evidence.  
3           After considering the totality of the  
4           aggravating and mitigating circumstances,  
5           each of you must be convinced beyond a  
6           reasonable doubt that the imposition of the  
7           death penalty is justified and appropriate  
8           in this case before you can answer this  
9           issue yes. In so doing, you are not  
10          applying a mathematical formula. For  
11          example, three circumstances of one kind do  
12          not automatically and of necessity outweigh  
13          one circumstance of another kind. You may  
14          very properly gave more weight to one  
15          circumstance than another. You must  
16          consider the relative substantial quality  
17          and persuasiveness of the existing  
18          mitigating and aggravating circumstances in  
19          making this determination. Now, you the  
20          jury must determine how compelling and  
21          persuasive the totality of the aggravating  
22          circumstances are when compared with the  
23          totality of the mitigating circumstances.

24                 After doing so, if you are satisfied  
25          beyond a reasonable doubt that the

1           aggravating circumstances found by you are  
2           sufficiently substantial to call for the  
3           death penalty when considered with  
4           mitigating circumstances found by one or  
5           more of you, it would be your duty to  
6           answer the issue yes. If you are not so  
7           satisfied or if you have a reasonable  
8           doubt, it would be your duty to answer the  
9           issue no.

10                   Now, in the event you do not find the  
11           existence of any mitigating circumstances,  
12           you must still answer this fourth issue.  
13           In such cases, you must determine whether  
14           the aggravating circumstances found by you  
15           are of such value, weight, importance,  
16           consequence, or significance as to be  
17           sufficiently substantial to call for the  
18           imposition of the death penalty. Now,  
19           again, "substantial" means having  
20           substance, weight, importance, significance  
21           or momentous.

22                   Aggravating circumstances may exist in  
23           a particular case and still not be  
24           sufficiently substantial to call for the  
25           death penalty. Therefore it is not enough

1           for the State to prove from the evidence  
2           beyond a reasonable doubt the existence of  
3           one or more aggravating circumstances. It  
4           must also prove beyond a reasonable doubt  
5           that such aggravating circumstances are  
6           sufficiently substantial to call for the  
7           death penalty before -- and before you may  
8           answer Issue Number 4 yes, you must  
9           unanimously agree that they are.

10                     Pardon me one second, folks.

11                     Let me read that to you again. Under  
12           the law, it is not enough for the State to  
13           prove from the evidence beyond a reasonable  
14           doubt the existence of one or more  
15           aggravating circumstances. It must also  
16           prove beyond a reasonable doubt that such  
17           aggravating circumstances are sufficiently  
18           substantial to call for the death penalty.  
19           And before you may answer Issue 4 yes, you  
20           must agree unanimously that they are.

21                     Now, if you answer Issue 4 no, you  
22           must recommend that the defendant be  
23           sentenced to life imprisonment. If you  
24           answer Issue 4 yes, it would be your duty  
25           to recommend that the defendant be

1           sentenced to death.

2           Members of the jury, you have heard  
3           the evidence in this case, you've heard the  
4           arguments of counsel for the State and  
5           counsel for the defendant. Court has not  
6           summarized all of the evidence. But it is  
7           your duty to remember all of the evidence  
8           whether it has been called to jury  
9           attention or not. And again I instruct you  
10          that if your recollection of the evidence  
11          differs from that of the Court or that of  
12          the District Attorney or that of counsel  
13          for the defendant, you are to rely solely  
14          upon your recollection of the evidence in  
15          your deliberations.

16          Now, I have not reviewed the  
17          contentions of the State or the contentions  
18          of counsel for the defendant. But folks, I  
19          instruct you that it is your duty not only  
20          to consider all of the evidence but also to  
21          consider all of the arguments, the  
22          contentions, and the positions urged by the  
23          State's attorney and the defendant's  
24          attorneys in their speeches to you. It's  
25          also your duty to consider any other

1           contention that you find arises from the  
2           evidence in this case and to weigh these  
3           matters in light of your common sense and  
4           to make your recommendation as to  
5           punishment based solely on the evidence  
6           presented and in accord with the Court's  
7           instructions on the law.

8           Now the law, as indeed it should,  
9           requires the Judge to be impartial.  
10          Therefore, I instruct you that you're not  
11          to draw any inference from any ruling that  
12          I may have made, you're not to draw any  
13          inference from any inflection in my voice  
14          or any expression on my face. You're not  
15          to draw any inference from any question  
16          that I may have asked a witness or anything  
17          else that I may have said or done during  
18          the course of this proceeding that I have  
19          any opinion of any kind or that I've  
20          intimated any opinion of any kind as to  
21          whether any part of the evidence in this  
22          case should be believed or disbelieved, as  
23          to whether any aggravating or mitigating  
24          circumstance has been proved or disproved  
25          or indeed as to what your recommendation

1           ought to be.

2                   It is your exclusive province to find  
3           the true facts of this case and to make a  
4           recommendation reflecting the truth as you  
5           find it to be. Now, folks when you are  
6           ready to make a recommendation, have your  
7           foreperson write in your recommendation as  
8           directed by the instructions set out on the  
9           issues and recommendation form. It appears  
10          that at this time that the original 12  
11          members of the panel are able to  
12          participate in the deliberations.

13                   Ms. Odum, if you will take the copy of  
14          the issues and recommendation form that you  
15          have in hand and if you will follow Major  
16          Watson's instruction and if you'll step  
17          inside that same room for the moment  
18          please, ma'am.

19                   (Alternate juror Ms. Odum steps to  
20          other room.)

21                   THE COURT: Members of the jury,  
22          I'm going to send you to the jury room in  
23          just a moment. Again, for the purpose of  
24          selecting a foreperson. That's required  
25          under our rules. Now, you folks are

1           absolutely free to keep the foreperson that  
2           you had in phase 1 of these proceedings.  
3           But I am required under our rules of  
4           procedure to instruct you that your duty at  
5           this point is to select a foreperson to  
6           lead you in your deliberations regarding  
7           your recommendation as to punishment in  
8           this case. Again, do not proceed with any  
9           deliberations at this time.

10                   In a few moments, the bailiff will  
11           knock on the door to the jury room, and he  
12           will hand the envelope containing the  
13           original issues and recommendation form to  
14           the first juror responding to his knock.  
15           If you accomplish your task before you hear  
16           from us, if you'll simply wait patiently.  
17           Once you have received the envelope  
18           containing the original issues and  
19           recommendation form, you may then begin  
20           deliberations. But proceed only at this  
21           time with the selection of a foreperson to  
22           lead you in your deliberations as to your  
23           recommendation as to punishment.

24                   Thank you, folks, for your attention  
25           to my instruction. All members of the jury

1 are to retire to the jury room at this time  
2 for the purpose of selecting a foreperson.

3 (Jury out at 11:02 a.m.)

4 THE COURT: Let the record  
5 reflect the following is occurring in the  
6 absence of the jury. Mr. Britt, on behalf  
7 of the State, other than those matters  
8 already noted, any objections, corrections,  
9 request for modifications, additions, or  
10 any other matters related to the Court's  
11 instruction?

12 MR. BRITT: None other than those  
13 previously noted at the charge conference.  
14 And for the purpose of the record, the  
15 Court's instructions are in accord as what  
16 it indicated it would give at the  
17 conference.

18 THE COURT: Any additions,  
19 modifications, or any other matters related  
20 to the Court's instructions to the jury?

21 MR. BOWEN: Let me consult for  
22 just a moment, Your Honor.

23 THE COURT: Yes, sir.

24 MR. BOWEN: None, Your Honor.

25 THE COURT: All right. Folks, I

1 don't know if all counsel were provided a  
2 copy of the issues and recommendation form  
3 as amended. You folks want to step up and  
4 look at it?

5 MR. BRITT: Just the first page.

6 THE COURT: First page is the  
7 only page that's been changed, and that's  
8 to include an entry for provision for an  
9 answer as to the Enmund, Enmund and Tyson  
10 issues.

11 MR. BRITT: That's satisfactory.

12 THE COURT: Okay. Anything from  
13 counsel for defendant?

14 MR. BOWEN: No, sir.

15 THE COURT: Mr. Horne, if you'll  
16 knock on the door to the jury room, hand  
17 the envelope containing the original issues  
18 and recommendation form to the first juror  
19 responding to your knock.

20 THE BAILIFF: Ms. Odum is also  
21 requesting her property out of the jury  
22 room.

23 THE COURT: Why don't we do that  
24 first. If you'll simply knock on the door,  
25 ask whoever responds to hand Ms. Odum's

1 items out to you. Is that satisfactory  
2 with counsel for the defendant?

3 MR. BOWEN: Yes, sir.

4 THE COURT: Is that satisfactory  
5 with counsel for the State?

6 MR. BRITT: Yes, sir.

7 THE COURT: Yes, sir, if you'll  
8 do that, please.

9 (Bailiff complies.)

10 THE COURT: In that regard,  
11 folks, once we get Ms. Odum's items out,  
12 she's released. I'm going to bring her  
13 into the courtroom and release her with  
14 appropriate instructions.

15 Mr. Horne, if you'll hand the envelope  
16 to the first juror responding to your knock  
17 in the jury deliberation room, please, sir.

18 (Bailiff complies.)

19 THE COURT: Major Watson, if  
20 you'll -- if Ms. Odum is available, if  
21 you'll ask her to come in, please.

22 (Ms. Odum enters courtroom.)

23 THE COURT: 11:07, is that what  
24 you've got?

25 THE COURT REPORTER: Yes, sir.

1                   THE COURT:  You can stand where  
2                   you are.  Ma'am, this concludes your duties  
3                   and responsibilities as a member of the  
4                   jury in this case.  The original 12 members  
5                   of the panel now being involved in  
6                   deliberations regarding their  
7                   recommendation as to sentence, I'm going to  
8                   excuse you at this time.

9                   Before I do that, Ms. Odum, I want to  
10                  earnestly and sincerely thank you not only  
11                  for your full service but also for your  
12                  willingness to serve.  You've rendered a  
13                  tremendous service to your fellow citizens  
14                  here in Robeson County and to your fellow  
15                  citizens here in the State of North  
16                  Carolina.  This trial has been longer than  
17                  the normal proceeding, and I want to thank  
18                  you for your service, ma'am, and for your  
19                  contribution for our judicial system.

20                 If you will hand your badge, if you  
21                 would like to keep that, you're -- not the  
22                 badge, I would have to pay for that if you  
23                 don't turn that in.  But I would like to  
24                 thank you, ma'am.

25                 You're free to talk to anybody you

1           want to now, Ms. Odum. Let me suggest to  
2           you that discretion, while this jury is  
3           out, would require that you not discuss  
4           with anyone anything about this case at  
5           least until the jury is back in with a  
6           recommendation as to punishment. After  
7           that, you have the choice of speaking to  
8           anybody that you want to. It's up to you.  
9           I simply say again, that discretion, I  
10          think, requires that you not say anything  
11          that you would not be comfortable in saying  
12          in the presence of other members of the  
13          panel.

14                 And thank you very much for your  
15          service, you're free to go. If you would  
16          like to remain, you're absolutely welcome  
17          to remain. If you would like to leave,  
18          you're free to do that. But thank you very  
19          much, ma'am, it's been a pleasure to serve  
20          you.

21                 We're at ease, folks.

22                         THE BAILIFF: Court stands at  
23          ease.

24                         (Brief recess.)

25                         THE COURT: Let the record show

1 all counsel are present, the defendant is  
2 present in open court. The Court been  
3 informed that the jury wants a break. I'm  
4 going to ask Mr. Horne in just a moment to  
5 bring the envelope in containing the  
6 original issues and recommendations form,  
7 give them a break until about five until or  
8 12:00, depending upon how long it takes us  
9 to get them in here. Anything from either  
10 counsel?

11 MR. BRITT: No, sir.

12 THE COURT: If you'll bring them  
13 in, please.

14 (Jury in at 11:36 a.m.)

15 THE COURT: Will the foreperson  
16 of the jury please stand? For the record,  
17 ma'am, please identify yourself.

18 JUROR: Audrey Chavis.

19 THE COURT: Thank you, you may  
20 return to your seat. My understanding is,  
21 ma'am, that the jury would like to take a  
22 break at this time; is that accurate?

23 JUROR: Yes.

24 THE COURT: Mr. Horne, if you'll  
25 retrieve the envelope containing the

1 original issues and recommendations form  
2 from Ms. Chavis.

3 Ladies and gentlemen, I'm going to  
4 give you until 12:00. Again, it's required  
5 under our rules that I determine that all  
6 of you are present so I'm going to ask that  
7 you return to the jury assembly room --  
8 strike that, the jury deliberation room  
9 from which you've just come at 12:00. I'll  
10 need to bring you into court, make sure all  
11 of you are present. Once I make that  
12 determination on the record, the jury will  
13 then be permitted to continue with your  
14 deliberations concerning your  
15 recommendation as to punishment in this  
16 case.

17 During the recess, you are to suspend  
18 all deliberations in this matter. You are  
19 not to talk about this matter among  
20 yourselves or with anyone else. You're not  
21 to allow anyone to say anything to you or  
22 in your presence about this case. You're  
23 not to allow anyone to attempt to say  
24 anything about the case in your presence.  
25 If anyone communicates with you, attempts

1 to do so, or says anything about this  
2 matter in your presence, it remains your  
3 duty to inform us of that immediately  
4 through one of the bailiffs assigned to the  
5 courtroom.

6 Don't form or express any opinions at  
7 all during this recess, don't have any  
8 contact or communication with anyone  
9 involved in this matter. Avoid any  
10 exposure to any media accounts which may  
11 exist in connection with this matter. And  
12 don't conduct any independent inquiry or  
13 investigation or research of any kind.  
14 Everyone else please remain seated, the  
15 members of the jury are excused until  
16 12:00. Again, please report to the jury  
17 room at that time.

18 (Jury out at 11:39 a.m.)

19 THE COURT: Anything from either  
20 counsel? We're at ease.

21 (Brief recess.)

22 THE COURT: All counsel are  
23 present, the defendant is present in open  
24 court. Major Watson, do we have all  
25 members of the jury secured in the jury

1 room?

2 THE BAILIFF: No, sir, just a few  
3 minutes.

4 THE COURT: Okay.

5 THE BAILIFF: They are all back.

6 THE COURT: If you'll bring the  
7 members of the jury in, please, sir.

8 (Jury in at 11:59 a.m.)

9 THE COURT: Mr. Horne, the Court  
10 having determined that all members of the  
11 deliberating jury are present, if you'll  
12 hand the envelope containing the original  
13 issues and recommendation form to the  
14 foreperson, Ms. Chavis. And thank you,  
15 folks, you may retire to the jury room to  
16 continue with your deliberation as to your  
17 recommendation as to punishment.

18 (Jury out at 12:00 p.m.)

19 THE COURT: We're at ease.  
20 Folks, there's been a recent amendment to  
21 7A-27, went into effect December 1st, 1995,  
22 dealing with venue, appellate venue. In  
23 any case under North Carolina General  
24 Statute 15-A2000, a sentence of death,  
25 there is an appeal of right to the North

1 Carolina Supreme Court, in any other  
2 sentence, the appeal lies in the North  
3 Carolina Court of Appeals.

4 We're at ease.

5 THE BAILIFF: Court stands at  
6 ease.

7 (Brief recess.)

8 THE COURT: Let the record  
9 reflect that all counsel are present, the  
10 defendant is present in open court. Folks,  
11 I'm going to ask with the consent of  
12 counsel -- and if you folks want to be  
13 heard, let me know -- Mr. Horne to knock on  
14 the door to the jury room, ask them if they  
15 would like to take lunch recess from 1:00  
16 until 2:00. Is that sufficient time as far  
17 as the State is concerned?

18 MR. BRITT: Yes, sir.

19 THE COURT: As far as counsel for  
20 defendant is concerned?

21 MR. THOMPSON: Yes, sir.

22 THE COURT: Mr. Horne, if you  
23 would knock on the door to the jury room  
24 and ask them if they would like to take a  
25 lunch break from 1:00 to 2:00 p.m.

1           Let the record reflect that is with  
2           the consent of all counsel and the  
3           defendant. Is that accurate, Mr. Green?

4           MR. GREEN: Yes, sir.

5           THE BAILIFF: They have indicated  
6           yes, sir.

7           THE COURT: Okay. Sir, if you  
8           will ask the foreperson of the jury to  
9           place the original issues and  
10          recommendation form in the envelope and ask  
11          all members of the jury to come in,  
12          please.

13          (Bailiff complies.)

14          (Jury in at 12:58 p.m.)

15          THE COURT: Ms. Chavis have you  
16          placed the original issues and  
17          recommendation form in the envelope, ma'am?

18          JUROR: Yes.

19          THE COURT: If you'll hand that  
20          envelope to Mr. Horne, please.

21          Ladies and gentlemen, we're going to  
22          take the lunch recess until 2:00. During  
23          the lunch recess you are to suspend all  
24          further deliberations regarding your  
25          recommendation as to punishment in this

1 case. You're not to talk about this matter  
2 among yourselves, with anyone else. You're  
3 not to allow anyone to say anything to you  
4 or in your presence about the case. If  
5 anyone communicates with you, attempts to  
6 do so, or if anyone says anything about the  
7 case in your presence, it's your duty to  
8 inform us of that immediately.

9 Don't form or express any opinions  
10 about this matter during the lunch recess.  
11 Don't have any contact or communication  
12 with anyone involved in this case. Avoid  
13 any exposure to any media accounts which  
14 might exist in connection with this matter,  
15 and don't conduct any independent inquiry  
16 or investigation or research of any kind.

17 As you are probably aware by now, I'm  
18 going to ask that you return to the jury  
19 room by 2:00, then bring you into the jury  
20 room to make a determination that all of  
21 you are present. Once that is done, you  
22 folks will be allowed to continue with your  
23 deliberations in this matter. Everyone  
24 else remain seated, the members of the jury  
25 are excused until 2:00.

1 (Jury out at 1:00 p.m.)

2 THE COURT: Anything further from  
3 either counsel?

4 MR. BRITT: No, sir.

5 THE COURT: If you'll recess us  
6 until 2:00, please.

7 THE BAILIFF: All rise.

8 (Lunch recess).

9 THE COURT: Let the record show  
10 that all counsel are present, the defendant  
11 is present in open court. Mr. Horne, do we  
12 have all members of the jury secured in the  
13 jury room?

14 THE BAILIFF: Yes, sir, we do.

15 THE COURT: Anything further from  
16 either counsel?

17 MR. BOWEN: Yes, sir. I would  
18 like the record to show that pursuant to  
19 court's order, the camera, while it's down  
20 on the floor, is over here, there's what  
21 looks like to be an office screen between  
22 three members of the press and the juror  
23 area, and as the jurors file in, it is my  
24 impression that they will certainly be able  
25 to see those individuals over there.

1 THE COURT: Let the record so  
2 show. Bring the jury in.

3 (Jury in at 2:05 p.m.)

4 THE COURT: Good afternoon,  
5 ladies and gentlemen.

6 The Court having determined for the  
7 purpose of the record that all 12 members  
8 of the deliberating jury are present, Mr.  
9 Horne, if you'll hand the envelope  
10 containing the original issues and  
11 recommendations form to Ms. Chavis.

12 Folks, thank you very much, you may  
13 retire and continue with your deliberations  
14 at this time.

15 (Jury out at 2:06 p.m.)

16 THE COURT: Anything further from  
17 counsel?

18 MR. BRITT: No, sir.

19 THE COURT: We're at ease,  
20 folks.

21 (Brief recess.)

22 THE COURT: Let the record  
23 reflect that all counsel are present, the  
24 defendant is present in open court. Folks,  
25 it's now a little past 3:30. I would like

1 to ask Mr. Horne to inquire whether the  
2 jury would like to take a break. Counsel  
3 for the State have any objection to that?

4 MR. BRITT: No, sir.

5 THE COURT: Counsel for the  
6 defendant?

7 MR. THOMPSON: No, sir.

8 THE COURT: Mr. Green, do you  
9 consent to that procedure?

10 MR. GREEN: Yes, sir.

11 THE COURT: Mr. Horne, if you  
12 would knock on the door of the jury room,  
13 ask the members of the jury if they would  
14 like to take a break at this time.

15 (Bailiff complies.)

16 THE BAILIFF: Yes, sir, they  
17 would like one.

18 THE COURT: Okay. If you will  
19 ask the foreperson, Ms. Chavis, to place  
20 the issues and recommendation form in the  
21 envelope and if you'll ask all members of  
22 the jury to come in, please.

23 (Jury in at 3:36 p.m.)

24 THE COURT: Ms. Chavis, you have  
25 placed the original of the issues and

1            recommendation form in the envelope,  
2            ma'am?

3                            JUROR:    Yes.

4                            THE COURT:    And if you'll hand  
5            that envelope to Mr. Horne, please.

6                            (Juror complies.)

7                            THE COURT:    Members of the jury,  
8            you are to suspend all further  
9            deliberations in this matter.    You're not  
10           to discuss this matter among yourselves or  
11           with anyone else, you're not to allow  
12           anyone to say anything to you or in your  
13           presence about the case.    If anyone  
14           communicates with you about this matter or  
15           attempts to do so, or if anyone says  
16           anything about the case in your presence,  
17           it remains your duty to inform us of that  
18           immediately.

19                            Don't form or express any opinions  
20            about this matter during this recess, don't  
21            have any contact with anyone involved in  
22            the case.    Don't allow yourselves to be  
23            exposed to any media accounts which may  
24            exist in connection with this matter, and  
25            don't conduct any independent inquiry,

1 investigation or research of any kind.

2 Folks, if you would resembling in the  
3 jury room at 12 -- strike that -- at 4:00,  
4 once I determine on the record that all of  
5 you are present, again, I'll need to bring  
6 you into court for that purpose, you folks  
7 will be allowed to continue with your  
8 deliberations at that time.

9 Everyone else please remain seated,  
10 the members of the jury are excused until  
11 4:00.

12 (Jury out at 3:38 p.m.)

13 THE COURT: Anything from either  
14 counsel?

15 MR. BRITT: No, sir.

16 THE COURT: We're at ease.

17 (Brief recess.)

18 THE COURT: All counsel are  
19 present, the defendant is present in open  
20 court. Major Watson, is Mr. Demery over  
21 here?

22 THE BAILIFF: No, sir.

23 THE COURT: He's not?

24 THE BAILIFF: Not as I know of.

25 THE COURT: I've got the motion

1 filed by his counsel and I was -- he's in  
2 the local facility?

3 MR. BRITT: Yes, sir.

4 THE COURT: That would take 20  
5 minutes or so?

6 MR. BRITT: If they have got him  
7 ready, it would take about ten at the most.

8 THE COURT: Can we check on his  
9 status?

10 MR. BRITT: Mr. Rogers and  
11 Mr. Campbell are standing by.

12 THE COURT: Yes, sir. Anything  
13 from either counsel? I'm about to bring  
14 our jury in and allow them to continue with  
15 deliberations.

16 MR. BRITT: No, sir.

17 THE COURT: Mr. Horne if you'll  
18 bring our jury in, please, sir.

19 (Jury in at 3:59 p.m.)

20 THE COURT: The Court having  
21 determined for the purpose of the record  
22 that all members of the deliberating jury  
23 are present, Mr. Horne, if you'll hand the  
24 envelope containing the original issues and  
25 recommendations form to Ms. Chavis.



1 present at this time, and I would prefer to  
2 broach that issue with him being present.

3 So Major Watson --

4 THE BAILIFF: 25 minutes, Judge.

5 THE COURT: Why don't we send for  
6 him, please, and ask them to bring him  
7 over. Once Mr. Demery is present, we'll go  
8 forward.

9 We're at ease.

10 (Brief recess.)

11 THE COURT: Let the record  
12 reflect all counsel are present, the  
13 defendant is present in open court. The  
14 Court has been informed that the jury has  
15 reached a recommendation as to punishment.  
16 Mr. Horne, if you'll bring our jury in,  
17 please.

18 Mr. Watson, if there's any outcry of  
19 any kind or any disturbance of any kind,  
20 the bailiffs assigned to the courtroom are  
21 to remove that person immediately.

22 THE BAILIFF: Yes, sir.

23 (Jury in at 4:28 p.m.)

24 THE COURT: Ms. Chavis, for the  
25 record I'm going to ask you to stand. And

1           again, for the record, ma'am, if you will  
2           state your full name at this time.

3                         JUROR:   Audrey Chavis.

4                         THE COURT:  If you will answer my  
5           questions yes or no only, please, ma'am.  
6           Has the jury reached a unanimous  
7           recommendation as to punishment in this  
8           case?

9                         JUROR:   Yes.

10                        THE COURT:  Have you as the  
11           foreperson of the jury marked the issues  
12           and recommendation form accordingly and  
13           have you dated and signed the issues and  
14           recommendation form?

15                        JUROR:   Yes.

16                        THE COURT:  Ms. Chavis, thank  
17           you, ma'am, if you'll hand the envelope  
18           containing the issues and recommendation  
19           form to Mr. Horne.

20                        THE COURT:  You may return to  
21           your seat, ma'am.

22                        Ms. Chavis, if you'll please stand  
23           again.  As foreperson of the jury you have  
24           returned as the unanimous recommendation as  
25           to punishment in this case that the

1 unanimous recommendation of the jury is  
2 that the defendant Daniel Andre Green, also  
3 known as As-Saddiq Al-Amin Sallam U'Allah  
4 be sentenced to life imprisonment. Is that  
5 the unanimous recommendation of the jury?

6 JUROR: Yes.

7 THE COURT: So say you all, if  
8 that is the unanimous recommendation of the  
9 jury, please so indicate by raising your  
10 right hands at this time.

11 Ms. Chavis, you may return to your  
12 seat. Folks, I need to explain to you that  
13 under our statutory provisions under North  
14 Carolina general statute section 15-A  
15 2000-B, I am required by law to poll each  
16 and every member of the jury.

17 Now, I will call you by name, I will  
18 ask that you stand, and I will pose two  
19 questions to you. I will read the  
20 recommendation of the jury as to punishment  
21 as that recommendation has been returned by  
22 your foreperson, beginning with your  
23 foreperson, and then proceeding  
24 numerically, and then I will ask you  
25 whether that is the unanimous

1            recommendation in the case -- strike that,  
2            whether that is your recommendation in this  
3            case and whether you still assent or agree  
4            to that recommendation.

5            Ms. Chavis, if you'll stand at this  
6            time.

7            Ms. Chavis, you as foreperson of the  
8            jury, have returned as the unanimous  
9            recommendation of the jury as to punishment  
10           in this case that the defendant Daniel  
11           Andre green also known as As-Saddiq Al-Amin  
12           Sallam U'Allah be sentenced to life  
13           imprisonment. Is that the unanimous  
14           recommendation of the jury?

15                            JUROR: Yes.

16                            THE COURT: Is that your  
17           recommendation as to punishment?

18                            JUROR: Yes.

19                            THE COURT: Do you still assent  
20           or agree thereto?

21                            JUROR: Yes.

22                            THE COURT: Thank you, ma'am. If  
23           you'll take your seat. And juror number  
24           one, Ms. Patricia Haley, your foreperson  
25           has return as the unanimous recommendation

1 of the jury as to punishment that the  
2 defendant Daniel Green, also known as  
3 As-Saddiq Al-Amin Sallam U'Allah, be  
4 sentenced to life imprisonment. Is that  
5 your recommendation as to punishment?

6 JUROR: Yes.

7 THE COURT: Do you still assent  
8 or agree thereto?

9 JUROR: Yes.

10 THE COURT: Thank you. You may  
11 return to your seat. Ms. Woodell, if  
12 you'll please stand. Ms. Woodell, your  
13 foreperson has returned as the unanimous  
14 recommendation of the jury as to punishment  
15 in this case that the defendant Daniel  
16 Andre Green, also known as As-Saddiq  
17 Al-Amin Sallam U'Allah, be sentenced to  
18 life imprisonment. Is that your  
19 recommendation as to punishment?

20 JUROR: Yes.

21 THE COURT: Do you still assent  
22 or agree thereto?

23 JUROR: Yes.

24 THE COURT: Thank you, ma'am.

25 Ms. Manuel, if you'll please stand.

1 Ms. Manuel, your foreperson has returned as  
2 the unanimous recommendation of the jury as  
3 to punishment that the defendant Daniel  
4 Andre Green, also known as As-Saddiq  
5 Al-Amin Sallam U'Allah, be sentenced to  
6 life imprisonment. Is that your  
7 recommendation?

8 JUROR: Yes.

9 THE COURT: Do you still agree or  
10 assent thereto?

11 JUROR: Yes.

12 THE COURT: Thank you. You may  
13 return to your seat. Mr. Kotai.

14 Mr. Kotai, your foreperson has returned as  
15 the unanimous recommendation of the jury as  
16 to punishment that the defendant Daniel  
17 Andre Green, also known as As-Saddiq  
18 Al-Amin Sallam U'Allah be sentenced to life  
19 imprisonment. Is that your recommendation?

20 JUROR: Yes.

21 THE COURT: And do you still  
22 agree or assent thereto?

23 JUROR: Yes.

24 THE COURT: Thank you, sir.  
25 Ms. Coverdale. Ms. Coverdale, your

1           foreperson has return as the unanimous  
2           recommendation as to punishment of the jury  
3           that the defendant Daniel Andre Green, also  
4           known as As-Saddiq Al-Amin Sallam U'Allah,  
5           be sentenced to life imprisonment. Is that  
6           your recommendation as to punishment?

7                         JUROR: Yes, sir.

8                         THE COURT: Do you still assent  
9           or agree thereto?

10                        JUROR: Yes, sir.

11                        THE COURT: Thank you,  
12           Ms. Coverdale. Mr. Evans if you'll please  
13           stand. Mr. Evans, your foreperson has  
14           returned as the unanimous recommendation as  
15           to punishment that the defendant Daniel  
16           Andre Green, also known as As-Saddiq  
17           Al-Amin Sallam U'Allah, be sentenced to  
18           life imprisonment. Is that your  
19           recommendation?

20                        JUROR: Yes.

21                        THE COURT: Do you still agree or  
22           assent thereto?

23                        JUROR: Yes.

24                        THE COURT: Thank you, sir. You  
25           may return to your seat. Mr. Campbell.

1 Mr. Campbell, your foreperson has returned  
2 as the unanimous recommendation as to  
3 punishment of the jury in this case that  
4 the defendant Daniel Andre Green, also  
5 known as As-Saddiq Al-Amin Sallam U'Allah,  
6 be sentenced to life imprisonment. Is that  
7 your recommendation?

8 JUROR: Yes.

9 THE COURT: Do you still agree or  
10 assent thereto?

11 JUROR: Yes.

12 THE COURT: Thank you, sir.

13 Mr. McGirt, if you'll please stand. The  
14 foreperson returned as the unanimous  
15 recommendation that the defendant Daniel  
16 Andre Green, also known as As-Saddiq  
17 Al-Amin Sallam U'Allah, be sentenced to  
18 life imprisonment. Is that your  
19 recommendation?

20 JUROR: Yes, sir.

21 THE COURT: And do you still  
22 assent or agree thereto?

23 JUROR: Yes, sir.

24 THE COURT: Thank you. You may  
25 return to your seat. Mr. Cassidy.

1 Mr. Cassidy, your foreperson has returned a  
2 unanimous recommendation of the jury that  
3 the defendant Daniel Andre Green, also  
4 known as As-Saddiq Al-Amin Sallam U'Allah,  
5 be sentenced to life imprisonment. Is that  
6 your recommendation?

7 JUROR: Yes.

8 THE COURT: Do you still agree or  
9 assent thereto?

10 JUROR: Yes.

11 THE COURT: Thank you,  
12 Mr. Cassidy. Ms. Dial. Ms. Dial, your  
13 foreperson has returned as the unanimous  
14 recommendation as to punishment that the  
15 defendant Daniel Andre Green, also known as  
16 As-Saddiq Al-Amin Sallam U'Allah, be  
17 sentenced to life imprisonment. Is that  
18 your recommendation?

19 JUROR: Yes, sir.

20 THE COURT: Do you still assent  
21 or agree thereto?

22 JUROR: Yes, sir.

23 THE COURT: Thank you, ma'am.

24 Mr. Burnette. Mr. Burnett, your foreperson  
25 has returned as the unanimous

1            recommendation as to punishment that the  
2            defendant Daniel Andre Green, also known as  
3            As-Saddiq Al-Amin Sallam U'Allah, be  
4            sentenced to life imprisonment. Is that  
5            your recommendation?

6                            JUROR: Yes.

7                            THE COURT: Do you still assent  
8            or agree thereto?

9                            JUROR: Yes.

10                           THE COURT: Thank you,  
11           Mr. Burnette.

12                           Anything on behalf of either the State  
13           or counsel for the defendant as to the  
14           recommendation as to punishment of the  
15           jury?

16                           MR. BRITT: No, sir.

17                           THE COURT: Mr. Thompson or  
18           Mr. Bowen.

19                           MR. THOMPSON: No, sir.

20                           THE COURT: All right. State  
21           pray judge?

22                           MR. BRITT: Yes.

23                           THE COURT: Anything further on  
24           behalf of the State? Folks, for the  
25           record, this is a fair sentencing offense

1 as is true with the offense of conspiracy  
2 to commit robbery with a dangerous weapon,  
3 that being a class H felony under our laws,  
4 anything the State wishes to present as to  
5 aggravation or mitigation as to the class H  
6 felony involved in this case?

7 MR. BRITT: Yes, sir. I would  
8 ask the Court to take notice of the  
9 evidence that you've heard as it relates to  
10 both the guilt phase and the sentencing  
11 phase of this trial and would move the  
12 Court to find aggravating factors as they  
13 relate to the conspiracy charge. I would  
14 urge the Court to find aggravating factor  
15 1-B, that the defendant occupied a position  
16 of leadership or dominance of other  
17 participants in the commission of the  
18 offense. I would ask the Court to find as  
19 it relates to the conspiracy charge 9-B  
20 that the defendant used a deadly weapon at  
21 the time of the crime. 13-B --

22 THE COURT: Well, can I stop you  
23 there?

24 MR. BRITT: Yes, sir.

25 THE COURT: The underlying matter

1 is conspiracy to commit firearm with a --  
2 strike that. Conspiracy to commit robbery  
3 with a firearm. That's an element of the  
4 offense.

5 MR. BRITT: I would differ from  
6 the Court, in that the conspiracy charge is  
7 an agreement to commit the criminal offense  
8 of robbery with a firearm, and the elements  
9 are was there an agreement, did they intend  
10 to --

11 THE COURT: As to the underlying  
12 conspiracy, it's not an element, but the  
13 conspiracy set out in the indictment is to  
14 commit robbery with a firearm.

15 MR. BRITT: Yes, sir.

16 THE COURT: Okay.

17 MR. BRITT: 13-B, that the  
18 offense involved the actual taking of  
19 properties of great monetary value, that  
20 being the Lexus 400 automobile.  
21 Stipulation that was entered into between  
22 counsel and the defendant, the value of the  
23 car was \$40,000. And I would ask the Court  
24 to find as nonstatutory aggravating factors  
25 that the defendant engaged in a course of

1           conduct that involved the commission of  
2           other crimes of violence against other  
3           people and that the conspiracy was a part  
4           of that same course of conduct. And I  
5           would ask the Court to find as a  
6           nonstatutory aggravating factor that the  
7           conspiracy was committed for the purposes  
8           of pecuniary gain.

9           I would ask the Court to find that any  
10          aggravating factors found by a  
11          preponderance of the evidence would  
12          outweigh any of the mitigating factors that  
13          the Court might consider, and would ask the  
14          Court to impose a sentence of ten years on  
15          the conspiracy charge and that ten years  
16          run at the expiration of the life sentence  
17          that has been entered on the murder charge.

18                 THE COURT: Mr. Thompson, Mr.  
19          Bowen, any matters first of all in  
20          mitigation under the Fair Sentencing Act,  
21          which was in effect at the time of these  
22          offenses, or any matters that you want to  
23          bring to the Court's attention regarding  
24          any of the aggravating circumstances that  
25          the State is asking the Court to find?

1                   MR. THOMPSON: Your Honor, may I  
2 see the verdict form?

3                   THE COURT: Yes, sir. Step up.

4                   MR. THOMPSON: Your Honor, on  
5 behalf of the defendant, the defendant  
6 would submit mitigating factor number one  
7 on the felony judgment findings of fact  
8 sheet, the defendant has no record of  
9 criminal convictions. The defendant would  
10 also submit statutory mitigating factor  
11 number 11, defendant's immaturity at the  
12 time of the commission of the offense, we  
13 submit would reduce his culpability for the  
14 offense.

15                   Your Honor, if I may have just a  
16 moment.

17                   Your Honor, this being a ten year  
18 felony, class H felony, the presumptive  
19 sentence being three years, the defendant  
20 would request the Court to find that  
21 mitigating factors outweigh any aggravating  
22 factors in the event that the Court does  
23 not find, we would ask that in this case  
24 the -- a fair sentence would be that of no  
25 more than the presumptive of three years,

1           and that the charges of conspiracy be  
2           consolidated with that of the first degree  
3           murder, and that the time that is activated  
4           be run concurrent with all sentences.

5                         THE COURT: Mr. Green, you have  
6           what is referred to under our statutory  
7           provisions as the right of allocution at  
8           this time. That means you have a right to  
9           be heard before imposition of sentence by  
10          the Court. Is there anything that you want  
11          to say at this time before the Court  
12          imposes sentence, sir.

13                        MR. GREEN: May I?

14                        THE COURT: Yes, sir.

15                        MR. GREEN: First of all, I just  
16          want to thank you, Your Honor; I want to  
17          thank you, my lawyers; I want to thank you,  
18          the jury; everyone for the time spent in  
19          this case. I know it may seem cliché to  
20          you, but I did not kill Mr. Jordan. I did  
21          not rob Mr. Jordan. I have never tried to  
22          kill anybody or tried to hurt anybody  
23          except for in self defense. I know that  
24          this is supposed to be a sacred  
25          institution, being this law, this court,

1 but the way that people lie both inside  
2 this courtroom and outside this courtroom  
3 has made this whole process about as sacred  
4 as the red light district in New Orleans.  
5 I wish peace on everybody. Thank you.

6 THE COURT: Mr. Green, if you'll  
7 remain standing. 93 CRS 15291, the  
8 defendant having been found guilty by a  
9 jury of the charge of first degree murder,  
10 the jury in this case having unanimously  
11 recommended a sentence of life  
12 imprisonment, it is the judgment of the  
13 Court that the defendant be imprisoned in  
14 the North Carolina Department of  
15 Corrections for a term of his natural life.

16 In 93 CRS 15293, the Court makes the  
17 following findings as the factor in  
18 mitigation and aggravation by at least a  
19 preponderance of the evidence based on  
20 matters presented before the Court. The  
21 Court finds the following factors in  
22 aggravation: The defendant occupied a  
23 position of leadership or dominance of  
24 other participants in the commission of the  
25 offenses. The offense involved the actual

1 taking of property of great monetary  
2 value. And as a nonstatutory aggravating  
3 factor, the Court finds that the offenses  
4 for which the defendant is or has been  
5 convicted, that being conspiracy to commit  
6 the offense of robbery with a firearm, this  
7 offense was a part of the course of conduct  
8 on the part of the defendant involving the  
9 use of violence against other persons.

10 In mitigation, the Court finds that  
11 the defendant has no prior record of  
12 criminal convictions. The Court declines  
13 to find that the defendant's immaturity at  
14 the time of the commission of the offense  
15 significantly reduced his culpability to  
16 the offense, to which the defendant objects  
17 and excepts for the record. Court finds  
18 that factors in aggravation outweigh the  
19 factor in mitigation.

20 Based upon the foregoing findings, the  
21 Court imposes a sentence of ten years in  
22 the custody of the North Carolina  
23 Department of Corrections, this sentence to  
24 run to the expiration of the sentence  
25 imposed in 93 CRS 15291.

1           Mr. Thompson, Mr. Bowen, you folks  
2           want to give notice of appeal at this time  
3           in open court?

4           MR. THOMPSON: Yes, sir. May it  
5           please the Court, the defendant would give  
6           notice of appeal to the North Carolina  
7           court of appeals with respect to the  
8           charges of first degree murder --

9           THE COURT: Both charges.

10          MR. THOMPSON: -- conspiracy to  
11          commit, yes, sir.

12          THE COURT: Notice of appeal  
13          being given in open court, in adequate  
14          time, further notice is not required. The  
15          Court appoints the office of the appellate  
16          defender to perfect the appeal in this  
17          case.

18          Anything further on behalf of either  
19          the State or the defendant?

20          MR. BRITT: Nothing from the  
21          State.

22          THE COURT: All right.  
23          Mr. Green, also known as U'Allah, is in the  
24          custody of the Sheriff of Robeson County.  
25          Judgment and commitments will be prepared

1           forthwith and signed forthwith so he could  
2           be transported to the North Carolina  
3           Department of Corrections.

4           Okay. Ladies and gentlemen of the  
5           jury, this concludes your service. Folks,  
6           this has been a long trial and it's been a  
7           difficult trial in many respects. I want  
8           to sincerely and earnestly thank you folks  
9           for your service and as importantly in my  
10          mind at least for your willingness to  
11          serve.

12          We are blessed to live in a country  
13          where we enjoy freedoms, and I think often  
14          our citizens tend to forget, along with  
15          those freedoms comes certain duties and  
16          responsibilities. Jury service is one of  
17          the few remaining duties and obligations of  
18          citizenship. We recognize a jury service  
19          is a disruption in your lives. We  
20          recognize it takes you away from your place  
21          of business and your homes to a great  
22          extent because of the focus on the  
23          preoccupation of matters before you as a  
24          collective body.

25          But I want to emphasize to you that

1           without service from folks like you, our  
2           judicial system could not function. And  
3           you are to be commended for the  
4           conscientious and diligent manner in which  
5           you have fulfilled your duties and  
6           obligations. I've been on the bench going  
7           on eight years now, and I don't think I  
8           have ever had the privilege or the honor of  
9           serving with a jury who has -- or which has  
10          fulfilled its responsibility in the manner  
11          that you folks have. I'm very proud to  
12          have served with you, and I look forward to  
13          serving with you folks at sometime in the  
14          future. You folks are excused with the  
15          earnest thanks of the Court. You're free  
16          to go at this time.

17                 If you'll leave your badges in your  
18          seats, please, folks.

19                 Folks, it's now ten minutes until  
20          5:00. What I'm going to propose is that we  
21          go forward with Mr. Demery's matter at 9:30  
22          tomorrow morning.

23                         MR. BRITT: That would be fine.

24                         MR. THOMPSON: Your Honor, the  
25          defendant has made a request that any

1 judgment and commitment papers that are  
2 issued in this case be issued in his now  
3 legal name, Lord D As-Saddiq Al-Amin Sallam  
4 U'Allah.

5 THE COURT: Mr. Green, as I  
6 indicated to you at the outset, it's my  
7 intent to respect your choice in terms of  
8 changing your name, but for the purposes of  
9 the court documents, the court documents  
10 will bear the following name: Daniel  
11 Green -- Daniel Andre Green, pardon me,  
12 also known as, because to do otherwise  
13 would be to invite confusion in the  
14 records. I understand your position. I  
15 respect your position. But this is the  
16 position that I am obligated to take.

17 Now, Mr. Thompson, if you'll hand up  
18 the verdict issues and recommendation form,  
19 please.

20 MR. THOMPSON: Yes, sir.

21 THE COURT: Mr. Green is in  
22 custody.

23 MR. THOMPSON: We desire to get a  
24 copy of that. He wants it.

25 THE COURT: Sue, make copies for

1           all counsel.

2                    Any other matters related to the case  
3           of the State of North Carolina versus  
4           Daniel Andre Green, also known as U'Allah?

5                    MR. BRITT:  No, sir.

6                    THE COURT:  We will convene at  
7           9:30 tomorrow morning, go forward with the  
8           defendant Larry Martin Demery's motion to  
9           impose a life sentence as a matter of law.

10                   Mr. Horne, if you'll recess us until  
11           9:30 tomorrow morning.

12                   THE BAILIFF:  All rise, please.

13                   (Court adjourned.)

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ROBESON COUNTY:

I hereby certify that the foregoing trial was reported, as stated in the caption, and the questions and answers thereto were reduced to the written page under my direction; that the foregoing pages 1 through 8411 represent a true and correct transcript of the evidence given.

This, the 16th day of April, 1996.

-----  
STEVE S. HUSEBY, CCR-B-1372  
My Commission Expires  
December 8th, 1997.