

CAPITAL CASE

No. _____

IN THE

Supreme Court of the United States

CURTIS WINDOM,

Petitioner,

v.

STATE OF FLORIDA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
FLORIDA SUPREME COURT

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

DEATH WARRANT SIGNED

Execution Scheduled: August 28, 2025, at 6:00 p.m.

/s/ Ann Marie Mirialakis
ANN MARIE MIRIALAKIS
*Counsel of Record
Assistant CCRC
Florida Bar No. 0658308
mirialakis@ccmr.state.fl.us

Law Office of the Capital Collateral
Regional Counsel - Middle Region
12973 N. Telecom Parkway
Temple Terrace, Florida 33637
813-558-1600
support@ccmr.state.fl.us

CONTENTS OF APPENDIX
INDEX TO THE APPENDIX

JUDGEMENT SOUGHT TO BE REVIEWED

- Appendix A: Opinion of the Florida Supreme Court
Windom v. State, SC2025-1179 & SC2025-1182, 2025 WL _____
(Fla. August 21, 2025)
- Appendix B: Order of the Circuit Court for the Ninth Judicial Circuit, Orange
County, Florida, denying postconviction relief (August 7, 2025) –
SPCR.1292-1496

OPINIONS OF THE FLORIDA SUPREME COURT

- Appendix C: *Windom v. State*, SC80,830, 656 So. 2d 432 (Fla. April 27, 1995)
- Appendix D: *Windom v. State*, SC01-2706 & SC02-2142, 886 So. 2d 915 (Fla.
May 6, 2004)
- Appendix E: *Windom v. State*, SC16-1371, 2017 WL 3205278 (Fla. July 28,
2017)

ORDERS OF THE NINTH JUDICIAL CIRCUIT, ORANGE COUNTY, FL

- Appendix F: Order on Case Management Conference (Scheduling Order for
Warrant), filed July 30, 2025 – SPCR.1149-1153
- Appendix G: Final Order Denying Defendant’s Emergency Motion for Stay of
Execution, filed August 8, 2025 – SPCR.1556-1567
- Appendix H: Sentencing Order, Filed November 10, 1992.

RECORDS ON APPEAL TO THE FLORIDA SUPREME COURT

- Appendix I: Circuit Court for the Ninth Judicial Circuit, Orange County,
Florida, Transcript of Trial Proceedings, Vol. II – TrR.197-404
- Appendix J: Circuit Court for the Ninth Judicial Circuit, Orange County,
Florida, Transcript of Trial Proceedings, Vol. IV – TrR.521-732

- Appendix K: Circuit Court for the Ninth Judicial Circuit, Orange County, Florida, Transcript of Trial Proceedings – Supplemental Record, SupplR.267-392
- Appendix L: Circuit Court for the Ninth Judicial Circuit, Orange County, Florida, Transcript of Trial Proceedings – Supplemental Record, SupplR.393-595
- Appendix M: Circuit Court for the Ninth Judicial Circuit, Orange County, Florida, Transcript of Penalty Phase Proceedings, PP-R1-113
- Appendix N: Circuit Court for the Ninth Judicial Circuit, Orange County, Florida, Transcript of Postconviction Evidentiary Hearing – Volume 15, PC-R492-686, PCTr.1 – 195
- Appendix O: Circuit Court for the Ninth Judicial Circuit, Orange County, Florida, Transcript of Postconviction Evidentiary Hearing – Volume 16, PC-R687-883, PCTr.196 – 392

RELEVANT EXHIBITS

- Appendix P: Dr. Kirland's Psychological Evaluation, Filed August 19, 1992, Appendix D to Postconviction Motion – SPCR.1232-1233
- Appendix Q: Letters from Victims' Families, Appendices A, B, and C to Petition for Writ of Habeas Corpus, Filed August 8, 2025.
- Appendix R: (*Pro Se*) Second or Successive Motion for Post Conviction Relief, Case No. 481992CF0013050, Filed October 9, 2018 – Excerpt from Exhibit 59, SPCR, 847,861-864

CAPITAL CASE

No. _____

IN THE
Supreme Court of the United States

CURTIS WINDOM,
Petitioner,

v.

STATE OF FLORIDA,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
FLORIDA SUPREME COURT

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

DEATH WARRANT SIGNED
Execution Scheduled: August 28, 2025, at 6:00 p.m.

APPENDIX J

Circuit Court for the Ninth Judicial Circuit, Orange County, Florida,
Transcript of Trial Proceedings, Vol. IV – TrR.521-732

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305
SUPREME CT. NO. 80,830

INFORMATION FOR:
MURDER IN THE FIRST DEGREE
(3 counts)
ATTEMPTED MURDER IN THE FIRST DEGREE

STATE OF FLORIDA

Plaintiff,

-VS-

CURTIS WINDOM

Defendant,

FILED

SID J. WHITE

rt8 26 1993

CLERK, SUPREME COURT

By
Chief Deputy Clerk

TRANSCRIPT OF TRIAL PROCEEDINGS
VOLUME IV

HONORABLE JUDGE DOROTHY RUSSELL

FILED IN OFFICE
1993 FEB -5 PM 2:55
FRANK J. RUSSELL
CLERK OF CIRCUIT COURT
ORANGE COUNTY, FL.

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

Case No. 11
Division No: CR92-1305

CURTIS WINDOM,

Appellant/Defendant,

vs.

STATE OF FLORIDA,

Appellee/Plaintiff.

ORIGINAL

IN RE:

JURY TRIAL - VOLUME IV

BEFORE:

Hon. Dorothy J. Russell
Circuit Judge

DATE:

August 27, 1992 and
August 28, 1992

LOCATION:

Orange County Courthouse
Courtroom Number 250
Orlando, Florida

REPORTED BY:

SARAH E. LIGHTSEY, RPR, CCR
Official Court Reporter

ON BEHALF OF APPELLEE/
PLAINTIFF:

MR. JEFF ASHTON, ESQUIRE
and JANNA BRENNAN
Assistant State Attorney
250 North Orange Avenue
Suite 400
Orlando, Florida 32801

ON BEHALF OF APPELLANT/
DEFENDANT:

MR. ED LEINSTER, ESQUIRE
and KURT BARCH, ESQUIRE
1302 East Robinson Street
Orlando, Florida 32801

I N D E X

1		
2		
3	WILLIAM ROBERT ANDERSON	
4	Direct examination by Mr. Ashton	524
5	Cross examination by Mr. Leinster	545
6		
7	DR. ROBERT KIRKLAND	
8	Proffered Direct exam by Mr. Leinster	560
9	Proffered Cross exam by Mr. Ashton	564
10	Direct examination by Mr. Leinster	580
11	Cross examination by Mr. Ashton	586
12	Redirect examination by Mr. Leinster	590
13	Recross examination by Mr. Ashton	594
14		
15	PAMELA FIKES	
16	Direct examination by Mr. Leinster	608
17		
18	JACK LUCKETT	
19	Direct examination by Mr. Leinster	610
20	Cross examination by Mr. Ashton	618
21		
22	LENA WINDOM	
23	Direct examination by Mr. Leinster	621
24	Cross examination by Mr. Ashton	628
25		
	<u>EXHIBITS</u>	
	State's Composite Exhibit Number 18	535
	Photos of victim Lee	
	State's Composite Exhibit Number 19	537
	Photos of victim Davis	
	State's Composite Exhibit Number 20	545
	Defendant's Exhibit Number 1	640
	Video tape	
	CLOSING ARGUMENT BY MR. ASHTON	650
	CLOSING ARGUMENT BY MR. LEINSTER	665
	REBUTTAL ARGUMENT BY MR. ASHTON	686
	JURY CHARGE	695
	VERDICT	725
	CERTIFICATE OF REPORTER	732

P R O C E E D I N G S

(Proceedings commenced at 10:10 a.m.)

THE COURT: Anything we should take up before the jury comes in?

MR. ASHTON: Not for the State, Your Honor.

THE COURT: I'm going to tell them that the air is off for two hours. If you want to take your jackets off, that's fine. I'll tell the jury they can. Bring the jury in.

(Jury is in the box.)

THE COURT: Have a seat. I've told the lawyers, because the air is off now for a couple of hours, if you want to take off your jackets or anything, as long as you are still decent, I don't have any problem with that. They have taken me up on that. Does the State recognize the jury is properly seated?

MR. ASHTON: Yes, Your Honor.

THE COURT: Defense?

MR. LEINSTER: Yes.

THE COURT: State, call your next witness.

MR. ASHTON: Dr. Anderson.

Thereupon,

WILLIAM ROBERT ANDERSON

was called as a witness, having been first duly sworn, was examined and testified as follows:

1 MR. ASHTON: May I proceed?

2 THE COURT: Yes.

3 DIRECT EXAMINATION

4 BY MR. ASHTON:

5 Q The Judge has given us all permission to take
6 our coats off because the air-conditioning is off. If
7 you'd like to, go right ahead.

8 A Sounds like a good idea.

9 (Short pause.)

10 Q Would you, please, state your name.

11 A William Robert Anderson.

12 Q How are you presently employed?

13 A I'm a physician and I practice forensic medical
14 legal medicine. I am deputy chief medical examiner for
15 District Nine in Florida, which encompasses Orange and
16 Osceola Counties.

17 MR. ASHTON: I would ask if the defense would
18 stipulate to Dr. Anderson as an expert in forensic
19 pathology for opinions in this area.

20 MR. LEINSTER: Yes.

21 THE COURT: So, Dr. Anderson is considered an
22 expert in forensic pathology and can give opinions in
23 that area. Thank you.

24 BY MR. ASHTON:

25 Q Doctor, as part of your duties as deputy chief

1 medical examiner, did you have occasion to perform an
2 autopsy on three individuals by the name of Johnny Lee,
3 Mary Reeves Lubin and Valerie Davis?

4 A Yes.

5 Q Could you tell us where you first came in
6 contact with the remains -- let's start off with Mr. Lee,
7 where you first came into contact with his remains?

8 A First saw Mr. Lee in the emergency room at West
9 Orange Memorial Hospital.

10 Q And when you first saw him, I assume he had
11 already passed? He was already dead?

12 A He was already dead, yes.

13 Q Did you do any preliminary examination at West
14 Orange Hospital?

15 A I just generally took an overall look at the
16 body and see what the basic -- very basic injuries were
17 and gathered what material might be with the body. And in
18 conjunction with my investigator, the body is wrapped in
19 some -- a shroud, a plastic shroud and sheet to preserve
20 evidence with the body for transport to our facility.

21 Q Once the remains arrived at your facility --
22 that's down near the Orlando Regional Medical Center?

23 A Yes, it's the medical examiner's office.

24 Q Did you perform a complete autopsy on Mr. Lee?

25 A Yes.

1 Q Would you describe first for us what internal
2 evidence of injury there was on Mr. Lee?

3 A Mr. Lee had force entry gunshot wounds involved
4 in the back and the chest.

5 Q All right. If you could just take them
6 individually, starting wherever you'd like, and describe
7 for us the angle of entry and what, if any, internal
8 injuries were caused and whether projectiles were found as
9 to each wounds.

10 A There was a wound to the left posterior chest.
11 This was the -- this gunshot wound tracked the most
12 destruction. It came in the back, passed from back to
13 front, when to the right it struck a portion of the lung.
14 It struck the heart, the left ventricle, the main pumping
15 chamber, and the left lung and still passing in the left
16 to right direction, came to the anterior chest, almost to
17 the midline, just a little to the left side.

18 Q All right. So, it ended up just like you said,
19 left of midline, the belt area?

20 A Yes.

21 Q And it came in through the back?

22 A Correct, on the left side. It stayed on the
23 left side all the way, but it hit -- as it came through
24 here, it hit lung, heart. It was passing left to right,
25 even though it ended up on the left side of his chest.

1 Q Was that bullet retrieved by you?

2 A Yes, it was.

3 Q And what -- what was the next one -- shot you'd
4 like to explain to us?

5 A There was a second wound to the back. This one
6 was in the left -- I'm sorry, in the right shoulder area,
7 in the back (indicating) in this direction. This one on
8 the tummy also passed from his -- the victim's left to his
9 right, came out and created a break in the main bone of
10 the arm, the humerus and a projectile was recovered from
11 here.

12 Q So, both the shots to the back were slightly
13 from left to right entering in the back?

14 A Correct.

15 Q And did you retrieve the projectile from that
16 second wound?

17 A (Reviewing.) Yes.

18 Q Now, did damage from the second gunshot wound to
19 the back, would that have caused -- what in your opinion
20 would have been the fatal injuries to Mr. Lee?

21 A That wound, basically, didn't enter the chest
22 cavity. It stayed outside in the shaft tissues, went into
23 the arm and created quite a bit of damage to the bone but
24 not necessarily in and of itself would have been the fatal
25 wound.

1 Q Did the angle of either one of these wounds have
2 any -- were they straight in or up and down or a
3 horizontal plane, assuming that the victim had been
4 standing straight up?

5 A Well, the wound to the back that went through
6 the heart and came to the chest we recovered, it slightly
7 looked -- like slightly upward. It was only an inch
8 difference. It was, essentially, in a horizontal plane.

9 Since we don't know the actual position of
10 the -- either the shooter or the victim, we can't really
11 conjecture other than it was in a pretty straight plane as
12 far as his body is concerned.

13 Q How about the other wound to the back that ended
14 up in the shoulder that also went slightly upward?

15 Was the upward angle about the same in both of
16 them as to the horizontal plane to the body?

17 A Roughly. Roughly.

18 Q Now, did the first gunshot wound to the back you
19 indicated, what organs were struck by that? What effect
20 would that bullet alone have had on Mr. Lee's ability to
21 function and/or survive?

22 A Okay. That particular wound hit both the
23 pumping chambers of the heart. As the bullet passes
24 through, it creates a great deal of injury, essentially
25 opening the pumping chambers of the heart to the outside.

1 So, its' blood pressure would have dropped immediately
2 upon that bullet wound passing through, because the
3 pressure goes down.

4 Death doesn't necessarily occur right away, and
5 some people can perform activity after, you know, fairly
6 serious injuries. But an injury like this is going to
7 cause the blood pressure to drop, basically, to zero
8 because there's now a hole in both chambers of the heart;
9 and there's no pressure in the system anymore. That's
10 going to cause unconsciousness almost immediately because
11 of lack of flow to the brain.

12 Q So, as a result of this wound, is it your
13 opinion that Mr. Lee would have been almost immediately
14 unconscious?

15 A Yes.

16 Q Let's take the next two, whichever one you'd
17 like to talk about first.

18 A There's one wound -- there's two more. There's
19 one wound of the left chest in this area (indicating), and
20 this wound comes very sharply across the body from left to
21 right. Actually, not even going into the chest but
22 striking the liver as it comes across here.

23 The liver sits here. It strikes the liver, and
24 it's going downward, left to right; and it created a
25 significant amount of injury to the liver as it passed

1 through.

2 A large projectile passing through creates not
3 only a laceration but a certain amount of actual force
4 around its' track. As the force is expanded, that causes
5 injury, also. So, there was significant damage to the
6 liver.

7 And this projectile actually did enter a portion
8 of the right chest but didn't do much damage. It ended up
9 back here, and we recovered that, also.

10 Q Now, the injuries from that bullet isolated from
11 the others, would that have been fatal alone?

12 A I think it probably would have been, not as
13 quickly but with that much damage to the liver. I have
14 seen cases survive that have been injured this badly, but
15 it would almost have to be within immediate medical care
16 and operative intervention immediately because there's a
17 significant amount of bleeding.

18 The blood pressure wouldn't necessarily drop
19 immediately so there might be activity after this type of
20 wound as opposed to the other one.

21 Q And then the last one, sir?

22 A Okay. The last wound -- I don't remember which
23 ones we've done so far -- comes in the left chest,
24 basically, and passes through the left lung, upper lobe
25 and lower lobe, creates a significant tearing injury, does

1 not hit the heart and ends up passing left to right.

2 And this one, more or less, is front to back.

3 And this ends up in the posterior left chest coming in
4 like this (indicating), backwards, striking here, the
5 lung, and ending up back here and creating laceration and
6 bleeding in that lung and into the thoracic cavity, which
7 is where the lung is contained. And we recovered that
8 projectile, as well.

9 Q Isolating that bullet wound from the others,
10 would that wound alone have been fatal in your opinion?

11 A It was serious but it would not necessarily be
12 fatal.

13 Q He could have survived that one?

14 A Yes.

15 Q Now, as a part of your autopsy, did you have
16 occasion to have photographs taken of Mr. Lee and of the
17 internal evidence of the injury and also separates that
18 were taken?

19 A Yes.

20 Q Let me show you State's Exhibit T-1 through T-7
21 and ask if those are photographs that were taken at your
22 direction of Mr. Lee and the X-rays.

23 A (Reviewing.) Yes.

24 MR. ASHTON: All right. At this time I'd move
25 into evidence the previously mentioned exhibits, T-1

1 through T-7.

2 MR. LEINSTER: May we approach?

3 THE COURT: Yes.

4 (The following is a bench conference.)

5 MR. LEINSTER: Standard objection. These
6 pictures show a dead body. The bodies have already
7 been described as to who they are. I'll make this
8 objection to all the people at this point in time.

9 THE COURT: These particular pictures are,
10 frankly, not so gruesome, not like a lot of pictures
11 you see in these cases.

12 MR. LEINSTER: It is unnecessary. It is more
13 prejudicial than probative of anything. Let the
14 Court review the pictures.

15 THE COURT: (Reviewing.) State?

16 MR. ASHTON: There are seven photographs, two of
17 them are x-rays. The others simply are depicting
18 where the wounds are. They are identification
19 photos; they are not gruesome. They are not
20 explicit. I don't believe they are objectionable.

21 THE COURT: Why do we have two of these?

22 MR. ASHTON: No. This is the identification
23 photograph a previous witness identified as being
24 Mr. Lee. This photograph shows the location of the
25 bullet wound bruise of one of the bullets found.

1 That's the reason for two of them.

2 THE COURT: These are X-rays.

3 MS. BRENNAN: Do you want to look at the other
4 photographs?

5 THE COURT: All these show are tiny little holes
6 in his back. One just shows the bullet holes in the
7 victim and a bruise. I don't think they are
8 gruesome. There's not any blood whatsoever.

9 And the I.D. photo, which was necessary, which
10 was the one with the picture of the upper torso along
11 with the head that shows in relation to the rest of
12 the body where the injuries are. And, certainly, the
13 X-rays are not inflammatory.

14 I don't think these are so prejudicial that the
15 defense is going to have -- these are the least
16 prejudicial photos I have ever seen. There is
17 absolutely not one drop of blood.

18 MR. ASHTON: These would be State's Exhibit S-1
19 through S-5 of Valerie Davis.

20 THE COURT: That's it. Do we need this?

21 MR. ASHTON: Got to show the position of the
22 gunshot wound.

23 THE COURT: That's a close-up of the gunshot
24 wound showing the position of the exit wound here and
25 the close-up of the characteristics of the exit

1 wound. That's it. Any --

2 MR. LEINSTER: Same objection.

3 THE COURT: Same ruling. These are just like
4 the others except we have to show one with the breast
5 and it does show where the wound is and nothing else
6 does.

7 THE COURT: Okay. And those are photos S-1
8 through 5. Any others?

9 MR. ASHTON: These are the photographs of Mary
10 Lubin.

11 THE COURT: Is that --

12 MR. ASHTON: That's an injury under the chin.

13 THE COURT: Oh, under the chin, okay. These two
14 pretty much just depict where the injuries were.
15 There's no gore. Practically no blood whatsoever.
16 Overrule the objection on Mrs. Lubin, too.

17 MR. LEINSTER: Okay.

18 MR. ASHTON: Thank you.

19 THE COURT: You're placing the 1 through 7 in
20 evidence. That will come in as composite exhibit --

21 THE CLERK: Is it going to be a composite?

22 MR. ASHTON: Composite will be okay. I think
23 that will be all right. I don't know if you want to
24 call them 18A through whatever the appropriate number
25 is.

1 THE COURT: A through 7, 1 through 7?

2 MADAM CLERK: That will be 18.

3 THE COURT: Okay. As a composite.

4 (State's Composite Exhibit Number 18 was
5 received into evidence.)

6 MR. ASHTON: May I proceed, Your Honor?

7 THE COURT: Yes.

8 (End of bench conference.)

9 BY MR. ASHTON:

10 Q Let's move on to Valerie Davis. Where did you
11 first come in contact with the remains of Valerie Davis?

12 A Mrs. Davis was also at the -- Mrs. Davis was at
13 the Princeton Hospital.

14 Q Again, did you perform the same kind of
15 procedures as to her that you described with Mr. Lee?

16 A Yes.

17 Q When she arrived at your facility, did you
18 perform an autopsy on her?

19 A Yes. We did the usual external examination and
20 internal examination and documentation.

21 Q Would you describe your findings, please?

22 A Mr. Davis had a single gunshot wound of the left
23 chest area (indicating). It penetrated back, backward to
24 the left, striking her heart, also creating tearing and
25 defects in both pumping chambers of the heart, and the

1 lower lobe and upper lobe of the left lung as it passed
2 backwards and created a lot of bleeding into both the
3 pericardial sack around the heart and the left thoracic
4 cavity which is where the lung is.

5 This bullet tracks then on roughly a horizontal
6 plane and was slightly upward, then exited in the back
7 left chest.

8 Q You say horizontal and slightly upward.
9 Assuming the horizontal plane of her body standing erect,
10 what would be the difference of the height of the entrance
11 and exit wounds?

12 A Just one difference.

13 Q Again, you have described the organs that were
14 injured by the bullet wounds. What effect would that have
15 had on her ability to function or to survive?

16 A I believe with those wounds of the heart, it
17 would have been similar to the heart wound in the first
18 case; that is, within a very short period of time, she
19 would have lost consciousness as blood pressure drops and,
20 essentially, would not have functioned after that.

21 Q All right. Let me show you State's Exhibit S-1
22 through S-5 and ask if these are photographs that were
23 taken at your direction of the injuries to Valerie Davis.

24 A (Reviewing document.) Yes.

25 MR. ASHTON: At this time I move into evidence

1 State's Exhibit S-1 through S-4.

2 THE COURT: Okay. Over defense objection -- I'm
3 sure, Mr. Leinster, you're objecting to this?

4 MR. LEINSTER: No other objection.

5 THE COURT: No other objections?

6 MR. LEINSTER: Right.

7 THE COURT: All right. They will come in as
8 State's 19, composite exhibit -- is it four of them?

9 MR. ASHTON: It's five photographs.

10 THE COURT: A through E.

11 MR. ASHTON: So 19 A through E?

12 THE COURT: 19A through 19E. I probably should
13 have said letters instead of numbers on the first
14 one.

15 THE COURT: Let's make 18A through F -- G? Is
16 it seven of them?

17 MR. ASHTON: The first one was seven, I believe.

18 THE COURT: G. A through G. And 19 will be A
19 through E.

20 MR. ASHTON: All right.

21 THE COURT: Okay.

22 (State's Exhibit Numbers 19A-19E were received
23 into evidence.)

24 BY MR. ASHTON:

25 Q So the jury understands when they look at the

1 photographs, Doctor, the entrance wound is the one to the
2 chest?

3 A The front, correct.

4 Q And the exit is in the back?

5 A Correct.

6 Q All right. Move on to the next individual, Mary
7 Reeves Lubin. When did you first come in contact with her
8 remains?

9 A Mrs. Lubin was at the West Orange Memorial
10 Hospital, as was the first victim.

11 Q And, again, you performed the same type of
12 procedure that you did with Mr. Lee?

13 A Correct.

14 Q When she arrived back at the medical examiner's
15 facility, did you perform an autopsy?

16 A Yes.

17 Q Did you perform all three of these autopsies in
18 the same day?

19 A No. I believe two are one day and the one was
20 the next day.

21 Q All right.

22 A Although the preliminaries, some of the
23 procedure, internal, external photographs, X-rays and so
24 forth was done the first day. There may be a staggering
25 on how we do the dissecting part of the autopsy.

1 Q How long does the actual dissection part of the
2 autopsy take normally or in this case, specifically?

3 A It depends on the case. Generally, in the
4 neighborhood of two hours. In the case of multiple
5 gunshot wounds, such as the first victim, it probably
6 would take three or four hours.

7 Q All right. So, if you could, relate for us what
8 findings you had as to any injuries to Mary Reeves Lubin?

9 A Mrs. Lubin suffered -- the fatal wound was a
10 gunshot wound to the posterior right chest that went up
11 the lung across the front of the neck and exited in the
12 left, passing through this area, the aorta, and comes up
13 through here, hitting some of the major vessels to the
14 head on the right side, the vessel the called the
15 innominate artery which bifurcates the artery down the arm
16 and head.

17 And the other side, the two vessels take off
18 separately. The bullet lacerated -- it came up the right
19 innominate artery causing a great deal of bleeding into
20 the chest and into the mediastinum or the soft tissues of
21 where the heart, esophagus and trachea and so forth are
22 located.

23 Q So, the bullet came in low and exited high.
24 Would that be correct?

25 A Yes. It came in about 15 inches from top to

1 head and exited about eleven and a half. So, it was
2 considerably upward coming across.

3 Q Now that particular wound track, assuming
4 hypothetically that the bullet is coming in at a
5 horizontal plane, a straight horizontal plane, what
6 position would she have to be in in order to receive that
7 angle?

8 A I think you can pretty well hit it just by
9 moving your body around and you bend the body forward. As
10 you put the body back in the anatomical position, it's
11 going to look like it's upward.

12 That's why the angle of a bullet track through a
13 body in and of itself -- you can't determine where the
14 shooter was unless you know one of the variables -- where
15 the gun was -- then you can figure out where the position
16 of the person or where the person was and what position
17 they are in. Then you can figure out the position of the
18 gun by the track.

19 But I've got to know one of those variables or
20 you cannot be sure. There's a number of ways the person
21 can be bending over with a horizontal track.

22 Q We've heard testimony that the shooter was
23 standing, shooting basically straight out. That being the
24 case, we would assume her body would have to have been in
25 a slight -- a slight angle to one side and forward?

1 A And forward, yes.

2 Q All right. Now what was --

3 A Quite a bit forward, actually, because you would
4 have to get to the chest. So, it would still be going
5 upwards.

6 Q Considerably forward and to one side?

7 A Right.

8 Q You told us what organs were injured from that
9 bullet. What effect would that have had on her ability to
10 function?

11 A I think that with that injury, she would have
12 possibly had some function for a period of maybe a minute
13 or two. Certainly, with a large artery open to the chest
14 and into outside, essentially, you're going to be losing
15 blood at a very rapid rate.

16 It wouldn't necessarily cause an immediate drop
17 in pressure because her compensatory mechanism of vessels
18 constricting down and so forth, you don't get when the
19 heart chambers themselves are blown apart. So it would be
20 a longer period of possible functioning.

21 Sometimes, though, when people become
22 unconscious very rapidly due to a gunshot wound just by
23 the physiologic mechanism of shots, you cannot be sure.
24 But, certainly, this would have potentially allowed the
25 person more activity than the wound of the heart.

1 Q We have heard testimony after the shots were
2 fired she got out of the car and walked a short distance.
3 Would that be consistent if it didn't take over a minute
4 or two?

5 A Yes.

6 Q You said there was a second gunshot wound?

7 A Yeah, of the back, right arm; and it, basically,
8 came through the arm into the breast and in and out of the
9 breast. It really didn't do any significant injury.

10 Q Did it -- you said it entered the arm. Which
11 arm was it?

12 A The right arm.

13 Q The right arm. It entered the right arm
14 approximately where, if you want to point on me? I should
15 have brought my dummy but I didn't. I'll do as a dummy,
16 okay?

17 A It enters here, basically, passes here and into
18 the breast area. It was a female so the breast was out
19 here and went through the soft tissues.

20 Q Did it actually exit and re-enter?

21 A Yes.

22 Q So, it came out again?

23 A Yes. Interesting enough, we do have a little
24 bit more definite angle because as the arm changes
25 position with the movement of a body, when it comes in

1 like this, it's going to go much higher. Because it's in
2 this plane, it's much more probable that this wound was
3 with her in an upright position because we have -- as a
4 position changes, we are going to change this angle.

5 Here we have eliminated -- not having any
6 variables like the first shot to having the variable now.
7 We know the arm has to be in this position. It's going to
8 be going upward and miss.

9 This shot, we can say with much more -- not
10 absolute certainty but more confidence that she was
11 generally in this position and allowed the bullet to come
12 through like that.

13 Q And the shooter would have had to have been to
14 the right and slightly behind the position of her body?

15 A Quite a bit behind because it's got to come like
16 this. Any more like this, it's going to go into her chest
17 and create injuries in the chest, penetrate the chest.

18 Q We have heard testimony that Mrs. Lubin was
19 sitting in a car and that the shooter was to her right.
20 If she had turned away from him, could that also account
21 for the angle?

22 A Yes.

23 Q She turns this way --

24 A Anything that put the two of them at that angle,
25 whatever it happens to be.

1 Q But her arm would have to have been by her side
2 for that to occur?

3 A In that general position, yes.

4 Q Not upward like this?

5 A Not completely upward, no.

6 Q Again, were there any significant or fatal
7 injuries from that second wound?

8 A No.

9 Q Let me show you State's Exhibit R-1 through
10 R10 and --

11 MR. LEINSTER: Could we approach briefly? I
12 don't need the court reporter.

13 (Discussion off record.)

14 THE COURT: Okay.

15 BY MR. ASHTON:

16 Q I believe I just had the doctor identify these
17 photographs.

18 A I don't recall which ones you have.

19 Q I lost my train of thought. This is R-1 through
20 R-10. I brought this over to have you identify them.
21 Those are the photographs taken of her?

22 A (Reviewing.) Okay. Yes.

23 MR. ASHTON: At this time, Your Honor, I move
24 into evidence State's Exhibit R-1 through R-10.

25 MR. LEINSTER: Nothing.

1 THE COURT: That will come in as 19.

2 THE CLERK: I believe that's 20.

3 THE COURT: 20, okay. 20A through J, composite.

4 (State's Exhibit Numbers 20A through 20J were
5 received into evidence.)

6 BY MR. ASHTON:

7 Q Doctor, to summarize this as to all three of
8 these individuals, would it be your opinion they died as a
9 result of receiving either single or multiple gunshot
10 wounds?

11 A Yes.

12 MR. ASHTON: No further questions.

13 THE COURT: Defense.

14 CROSS EXAMINATION

15 BY MR. LEINSTER:

16 Q Doctor, with respect to Johnny Lee, as you said
17 the first bullet that you described, you don't know which
18 was the first shot, do you?

19 A No. I just temporarily numbered those to have a
20 point of reference. I don't know which is the first shot.

21 Q But taking the first back wound -- that's the
22 one, I believe, that would have rendered him unconscious
23 almost immediately?

24 A Yes.

25 Q So, if that back shot had been the first bullet

1 or the second bullet, he would have, essentially, fallen
2 where he was shot?

3 A Or with very little motion after, yes.

4 Q He wouldn't have walked 20 feet, crawled 20 feet
5 and dropped?

6 A I think that's unlikely. There may be some
7 activity -- it would be more or less, but it wouldn't even
8 be the same as holding your breath. It would be very
9 limited activity. I would doubt he could go 20 feet.

10 Q Okay. And what method do you have for
11 determining how far the gun is from the body when one is
12 shot?

13 A Well, when a gun is fired, powder, both burned
14 and unburned, come out of the muzzle of the weapon. And
15 if there is, this soot material or the burning powder --
16 we call it stippling -- if that's present on the skin, we
17 can get a general range of the soot that will be on the
18 skin up to six inches away and stippling will be,
19 depending on the weapon, up to 20 inches away.

20 So, if that is present on the skin or the
21 clothing, then the determination can be made whether it's
22 further out than this or if it's in that range.

23 Q And you found no stippling?

24 A I found none on the skin. We did not examine
25 the clothing. That would be done by the crime laboratory.

1 Q You didn't receive the clothing?

2 A No.

3 Q Okay. Now, as far as the frontal shots, you
4 have indicated that one of those was, essentially,
5 horizontal across the body entering the liver?

6 A No. The one that went through the liver went
7 downward.

8 Q Okay. You described one of the frontal shots as
9 coming almost across the body, did you not?

10 A Well, yea, coming across but somewhat downward
11 to get into the liver area.

12 Q All right. At what angle, though? Let's say
13 that the -- if the body were on the ground, face up, and
14 someone were shooting at that body --

15 A Okay.

16 Q -- what sort of an angle are we talking about to
17 produce that frontal wound?

18 A Well, the shooter would be to this side. If the
19 person is laying down, the shooter would be behind the
20 person because he's got to fire over and still make it go
21 down. If he's next to it, he's going to go horizontal and
22 somewhat down.

23 Q But if he's standing over the body, it's going
24 to be more of a front-to-back angle than the angle you're
25 describing?

1 A Right. The entrance is eighteen and a half from
2 the top of the head, and that projectile is 21 inches from
3 the top of the head. So, it goes down about two and a
4 half inches in its trajectory across here. It's not real
5 steep, but it's a little bit downward. It's not
6 horizontal, though.

7 Q I understand that. But it is not consistent
8 with someone standing over the body and shooting into it.
9 It would be more consistent with someone being at a
10 distance --

11 MR. ASHTON: Let me object without a
12 hypothetical adding the position of the body. And
13 the evidence -- I'll leave it at that.

14 THE COURT: Let the expert decide whether he can
15 answer the hypothetical. I'll let him decide that.
16 I'm going to overrule the objection.

17 THE WITNESS: It wouldn't necessarily have
18 anything to do with the existence of -- well, it
19 would be the relative position of the gun. You
20 could get at that angle close or distant.

21 BY MR. LEINSTER:

22 Q You would almost have to lean and place the gun
23 almost across the body to get that angle close, wouldn't
24 you?

25 A If the body was just flat on its' back?

1 Q Right, yes. If the body were partly over a
2 little bit, then it would drastically alter that angle.
3 So, we really don't -- we don't know the other variables
4 in that situation. So, it's really hard to say
5 accurately.

6 Q With respect to Valerie Davis, you have
7 indicated that there was a slight upward angling of the
8 bullet?

9 A Yes. It came out an inch closer to the head
10 than it entered the chest.

11 Q Which would indicate that the gun was slightly
12 lower in an upward tilt to the body?

13 A Well, that would be one possibility being,
14 obviously, the bullet is going to go straight until it
15 hits the body. The other would be that it was straight,
16 and she was leaning backwards somewhat which would, again
17 -- I mean, it's either. Either is a possibility. I can't
18 say.

19 MR. LEINSTER: All right. That's all the
20 questions I have.

21 THE COURT: Redirect examination?

22 MR. ASHTON: Nothing, Your Honor.

23 THE COURT: Anybody going to want the call the
24 doctor back again?

25 MR. ASHTON: No, Your Honor.

1 THE COURT: Thank you very much. Don't forget
2 your jacket.

3 THE WITNESS: Okay.

4 MR. ASHTON: I believe there's one item that has
5 not been moved into evidence, which I would move at
6 this time, which is State's Exhibit Q. Other than
7 that, we would rest. I'll show it to Mr. Leinster.

8 THE COURT: That's the photo lineup?

9 MR. ASHTON: Yes, Your Honor, that was
10 identified by Mr. Younce at the beginning of the
11 trial.

12 THE COURT: Any objection?

13 MR. LEINSTER: No.

14 THE COURT: That will come in as 21, correct?

15 THE CLERK: Twenty-one.

16 (State's Exhibit Number 21 was received into
17 evidence.)

18 MR. ASHTON: So, State would rest at this time,
19 Your Honor.

20 THE COURT: Okay. Let's let the jury take off
21 for about ten minutes, and we're going to have some
22 legal issues to discuss; and then we'll bring you
23 back. Okay. Thank you very much.

24 (Jury goes out at 11:12 a.m.)

25 THE COURT: Any argument at this time?

1 MR. LEINSTER: Insufficient evidence --

2 THE COURT: Wait a minute. We don't have the
3 door shut. Sorry.

4 (Short Pause.)

5 THE COURT: Did you say that Mr. Barch said that
6 Kirkland was already here?

7 MR. LEINSTER: Supposed to be here at 1:00.

8 THE COURT: He hadn't arrived when he was
9 called. They are going to send him over. Okay. Any
10 argument at this time? Any motions?

11 MR. LEINSTER: Yes. I don't want to lose all
12 credibility by pretending I haven't heard the
13 evidence, but the law requires that a Motion for
14 Judgment of Acquittal be made with specificity; and,
15 ultimately, the appeals court, for whatever reason,
16 decides as a 13th juror in these situations that the
17 evidence was insufficiently proven.

18 But to discourage courts from finding that -- I
19 don't understand that, but that's the way it is.

20 In line with that, as to Johnny Lee, I would
21 concede that the evidence is sufficient to go to a
22 jury to determine the intent.

23 With respect to Mr. Williams, attempted murder,
24 it is clear that Mr. Windom had every opportunity to
25 shoot him face on. That was his second opportunity

1 to shoot him. He shot him one time in a downward
2 position in a grazing type shot.

3 Mr. Williams clearly was not dead. He fell and
4 jumped up. If Mr. Windom had the intent to kill him,
5 he would have killed him then and there.

6 With respect to Valerie Davis, there is
7 testimony that would be consistent with a quick,
8 reflexive raising of the gun from a low level
9 position, firing off a quick shot in a slightly
10 upward position.

11 The one shot happened to kill her, but there is
12 no evidence that would indicate that he had any
13 reason to kill her or that he intended to.

14 With respect to Mrs. Lubin, the testimony is
15 that as he wrestled with Mr. Brown and Mr. Duke, that
16 she pulled up within about 15 feet and that two shots
17 were fired rapidly in succession as he jerked away
18 from other two men, which would necessitate great
19 premeditation.

20 THE COURT: Okay, State, any response?

21 MR. ASHTON: Your Honor, on the second one --
22 I'm sorry. On the Valerie Davis shooting, the
23 evidence is that he walked in, made a few comments,
24 picked up the gun and shot her right through the
25 heart. That's sufficient for a jury to find

1 premeditation.

2 As to Mr. Williams, the evidence is clear.
3 Mr. Williams, luckily, turned so he didn't get the
4 full brunt of the bullet. It came in the side and
5 went out that way, though he was facing him. He,
6 obviously, turned so he didn't get it right through
7 the chest as Mrs. Davis did.

8 The fact that he survived does not change the
9 intent of Mr. Windom in firing the shot at the -- as
10 he put it, I think -- nigger cop was the word that
11 was used.

12 As to Ms. Lubin, the argument that the defendant
13 went through all the trouble -- first of all, two
14 different versions; one is Pearly Mae Riley said he
15 was alone when he fired the shots. Nothing about
16 wrestling with anybody.

17 Mrs. Law says that prior to seeing Mrs. Lubin,
18 he tore away from these other two individuals. I
19 don't believe she said that it was the middle of a
20 wrestling match that the shots were fired.

21 Even if we assumed that he deliberately tore
22 away from these individuals in order to shoot Mary
23 Lubin, it shows premeditation and more
24 deliberateness.

25 There is sufficient evidence to create a jury

1 question at this time and submit it to the jury.

2 THE COURT: Okay. As to all four victims, I'm
3 going to deny the Motion for Judgment of Acquittal. I
4 think there is sufficient evidence to let them
5 decide, especially about premeditation.

6 Defense, what is your game plan here?

7 MR. LEINSTER: Your Honor, I would request --
8 I've got Jack Lockett and Pamela Fikes out there, and
9 I could call them at this time. I would then request
10 that we adjourn. I would like to talk to my client.
11 I would also like to check the status of Dr.
12 Kirkland.

13 MR. ASHTON: Your Honor, I'm not -- are you
14 finished?

15 MR. LEINSTER: Yeah.

16 MR. ASHTON: I'm not sure for what purpose
17 Mrs. Fikes and Lockett are being called. If it is
18 for the previously stated purpose of establishing
19 some reputation or prior bad acts of Mr. Lee, there
20 still has not been a predicate established for that.
21 They cannot testify until a predicate has established
22 justifying self-defense. All the evidence is
23 contrary.

24 I don't think they would be relevant until there
25 is a predicate. I understand Mr. Windom is going to

1 supply that.

2 MR. LEINSTER: That's not the purpose they are
3 being called.

4 THE COURT: They are not going to give you a
5 reputation --

6 MR. LEINSTER: (Shakes head.)

7 THE COURT: Well, any other problem with it
8 then?

9 MR. ASHTON: No. I may have an objection to
10 whatever he's going into. Obviously, he isn't going
11 to tell me that.

12 THE COURT: Is that the extent of your witnesses
13 for this case? Lockett, Fikes, possibly your client
14 and possibly Dr. Kirkland?

15 MR. LEINSTER: I believe so.

16 THE COURT: Okay. Well, we just let the jury go
17 for ten minutes, and I think they went outside.

18 What about Eddie Windom? Did you want him? We
19 ordered him.

20 MR. LEINSTER: I'm not really certain that I do;
21 but he's in a holding cell back here, isn't he? Why
22 don't I take two minutes of our break and find out.
23 We will be in recess for the ten-minute period we
24 gave the jury. As soon as they get back, call me.

25 (Recess at 11:20 a.m. The following proceedings

1 commenced at 11:30 a.m.:)

2 THE COURT: As far as Dr. Kirkland is concerned,
3 he's on his way over here and he has a one o'clock
4 trial over in Melbourne, which is a first degree
5 also; and it's 11:30 now. So, you have suggested
6 that we profer his testimony.

7 Until I see what it connects up, I don't have a
8 clue whether I'll allow the testimony.

9 MR. LEINSTER: First of all, as part of his
10 diagnosis as to Windom's insanity, which he took to
11 be four hours of trial, then made no ruling as far as
12 the time of the incident -- since the statements
13 given by Mr. Windom were for medical diagnosis, they
14 are admissible; and he said he didn't remember a good
15 bit of what happened. He was, basically, in that
16 blackout.

17 So, that by itself, his testimony alone would
18 provide its' own predicate. And then to say is
19 there, in fact, such a condition that is
20 recognizable -- and he may say yes or no. So, you
21 will have the predicate with his profer all by
22 itself.

23 Now, I do expect, although I want to talk to my
24 client during the lunch break -- I do expect that
25 he's going to testify and expect that he doesn't

1 remember a good bit of this, which is going to
2 buttress what the doctor says. I don't want to
3 promise that as a predicate and not deliver.

4 THE COURT: State, what's your position on this?

5 MR. ASHTON: Our position is, first of all, that
6 according to the cases that we have given you, the
7 only way that a psychiatrist's testimony is
8 admissible at all in the context of an insanity
9 defense, intoxication defense or what the cases
10 refer to as things like senility, infancy, epilepsy,
11 physically variable conditions -- aside from that,
12 the Supreme Court rule, as a matter of policy, they
13 are not going to permit psychiatric testimony as to
14 diminished capacity.

15 That, clearly, is what this appears to be.
16 There is no claim of epilepsy, intoxication,
17 senility, infancy or any recognized physical or
18 mental ailment on the part of Mr. Windom.

19 All the doctor is going to testify to is
20 sometime people blackout. Whether the defendant
21 blacked out or not is relevant to some intent.

22 MR. LEINSTER: I'll talk to Mr. Kirkland.
23 That's probably number one. Even if he says it's
24 probable to blackout and act as a robot, that's not
25 relevant under Chestnut and Bunney, the case I gave

1 you.

2 THE COURT: Not knowing if the defendant has any
3 objective evidence of any kind of mental incapacity,
4 I don't know. I'm willing to listen to his profer,
5 and we'll see where it goes.

6 But I think I need to know something more than
7 he just doesn't have any memory of it. Otherwise, in
8 every single murder case -- probably everybody who
9 commits a murder is in some state of anguish; and if
10 there were a legitimate defense, it would be
11 applicable in every single murder case.

12 Then you would be exposing the possibility that
13 a jury could come back in the guilt phase and say
14 perhaps even not guilty in every single case. And
15 without some basis for his saying -- I don't know if
16 he's going to come in and say it's a 50-percent
17 chance he was in the fugue state -- Esta wrote me a
18 note that two o'clock in Melbourne has changed.
19 Maybe he doesn't have a time problem.

20 I would suggest as soon as he gets here that we
21 ought to try to get him in. Why don't we take your
22 first two witnesses and maybe do him as soon as
23 you're through with them?

24 MR. LEINSTER: Okay.

25 THE COURT: Is the jury ready?

1 (Discussion off record.)

2 THE COURT: What did you decide about Eddie
3 Windom?

4 MR. LEINSTER: I'll put Eddie on.

5 MR. ASHTON: I need to speak to him. He was a
6 last-minute witness.

7 THE COURT: Here is Dr. Kirkland.

8 MR. ASHTON: I need to speak to him a few
9 minutes.

10 MR. LEINSTER: It probably wouldn't be until
11 after lunch.

12 MR. ASHTON: That's fine. I'll speak to him
13 during lunch.

14 THE COURT: Do you want to do the profer at this
15 time?

16 MR. LEINSTER: That's fine.

17 THE COURT: All right. While the jury is out --
18 how long do you anticipate this will take?

19 MR. LEINSTER: Five to ten minutes.

20 THE COURT: The jury is going to have ten more
21 minutes than they thought.

22 Thereupon,

23 ROBERT KIRKLAND

24 was called as a witness, having been first duly sworn, was
25 examined and testified as follows:

1 THE WITNESS: Good morning, Judge.

2 THE COURT: Morning. How are you? Okay,

3 Mr. Leinster.

4 PROFFERED DIRECT EXAMINATION

5 BY MR. LEINSTER:

6 Q You're Dr. Robert Kirkland?

7 MR. ASHTON: We'll stipulate to his
8 qualifications.

9 THE WITNESS: My name is Robert Graham Kirkland,
10 yes.

11 BY MR. LEINSTER:

12 Q And you had an opportunity to examine to some
13 extent Curtis Windom with respect to his insanity?

14 A I spoke to him at the Orange County jail on
15 August 17th, ten days ago.

16 Q And in his recitation to you of the events of
17 the shootings --

18 MR. ASHTON: Your Honor, Mrs. Brennan just made
19 a point. The microphone is so loud, the jury may be
20 able to hear him.

21 THE COURT: Maybe you can lean back.

22 THE WITNESS: How is that?

23 MR. ASHTON: Perhaps we can turn the microphone
24 off.

25 THE COURT: Face it another way.

1 MR. ASHTON: Booming, boisterous voice of yours.

2 THE COURT: Go ahead.

3 BY MR. LEINSTER:

4 Q Did Mr. Windom describe for you a lack of memory
5 as to a portion of this?

6 A Yes.

7 Q And what portions did he describe a lack of
8 memory to?

9 A The middle part. There were, as I understood,
10 three incidents; and it was the middle one that he didn't
11 recall.

12 Q Okay. Did not remember his girlfriend being
13 shot?

14 A Right. Could not understand it, either.

15 Q Do you recall whether he remembered a
16 Mr. Kenneth Williams being shot?

17 A That issue didn't come up. My understanding
18 from talking to him is that there were four -- excuse me,
19 there were three charges, and the issue of Mr. Williams
20 never came up. I didn't know about it, and he didn't
21 mention it.

22 Q All right. Now, you have indicated to me that
23 the literature supports the theory of a fugue state, which
24 is potentially inspired by one trauma and then leading to
25 others in succession; is that correct?

1 A There is a bona fide psychiatric condition
2 called a fugue state.

3 Most commonly, that is a situation when you hear
4 about an ordinary fellow who, after super one evening,
5 goes to the store to get some cigarettes; and then
6 disappears, and he, in essence, sort of wakes up in
7 Abilene, Texas, a long way off, four years later and has
8 been living under a different name, has married again, et
9 cetera. All of a sudden he remembers, so to speak.

10 There is also a type of a fugue state that is a
11 short period of very frenzied activity, mostly just wild
12 flashing about, no deliberate actions, something almost
13 like a seizure but happening in the absence of brain
14 abnormality.

15 Q You mentioned to me something about a boy with a
16 baseball bat as an example of this, one of the cases
17 involved in a fugue state?

18 A Yes.

19 Q And the context in which you told me that, as I
20 understood it, was that after having committed the first
21 act that generated the fugue state, he committed some
22 other violent acts and would not necessarily remember
23 those?

24 A That was the considered opinion of a group of
25 experts, myself included.

1 Q Now the fugue state is not like schizophrenia.
2 It's not like psychopathic behavior. It is simply a
3 blackout type of condition; isn't that right?

4 A It can be -- it's not like a blackout in terms
5 of somebody fainting or falling down. It is a brief
6 acting period of senseless, poorly-directed behavior or
7 long period of depersonalization.

8 As a matter of fact, it's one of the
9 depersonalization disorders. But it can be either long or
10 short. The person does not necessarily lose consciousness
11 during that.

12 Q I understand that. I also asked you whether or
13 not, if you knew everything there was to know about Curtis
14 Windom back to front, that the best you would be able to
15 do would be to say it's possible that he didn't remember
16 because of a fugue state. You're sort of left with that,
17 aren't you?

18 A Pretty much, yes.

19 Q Okay. And, so, describing -- I don't know if
20 you know all the evidence here; but the hypothetical here
21 is that Curtis Windom, who has never shot anyone before so
22 as anybody knows, goes off and shoots Johnny Lee to death,
23 then goes and shoots his girlfriend and then goes and
24 shoots another fellow, who doesn't die, and then goes and
25 shoots another lady who does?

1 A Yes, sir.

2 Q And you have indicated that portion involving
3 his girlfriend he claims not to remember?

4 A Yes.

5 Q And would that information where that
6 information -- are you saying that possibly the first act
7 of violence induced the fugue state and he doesn't
8 remember? It's possible otherwise, also?

9 A Yes. That's correct.

10 MR. LEINSTER: I tender him.

11 PROFFERED CROSS EXAMINATION

12 BY MR. ASHTON:

13 Q Doctor, just so we're clear, you are not
14 rendering an opinion that is legally insane under the
15 McNaughton standard?

16 A Correct.

17 Q How does one act in this fugue state? In other
18 words, a person observing someone in a fugue state, what
19 would they see?

20 A Purposeless activity, short of a frenzied sort
21 of thrashing about. Someone who appeared to be perfectly
22 normal.

23 Q And would someone have the ability in this fugue
24 state to perform goal-directed activity?

25 A Yes.

1 Q What is their thinking process during the fugue
2 state?

3 A Maybe perfectly normal or maybe static.

4 Q All right. If someone is in a fugue state and
5 performing goal-directed activities for particular logical
6 reasons, would that tend to indicate that at that
7 particular time they had the ability to think and to plan
8 and to premeditate?

9 A If I might use my own example.

10 Q Sure.

11 A The fellow who was thrashing about is not likely
12 to understand what's going on. It's, in essence, like
13 having a seizure. The other gentlemen who happened to
14 have a life in the city in Texas, if he were to commit a
15 crime, he would probably be responsible for that crime, so
16 to speak, during that time. Criminal activity is not a
17 regular presentation of this disorder.

18 Q Is it also possible that someone can have a -- I
19 may be using a term that's not correct -- hysterical
20 amnesia, forget a traumatic event?

21 A That's possible.

22 Q And that would not necessarily mean that at the
23 time the event occurred they were not in possession of
24 their complete faculties?

25 A You're correct.

1 Q Is it your opinion, to a reasonable degree of
2 expert certainty, that at the time he shot anybody in this
3 case that he was in this fugue state?

4 A No.

5 Q You could merely say it's possible?

6 A Yes.

7 Q Is it a common -- something you see commonly?

8 A No.

9 Q Or is it fairly rare?

10 A Rare.

11 Q Does the fugue state -- in other words, not the
12 thrashing variety of the fugue state but the other variety
13 you have described -- affect the ability of a person to
14 plan and premeditate?

15 A No.

16 MR. ASHTON: No further questions.

17 THE COURT: What was the last question?

18 MR. ASHTON: The question was -- he gives two
19 forms, one where there's thrashing, whether that
20 would affect his ability to plan and premeditate, and
21 the Doctor said, no, it would not.

22 THE COURT: So, what you're saying is that if he
23 were in a fugue state, he would still plan and
24 premeditate the murder?

25 THE WITNESS: Your Honor, my fellow that I've

1 got in Texas now who left to go get cigarettes and
2 lived in Texas might during this time when he is
3 still in a fugue, although it's not a troublesome
4 fugue -- it's quiet. He has no recall of his
5 background. He is missing a large part of his life
6 but covers that up. He could certainly, in theory at
7 least, plan and commit a crime during that period of
8 time; and I would think he would be probably
9 responsible.

10 If we go one more step, now we get this fellow
11 to recover his fugue and come back to his family in
12 Orlando and realizes he has committed a crime, he
13 hasn't been apprehended, that would be entirely
14 different as to what his situation would be like now
15 as Person A and as opposed to when the crime would be
16 as Person B, what responsibility Person A would
17 have.

18 THE COURT: Has he come out of the fugue state?

19 THE WITNESS: Let's assume he has come out of
20 the fugue now. A, Mr. A goes out for a pack of
21 cigarettes in 1986. Disappears. Develops a fugue
22 state. Lives in Texas for four years as Mr. B.
23 Commits a crime as Mr. B.

24 If he's apprehended and dealt with, I wouldn't
25 think he would have any problem.

1 But let's assume he doesn't get apprehended and
2 recovers and goes back to being Mr. A again; and a
3 year later is found to have committed that crime
4 while he was Mr. B, then the mental issue would be, I
5 think, one to be decided.

6 BY MR. ASHTON:

7 Q What you're saying is it is a question of legal
8 or moral responsibility because he is two different
9 people?

10 A That's correct.

11 Q When he was Person B he was able to premeditate
12 and plan those functions?

13 A Yes.

14 THE COURT: How long does a fugue state last?

15 THE WITNESS: Any length of time. Ten seconds
16 to four years or longer.

17 THE COURT: How does it distinguish itself from
18 amnesia?

19 THE WITNESS: Regularly a part of it doesn't
20 distinguish itself from amnesia.

21 THE COURT: So that's part of it?

22 THE WITNESS: That's part of it, yes.

23 THE COURT: Anything else, Mr. Leinster?

24 MR. LEINSTER: I don't think so.

25 MR. ASHTON: No other questions.

1 THE COURT: I think we're going to have argument
2 on this. So you want -- when would he be testifying
3 if he were to be testifying?

4 MR. LEINSTER: I would, in order to make it
5 convenient for him, call him right away, assuming the
6 legal argument doesn't take any time.

7 THE COURT: Okay. Why don't -- could you wait
8 in the room back there? We'll let you know which way
9 we're going on this.

10 Anything else from the defense other than what
11 you've already said?

12 MR. LEINSTER: So far as argument?

13 THE COURT: About his testifying to this fugue
14 state under the Wise case.

15 MR. LEINSTER: Yeah. The Bunney case, which
16 asked the Supreme Court to overrule Wise did not.
17 And, interestingly, Chestnut plowed up all their
18 ground and came to something -- I think, fairly
19 co-joint decisions insofar as the law is capable of
20 being that way. Certainly set the standard.

21 But then Wise came along with the First
22 District. And if Chestnut had had sufficient
23 background to actually discuss epilepsy and a variety
24 of other potential ailments, it would simply cover
25 the waterfront; and we wouldn't have the Wise

1 decision at all.

2 Wise says we've got Chestnut and here's what it
3 says. Let's see here. Epilepsy or blackouts,
4 whatever the amnesia aspect of what this gentlemen
5 would profer here, yea, we're going to let that in.
6 We don't think that's barred by Chestnut.

7 What we have here, another new wrinkle on the
8 psychiatric front, not contemplated, specifically, by
9 Chestnut nor contemplated by Wise and Bunney because
10 now we are talking about amnesia. Amnesia is
11 commonly understood.

12 He is not going to testify that my client was in
13 that state. He is simply going to show that he says
14 he was and, yes, that is possible.

15 Most jurors would, I think, say, yea, he says he
16 doesn't remember. I don't buy it. And if for no
17 other reason, I'd like him to be able to testify
18 that, yes, that is possible that he is telling the
19 truth about that.

20 THE COURT: Is that your client's only defense
21 to this case? Does it go to the heart of his
22 defense?

23 MR. LEINSTER: We're not claiming self-defense.
24 Yeah, I'm arguing intent. That's it.

25 THE COURT: Okay. State.

1 MR. ASHTON: The first difficulty with this is
2 Dr. Kirkland just said this fugue state has nothing
3 to do with intent. So, I'm not sure what element
4 this is relevant to.

5 It's not relevant to insanity; it's not relevant
6 to intent. So, the first level of this, this isn't
7 relevant to anything except, apparently, Mr. Leinster
8 wants to have the Doctor to testify to try to bolster
9 the credibility of his client's claim that he doesn't
10 remember anything.

11 It's not beyond the realm of any -- that isn't
12 relevant, for one thing, whether he claims to
13 remember anything or not. Isn't relevant.

14 Two is it doesn't go to intent. My problem is
15 I'm confused as to what Mr. Leinster wants to ask
16 this Doctor. Does he want to ask is it possible to
17 have amnesia 56, killing somebody?

18 THE COURT: He would say yes.

19 MR. ASHTON: He would say yes, which is not
20 beyond the realm of a normal juror's understanding.

21 Two, why is that relevant? What does that tell
22 us? Credibility. There's plenty of case law that
23 says you cannot have an expert vouch for the
24 credibility of any witness. I don't have that with
25 me. You can't do that. That, apparently, is the

1 point here.

2 If there's a different point, I'm confused.

3 I'll be honest with you.

4 THE COURT: Are you trying to get him to say
5 that fugue has anything to do with intent?

6 MR. LEINSTER: Sure. He got through saying
7 Party A and Party B, that he may be responsible as
8 Party B if found as Party B at the time. If he comes
9 back and becomes Party A, who knows.

10 It's up to the Court to decide. We don't know
11 how much responsibility to allocate to a man in an
12 amnesia state. And if Mr. Ashton didn't see the
13 relevance, he wouldn't be objecting.

14 MR. ASHTON: I object to bringing in thinking
15 that's not relevant and going to distract the jury
16 from their job. What he said was when a person in an
17 a fugue state commits a crime, they do have the
18 ability to perform specific intent.

19 What he says, it's up to you guys to decide
20 whether you want to give somebody an out because they
21 were a different people. Florida decided. We
22 don't. We don't give people an out for that reason.

23 We give them an out when they are insane and
24 that's it. That's not a question here. The law is
25 already made.

1 This is precisely the kind of what Bunney calls
2 esoteric illnesses for which there is no objective
3 symptoms. The Bunney case said or the Supreme Court
4 has made a policy decision not to allow this. Under
5 both of those reasons, I believe the Court should not
6 allow the testimony.

7 MR. LEINSTER: What he said, Dr. Kirkland would
8 bury me with the intent issue. I think he would be
9 chomping on the bit to have Dr. Kirkland.

10 THE COURT: I have read all three of the cases.
11 Frankly, I personally feel like -- and that's not
12 the way I'm going to end up on this.

13 I don't see any evidence that the defendant has
14 any kind of objective kind of brain damage or mental
15 incapacity or any history of epilepsy or amnesia or
16 any evidence that he has suffered from anything
17 except during this one little 30-minute period in his
18 life when, of course, his life depends on how it
19 comes out.

20 On the other hand, it is his only shot in this
21 case. It's his only defense. It's the only thing
22 he's going to present on his behalf. And I'm
23 concerned that, as crazy as I think the idea of the
24 fugue state defense is, I'm going to let the Doctor
25 testify to that.

1 And the State certainly can bring out the points
2 that you think are relevant. So if you want -- do
3 you want him to testify first before they have heard
4 the basis for all this?

5 MR. LEINSTER: I'm doing this for his
6 convenience.

7 MR. ASHTON: I object to this convenience. I
8 have no grantee Mr. Windom is ever going to take the
9 stand.

10 THE COURT: He's saying that the Doctor is going
11 to say he forgot. And being an expert, he would be
12 able to say what he based his evaluations on.

13 MR. ASHTON: If I could have a couple minutes, I
14 could hand you a case that says an expert cannot give
15 an opinion based merely on hearsay statements from a
16 defendant.

17 THE COURT: I, frankly, think you ought to have
18 the evidence presented so it makes more sense to the
19 jury before you put the Doctor on to explain it.

20 I don't want to tell you how to run your case.
21 But I think that's what I think you need to do. If
22 we have to bring him back, we can bring him back. He
23 can go to lunch and come back.

24 MR. LEINSTER: I don't have any problem with
25 that.

1 THE COURT: Why don't we set him a time to come
2 back. Can you bring in Dr. Kirkland and we'll see.

3 (Short Pause.)

4 THE COURT: So, you would put on how many
5 witnesses? How long will you be in testimony before
6 you'd want to put the Doctor on?

7 MR. LEINSTER: Well, if we did it in the fashion
8 that you think is appropriate, I would be putting on
9 three people first. Now, two of those are their
10 former witnesses, and they will be pretty brief.

11 THE COURT: Okay. So, are we talking -- how
12 long will your client be? You said he was going to
13 testify.

14 MR. LEINSTER: I said I thought he would. I
15 told you I wasn't promising that as a predicate. If
16 he testifies, I can't control Mr. Ashton. So, I
17 wouldn't presume how long it would take.

18 THE COURT: I'm going to let you testify in the
19 case as to what you have just said. I understand
20 that you don't have the two o'clock in Melbourne
21 anymore?

22 DR. KIRLAND: I do have it. It changed from one
23 to two.

24 THE COURT: It changed from one to two, okay.
25 Well, what we could do is do this and then go to

1 lunch and have a late lunch.

2 MR. LEINSTER: Fine.

3 THE COURT: Okay.

4 MR. LEINSTER: Yes.

5 THE COURT: So, you're going to put on whatever
6 you're going to put on and then Dr. Kirkland. And he
7 needs to be out of here by one.

8 DR. KIRLAND: An hour and forty-five minutes,
9 Judge.

10 MR. ASHTON: Is the Court ruling that he can
11 testify and state Mr. Windom's statements?

12 THE COURT: Well, I think we need some basis for
13 his saying this other than just that the defendant
14 told him that he doesn't remember it. I think you
15 need something other than the hearsay statement.

16 MR. LEINSTER: Then we're not going to get the
17 Doctor to his two o'clock, because what you're saying
18 is you feel that I need to put my client on. He's
19 the only predicate.

20 THE COURT: I'm not telling you you've got to
21 put your client on. Dr. Kirkland isn't going to give
22 us much about a fugue state without a predicate in
23 the record.

24 MR. LEINSTER: That's not going to get the
25 Doctor to Melbourne.

1 MR. ASHTON: It will if we put Mr. Windom on
2 now.

3 THE COURT: We're wasting time, too. I don't
4 know how you're going to do it. And how long are you
5 going to be in Melbourne?

6 DR. KIRLAND: Their estimate was that I would be
7 there the rest of the day and maybe tomorrow morning,
8 also.

9 THE COURT: Frankly, I don't know what to do
10 about this. I can't make time happen.

11 MR. LEINSTER: What I think you need to do is
12 make a legal ruling that his testimony is going to
13 depend on my client taking the stand. He's the only
14 other predicate.

15 I can't establish any other predicate without my
16 client saying he doesn't remember unless the State
17 would like to stipulate a number of his relatives can
18 say that and they are not --

19 THE COURT: That's no better.

20 MR. ASHTON: Plus, the fact that under the case
21 of Cirack, C-i-r-a-c-k, versus State 201 So.2d 706,
22 it says that a court-appointed psychiatrist cannot
23 render an opinion on these issues based merely on the
24 self-serving declarations of the defendant. That's
25 all there is. I'll give the Court the case.

1 I understand the Court wants to give the defense
2 every opportunity and I agree. Based on the case,
3 they should get every legal opportunity. I think
4 this is going way beyond --

5 THE COURT: I think there has to be a basis for
6 the Doctor to testify before the jury and they have
7 heard nothing. And I don't think his coming in here
8 telling us what the defendant told him without more
9 than that is going to be a decent basis or legitimate
10 basis for his testimony.

11 MR. LEINSTER: All right.

12 THE COURT: That's it.

13 MR. LEINSTER: Then, what I would have to do is
14 make a decision to tell you right now that my client
15 is going to testify and risk your wrath if I change
16 my mind because I don't want to put my client on the
17 stand at this point in time. He's the only predicate
18 you could possibly have. If somebody says I don't
19 remember, what other possible predicate could you
20 have?

21 So, I would go ahead so that the Doctor could
22 get to Melbourne and say that I have now chosen to
23 put him on the stand because I do want the Doctor's
24 testimony.

25 THE COURT: You're not going to set up this

1 situation like that. I'm not telling you that you
2 have to put your client on right now.

3 MR. LEINSTER: I didn't say that. I said that
4 you needed more predicate than just my client's
5 statements to the Doctor, and I don't have any other
6 predicate.

7 THE COURT: I'll tell you what: Over the
8 State's objection, I'm going to let the Doctor
9 testify now; and we'll see whether Mr. Windom
10 testifies or not.

11 Certainly, if he doesn't, the State will have
12 their argument for closing. But I'd rather take care
13 of it now. It's a disadvantage for the State, and
14 I'm sorry; but that's what I'm going to do.

15 MR. ASHTON: I assume I will be able to recall
16 the Doctor. I have no idea what this man or
17 Mr. Windom is going to say.

18 THE COURT: If worse comes to worse, we will
19 postpone the trial until tomorrow night or Saturday,
20 if that's what you want to do. I can't make time
21 happen. I can't change his appointment over there in
22 Melbourne. I'm doing the best I can.

23 If you need to call him back, we will do it at
24 whatever convenience y'all can get it together.

25 MR. ASHTON: Yes, ma'am.

1 THE COURT: That's the best I can do. Let's
2 bring in the jury, and we'll do Dr. Kirkland.

3 COURT DEPUTY: He doesn't have to be resworn?

4 THE COURT: No. We'll say he was under oath
5 already. Let's bring in the jury.

6 (Jury is in the box at 12:00 noon.)

7 THE COURT: Have a seat. Does the State and
8 defense recognize the jury is properly seated?

9 MR. LEINSTER: Yes.

10 MR. ASHTON: Yes, Your Honor.

11 THE COURT: Okay. I'm sorry it took longer than
12 we expected. There are certain things we have to
13 take up, and you don't need to be in here.

14 We have Dr. Kirkland, and he has already been
15 sworn. So, the defense is going to present testimony
16 at this time.

17 DIRECT EXAMINATION

18 BY MR. LEINSTER:

19 Q You're Dr. Robert Kirkland?

20 A Robert Graham Kirkland, yes, sir.

21 Q And you practice psychiatry here in Orlando?

22 A I am psychiatrist, yes, sir.

23 MR. LEINSTER: Will the State stipulate to his
24 qualifications?

25 MR. ASHTON: Yes.

1 BY MR. LEINSTER:

2 Q Doctor, you had the opportunity to interview
3 Curtis Windom?

4 A Yes.

5 Q And for how long did you interview him?

6 A The best part of an hour.

7 Q Did he familiarize you to any extent with the
8 happenings related to the shootings in Winter Garden?

9 A He told me the scenario according to him to the
10 best of his ability.

11 Q All right. And was there a gap in his
12 recollection as he told you?

13 A Yes.

14 Q And what portion would that have been?

15 A Mr. Windom stated that he remembered his
16 encounter with victim number one -- I believe that's
17 Johnny Lee -- that he did not remember the encounter with
18 his girlfriend, Valerie; and, once again, he did remember
19 his encounter with the third victim, the victim Valerie's
20 mother.

21 Q All right. Now, you have indicated that there
22 is a condition called a fugue that --

23 MR. ASHTON: Objection to the leading nature of
24 the question, Your Honor.

25 THE COURT: Okay. Could you restate the

1 question?

2 BY MR. LEINSTER:

3 Q What is a fugue state?

4 A A fugue state is a type of depersonalization
5 reaction that people sometimes suffer, apparently, because
6 of stress, pressure, although we don't always know what
7 the stress is.

8 During this time of what we call a fugue -- a
9 fugue is a musical term. It has to do with a kind of
10 frantic playing of discord notes. And, in fact, the
11 person quite often acts in a frenzy or with very rapid
12 movements, usually purposeless movements, flashing around
13 and about.

14 During that period of time, which may last a
15 short period of time or a long time, they have problems
16 with depersonalization. They may not know who they are.
17 They may have difficulty remembering the state when it
18 occurred.

19 There is also a type of disorder that's called a
20 fugue state in which a person loses their identity, so to
21 speak. This is the situation that you have probably read
22 about in the newspapers in which Mr. Jones, upstanding
23 citizens, leaves. Married and a father of three children,
24 an electrical engineer, leaves home one evening after
25 diner, gets a pack of cigarettes and isn't heard of for

1 four years.

2 Four years later he returns. In the meantime he
3 has been living in a city three hundred miles away under a
4 different identity having, so to speak, awakened from this
5 other citizen with a previous life planned out. He may
6 have married again and had children.

7 Then three or four years later, he wakes up
8 again and remembers he is Mr. Jones and returns to his
9 home.

10 These illnesses, as I mentioned, represent a
11 loss of personal -- loss of knowing who one is and is a
12 certain amount of amnesia, the regular part of it.

13 Q Is the fugue state that you're describing in a
14 sense like amnesia?

15 A It is a part of it, yes.

16 Q And is there a fugue state that is recognized as
17 being induced perhaps by a -- committing a violent crime?

18 A Well, the commission of a violent crime is
19 stressful, not only to the victim but also to the
20 perpetrator and, yes, we do see significant, emotional
21 reactions occurring after the commission of crimes.

22 Q Which could include the amnesia you describe?

23 A Which could include the amnesia, yes.

24 Q And that could be a short period or a long
25 period?

1 A It could be seconds and could be hours. And, as
2 I mentioned, Mr. Jones could have lived in another city
3 for four or five years.

4 Q So, the fact that someone describes to you they
5 don't remember what happened is not that they do remember
6 and just don't want to --

7 MR. ASHTON: Objection. Comments on
8 credibility are not proper.

9 THE COURT: Sustained.

10 BY MR. LEINSTER:

11 Q Have you made any diagnostic find as to
12 Mr. Windom as to whether he was or was not in a fugue
13 state?

14 A No.

15 Q Is it reasonably, medically possibly that he
16 was?

17 A That's two questions, Mr. Leinster. Is it
18 reasonable and possible? It is possible, yes. Is it
19 reasonable or likely? No.

20 Q Okay. And you have had, what, one interview
21 with him?

22 A Yes.

23 Q Now, have you described for me one of the case
24 histories involving a fellow with a baseball bat?

25 A Yes.

1 Q What is that case history?

2 A I described to Mr. Leinster a situation in which
3 a young man, college student, came home on a holiday; and
4 while practicing -- he was a baseball player. And while
5 practicing his batting stroke, he, apparently,
6 accidentally hit his father in the head and killed him.
7 The blow killed him.

8 It was accepted that it was an accident. The
9 trauma of it to the young man led him into a severe
10 psychotic reaction during which time he killed his mother
11 and an older brother.

12 And that period of time lasted for minutes, 30
13 minutes or so. And then he, in essence, regained the --
14 he overcame this psychosis, and there was another killing
15 after that. So, it was kind of deliberate.

16 So, we had a case in which this young man was --
17 this was kind of accepted by a group of well-known experts
18 in my field that, in essence, he committed an accidental
19 killing at first, the first one; and then the middle two
20 were committed during a severe mental disorder.

21 And the last one, that of the younger brother,
22 was committed during the period of time he was rational
23 and responsible for his actions.

24 Q You say you were personally involved in that
25 evaluation?

1 A No. I was involved in a teaching seminar using
2 that case, which is a real case from Cleveland, Ohio.

3 Q And do you know how much evaluation went into
4 their determination?

5 MR. ASHTON: I'm going to object. This goes
6 beyond merely an example demonstrating this. I
7 object to its' relevancy.

8 THE COURT: Overruled.

9 THE WITNESS: Yes. They had several experts who
10 examined him at great length, examined the young man
11 at great length, including video-taped interviews and
12 so forth.

13 BY MR. LEINSTER:

14 Q Lastly, how long has what you regard as the
15 fugue state been recognized as a psychiatric possibility?

16 A Many years.

17 MR. LEINSTER: That's all I have.

18 THE COURT: State, cross?

19 CROSS EXAMINATION

20 BY MR. ASHTON:

21 Q Speaking of one case you told us about, what was
22 it? You said that the first killing was accidental; there
23 is second and third, and the fourth was deliberate?

24 A Yes.

25 Q What was it about the nature of the second and

1 third that convinced you that it was fugue state and the
2 last was deliberate? How were they deliberate?

3 MR. LEINSTER: I don't believe he was involved
4 in evaluations that convinced him. He testified to
5 the incident.

6 THE COURT: Surely he can testify if he knows
7 what the distinction was.

8 THE WITNESS: The second two were done in a
9 frenzy, and it was a violent frenzy.

10 BY MR. ASHTON:

11 Q Was it a continuous episode of frenzy?

12 A Lasting for minutes. The last one was coldly
13 thought out to prevent his younger brother from
14 discovering the other crimes and reporting them. So, he
15 deliberately killed his younger brother and set his house
16 on fire in an effort to avoid --

17 Q Would you say an individual reloading a gun
18 would be inconsistent with him being in that fugue state?

19 A No.

20 Q It would not be inconsistent with it?

21 A It would be inconsistent with a frenzy type.

22 Q Okay. And you have indicated, I believe --
23 assuming, hypothetically, that in this case the evidence
24 showed that the defendant killed the first victim, walked,
25 passing individuals on the street to his apartment, shot

1 the second victim after speaking to her, having a
2 conversation with her and calling her by name, reloaded
3 his gun, walked out, shot a second individual after
4 referring to him as a police informant, which in fact he
5 was, walked down, had a conversation with his brother and
6 then walked a few more feet and shot victim number two's
7 mother. That would not be consistent with the frenzy
8 fugue state?

9 A Correct.

10 Q There is another kind of fugue state that you
11 referred to where somebody loses their memory and lives
12 another life for four years?

13 A Yes.

14 Q When a person is in that fugue state, he has no
15 memory of his prior life; is that correct?

16 A Correct.

17 Q So, if Mr. Windom during the time of the first
18 shooting and the third talked to people he knew, expressed
19 the indication that he was aware of who he had been and
20 these people were, that would indicate he was not in that
21 fugue state at that time?

22 A Correct.

23 Q Now, even when this hypothetical person is in a
24 fugue state -- the person has forgotten who they were --
25 they are still able to function intelligently at that

1 moment; they don't have a memory of who they were?

2 A That's correct.

3 Q And a fugue state does not lead a person to
4 commit acts of violence.

5 A No.

6 Q Now a person in a fugue state -- not the frenzy
7 type -- they are capable of premeditating, planning and
8 intending their actions; is that correct?

9 A Yes.

10 Q If you were told, as I indicated -- first of
11 all, were you given any of the facts of this case other
12 than what you were told by Mr. Windom?

13 A I have talked to Mr. Leinster, and I got some
14 information from Mr. Leinster.

15 Q What did he tell you about the facts of the case
16 in addition to what the defendant told you?

17 A Not a lot. We spent more time talking about a
18 possibility of emotional reaction in the midst of all of
19 this.

20 Q Taking this hypothetical, let us assume the
21 following facts: That the defendant went to a store,
22 purchased ammunition, went to his home, loaded his gun,
23 got in his car, drove two blocks. Finding the first
24 victim, said to the first victim, "I want my fucking
25 money, nigger;" shot him twice in the back.

1 He fell. Shot him twice in the front. Ran to
2 his apartment. He met his girlfriend. Said to his
3 girlfriend, "Val, I have had enough. I'm through. I'm
4 through," and then shot her.

5 Went into the bedroom, reloaded the gun with
6 five fresh shells, walked out of the apartment, meeting up
7 with victim number three, saying, "I don't like police ass
8 niggers anyhow," shot him once, walked down the block, had
9 a conversation with his brother, where his brother tried
10 to take the gun away.

11 Upon seeing the fourth victim, approached her
12 car and shot her twice. Would that indicate at any time
13 the defendant did not intend the actions he was taking in
14 your opinion?

15 A No.

16 MR. ASHTON: No further questions.

17 THE COURT: Redirect examination?

18 REDIRECT EXAMINATION

19 BY MR. LEINSTER:

20 Q Let's talk about that just a second. The case
21 history you provided with the young man with the baseball
22 bat --

23 A Yes.

24 Q -- would that have been a frenzied fugue state?

25 A The middle one, the killing of the mother and

1 older brother, yes.

2 Q Then right after that, there was a well
3 thought-out, well-planned, methodical killing of the
4 brother?

5 A Younger brother, right.

6 Q So, there was a middle portion that was,
7 basically, forgotten, I guess, amnesiac period?

8 A Yes.

9 Q And then the ability to think out the last
10 killing, right?

11 A Yes.

12 Q All right. Now, do you know how the team of
13 psychiatrists who evaluated that determined that the last
14 one was not a fugue state?

15 A By talking to him. That and by his actions.
16 The actions as described. His behavior soon thereafter.
17 He set the fire and then returned to college which was in
18 another city.

19 Q Now, in theory, the period of the fugue state
20 that you have described was set in motion by the first
21 act?

22 A Yes.

23 Q And you described the intent, the ability to
24 form intent for someone in a fugue state, Party A, who
25 starts off in his life and suddenly disappears, that's not

1 necessarily the case.

2 You used a hypothetical of a fellow that loses
3 life for four years and comes back.

4 A Yes.

5 Q It could be a shorter period of time than that?

6 A Yes.

7 Q All right. Now, that person, for whatever short
8 or long period of time, becomes Party B, right?

9 MR. ASHTON: Your Honor, may I object and
10 approach the bench?

11 THE COURT: All right.

12 (The following is a bench conference.)

13 MR. ASHTON: I am concerned that Mr. Leinster
14 is going to get into the point he was making
15 Previously outside the presence of the jury about
16 moral responsibility when you re-acquire your
17 person.

18 That's not a subject for this witness to give an
19 opinion about. It is a legal matter. Maybe I'm
20 jumping the gun, but I think that's where he's going
21 and I object.

22 MR. LEINSTER: I don't think he's qualified to
23 talk about responsibility.

24 THE COURT: Where are you going?

25 MR. LEINSTER: He's talking about intent. He

1 raised the issue could someone form intent.

2 I'm going back to his presentation that Party A
3 becomes Party B, as Party B forms an intent to do
4 something then becomes Party A again and doesn't
5 remember.

6 THE COURT: All right.

7 MR. ASHTON: I don't think he ever said Party A
8 doesn't remember. If that's where you're going,
9 that's fine.

10 (End of bench conference.)

11 BY MR. LEINSTER:

12 Q Back to what started out as a question, Party A
13 becomes Party B for a short or long period. As Party B,
14 you have indicated that Party B could form an intent to
15 commit a crime.

16 A Yes, sir.

17 Q All right. And then regardless of the length of
18 time involved, Party B then becomes Party A again?

19 A Yes, sir.

20 Q Okay. Party A would necessarily remember or not
21 remember being Party B?

22 A Probably not remember it.

23 Q Okay.

24 MR. LEINSTER: That's all I have.

25 THE COURT: Recross?

RECROSS EXAMINATION

BY MR. ASHTON:

Q Based on the hypotheticals I have given you, Mr. Windom does not appear to be in a fugue state in this case based on the facts I gave you?

A Correct.

MR. ASHTON: No further questions.

THE COURT: Okay. Then is -- you want us to keep him on standby or not?

MR. ASHTON: If I need Dr. Kirkland, I'll call him. He can go about his business.

THE COURT: Drive carefully. Why don't we take a lunch break now and come back at 1:30. That gives you an hour and 15 minutes, because I think you're going to hit the crowds. 1:30 we'll see you.

Don't talk about the case. Don't read the paper. Don't listen to the news. Don't talk to lawyers, defendant or witnesses. Other than that, have a great lunch.

(Jury is out at 12:17 p.m. The following proceedings commenced at 1:30 p.m.)

THE COURT: Anything we need to do before the jury comes in?

MR. LEINSTER: There is something, Your Honor.

THE COURT: What's that?

1 MR. LEINSTER: I had mentioned once before, but
2 I neglected to mention just before lunch that I would
3 propose to put on the tape of Curtis Windom after his
4 arrest. I think Mr. Ashton announced a problem with
5 that at one point. So --

6 THE COURT: You said there was a problem with
7 that.

8 MR. ASHTON: Yes, Your Honor. The first thing
9 is the relevance of it. It's a tape of a
10 conversation between Mr. Windom as his mother, most
11 of which is inaudible. I guess I need to know the
12 relevance of it. If it is for the truth of a matter
13 asserted, then it's hearsay clearly.

14 THE COURT: When was he arrested on the case?
15 How long after the incident?

16 MR. ASHTON: I think it happened at noon. He
17 was arrested about three or four. This tape is
18 probably at five or six o'clock in the morning. It's
19 definitely in the evening hours.

20 THE COURT: What's the purpose of the tape?

21 MR. LEINSTER: The tape shows Mr. Windom in an,
22 obviously, confused state. The police have brought
23 him in to the station. At first they sit with him.
24 Then the two of them get up and leave, leaving him
25 ostensibly alone with his mother.

1 Now the purpose of that, obviously, was they
2 hoped they would be able to catch him on candid
3 camera stating something like, "I went out and shot
4 four people."

5 What they got was a tape, basically, with Curtis
6 Windom agitating back and forth in his seat with his
7 mother -- frankly, what he's saying you can't discern
8 very well. That's why I originally tried to get a
9 transcript. All you can hear from her, basically, is
10 she thinks he needs some kind of help.

11 What he says is strictly, "They say I done
12 this," or, "I don't remember this." Basically, what
13 the doctor said his testimony was to him. It's a
14 state of mind at the time.

15 I would cite to the Court Glass v. State
16 574 So.2d 1099, which is a Supreme Court case, '91,
17 talking about the testimony of the defendant, his
18 statement.

19 Because Downs was charged with premeditated
20 murder, his state of mind at the time of the murder
21 was an issue. Court must determine if declaring
22 state of mind at the time of the declaration is
23 relevant to state of mind at the time at issue.

24 If a finding that four or five hours later his
25 state of mind is demonstrably confused and in line

1 with what the doctor says, it's clearly relevant.

2 THE COURT: State?

3 MR. ASHTON: Is what Mr. Leinster trying to get
4 in the video or the audio portion? If it's just
5 video, that's fine, no problem. If it's the audio
6 portion that contains statements by his mother which
7 are clearly hearsay and statements by him which are
8 also hearsay --

9 THE COURT: What do you mean hearsay? The fact
10 the mother is talking and she didn't testify?

11 MR. ASHTON: Right. Obviously, she wants to
12 testify as to his state of mind, what he was saying,
13 what he was doing. But I don't know how -- the
14 question for me is: I have listened to the
15 statement. I can't understand anything Curtis Windom
16 says on the tape.

17 The question is what does Curtis Windom say that
18 the defense wants to get before this jury? That is
19 the issue first.

20 THE COURT: What is it he says?

21 MR. LEINSTER: I just told everybody.

22 THE COURT: That he appears confused? You can
23 understand his words?

24 MR. LEINSTER: I can. I can't understand his
25 mother, but I can understand him. Sometimes I can;

1 but, for the most part, what you hear is, "I don't
2 remember. They said I shot somebody." He doesn't
3 say anything about I didn't shoot somebody or I did
4 shoot somebody.

5 It's just, basically, "I don't remember."
6 That's the totality of it.

7 MR. ASHTON: Your Honor --

8 MR. LEINSTER: Let me continue, please.

9 MR. ASHTON: I'm sorry.

10 MR. LEINSTER: Mr. Ashton says his mother could
11 testify as to whatever he said. Well, if that's the
12 case then it clearly isn't hearsay, if he concedes
13 that his mother can take the stand and say what he
14 said. You just pointed to a Supreme Court case which
15 talks about the introduction of that kind of
16 statement where it bears on the state of mind.

17 THE COURT: Who was the statement made to in the
18 Glass case and what kind of tape was it are we
19 talking about? Who are they talking to? Was there
20 another person who doesn't testify who is on the tape
21 talking in the Glass case?

22 MR. ASHTON: You mean Downs. Glass is a
23 case --

24 THE COURT: You said Glass when you cited it.

25 MR. ASHTON: That's a probation violation case.

1 It's Downs.

2 THE COURT: Downs.

3 MR. LEINSTER: It's the right cite, 574 So. 2nd
4 1095.

5 MR. ASHTON: (Reviewing document.) I'm going to
6 have to read this a little bit to figure out -- well,
7 it starts talking about statements to the defendant
8 before the murder. Let's see. A quick look at this,
9 it appears that all the statements are before the
10 murder. But Mr. Leinster perhaps has read it more
11 than I have.

12 MR. LEINSTER: The note is what I was referring
13 to. We're talking about state of mind is the
14 relevant part.

15 MR. ASHTON: Right. State of mind at the
16 particular time. The point is can -- this is an
17 after-the-fact statement of a prior state of mind,
18 and that's not admissible under the state of mind
19 exception to the hearsay rule.

20 I guess you're talking about 90.033 which says,
21 "The statement of the declared then existing state of
22 mind motion, et cetera, et cetera, to prove his state
23 of mind at that time or to explain acts of subsequent
24 conduct by the declarant." It says, "Specifically,
25 however, this section does not make admissible an

1 after-the-fact statement of memory or belief -- which
2 is precisely what this appears to be -- "to prove the
3 fact remembered unless such statements relays to
4 execution of a will," et cetera.

5 I never said that Mr. Windom's mother could
6 testify as to what she said. I said she could
7 testify as to how he appeared; how he was acting.
8 Never said she could testify as to hearsay.

9 It's circumstantial hours later after arrested
10 and held in jail awhile if he comes in and says, "I
11 don't remember." There certainly is substantial
12 reasons not to believe the trustworthiness of that.
13 If he wants to show the video, that's fine.

14 MR. LEINSTER: I don't mean to cut you off. In
15 getting to the reliability factors of this
16 statement --

17 THE COURT: Who are you going to introduce the
18 statements through?

19 MR. LEINSTER: Just the tape itself. They are,
20 not doubt, willing to vouch for the authenticity of
21 it. They gave it to me.

22 MR. ASHTON: You have to have someone doubt.

23 MR. LEINSTER: Crying out loud. You want that
24 filmed to say that it was an actual presentation?

25 MR. LEINSTER: I don't know who filmed this

1 thing.

2 MR. ASHTON: His mother.

3 MR. LEINSTER: We will cross that hurdle then.
4 I am -- I will be happy to do that. We will have
5 his mother look at it and say what's happening if
6 that's going to solve the riddle.

7 I'm talking right now, if I may, about the
8 reliability of the statement because Mr. Ashton's
9 statement stated there is nothing to suggest that
10 statement is reliable five hours later.

11 First of all, there's nothing about a
12 spontaneous or excited utterance that has to tie
13 indirectly to the event.

14 If you are talking about an emotional state of
15 mind, it could be three hours, four or ten hours. It
16 doesn't make any sense as long as the statement is,
17 basically, the product of that kind of emotional
18 duress if we're going to have here a fellow who
19 thinks he is all alone. That's why they stuck him in
20 this situation with his mother.

21 THE COURT: How are you going to know that?

22 MR. LEINSTER: Know what?

23 THE COURT: They stuck him in that situation
24 because they thought he was alone.

25 MR. LEINSTER: I don't have to prove that.

1 THE COURT: You're telling me that.

2 MR. LEINSTER: Why do you think they left the
3 room?

4 THE COURT: That's the point. How is the jury
5 going to know?

6 MR. LEINSTER: I'm not considering the jury
7 considering reliability or nonreliability. This is a
8 threshold issue for you. As far as telling the
9 truth or not telling the truth for his state of mind
10 at that time, he thinks they are gone. That's why
11 they left.

12 They said, "Okay, Let's leave. He can talk to
13 his mother." They are filming it. If he said, "I
14 killed Cock Robyn. I shot four people," they would
15 be sweeping that in without any regard for privacy,
16 although he doesn't have any privacy.

17 The reliability is because he, apparently,
18 thinks he is alone. So mother, the only person on
19 the planet right this moment in this tortured state
20 that he can trust, is talking to him. I can't
21 understand most of it, but it's a helpful kind of
22 thing. You know, "Curtis, Curtis," and he is saying,
23 "I don't remember."

24 THE COURT: How long does it take?

25 MR. ASHTON: I honestly don't know. My

1 objection is initially that it's hearsay. I have not
2 heard an exception thus far that gets past that.

3 THE COURT: The mother's statements are hearsay?
4 Is that what you're saying?

5 MR. ASHTON: And his, as well.

6 THE COURT: His?

7 MR. ASHTON: His statements. They are
8 out-of-court statements offered for the truth of the
9 matter asserted in the statement. That makes them
10 hearsay.

11 There is an exception for admissions by a party
12 but only when offered by the opposing party. A
13 defendant cannot offer his own exculpatory statement
14 at a prior statement. It's a prior consistent
15 statement. That's what he's going for here. A prior
16 consistent statement.

17 According to the evidence code, a prior consist
18 statement is admissible as substantive evidence
19 when offered to rebut an expressed or implied
20 charge of recent fabrication or improper influence or
21 motive.

22 He hasn't testified yet, so we don't know if
23 that's going to come or not. That appears to be
24 where we are. We have a hearsay problem.

25 THE COURT: I have to see some predicate for the

1 tape. I'm not going to let the tape in with no
2 predicate whatsoever. I'm not going -- I don't know
3 what you're going to offer as predicate.

4 MR. LEINSTER: The only way I can do that is if
5 my client -- I'm not going to call my client to the
6 stand. The only way the predicate would come up,
7 assuming his mother is part of the predicate, is have
8 her look at the tape and roll it out of the presence
9 of the jury.

10 MR. ASHTON: If Mr. Windom is not going to
11 testify, that makes the hearsay problem greater;
12 because, apparently, we're going to put in this "I
13 don't remember" with no ability to cross examine.

14 There is no indicia of reliability in the
15 statement to his mother. Mr. Leinster (sic) didn't
16 know he was being taped. How does he know he wasn't
17 being taped? I saw the setup and -- I don't want to
18 testify. How do we know someone wasn't listening?
19 All of this needs to be addressed.

20 THE COURT: I have a problem with this tape.
21 Without a better predicate than what you're
22 describing, I don't think it's going to be
23 admissible. You're doing everything to put on his
24 testimony, and that's fine; but you're not going to
25 put it on without some ability for the State to at

1 least cross-examine it.

2 I don't know. And I don't know how you're going
3 to put on the fact that Curtis did not know nobody
4 was in the room or nobody was taping it, and it's
5 just a tape that doesn't really have any predicate
6 laid.

7 And you're not going to come in with a tape and
8 play this tape out of the clear blue.

9 MR. LEINSTER: Is that the stumbling block?

10 THE COURT: I'm not going to have the tape
11 coming in wild.

12 MR. LEINSTER: I heard what you said.

13 THE COURT: With no predicate.

14 MR. LEINSTER: Well, predicate is a large word.

15 THE COURT: Yes. And I guess you're going to
16 have to think what you've got for the predicate. I
17 don't know what you're willing to put on.

18 MR. LEINSTER: I know what I can do, but I have
19 heard more objections than predicate. I don't want
20 to bother with the predicate if you are going to say
21 it's hearsay. I can cure the predicate problem as I
22 have heard you describe it.

23 THE COURT: It's definitely hearsay with what
24 the mother says. The defendant's statement, "I don't
25 know," I don't have a big problem with that. You do.

1 MR. ASHTON: Huge, Judge. That's, basically,
2 allowing him to put on their defense without any
3 ability to cross-examine at all. And there's
4 absolutely no reason to -- you can't have excited
5 utterance when the situation is calm and someone has
6 had time to think about what happened.

7 And the evidence in this case is going to
8 indicate -- if we get that far -- that this was after
9 some hours in a jail cell. He had time to sit, calm,
10 have a drink, have a smoke. Whatever. There is no
11 excitement involved. He isn't even excited on the
12 tape. I would be repeating if I went any further.

13 MR. LEINSTER: I am at risk of that, too. His
14 mother is out in the hall. I want to get the point.
15 If it's predicate, I can deal with that. If you have
16 no trouble with the statements other than predicate,
17 I know how to proceed.

18 THE COURT: All right. You put the predicate
19 on, I'll let the tape come.

20 MR. LEINSTER: Now, I think we're ready to
21 proceed.

22 MR. ASHTON: The tape including the mother's
23 part of the tape?

24 THE COURT: Yup. Well, assuming he's going to
25 put the predicate on to show when the tape was done,

1 what time it was done and all that. I'm not going to
2 let a tape in when we don't know when it was, where
3 it was done, or anything else. Somebody is going to
4 have to tell us where and when.

5 MR. LEINSTER: Fine. I understand the ruling.
6 I would like to call Pamela Fikes back to the stand,
7 please.

8 THE COURT: We need to bring jurors in, please.
9 This isn't any kind of profer, right?

10 MR. LEINSTER: (Shakes head.)

11 THE COURT: Let's bring the jury in.

12 (The jurors are in the box at 1:53 p.m.)

13 THE COURT: Have a seat. Did you have a nice
14 lunch? State and defense recognize the jury is
15 properly seated?

16 MR. ASHTON: Yes, ma'am.

17 MR. LEINSTER: Yes, ma'am.

18 THE COURT: The defendant is calling Ms. Fikes.
19 You are still under oath for purposes of testimony in
20 this case. Okay, have a seat.

21 Thereupon,

22 PAMELA FIKES
23 was called as a witness, having been previously duly
24 sworn, was examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. LEINSTER:

2 Q Mrs. Fikes, I wanted to clarify something you
3 said yesterday. When Mr. Windom pulled up in his vehicle,
4 your vehicle was where?

5 A Parked almost by --

6 THE COURT: You need to speak up very distinctly
7 so she can get every word.

8 THE WITNESS: I was almost on the side in -- in
9 the middle of the road.

10 BY MR. LEINSTER:

11 Q Did he pull up near your vehicle?

12 A Yes.

13 Q Right next to it?

14 A Yes, sir.

15 Q And very close to Johnny Lee?

16 A Yes.

17 Q Right?

18 A Uh-huh.

19 Q And after Johnny Lee got shot, you say you moved
20 your vehicle?

21 A Yes, sir.

22 Q How far?

23 A I moved it on the -- right in front of the house
24 that -- Jean Marie's house.

25 Q I know the distances are probably not your

1 strong suit. You mean farther than the length of this
2 room?

3 A Yes.

4 Q And were there any other vehicles out there
5 after that shooting other than Mr. Windom's? You have
6 left yours -- you have taken yours. Was there any other
7 parked vehicle out there that you can remember?

8 (Short Pause.)

9 A I can't remember.

10 Q Okay. You don't remember?

11 A (Shakes head.)

12 Q Let me ask you this: When you left, when you
13 got in your car and left, was Johnny Lee lying out in the
14 street right where you had parked your car; is that right?

15 A Uh-huh.

16 Q And he would have been next to Mr. Windom's
17 car; is that right?

18 A Uh-huh.

19 Q Okay. And no other cars that you remember?

20 A No.

21 MR. LEINSTER: That's all I have.

22 THE COURT: Cross?

23 MR. ASHTON: No questions.

24 THE COURT: Anybody want to call her back?

25 MR. ASHTON: No.

1 THE COURT: Mr. Leinster, are you going to want
2 to call her back?

3 MR. LEINSTER: No.

4 THE COURT: I can release her from the case
5 then. You're released from the case. Next witness.

6 MR. LEINSTER: Mr. Lockett.

7 THE COURT: Lockett?

8 MR. LEINSTER: Jack.

9 THE COURT: Jack Lockett.

10 (Short pause.)

11 THE COURT: Mr. Lockett, you testified
12 yesterday, didn't you?

13 MR. LUCKETT: Yes, ma'am.

14 THE COURT: So, you are still under oath from
15 yesterday. Have a seat.

16 Thereupon,

17 JACK LUCKETT

18 was called as a witness, having been previously duly
19 sworn, was examined and testified as follows:

20 THE COURT: You may proceed.

21 DIRECT EXAMINATION

22 BY MR. LEINSTER:

23 Q All right. Mr. Lockett, you indicated yesterday
24 that the reason that you didn't tell Johnny Lee that
25 Curtis Windom had said that he was going to kill him --

1 when you were out there, just before he pulled up?

2 A Yes, sir.

3 Q Was because Johnny Lee was busy talking with
4 some girls?

5 A Yes, sir.

6 Q Right?

7 A Yes, sir.

8 Q Well, you gave a written statement on April
9 the 3rd, 1992; do you remember that?

10 A Yes, sir.

11 Q And do you recall in that statement, "Later at
12 about noon I was standing at the tennis courts with my
13 brother Jamie, Terry Jackson and Johnny Lee."

14 MR. ASHTON: Let met object to the procedure
15 here. Is this for purpose of impeachment?

16 MR. LEINSTER: Sure is.

17 MR. ASHTON: Perhaps counsel should get to the
18 statement impeachable.

19 THE COURT: Okay. Get to the impeachment part.

20 MR. LEINSTER: That is part of it.

21 THE COURT: That is part of it?

22 MR. LEINSTER: Yes, it is. Can I proceed?

23 THE COURT: What statement did he just make --

24 MR. LEINSTER: He had indicated that he did not
25 tell Johnny Lee about his in pending doom because

1 Johnny Lee was --

2 MR. ASHTON: Let me object to counsel's --

3 MR. LEINSTER: Let's go to the bench then.

4 (The following is a bench conference.)

5 THE COURT: I heard what he said, but I don't
6 know why you're reading that much of the statement
7 has anything to do with what he said.

8 MR. LEINSTER: Could you do it at the bench?

9 THE COURT: Yes.

10 MR. LEINSTER: Can he listen to all of this?

11 His statement yesterday would have been to the
12 affect that he didn't tell Johnny Lee because Johnny
13 Lee was talking to the girls.

14 MR. ASHTON: Right.

15 MR. LEINSTER: You're talking about Jamie
16 Lockett's statement?

17 MR. ASHTON: I'm sorry.

18 MR. LEINSTER: Maybe that's why it's not clear.

19 MR. ASHTON: I doubt that's the reason.

20 MR. LEINSTER: Second paragraph -- this is when
21 my client pulls up. "I was standing at the tennis
22 courts with my brother Jamie, Terry Jackson and
23 Johnny Lee." So, they were all standing together
24 when Curtis Windom. "Right before Curtis Windom
25 pulled up, johnny Lee walked over to Pam. Curtis

1 pulled up on the street."

2 My point is, they were all together right before
3 Curtis pulled up. And that -- it wasn't the reason
4 he didn't tell him. It wasn't like he arrived on the
5 seen.

6 THE COURT: Where were the girls?

7 MR. LEINSTER: I guess right there when --

8 THE COURT: What's that got to do with it? The
9 girls are there. He's talking to the girls.

10 MR. LEINSTER: Before he went over to talk to
11 the girls, Johnny -- before Johnny had left the
12 company of this man.

13 MR. ASHTON: It would be helpful if he would
14 simply ask him isn't it true if you were with him
15 before he talked to the girls. If he says yes,
16 there's nothing to impeach. If he says no, then you
17 can impeach him.

18 MR. LEINSTER: The manner in which I do it is up
19 to me.

20 THE COURT: You don't need to twist around so
21 you end up reading the whole statement.

22 MR. LEINSTER: This is the only part I was going
23 to read. At about noon he was standing with brother
24 Jamie, Terry Jackson and Johnny Lee. They were
25 standing there talking.

1 MR. ASHTON: But he hasn't asked him that
2 question.

3 THE COURT: Where were the girls?

4 MR. LEINSTER: Near them and Johnny Lee went
5 over and talked to the girls. He had ample
6 opportunity to tell Johnny Lee. It wasn't like he
7 hadn't run into him all day.

8 The impression you get, he saw Johnny but he
9 didn't tell him because he was busy with girls. My
10 question is, why didn't you tell him that before he
11 talked to the girls.

12 MR. ASHTON: Your Honor --

13 MR. LEINSTER: This is my witness.

14 MR. ASHTON: If I could finish my objection, in
15 order to impeach a witness, you have to get a clearly
16 inconsistent statement. He has never been asked.
17 Why don't you ask him? If he says it differently,
18 you can impeach him.

19 THE COURT: You've got to ask the questions so
20 that you can get the same timeframe in here. I think
21 you've got to find out where the girls are, where he
22 is, and get it down before you start impeaching him.

23 MR. LEINSTER: Let's try it again.

24 THE COURT: We are going to try this one again.

25 (End of bench conference.)

1 BY MR. LEINSTER:

2 Q The morning of February 7th, you've indicated
3 that you had been told by Curtis Windom that he was going
4 to kill Johnny Lee?

5 A Yes, sir.

6 Q Right? And then you said that you didn't tell
7 Johnny Lee because he was busy talking with some girls;
8 isn't that right?

9 A Yes, sir.

10 Q That was your reason for not telling him,
11 correct?

12 A Yes, sir.

13 Q Now at that time about noon were you standing at
14 the tennis courts?

15 A Yes, sir.

16 Q And how far would that be from where the girls
17 were?

18 A About from me to you.

19 Q Okay. And you were standing there with who,
20 your brother Jamie?

21 A Jamie and Terry Jackson.

22 Q And Terry Jackson and Johnny Lee?

23 A Johnny Lee wasn't standing with me.

24 Q He was not?

25 A No.

1 Q So, Johnny Lee did not walk over from you and
2 your brother and Terry Jackson to talk to them?

3 A Yes. But he wasn't standing by me because I was
4 in my van.

5 Q Okay.

6 MR. LEINSTER: (To Mr. Ashton:) Second
7 paragraph.

8 BY MR. LEINSTER:

9 Q The statement you gave, do you recall stating,
10 "Later at about noon I was standing at the tennis courts
11 with my brother Jamie, Terry Jackson and Johnny Lee.
12 Johnny Lee walked over to Pam. Curtis pulled up" -- then
13 you went into the recitation. Do you remember saying
14 that?

15 A Yes, sir.

16 Q Okay. To Sergeant Fusco?

17 A Yes, sir.

18 Q So, you had been talking with Johnny Lee?

19 MR. ASHTON: Objection, Your Honor. That's not
20 what the statement says. He was standing -- not that
21 they were talking.

22 THE WITNESS: I'm telling you, I never talked to
23 Johnny.

24 BY MR. LEINSTER:

25 Q You weren't standing there -- him, your brother

1 and Terry Jackson?

2 A I was standing there. You asked was I standing
3 there. My van was parked there. They were standing
4 there. I never talked to Johnny.

5 Q When you say I was standing with brother Jamie,
6 Terry Jackson and Johnny Lee, it doesn't mean that?

7 A No, it doesn't mean that.

8 MR. LEINSTER: Okay. I don't have anything
9 else.

10 MR. ASHTON: No questions.

11 THE COURT: Either of you want to call
12 Mr. Luckett again?

13 BY MR. LEINSTER:

14 Q One other thing. Did you see somebody move
15 Johnny Lee's body?

16 A Nope.

17 Q Did you see somebody take something off Johnny
18 Lee?

19 A Nope.

20 Q Did you tell Detective Fusco that somebody took
21 something off him?

22 A No.

23 MR. ASHTON: Could I have an exact quote so I
24 can follow?

25 MR. LEINSTER: (Tenders document.)

1 MR. ASHTON: (Reviewing document.)

2 BY MR. LEINSTER:

3 Q Did you tell Fusco that Johnny Lee had drugs on
4 him?

5 A Nope.

6 Q And that someone on the street took the drugs,
7 but you denied the rumor that you took them?

8 A I didn't take anything. I saw nobody take
9 anything.

10 Q What I'm saying, you did not tell Fusco that?

11 A I did not tell Fusco that.

12 Q You didn't take a gun off him, did you?

13 A I didn't take nothing off him.

14 THE COURT: State, any cross?

15 MR. ASHTON: Yes.

16 CROSS EXAMINATION

17 BY MR. ASHTON:

18 Q Did Johnny Lee pull a gun on Curtis Windom
19 before he shot him in the back?

20 A Nope.

21 MR. ASHTON: No further questions.

22 THE COURT: Either of you going to want to call
23 Mr. Lockett again?

24 MR. ASHTON: No, Your Honor.

25 MR. LEINSTER: (Shakes head.)

1 THE COURT: You're released from the case.
2 Defense, call your next witness.

3 MR. LEINSTER: Is Detective Fusco out there
4 still?

5 COURT DEPUTY: I can check.

6 MR. LEINSTER: See if he is, please.

7 (Short Pause.)

8 MR. ASHTON: Your Honor, may we approach the
9 bench?

10 THE COURT: Okay.

11 COURT DEPUTY: He's not there.

12 (The following is a bench conference.)

13 MR. ASHTON: If he's not there, I don't need to
14 make my objection.

15 THE COURT: Is he going to testify? He's not
16 here. Did you exempt him?

17 MR. LEINSTER: No.

18 MR. ASHTON: He was supposed to be back. Let me
19 make my objection. If the purpose of calling
20 Sergeant Fusco is to impeach Mr. Luckett on whether
21 someone else took drugs off Mr. Lee's body, that's
22 impeachment on a collateral issue. It's totally
23 irrelevant to this case whether somebody took drugs
24 off him or not.

25 THE COURT: That's true. Anyway, he's not here

1 so it doesn't make much difference.

2 MR. LEINSTER: Maybe he will be before the tape
3 is finished, so we might as well address this issue.

4 The question is whether or not he told Fusco
5 that somebody took something; i.e., drugs and that it
6 wasn't him that did it.

7 Now, that ties in with the fact I'm going to
8 argue that that body was moved. It was not on its'
9 back. The body was on the side when found and was 20
10 feet from where Curtis Windom's car was located. So
11 the fact that they had time --

12 THE COURT: Wait a minute. I thought he said it
13 was leaning up against a car.

14 MR. LEINSTER: One witness said it was next to a
15 car. And one witness said it was about 20 feet from
16 Curtis Windom's car. Nobody has gotten that one
17 straight. But my point is I need to be able to
18 argue, right or wrong, that the body was moved. And
19 that statement would show there was time between the
20 time he was shot and the time the police arrived to
21 take something off his person.

22 Now, Luckett said somebody did. Whether they
23 did or not, I don't know. According to Fusco, he
24 said that. Now he denies it.

25 MR. ASHTON: The question is: So what? There

1 has been no allegation of a self-defense here.
2 Apparently, since Mr. Windom isn't testifying, there
3 isn't going to be an allegation of self-defense; so,
4 so what?

5 THE COURT: I'm not going to let that in.
6 That's going way too far.

7 MR. LEINSTER: Any objection is noted.

8 (End of bench conference.)

9 THE COURT: Okay. Defense, call your next
10 witness.

11 MR. LEINSTER: Mrs. Windom, please.

12 THE COURT: Mrs. Windom? What's her first name?

13 MR. LEINSTER: Lena.

14 THE COURT: Lena?

15 (Short Pause.)

16 MR. LEINSTER: Are we still under the no-coat
17 rule?

18 THE COURT: You can take it off. It's a little
19 cooler, but I don't mind if you take it off.

20 Thereupon,

21 LENA WINDOM

22 was called as a witness, having been first duly sworn, was
23 examined and testified as follows:

24 THE COURT: Okay. Mr. Leinster.

25 DIRECT EXAMINATION

1 BY MR. LEINSTER:

2 Q State your full name, please.

3 A Lena Williams.

4 Q You're Curtis Windom's mother?

5 A Yes, sir.

6 Q And do you remember the day he got arrested for
7 the Winter Garden shootings?

8 A Yes, sir.

9 Q And did you go down to the police station?

10 A Yes, sir.

11 Q And which police station was that?

12 A In Winter Garden.

13 Q Was Curtis already there when you went there?

14 A Yes, sir.

15 Q Okay. Did you help in locating Curtis, or did
16 somebody else do that?

17 A Someone did that. Asked me to go and see Curt.
18 Curt be the one got there. I was the only one could get
19 him.

20 Q Were you there before he arrived or after?

21 A After.

22 Q Now, approximately what time was it when you got
23 there?

24 A To the jail house?

25 Q Right.

1 A I don't know exactly what time, but I was out
2 there five o'clock, I think. But he was already there.

3 Q Would that be a rough range, five o'clock
4 roughly?

5 A I don't know the exact time it was. But I would
6 say that.

7 Q When you first went into the room where Curtis
8 was sitting, were there detectives in there?

9 A Yes, sir, two.

10 Q Two of them?

11 A (Nods head.)

12 Q And were they both white, one black, one white?

13 A One black, one white.

14 Q And did both of them leave the room at any time?

15 A Yes, sir.

16 Q Okay. And so that left just you and Curtis?

17 A That's right.

18 Q And you and Curtis had a chance to talk?

19 A Yes, sir.

20 Q And do you know how long you talked for?

21 A I don't know exactly how long. But we talked.

22 Q And did Curtis appear to be emotionally
23 troubled?

24 A He wasn't hisself (sic). He wasn't hisself at
25 all. Nothing at all.

1 MR. LEINSTER: May we approach?

2 THE COURT: Yes.

3 (The following is a bench conference.)

4 MR. LEINSTER: Do you want to cross or voir dire
5 or whatever?

6 MR. ASHTON: I'm not sure what we're doing.

7 MR. LEINSTER: Okay. The only other predicate
8 that I can provide as far as the pictorial is to have
9 her view the tape outside the presence of the jury
10 and say that that is a fair representation of the way
11 things looked.

12 I don't think the State has any question that
13 that's the way things looked since it's their tape.
14 But that's as far as the predicate goes as far as
15 time and place.

16 MR. ASHTON: I haven't heard any time or place.

17 MR. LEINSTER: It was --

18 THE COURT: It was the police department
19 sometime around five o'clock.

20 MR. ASHTON: Sometime after five o'clock but --
21 I'm not quite sure what predicate the Court was
22 looking for. I don't think there's been any
23 predicate laid to establish hearsay exception. I
24 think the Court is determined to admit it anyway.

25 She doesn't need to view the tape. We know the

1 tape is what the tape is. So, I don't think a proper
2 predicate has been made for it in any way at this
3 point. Whatever the Court feels is necessary --
4 there's no excited utterance predicate.

5 MR. LEINSTER: It's hearsay predicate.

6 THE COURT: I'm going to let it in. Let's play
7 it unless you think she needs to view it.

8 MR. LEINSTER: As a matter of fact, I don't even
9 need her to sit there while it's being played.

10 MR. ASHTON: I want to cross-examine her after
11 it's played.

12 MR. LEINSTER: That's fine.

13 MR. ASHTON: I'm relatively sure I want to do
14 that.

15 MR. LEINSTER: You want her to sit there while I
16 it's being played?

17 MR. ASHTON: Sure.

18 THE COURT: Yeah. She needs to --

19 MR. ASHTON: I'll have to go upstairs and get
20 the video machine.

21 THE COURT: It's not here?

22 MR. ASHTON: He didn't tell me he wanted it this
23 afternoon.

24 MR. LEINSTER: Like I didn't tell you I wanted
25 to speak to the witness.

1 MR. ASHTON: Same thing.

2 MR. LEINSTER: Same thing.

3 THE COURT: How long is it going to take you?

4 MR. ASHTON: Ten minutes.

5 (End of bench conference.)

6 THE COURT: Okay. We're going to need to take a
7 ten-minute recess to get a recorder so we can play a
8 tape for you. Go ahead and go into the jury room
9 about ten minutes. Thank you.

10 (Jury is out at 2:10 p.m.)

11 THE COURT: We can take a ten-minute recess, but
12 you need to be back here because you've got to be in
13 the room when they play the tape.

14 THE WITNESS: Okay.

15 (Short recess. Proceedings commenced at
16 2:30 p.m.)

17 MR. LEINSTER: Judge, before the jury enters,
18 our machine brings it back to this point and says
19 it's completely rewound. It doesn't look like it
20 is.

21 MR. ASHTON: Your Honor, I have a last request
22 to make about this tape that I considered over the
23 break. We'd ask the Court to instruct the jury
24 before they see this that they are to consider this
25 tape only to extent that it is relevant to prove the

1 defendant's state of mind and not for the truth of
2 the statements made on the tape so that in some way
3 they will take it in the right sense.

4 THE COURT: That's pretty much what you're
5 entering it for, right?

6 MR. LEINSTER: That's fine.

7 THE COURT: Not for the truth of the matter
8 asserted.

9 (Discussion off the record regarding the
10 equipment.)

11 THE COURT: Let's bring in the jury. I would
12 like to be able to see it so where can I be -- off
13 the record.

14 (Discussion off the record.)

15 THE COURT: Do you want her to watch it?

16 MR. ASHTON: As long as she's up there, that's
17 all right.

18 THE COURT: She can hear it and tell if there's
19 anything unusual. Could I have a chair and watch it
20 for 30 minutes?

21 (Discussion off the record.)

22 THE COURT: Okay. Let's bring in the jury.

23 (Jury is in the box at 2:35.)

24 THE COURT: You may be seated. At this time a
25 type is being offered by the defense and you're to

1 consider it just to show the mental -- just to show
2 the mental state of the defendant and not the truth
3 of what's being said. That's the only consideration
4 you're to have for this tape.

5 (At this time, a video tape was played to the
6 jury.)

7 MR. LEINSTER: I don't have any further
8 questions.

9 THE COURT: Cross?

10 CROSS EXAMINATION

11 BY MR. ASHTON:

12 Q Mrs. Windom, I noticed on the tape that you were
13 doing most of the talking to Curtis?

14 A Yeah.

15 Q What were you trying to tell him or say to him?

16 A I was trying to get him back to his senses.

17 Q Back to his senses?

18 A That's right.

19 Q What was his wrong with his senses?

20 A Because I was out of my mind. That child was
21 never that way.

22 Q How do you know that?

23 A I know the child since he was a baby. He never,
24 ever in his life looked like that before. He never acted
25 like that before.

1 Q Had you ever seen him after he had murdered --
2 I'm sorry, shooting four people before?

3 A Afterwards, I went to the jail house where he
4 was.

5 MR. LEINSTER: That's okay. I have no
6 objection. She doesn't have to answer that.

7 THE COURT: Wait a minute. Could you rephrase
8 the question somehow?

9 MR. ASHTON: I'll change it.

10 BY MR. ASHTON:

11 Q Did you see him when he was shooting these
12 people?

13 A No, sir.

14 Q Did you see him when he was hid out in the house
15 on Klondike after he shot these people?

16 A Yes, sir.

17 Q So, the first time you saw him was in jail?

18 A When I got him out the house. The police were
19 with me.

20 Q So, when the police brought him out of the
21 house, you saw him?

22 A That's right.

23 Q But you didn't talk to him?

24 A Couldn't talk to him.

25 Q The first time you talked to him was when you

1 were brought in the room on the tape?

2 A That's right.

3 Q How long had he been sitting in the jail, three
4 or four hours?

5 A Yes, sir.

6 Q Arrested for three or four counts of murder?

7 A Whatever.

8 Q Do you think he was kind of upset?

9 A He was out of mind. He didn't know exactly
10 what he was doing.

11 Q When?

12 A When I got to him. When they let him find out
13 where he was and when I got to him. When I got to the
14 door, I said, "Curtis, this is momma." He came to the
15 door. He said, "Momma, what have I done?" And that's
16 when the police grabbed him.

17 Q We're talking about at the police station?

18 A The police station. They kept him in there. He
19 was hungry. Ladies in blue gave him some food. Every now
20 and then she would come back and say, "Wait a minute," and
21 let me see him.

22 Q That's what we saw on the tape?

23 A Yeah.

24 Q You start out the whole tape that something was
25 wrong with him?

1 A That's right. Something wrong with me -- him.
2 Him (sic) was running a fever, and I don't want it to get
3 out to nobody else.

4 Q Are you aware of whether he was checked by a
5 doctor after he was arrested?

6 A I don't even know.

7 Q And there was no evidence there wasn't anything
8 wrong with him?

9 A Everything was wrong with that child. That
10 child never been in the shape he was in.

11 Q Never what?

12 A Never been like he was.

13 Q What do you mean by the way he was?

14 A He didn't know what I was trying to bring back
15 to him.

16 Q Do you remember when you talked to him -- hear
17 him say, "I shot Val in the house?"

18 A I had him come straight. I tried to bring it
19 out what he know. Because all I get in your mind or he'll
20 be worse (sic).

21 Q On the tape he said, "Do you know I shot Val in
22 the house," didn't he?

23 A Yeah. But I had to bring it out of him.

24 MR. ASHTON: No further questions. I'm sorry.

25 BY MR. ASHTON:

1 Q Did you tell him he shot Val?

2 A Yeah.

3 Q He told you?

4 A Yeah.

5 Q He didn't want to tell you that?

6 A Like I tries -- I concentrated on his minds
7 (sic). Have you ever had a headache when you get so much
8 in your head it will run you crazy? You've got to get it
9 out or your head maybe bust open.

10 Q He told you he shot Val?

11 A I concentrating on his mind. You (sic) minds
12 like a psychiatric brain to brain. Whatever he was
13 checking to be.

14 Q You didn't tell him that he shot Val in the
15 house; he told you that, right?

16 A I asked him to concentrate and on that -- what
17 come to him and what he -- could he concentrate on.

18 Q And he did remember he shot Val in the house,
19 because he told you that, right?

20 A He say he shot Vale in the house and shot on the
21 street.

22 Q And Johnny on the street? And he remembered
23 both of those things back then a few hours after the
24 murders, correct?

25 A If you say.

1 Q And he wouldn't tell you why he did those
2 things, would he?

3 A I didn't ask him why he did it because anything
4 that he did -- he had forced to do. That child ain't
5 never be in no trouble and never until this. I know my
6 child.

7 Q Do you mean to tell us your son has never been
8 in trouble with the law before?

9 A Did I say that? Did you ask me that?

10 Q I thought that's what you said.

11 A I said he never been in trouble. Only trouble
12 is the trouble y'all got him in now.

13 Q Before that he had never been in trouble with
14 the law?

15 A Whatever. They caught him one time. They put
16 him in jail, but they didn't caught him with nothing or
17 something like that. He was set up.

18 Q He was set up the other time?

19 A That's what I think it was.

20 MR. ASHTON: No further questions.

21 THE COURT: Redirect.

22 MR. LEINSTER: No further questions.

23 THE COURT: Either of you going to want to call
24 her back?

25 MR. ASHTON: No, Your Honor.

1 THE COURT: Okay. You're excused from the
2 trial. Thank you. Next witness.

3 MR. LEINSTER: We rest.

4 THE COURT: You rest?

5 MR. LEINSTER: (Nods head.)

6 THE COURT: Okay. Counsel approach the bench,
7 please.

8 (The following is a bench conference.)

9 THE COURT: Do you have any additional motions
10 at this time different from what you said at the JOA?

11 MR. LEINSTER: No. Same motions.

12 THE COURT: Same? Okay. Same response.

13 MR. ASHTON: Yes, ma'am.

14 THE COURT: Same ruling.

15 MR. LEINSTER: Same ruling?

16 THE COURT: Now, we need to decide whether we're
17 going to finish this tonight or go tomorrow. Now
18 that the air is on, I don't care if we stay tonight.
19 I need to find out from the jury how late they want
20 to stay. I don't want them to stay in a hotel.

21 I think I need to tell them the facts of life.
22 If we go out tonight, that they will be together
23 until this case is concluded.

24 I don't want to say until they reach a verdict
25 because I don't want them to make -- do you have any

1 problem with that; where I just give them the choice
2 of doing deliberations tonight, which could involve
3 it being together as long as it takes, or coming back
4 tomorrow and doing deliberations?

5 MR. LEINSTER: I think I speak for both of us.
6 Probably have them come back. I only say that
7 because I talked to Jeff earlier.

8 THE COURT: How do you feel?

9 MR. ASHTON: I think you should ask them for
10 their opinion.

11 THE COURT: How long are your closings going to
12 be?

13 MR. LEINSTER: I need a little while to put it
14 together.

15 THE COURT: How long is it going to be once you
16 have it together?

17 MR. LEINSTER: I'm sorry?

18 THE COURT: How long is it going to be once you
19 have it together?

20 MR. LEINSTER: I think we would say half an
21 hour.

22 THE COURT: Each?

23 MR. LEINSTER: That's fine.

24 THE COURT: Is that what you're saying?

25 MR. ASHTON: That's fine.

1 THE COURT: So one hour of closing?

2 MR. LEINSTER: I think so. I don't want to be
3 rigidly held to that because I think it's fundamental
4 error to hold anyone to less than a half hour by case
5 law. But I think I can do that in that period.

6 THE COURT: I need a clue.

7 MR. LEINSTER: I'm giving you a wink and a nod
8 and telling you the best I can.

9 MR. ASHTON: Why don't we say 45 minutes a side?

10 THE COURT: I'll tell them that's what we've got
11 left; and if we do that tonight, we are going to go
12 into deliberations. Okay. I'm going to leave it up
13 to them.

14 One other thing: Is there any rebuttal?

15 MR. ASHTON: No, Your Honor.

16 (End of bench conference.)

17 THE COURT: All right. Let me tell you what
18 this situation is now. I'm going to leave it up to
19 you how you want to go from here.

20 The State and defense rested their cases. That
21 means all that's left is closing arguments. Neither
22 side wants more than 45 minutes, so that's an hour
23 and a half perhaps of closing arguments.

24 Then I have instructions, which might take 20
25 minutes, maybe 30, maximum -- instructions on the

1 law. Then you go into deliberations, and you stay
2 together until the case is concluded.

3 So, if we were to go into closing arguments
4 today, that would mean until you're finished with
5 your deliberations you're together and you're here.
6 If we do it tonight, that means for as long as it
7 takes or we can come back in the morning and do
8 closings, instructions and deliberations' and then
9 you're together for as long as it takes.

10 So, my question to you is: I know we would be
11 going past five if we do it tonight. I know we would
12 be going as long as it takes you to decide the case.
13 So, the question is: What do you want to do? Do you
14 want to do it tonight or come back tomorrow? You can
15 talk to each other and see if you can get a
16 consensus.

17 (Short pause.)

18 THE COURT: Is that unanimous? Tomorrow? This
19 is good here. Okay. Then what we'll do is -- let me
20 see. What have I got tomorrow? Come back at 9:30 in
21 the morning; and we'll do closings, instructions and
22 deliberations.

23 Is there anything else for the record from the
24 State or defense?

25 MR. LEINSTER: No.

1 MR. ASHTON: No, Your Honor.

2 THE COURT: Remember, don't talk about the
3 case. Don't read the paper. Don't watch the news.
4 Don't talk to the attorneys, the witnesses or the
5 defendant about anything.

6 Other than that, have a nice evening. We'll see
7 you at 9:30.

8 (The jury is out at 3:10.)

9 MR. ASHTON: Judge -- Ed, can you come up for a
10 second?

11 (Discussion off record.)

12 THE COURT: We can't have the family and the
13 jurors all together. They just walked out of here.
14 Eddie --

15 MR. ASHTON: I mentioned it to Ed already.

16 THE COURT: We can't have family and jurors
17 going out of here like that together. Maybe we're
18 going to have to take the jurors out this way. I
19 don't know. We have got to do one or the other.
20 Maybe hold them here from now on.

21 Okay. What about the instructions? Is
22 everything set? Does Ed want any other instructions?

23 MR. LEINSTER: I don't anticipate any. I have
24 looked through them. I don't see anything wrong.
25 Right now I'm happy with them. If I have any brain

1 storms overnight, it won't shake anybody up too much,
2 I hope.

3 MR. ASHTON: I haven't had an idea in years, so
4 it's unlikely it's going to happen tonight.

5 THE COURT: Okay. We'll see in the morning.
6 Why don't you get here a few minutes early so if
7 there's anything, we can get to talk about it. If I
8 have to put off a sentencing or something, I'll do
9 it.

10 MR. LEINSTER: I move the tape into evidence.

11 MR. ASHTON: Sorry to be so picky, but it's one
12 of those wild appellate things of mine.

13 THE COURT: So, if State and defense are in
14 agreement that it should be moved in and the defense
15 is going to move it in and the State is going to
16 waive any objections to after he rested?

17 MR. ASHTON: I made the objections before, and
18 they are for the record.

19 THE COURT: But the issue of when it was done is
20 not your biggest problem?

21 MR. ASHTON: Not my problem at all.

22 THE COURT: Okay. We'll put that in. I don't
23 think it needs any explanation to the jury. They
24 don't have a clue about that sort of thing. That
25 will be defense number one.

1 (Defense Exhibit Number 1 was received into
2 evidence.)

3 THE COURT: So, the State is going to have first
4 and last?

5 MR. ASHTON: Right.

6 (End of proceedings for August 27, 1992. The
7 following proceedings commenced at 9:45 a.m.,
8 August 28, 1992.)

9 THE COURT: The jury is not in the room, but we
10 do have both counsel and the defendant. Anything we
11 should discuss before we begin with closing argument?

12 MR. ASHTON: There is one thing I wanted to
13 bring to the Court's and Mr. Leinster's attention.
14 The tape we entered into evidence which is State's
15 Exhibit -- that's defendant's exhibit -- the State's
16 Exhibit 1, this is the tape of the search warrant. I
17 reviewed this yesterday and noticed that on the end
18 of this tape there is something in addition to the
19 search warrant on the house, which is a search of the
20 defendant's car.

21 I didn't know it was on there but neither did
22 Sergeant Fusco. If the jury wants to see it, we can
23 show it in here. There is something more. I wanted
24 to let everybody know that.

25 THE COURT: We can't send the tape back to jury

1 room.

2 MR. ASHTON: Unless we recopy and erase part of
3 it. The easiest way is we can show it to them in
4 here and stop it at the end of the search warrant.
5 Sergeant Fusco was as surprised as I was. I was
6 there when they took it.

7 THE COURT: Mr. Leinster, are you in agreement
8 with that?

9 MR. LEINSTER: To edit it at that point?

10 THE COURT: To have them come in here to see
11 that part of the evidence.

12 MR. LEINSTER: I thought that's what he intended
13 to do anyway, to introduce it at closing and end it
14 completely as far as the car than to have to send it
15 back to them.

16 THE COURT: He'll have to retape it and cut it
17 off after the part they saw in the courtroom or bring
18 them in here.

19 MR. LEINSTER: My understanding of this tape is
20 it's just a view of the house. It's nothing
21 particularly provocative about it that they would
22 want to put it in.

23 MR. ASHTON: Nobody published it but it is in
24 evidence.

25 THE COURT: Nobody published it to the jury. Do

1 you want them to see the house?

2 MR. LEINSTER: That's not what I'm saying. We
3 are -- in talking to Jeff, I think it's his intention
4 at the time of closing to publish it to the jury.

5 THE COURT: The part they have already seen.

6 MR. ASHTON: I, basically, put it into evidence
7 so the jury -- at some point I wanted them to see the
8 view of the apartment. I may show it in closing. I
9 may tell them you can see it during deliberations.
10 It's something they haven't seen already.

11 MS. BRENNAN: It's two tapes.

12 THE COURT: You have put it in evidence already?

13 MR. ASHTON: Yes. I chose not to publish it
14 during the factual parts of the trial, and I may not
15 publish it during either. The same thing goes for
16 the photograph of the victims. I haven't published
17 those yet, either; but they are there for them to
18 look it at.

19 MR. LEINSTER: It doesn't sound like a problem
20 as far as I can tell.

21 THE COURT: It doesn't sound like a problem if
22 we don't send the tape back or if we do send the tape
23 back there?

24 MR. LEINSTER: If we send it back, it has to be
25 edited to conform to what it was admitted to show,

1 which is the house. I can't imagine that they would
2 care to look at the house which is going to show them
3 what they have already been told is in the house.
4 It's the camera sweeping the place. The body is not
5 there. It shows the location of the pieces of
6 evidence.

7 THE COURT: In the event they want to see that
8 part, we're going to have to bring them in so they
9 wouldn't see whatever else is on the tape.

10 MR. LEINSTER: Right.

11 MR. ASHTON: That's fine.

12 THE COURT: Fine. And that's just the tape of
13 the house.

14 MR. ASHTON: Tape of Valerie Davis' apartment.
15 That's it.

16 THE COURT: Okay. Now a question I had of
17 Mr. Leinster, 2.04(e), defendant's statements, it's
18 part of the jury instructions, if they took a
19 statement from the defendant that was entered; but I
20 didn't see any statements by the defendant.

21 MR. LEINSTER: Well, the statements by the
22 defendant, obviously, would be the ones on the tape
23 which you instructed the jury not to consider the
24 truth one way or the other, which would mean that
25 they were not -- they were not statements which would

1 ordinarily be considered by this instruction.

2 THE COURT: I agree. I don't think that
3 instruction applies in this case. I just want to get
4 the word from you.

5 MR. LEINSTER: I'm sorry. I wasn't really in a
6 position to pay much attention when you offered me
7 this the first time.

8 THE COURT: That deals more with confessions and
9 statements they took from the defendant.

10 MR. LEINSTER: I agree with you.

11 THE COURT: So, we don't need this instruction,
12 2.04(e)?

13 MR. LEINSTER: Right.

14 THE COURT: What else?

15 MR. ASHTON: Were there any other problems or
16 changes in the jury instructions?

17 MR. LEINSTER: No.

18 THE COURT: You're satisfied with the jury
19 instructions you've got?

20 MR. LEINSTER: Yes.

21 THE COURT: And you were not asking for
22 justifiable homicide or anything like that?

23 MR. LEINSTER: No.

24 THE COURT: Are we ready to bring in the jury?

25 You are still sticking with probably 30 minutes,

1 but we told them 45 minutes, each of you.

2 MR. ASHTON: I just realized something about
3 these instructions. Unless it is specifically waived
4 by the defendant on the form, he's required to the
5 short form, excusable homicide. It's not in here.
6 It normally is.

7 I don't know why it would not be, but it isn't.
8 So, I'm going to need to prepare that unless the
9 defense is specifically waiving even the short forms
10 because manslaughter does indicate -- well, it is
11 necessary. So, I'm going to have -- I'll have it
12 prepared and brought over to be safe.

13 The Court can read it out of the book, and I'll
14 have one prepared so we don't have to wait in
15 actually instructing them.

16 THE COURT: Tell me what number.

17 MR. ASHTON: I apologize. I'm glad I caught it
18 before we got any further. It's part of the
19 introduction of homicide. The justifiable is just
20 the one paragraph, killing of a human being is
21 justifiable and excusable, from 782.012.

22 THE COURT: Justifiable homicide, just that one
23 paragraph?

24 MR. ASHTON: Just that one paragraph. Now the
25 excusable homicide paragraph that's in here has been

1 amended. If the defendant doesn't have any objection
2 to this brief paragraph, then I think you can read
3 it.

4 Obviously, they have the right to the new one,
5 which is slightly longer that I can have prepared
6 quickly. But it's up to the defense. I know they
7 aren't going to argue it.

8 MR. LEINSTER: If we're going to protect the
9 record for that purpose, put in the long form. He's
10 correct.

11 THE COURT: But I need a copy of the correct one
12 to read.

13 MR. ASHTON: Would you call Monica and ask her
14 to, please, spit out this justifiable paragraph and
15 the excusable homicide?

16 THE COURT: Is it in the updated rules?

17 MR. ASHTON: It should be. It's not in the
18 book I have.

19 THE COURT: It's not in the criminal rules?

20 MR. ASHTON: That's the same one I have. Well,
21 let me check. Let me see if I can find it. I
22 thought they changed that whole thing there.

23 THE COURT: One thing I did was to cover this --
24 Mr. Leinster, you might want to look at this.

25 And the other thing, this is just a cover that

1 the State didn't provide; but that's generally what
2 is on the front of every jury instruction.

3 THE COURT: Do you have any objection to my just
4 reading the whole thing through once and then, when I
5 got into the second victim, just saying the same
6 thing except the victim is a different person and
7 name that person? Or do you want me to read the
8 whole thing?

9 MR. LEINSTER: I don't want you to read the
10 whole thing three times.

11 THE COURT: State, have any objection to my not
12 reading it three times and say the same things apply?

13 MR. ASHTON: As long as the defense is
14 agreeable, that's fine. We have prepared a
15 separate --

16 THE COURT: One on each one.

17 MR. ASHTON: And we can send those backs.

18 THE COURT: Is this a copy you wanted to go to
19 the jury? Because I did write count one where it
20 applied to count one on the top. This is count two.

21 MR. ASHTON: I think I have a better copy than
22 that. It's not so messy. This copy is better. It's
23 cleaner and there's nothing written on it.

24 THE COURT: That's the one I'll send back.

25 MR. ASHTON: That's the only one I have, so I

1 may want to trade with you.

2 THE COURT: I just want to make sure I have the
3 right counts.

4 MR. ASHTON: Put a little sticky note on it or
5 something.

6 THE COURT: Okay. So where's that instruction?
7 Is it in there or not?

8 MR. ASHTON: I can't find it in here, no. But
9 it must have come out this year.

10 THE COURT: Okay. So, they will have to bring
11 it over.

12 MS. BRENNAN: Monica is not here today, Jeff.
13 Leery is going to attempt to do it, but she doesn't
14 know what she's doing. She's going to do the best
15 she can.

16 MR. ASHTON: There may be a slight delay before
17 the instructions get here, and I may have to go over
18 and supervise that.

19 THE COURT: Do you know how to do it because --

20 MR. ASHTON: You have the instruction?

21 THE COURT: I'm not sure it's the correct one.

22 MR. ASHTON: I can tell by looking at it. If he
23 can pull it up, I can look at it.

24 THE COURT: If you want to come back with us,
25 I'll pull it up. If it's been change since

1 January --

2 (Discussion off record.)

3 THE COURT: Okay. Then we can go ahead with
4 closing arguments, and they're going to bring that
5 over. And you want that read at the end of -- after
6 first degree murder?

7 MR. ASHTON: Should be the second or third page,
8 the following two paragraphs after that.

9 THE COURT: Okay. Then if there's nothing else,
10 we'll bring in the jury. Defense, have you got
11 anything else?

12 MR. ASHTON: Can I have the other copies?
13 Thanks.

14 MR. LEINSTER: No.

15 THE COURT: State?

16 MR. ASHTON: No, Your Honor.

17 THE COURT: Let's bring them.

18 (Jury is in the box at 9:50 a.m.)

19 THE COURT: Good morning.

20 JURORS: Good morning.

21 THE COURT: Okay. Both the State and defense
22 have rested their case now. Does the State recognize
23 the jury is properly seated?

24 MR. ASHTON: Yes, we do.

25 THE COURT: Defense?

1 MR. LEINSTER: Yes.

2 THE COURT: The attorneys are now going to
3 present their final arguments. Please remember that
4 what the lawyers say is not evidence. However, do
5 listen closely to these arguments because they are
6 intended to aid you in understanding the case.

7 Each side will have equal time, but the State is
8 entitled to divide this time between an opening
9 argument and rebuttal argument after the opponent has
10 spoken.

11 Is State ready to proceed?

12 MR. ASHTON: Yes, Your Honor.

13 THE COURT: You may proceed.

14 MR. ASHTON: Good morning, ladies and gentlemen.

15 JURORS: Good morning.

16 MR. ASHTON: This morning Mr. Leinster and I are
17 going to be doing the last part of our job. That's
18 our job. The judge is going to be instructing you on
19 the law, and that is the last part of her job; and
20 that's when your job starts.

21 Your job is to sit and listen to the evidence,
22 discuss and deliberate and decide whether the
23 defendant has been proven guilty of the crimes he has
24 been charged with.

25 Now, defendant has been charged in this case

1 with four separate crimes. And the Judge will tell
2 you that you must look at the evidence as to each
3 crime separately and render a separate decision as to
4 each.

5 Anytime you have this many crimes related, the
6 facts intermesh.

7 I'm going to talk about the facts altogether and
8 discuss with you the law as it applies to each one
9 separately.

10 The evidence in this case shows that on February
11 the 7th, of 1992, Curtis Windom was arrested in
12 Orange County, a resident of Winter Garden; lived
13 there all his life; went to Walmart in this
14 neighborhood and bought himself a box of bullets,
15 which is there; bought himself a 50-round box of .38
16 caliber ammunition from Walmart.

17 Now, remember the testimony the first witness,
18 Mr. Jones, who told you that he sold Mr. Windom the
19 box of bullets? The receipt is right here. And
20 remember Mr. Windom's fingerprints on it? So there's
21 no question Mr. Windom bought it.

22 He told us the gentlemen approached him, made a
23 transaction, spent \$13.27 on the box of bullets, gave
24 him \$15, got 1.73 change. That was at 11:51
25 a.m., nine minutes to twelve.

1 The evidence shows that the defendant then went
2 back to his house, his apartment, this apartment that
3 he shared with Valerie Davis. We don't know if
4 Valerie was home when he came home with the gun and
5 bullets. We don't know. We do know he came into the
6 front door of the house, went to the bedroom, took
7 the bullets out of the box and loaded five rounds of
8 that ammunition into this gun, opened it up and put
9 five rounds of ammunition in it, closed it up.

10 He walked out with this gun and got in his car,
11 drove down the street to where he saw Johnny Lee.

12 Now the evidence is that he drove his car down
13 the street -- of course, he is east, coming down this
14 way -- that he stopped; that Johnny Lee was talking
15 to Pam Fikes and Jean Willis on the side of the
16 street over here; that he reached across the
17 passenger side of his car, pointed the gun
18 (indicating with gun) at Johnny Lee -- always like to
19 make sure -- and shot him twice in the back.

20 Now, remember the medical examiner's testimony
21 is that those bullets came in almost horizontal.
22 Remember he said that the entrance was just one inch
23 below the exit or where the bullet was found? It was
24 a very, very even angle.

25 He pointed the gun at him and fired two shots.

1 But before he fired, what did he say and what did Pam
2 Fikes hear him say? "I want my fucking money,
3 nigger." Bam. Bam. And Johnny Lee falls.

4 Johnny Lee was dead, according to the medical
5 examiner. The first shot or the second shot in the
6 back, we don't know which one came first. He was
7 unconscious on the ground. He was gone.

8 What did Curtis Windom do? He got out of his
9 car -- had three shots left. He got out of his car,
10 walked over to Johnny Lee and stood over him as he
11 lay on the ground and shot him two more times; and
12 then he ran away.

13 Where did he go? Did he run and hide
14 someplace? No. Did he throw the gun? Ditch the
15 evidence?

16 He ran down the street. He ran past a lot of
17 people. He ran past Pam Fikes and Jean Willis. Ran
18 past Ken Williams and Nathan Watkins and ran directly
19 to the apartment. Walked past Cassandra Hall.

20 And with the one bullet that he knew he had left
21 in this gun, he looked at Valerie and he said, "I
22 have had enough. I have had enough. I'm through."
23 And he pointed the gun at her, and he shot her right
24 through the heart.

25 And, again, you'll note that the bullet angle

1 was again approximately one inch -- the exit was
2 about one inch above the entrance, same kind of angle
3 as Johnny Lee. Went right through her. Just like
4 Johnny Lee, she was gone. She was dead. Down
5 instantly.

6 Cassandra stood there and saw it. She ran. He
7 looked at her and pointed the gun at her, and all
8 there was was clicks because the bullets were gone.

9 So, what does Curtis Windom do then? Does he
10 run and hide? No. Does he hide the gun? No. He
11 goes into the bedroom, takes the gun, opens it. He
12 empties out the five shells he just used: Four on
13 Johnny Lee and one on Valerie.

14 He takes the box, pulls out five more. He loads
15 them in (indicating). While he is doing this,
16 Valerie is lying dead on the floor out in front and
17 the police are coming to take care of Johnny.

18 He closes the gun. He walks out the apartment.
19 Now, remember the description of him? He's not
20 running. He's not panicky. He's not in a frenzy.
21 He walks out down the corner around here and sees
22 Kenny Williams.

23 He looks at Kenny Williams and he said, "I don't
24 like police ass niggers anyway." Bam. He shoots
25 him. Kenny Williams would be dead right now but for

1 the fact Kenny Williams moved because his aim was
2 precisely the same as Valerie Davis' -- to the
3 chest.

4 Kenny Williams said he was shot here, but it
5 wasn't across because he turned. This is not where
6 Curtis Windom was aiming. This is where he was
7 aiming, dead for his chest. But Kenny Williams,
8 fortunately, turned; and it went through and it
9 didn't kill him. It wasn't for lack of trying.

10 What did Curtis Windom do then? He walked
11 away. He had four left. Ask yourselves, ladies and
12 gentlemen: Who was he loading up for over here? Was
13 he loading up to kill somebody else?

14 Well, the answer to that was obvious. Yes, he
15 wasn't there to defend himself. He wasn't hiding.
16 He was walking out in the middle of Center Street.

17 And where did he go? He went to behind Brown's
18 Bar. Remember: Mary Lubin is working at the Maxey
19 Recreation Center right here on Klondike Street.

20 This is a regular day to work. That's where
21 Reverend Beacham told you she was a receptionist. He
22 waited. I submit, he waited for Mary Lubin to drive
23 up Tenth Street.

24 His brother -- or the witnesses say his brother
25 tried to take the gun away from him but, apparently,

1 not very hard. And he stood there and waited;
2 wouldn't give up the gun; didn't try to run; didn't
3 try to hide. He stood there and waited.

4 And when Mary Lubin's car pulled out of the
5 parking lot, when she pulled out right here, coming
6 down Tenth Street, he walked out from behind Brown's
7 Bar.

8 And according to Pearly Mae Riley -- and there
9 is some disagreement as to exactly where Curtis
10 Windom was before he shot. Mary Law said she
11 believed he was up here and walked down and shot from
12 10 or 15 feet.

13 Mary Law told you she was relatively high on
14 cocaine at the time and perhaps her recollection
15 wasn't so good.

16 Pearly Mae Riley was not under the influence of
17 any drugs. She was walking down the street right
18 here and says Curtis was standing right on the corner
19 when Mary pulled up. Said looked like some words
20 passed between them.

21 And he picked up the gun, having four bullets
22 left, and fired twice into the body of Mary Lubin.

23 Now, Mary Law thought maybe they were
24 wrestling. Pearly Mae said, no, he was right there
25 with the gun and fired into the car and killed her.

1 What did the medical examiner tell you about
2 Pearly Mae Riley (sic); how she was shot? She was
3 not turned facing Curtis Windom in the seat of the
4 car.

5 The bullets, two bullets, one came in into her
6 arm and then directly into her body. The medical
7 examiner told us that her arm had to be next to her
8 body in order for that bullet to come in that way.

9 It came slightly from behind. Remember, it came
10 in here (indicating), through the arm and into the
11 breast.

12 Curtis Windom was to the side and slightly
13 behind Mary Lubin when that shot was fired; and Mary
14 Lubin was sitting with her arms like this
15 (indicating), up against her body.

16 The second shot: Remember how that came in?
17 The second shot came in from the side, but the
18 medical examiner told you she would have had to have
19 been leaned forward and slightly this way because the
20 angle came in here (indicating).

21 I submit to you, what that shows to you was Mary
22 Lubin was sitting in her car, driving to see her
23 daughter who had just been shot.

24 Remember, Ray Beacham told you the last thing
25 Mary Lubin said, leaning against the desk at the

1 recreation center was, "My God, not my daughter,
2 too."

3 Driving to see her daughter who had just been
4 murdered, she is shot through the arm slightly from
5 behind by Curtis Windom. She moves to try to get out
6 of the car, and he shoots her again. She stumbles
7 across the street; and here she falls and dies, her
8 car proceeding on its own across the street and
9 ending here.

10 Ladies and gentlemen, this was not a rampage.
11 This was not like William Cruise, the Palm Bay Show,
12 where he just started shooting people he didn't know
13 at random. This is four separate and distinct
14 shootings of four people known to the defendant, each
15 one of whom was shot for a particular reason.

16 I submit to you that on this day, Curtis Windom
17 simply decided to eliminate all of those people that
18 he had a grudge against.

19 We know why he had a grudge against Johnny Lee.
20 He told Jack Luckett that. "Owes me \$2000. He won
21 money at the track. He's not paying me back. You're
22 going to read about me in the paper today. I'm going
23 to make headlines." That's what Curtis Windom said.
24 Boy was he true to his word.

25 He shot Johnny Lee. He walked down and he shot

1 Valerie Davis with the remaining bullet. He came
2 back and he shot Kenny Williams. He shot because of
3 money. He got Valerie Davis because of -- Valerie
4 Davis' motive is a little less clear.

5 I submit to you, based on the statements he
6 made, it's jealousy: "I'm through. I have had
7 enough." She was yelling at him, "It's Latroxy and
8 Maxine." And then he shoots her.

9 Kenny Williams, he shot, because he was an
10 informer; and Mary Lubin, he shot, because she was
11 the mother of Valerie Davis.

12 Now, the Judge is going to read you instructions
13 on the law in this case. Those instructions tell you
14 what the State has to prove in order to convict the
15 defendant of each of these crimes.

16 The instructions as to the murder cases --
17 Johnny Lee, Valerie Davis and Mary Lubin -- are all
18 the same.

19 The Judge is going to tell you in order to prove
20 any of these counts of first degree murder we only
21 have to prove three things, and they are very simple
22 things.

23 The first is that a victim in each case is
24 dead. That is obvious. No one is disputing that.

25 The second element is the death was caused by a

1 criminal act or agency of the defendant.

2 Again, nobody is disputing that. We have his
3 fingerprints. We have his gun. We have him buying
4 the bullets. We have more witnesses than I could
5 ever hope for. So, there's no question about that.

6 And the third is that there was a premeditated
7 killing of each of the victims.

8 Now, the Judge is going to define for you what
9 premeditated means. It may not be -- it may not mean
10 what you think it means. But this is what it means
11 in law.

12 The Judge will tell you killing with
13 premeditation is killing after consciously deciding
14 to do so. The decision must be present in the mind
15 at the time of the killing.

16 The law does not fix the exact period of time
17 that must pass between the formation of the
18 premeditated intent to kill and the killing. In
19 other words, the law doesn't say it has to be an
20 hour, half hour, 30 minutes. It can be a matter of
21 seconds. The period of time must be long enough to
22 allow reflection by the defendant.

23 The premeditated intent to kill must be formed
24 before the killing.

25 So, as to each one of these killings, you must

1 ask yourselves did the defendant have time to
2 reflect, to think about what he was going to do,
3 decide to do it, and then do it.

4 And I submit to you that in each one of these
5 cases, he did. We know that he premeditated the
6 murder of Johnny Lee because he sought him out, drove
7 up to him, said, "I want my fucking money, nigger,"
8 and shot him and got out of the car and shot him two
9 more times. There's no question that's
10 premeditated.

11 Valerie Davis, he ran all the way from here,
12 past Kenny Williams to Valerie Davis with one bullet
13 left in his gun.

14 Why did he run to Valerie Davis with one bullet
15 left in his gun? There wasn't any fight with her.
16 There wasn't any argument with her. He walked in and
17 said, "Val, I have had enough. I am through. I am
18 through," and picked up the gun and shot her.

19 He had time to reflect. He had time to decide
20 and he took her life. The shot was not random. The
21 shot was not wild. The shot was with deadly
22 accuracy.

23 Kenny Williams. He reloaded the gun in the
24 apartment, obviously with the intent of using the
25 gun; walked out of the apartment; saw Kenny

1 Williams. There wasn't any fight. There wasn't any
2 argument. "I don't like police ass niggers anyway."
3 Bam. And shot him. Attempted premeditated murder.

4 He had decided that Kenny Williams was going to
5 join Johnny Lee and join Valerie Davis that day and,
6 but for Kenny turning, he would have.

7 He walked down to Brown's Bar where his brother
8 tried to take the gun away from him. Why wouldn't he
9 give up the gun? Because he had another plan. He
10 had something else to do. And that was Mary Louise
11 Lubin. He waited for her. He saw the car. He
12 approached her. He leveled the gun and he fired two
13 more times at her. Premeditated murder in the first
14 degree.

15 Ladies and gentlemen, we have given you a lot of
16 evidence in this case showing the defendant is the
17 person that committed these murderers. And you may
18 ask yourself: Why is that? The defendant is not
19 disputing in his trial that he committed these
20 murderers.

21 Ladies and gentlemen, we want you to see the
22 massive evidence that has been collected against
23 Mr. Windom so that you can understand why it is that
24 Mr. Windom's defense now is, "Oh, yea, I did it but
25 it wasn't premeditated." That's another point.

1 At this point in argument I also like to address
2 what the defense is. The problem is, in this case
3 I'm not sure I know what the defense is.

4 Dr. Kirkland was put on the stand to testify
5 that in some situations, though very rare, someone
6 can commit a act of violence that's in a fugue state
7 and commit additional acts in a frenzy that he may
8 not know he's doing.

9 But I described to Dr. Kirkland the facts as we
10 heard them from the witnesses and asked him, "Do you
11 have an opinion as to whether Curtis Windom was in a
12 fugue state on that day?" And he said, "Yes. My
13 opinion is he was not in a fugue state on that day."

14 So why did we hear from Dr. Kirkland?
15 Dr. Kirkland affirmatively and completely states that
16 Curtis Windom was not under any mental disease or
17 defect that day. That, as far as he knows,
18 everything that Curtis Windom did, he had the perfect
19 ability to plan, premeditate and intend.

20 We heard testimony from Pamela Fikes about
21 whether she moved her car or not. And, again, I'm
22 not sure what that has to do with any defense. The
23 evidence shows that, apparently, somebody moved
24 Mr. Lee's body. When the police got there, propped
25 him up on the car. I don't know what that has to do

1 with anything.

2 Mr. Lockett was called and questioned about
3 whether somebody moved the body or not. Again, so
4 what? There's no claim of self-defense here. Nobody
5 is claiming Johnny Lee attacked Curtis Windom or had
6 a gun or anything.

7 The last thing we heard from was the video tape
8 and the defendant's mother. What did that tell you?
9 It told you that when the police were in the room
10 with the defendant, he was crying and acting
11 confused. But when he was alone with his mother, he
12 was yawning.

13 But the one thing the defendant did say very
14 clearly on the tape, and his mother confirmed it, is,
15 "I shot Valerie in the apartment -- in the house," I
16 think is the word he used. And, "I shot Johnny on
17 the street."

18 So, it's clear that the defendant had a memory
19 of those, despite what he may have told Dr. Kirkland.
20 He told Dr. Kirkland, "I shot this guy and this
21 woman, but I don't remember the stuff in between."

22 Clearly, that's not true. He told his mother he
23 remembers shooting Valerie. What that proves, I
24 don't know.

25 At any rate, ladies and gentlemen, Mr. Leinster

1 is now going to have an opportunity to make argument
2 to you. Please give him your very, very careful
3 attention as you have me.

4 When he is finished, I will have a chance to
5 briefly respond in rebuttal. Thank you very much.

6 THE COURT: Thank you, counsel. Mr. Leinster.

7 MR. LEINSTER: There is a difference between
8 first degree murder and second degree murder. It is
9 a very fine distinction. It is a rhetorical
10 distinction. It is a semantic distinction.

11 We are stuck with the English language and
12 whatever that conveys to people which is, generally,
13 by way of images. And we probably all come away with
14 different thoughts when we hear different words.

15 So, these words become very important when we
16 use them in a court of law.

17 And I have to have hope that you take their
18 meaning from the same way I do, because the defense
19 that I have raised -- and I will say this for
20 Mr. Ashton's benefit -- is that what you're going to
21 be called on to do is to unscrew the top of a man's
22 head and look inside, essentially, and try to
23 determine from the acts themselves, the inherent
24 bizarreness of these acts, whether or not the intent
25 that these people died is there or whether or not the

1 acts of the defendant were a showing that he acted
2 out of ill will, hatred, spite, evil intent, in a
3 manner where a person of ordinary judgment would know
4 is reasonably certain to kill and in such a nature
5 that the act itself indicates an indifference to
6 human living.

7 Now that is the difference of second degree
8 murder, that contemplates the very rampage, the very
9 blind rage that Mr. Ashton says that this case is
10 not.

11 Mr. Ashton stands calmly before you, picks up a
12 pistol and points it as though that's the way it
13 happened. But Mr. Ashton wasn't there, and that's
14 not the way it was described as happening.

15 And the fact that Mr. Ashton tries to dispense
16 with this as a rampage is important, because
17 Mr. Ashton understands that the law recognizes this
18 fine distinction.

19 When the brain suspends logic, however briefly,
20 and ignores the consequences of behavior, you may not
21 qualify as legally insane; but the condition of the
22 mind then determines really what intent you're
23 forming, if any.

24 Are you in a state of thought or nonthought?
25 Are you contemplating that you want someone to die as

1 a result of your actions, or are you in such a rage
2 for whatever reason that people die as a result of
3 your acts but without your necessarily wanting that
4 to happen?

5 How do you make that determination as a human
6 being?

7 What was Mr. Windom's intent? That is what it's
8 going to come down to.

9 Let me go off on what may seem to be a tangent
10 briefly but a way that I sort of picture our world
11 working briefly.

12 Ideally we all live in a protected space. We
13 make certain rules for ourselves and our family and
14 our society, and we teach our children to say, "Yes,
15 sir," and "No, sir," and to be polite and to go to
16 school and do well so that they will grow up and they
17 will be successful.

18 And we hope that they will succeed. We think of
19 ourselves as decent people. We believe in freedom.
20 We believe in our country. We trust that our leaders
21 are doing the right thing.

22 And we conduct ourselves according to all those
23 beliefs; the belief in God, the hereafter,
24 accountability and the firm conviction that we are
25 all good and that we value the sanctity of human

1 life.

2 Now that is our society. That is the world we,
3 as individuals, not the rest of the planet perhaps,
4 but that's what we live in.

5 And that's not necessarily because that's the
6 way it is but it's because of the way we hope it is;
7 what we hope it to be. That's the idyllic world.

8 What happens when somebody comes along like
9 Mr. Windom to threaten that allusion for us? We
10 reject it. We ignore it or we hate it.

11 We pick up our coffee, we look at the TV, we
12 read our newspapers and what do we see? We see that
13 in a place known as Yugoslavia that thousands of
14 people are dying a day. And most of us don't have a
15 clue where Yugoslavia is or why those people are
16 doing it to each other. We are insulated from all of
17 that.

18 And in East Africa, thousands into the millions
19 die daily of starvation. And, being good people, we
20 are concerned. We are concerned to the extent we
21 watch it from the comfort of our living rooms; but it
22 doesn't threaten us. It's not our society. It's
23 somewhere far away.

24 Now, we don't pay attention to most of those
25 things because they don't directly affect us

1 individually. Emotionally, intellectually we say we
2 care. But we do nothing until it's too late. We
3 don't know how to do anything.

4 We don't know how to do anything about the
5 workings of the human mind, either; and we don't pay
6 much attention because it's a low priority item.

7 We can do a lot in the -- in space. We can't do
8 anything to know why we tick; what sets us off. Why
9 do we do one thing as opposed to the next?

10 Why does Curtis Windom, 26 years old, go on this
11 rampage he hasn't before? All of sudden he is a
12 different person that even the people that testified
13 against him say he is not the person they have known
14 all these years.

15 Premeditation is a word. It's all it is. We
16 can give it a life. We can give it a description.
17 But what does it mean? How does it really describe
18 the activity that goes on in the brain?

19 On February the 7th, Curtis Windom, who,
20 obviously, doesn't sport a gun regularly, goes out to
21 buy 50 bullets.

22 MR. ASHTON: Let me object and move to strike
23 the comment "regularly sports a gun." There is no
24 testimony at all in this case.

25 THE COURT: All right. The jury can remember

1 the testimony and you go with your memory as opposed
2 to what the lawyers say.

3 As I said before, what the attorneys say is not
4 evidence. So, if you recall it to be different, then
5 as a group you recall it the way you remember, not
6 the way the lawyers remember it. Thank you.

7 MR. LEINSTER: If Mr. Ashton were listening, he
8 would have heard me say if he regularly sported a
9 gun, he would have already had the bullets. So, on
10 February the 7th, he goes out, apparently with no
11 bullets, and buys them. He appears calm to the man
12 in the store.

13 What does that mean? Does that mean that Curtis
14 Windom is probably thinking at this point coherently?
15 What bomb is ticking inside Curtis Windom that
16 morning? What rage is festering in him that leads to
17 the rampage that Mr. Ashton said did not happen?

18 He then goes to shoot a lifelong friend. Over
19 \$2000? In broad daylight? He leaves his car sitting
20 right there with the door open with witnesses all
21 around.

22 This was going to be the end of his life as he
23 knew, too. He wasn't going to get away. He didn't
24 go surreptitiously and shoot Johnny Lee. He didn't
25 plan Johnny Lee to be dead and he not be found. He

1 could have set that out.

2 He, in a blind rage, pulls up and see Johnny Lee
3 and doesn't get out of the car first. He just starts
4 shooting. That act itself demands that you examine
5 what's going on his mind, the thinking or the
6 nonthinking. He is not going to get away from doing
7 this at this point.

8 Now a whole team of psychiatrists decide the
9 case that you heard described by Dr. Kirkland that in
10 their opinion a young man accidentally killed his
11 father with a baseball bat, then killed two other
12 family members without knowing it and then, carefully
13 and knowingly, planned the murder of his brother to
14 cover it all up.

15 What does that mean? That otherwise normal,
16 decent everyday kid in the opinion of a team of
17 psychiatrists commit a violent, accidental act and
18 two more intentionally but unaware acts of violence
19 and then comes out of it and says, "Whoops. I've
20 killed three. Now I'm myself again. I had better
21 kill my brother;" the same normal, decent everyday
22 kid that started out minutes before accidentally
23 killing dad now kills his brother because of the
24 sequence of events?

25 Voodoo. I did not call Dr. Kirkland to prove

1 that Curtis Windom went into a fugue state. The best
2 that he would ever be able to do is say it's a
3 possibility.

4 I'm proving only that the twisting of the human
5 mind is poor guesswork because an entire team of
6 psychiatrists, taking tremendous amounts of time with
7 this young man, concluded that he changed from being
8 a good guy to a bad guy in minutes and that two of
9 the acts --

10 MR. ASHTON: Let me object to this argument
11 based on the case law previously cited limiting the
12 mental health defenses.

13 MR. LEINSTER: I've got every right to discuss
14 his state of mind.

15 THE COURT: Overruled.

16 MR. LEINSTER: What that team undoubtedly
17 confronted themselves with is what you're called to
18 confront yourselves with.

19 What in the world happened to a young man with
20 no previous history of violence? Why would he do
21 this?

22 MR. ASHTON: Objection, Your Honor. Objection.
23 Move to strike. Could we approach?

24 THE COURT: Yes.

25 MR. LEINSTER: For crying out loud.

1 (The following is a bench conference.)

2 MR. ASHTON: Number one, I'd like to make my
3 objections without comment from Mr. Leinster.

4 THE COURT: I didn't hear what you said.

5 MR. ASHTON: For crying out loud. Number two,
6 we've gone through this. There was no testimony that
7 he had never had any history of violence.
8 Mr. Leinster knows his history of violence. The
9 Court limited it. That's fine. That is an unfair
10 comment.

11 MR. LEINSTER: I've got every right to go into
12 what the evidence shows. There is no showing of a
13 history of violence. I have every right to show the
14 fact that in this world it is certainly possible that
15 people act in crazy, unexplainable ways. This is
16 closing argument, first degree murder; and I resent
17 him inventing up silly objections.

18 MR. ASHTON: This has to do with your ruling.
19 This Court kept out evidence on his motion and
20 criticized the State for presenting evidence that you
21 ordered we could not present. It is an unfair
22 comment.

23 MR. LEINSTER: Where are you talking about? If
24 there is no evidence before this jury, I can comment
25 on it.

1 MR. ASHTON: Where you very deliberately say all
2 the testimony -- two witnesses indicate they had
3 never seen acts of violent. You cannot testify -- I
4 have made my point. I'm sorry.

5 THE COURT: There is no evidence before this
6 jury that he has any violent acts, so he can comment
7 on that.

8 MR. ASHTON: Your Honor --

9 THE COURT: He can also comment on the fact that
10 the only witnesses that were asked about it that
11 were -- that had seen it with their own eyes. That's
12 what the testimony is.

13 MR. ASHTON: I understand, Your Honor. My
14 position is still the defense cannot deliberately
15 keep out a piece of evidence and criticize the State
16 for not presenting something he deliberately kept
17 out.

18 THE COURT: Okay.

19 (End of bench conference.)

20 MR. LEINSTER: I'm going to start back where I
21 was interrupted. That team of psychiatrists
22 undoubtedly scratched their heads wondering why.
23 That is why they went through all of that to make
24 their determinations because people do bizarre things
25 that nobody can figure out. You're left with a huge

1 question mark.

2 And, finally, after all that intense study, they
3 came up with an opinion. They didn't say that's what
4 happened with that kid. They said we think in our
5 expert opinion that that's what happened.

6 We are threatened by the acts of Curtis Windom.
7 He has violated our sense of moral tidiness. We are
8 undoubtedly mad at Curtis Windom.

9 How could you do something like this, Curtis
10 Windom? The natural reaction in a society that
11 bombards you with get tough on crime. People, would
12 say you're tough on crime? No. I am tough on crime.
13 I am much tougher than you are.

14 Every single day what you get is "let's beat
15 them up." That's the way to do it. No, let's hang
16 them. Let's hang them higher. That's the way you
17 correct the problem. You're steeped in it.

18 And, so, what that leads to is a thinking
19 process that goes, "He did it and that's all I need
20 to know."

21 The consequences of his particular brain ticking
22 in a particular fashion on February the 7th don't
23 mean a thing to me. I'm not interested in dissecting
24 the English language to determine intent,
25 premeditation, or depraved mind. Who cares? Three

1 people dead.

2 Well, he is a human, too. Your job, as hard as
3 it may be, is to rise above that inclination to
4 simply reject him, to ignore him, to hate him and to
5 wish that he was not part of that society that
6 threatens our security.

7 We know that something happened in his brain,
8 but we don't know what. We don't have motives
9 established. We have guesswork. We know that the
10 lights were burning, the synapses were firing, the
11 neurons were flashing. We know the brain was
12 working. But what message was Curtis Windom
13 receiving that day?

14 How did it happen? We know that Johnny Lee fell
15 with the first two bullets. Supposedly, he fell on
16 his back. And Mr. Ashton says two more were pumped
17 into him at this angle.

18 Well, he would have died very close to his car,
19 Curtis' car, because Pamela, for whatever reason,
20 left the scene, pulled the car away. Yet, Fusco said
21 his body was 20 feet from Windom's car; and Keeman
22 Hunter said the body was on its side when found.

23 At least one of the frontal bullets came in on a
24 horizontal angle which is certainly not consistent
25 with standing over the body twice and shooting into

1 it.

2 The question that I raised about whether someone
3 moved the body or rolled the body on its side or --
4 although Mr. Lockett denied saying it -- did someone
5 remove something from the body was simply to suggest
6 to you that that is not necessarily the way the shots
7 were fired or how it happened.

8 We simply have the testimony of witnesses who
9 cared so little about it that they simply went to
10 their respective homes and that was the end of the
11 story for them.

12 Jack Lockett, a three-time convicted felon says,
13 "Curtis Windom says, 'I'll kill him. You'll read
14 about me.'"

15 Jamie Lockett and Terry Jackson, who were also
16 present at the time this statement was supposedly
17 made --

18 MR. ASHTON: Objection, Your Honor.

19 MR. LEINSTER: -- don't corroborate that in
20 court.

21 MR. ASHTON: I withdraw the objection with that
22 later addition.

23 MR. LEINSTER: Did not come into court to
24 corroborate that statement. Valerie Davis, Jeff
25 Ashton says, the motive is jealousy. Pure

1 arrogance. There isn't a shred of testimony to
2 suggest any motive whatsoever.

3 Valerie -- frankly, there's no showing he even
4 knew she was home at the time. They have a 3-month
5 old child together. They have lived together 3
6 years. There is no indication the two of them don't
7 get along. No evidence of fighting together.

8 Curtis Windom comes in. And what is heard is
9 not the simple, casual, calm statement, "I'm through.
10 I can't take it anymore," pointing the gun and --
11 bang. That's not what's done at all.

12 The statement is a desperate statement. "I'm
13 through. I'm through. I can't take it anymore."
14 That kind of statement you don't utter in the same
15 utterance you do, "How are you? Good morning."

16 This is another signal of what's going on in his
17 brain. The conversation, "Who are you talking to?"

18 "Maxine and Latroxy."

19 "I'm through. I'm through. I can't take it
20 anymore."

21 These are non sequiturs. This is not a
22 conversation. Why doesn't he go in and shoot her
23 right there on the spot, no conversation? There is
24 something bizarre about that particular sequence of
25 events.

1 And, yes, she is shot in the heart. But the
2 angle of entry is upward which would be consistent
3 with a quick movement from this angle with the gun
4 pointing upward toward the body. It must have been a
5 quick shot.

6 If the gun had been pointed at Valerie as
7 Cassandra said, then Latroxy and Maxine would have
8 probably heard something over the phone like, you
9 know, "Don't shoot me." Something. Anything.

10 They would have probably heard the screams that
11 Cassandra said that she made as she fled the
12 residence, before she heard the shooting as she fled.

13 Today for the first -- yesterday for the first
14 time -- was the only time that Cassandra Hall ever
15 said she saw him pull the trigger. I'm not saying he
16 didn't pull the trigger. I'm saying that Cassandra
17 Hall wasn't there to watch it. And Cassandra Hall
18 didn't see him calmly point the gun at Valerie.

19 In both of her statements to Fusco, whether it
20 was the first one or the one she wanted to clarify,
21 she wasn't there at the time that it happened.

22 So, again, Mr. Ashton, disregarding what's come
23 from the stand, says he stood in front of Valerie,
24 pointed at her heart and shot. But that's not what
25 the evidence shows.

1 If he had done that, the angle of entry would
2 have been more straight on, I submit, or perhaps even
3 in a downward angle.

4 Kenny Williams. Police informant. "Police
5 nigger." Tommy Lott said he heard that statement.
6 But Tommy Lott lived next door. He lived in the
7 second house, according to the police.

8 And according to Kenneth, this took place at the
9 first house. But he overhears a statement to that
10 effect. Kenneth Williams, depending on when he tells
11 the story, either did or didn't hear that. But is
12 that really that material? The fact is, Kenneth
13 Williams states he also got a look. He, like
14 everybody else in the neighborhood, has always known
15 Curtis Windom, had always been friends, as far as he
16 knew.

17 Kenneth Williams could be anyone. This is not a
18 stake-out. At this point in time, Curtis Windom is
19 in a rage. His eyes are large. He is sweating. He
20 is that very thing that Mr. Ashton says he is not.
21 He is not calmly doing anything.

22 He comes up to Kenneth Williams, quite by
23 accident, a man he could have shot and killed the
24 first time they passed; and he runs into him, and he
25 shoots him in a fashion like this, downward. The

1 easiest thing he could have done is stuck the gun
2 right in him, pulled the trigger and killed him.

3 If he wanted to kill, to have killed him, why
4 didn't he? Kenneth Williams falls down, jumps up and
5 starts to run.

6 Where is Curtis Windom? He is gone. He is on
7 the rampage, and somebody else is probably going to
8 get it at this point in time. But there's absolutely
9 no reason for his having gone after Kenneth
10 Williams. He was just a guy that happened to be
11 there at the time.

12 Mary Lubin. Mr. Ashton says that he waited for
13 Mary Lubin to come to that street corner. How in the
14 world would he know that Mary Lubin is coming looking
15 for him? This was another completely accidental
16 meeting.

17 The State, through Mr. Ashton, says he sought
18 her because she's the mother of his girlfriend who he
19 has just shot. Why? There is no showing of any
20 animosity between these people at all.

21 What we do through the State's witness, not
22 mine, Mary Law -- and they can say she was on drugs
23 so she didn't know. But they are the ones who put
24 her on the stand to testify.

25 Mary Law said it was during that wrestling for

1 the gun that Mary Lubin pulled up and said
2 something, yelled something. And as they wrestled to
3 get the gun from Windom about 15 feet away that he
4 wheeled and shot twice into the car.

5 Now, the State would indicate she was bending
6 over at the time to get out of the car. I would
7 submit to you that any number of things are possible,
8 including her bending over to get something; i,e, her
9 purse, for whatever reason, the purse that Sylvester,
10 for whatever reason, took; the one that Pearly Mae,
11 for whatever reason, took and was taken from the
12 scene.

13 Her own boyfriend leaves Mary Lubin lying in the
14 street bleeding in order to get her purse out of
15 there.

16 So, what was yelled through the window? We
17 don't know. We don't know what that inspired in
18 Curtis Windom at that particular point.

19 But there is nothing to show that at that moment
20 in time, however small period of time that may have
21 been, that Curtis Windom had the capacity, the
22 ability to form that thought, "I want you to die,
23 Mary Windom (sic)."

24 Now Curtis Windom is shown on a video. He is
25 left in that room because it would appear that he was

1 alone; that he would be more open perhaps with his
2 mother than he would be with the police; that we
3 would be able to see Curtis Windom with a person that
4 he probably trusts the most on the planet, speaking
5 with her as to what happened.

6 As she -- I can't understand most of what she
7 says other than "you're sick," but she does try to
8 get him to talk; and some of things that he says are
9 interesting.

10 At some point someone makes reference to the
11 fact that he shot a cop or he thought they said
12 that. And what he responds is, "I shot a cop? I
13 know I didn't. I didn't shoot a cop," which you
14 would think someone being accused of that who knew
15 what he just got through doing would say, "I shot a
16 cop?" This is spontaneous sort of stuff.

17 Curtis' momma would say anything that you led
18 her to say. If you said, "Didn't he -- isn't it a
19 fact that he said, 'I shot Val at the house and I
20 shot Kenneth;' isn't that fact?"

21 "Yes. Yes."

22 She'll say anything you want her to say. But
23 the tape is as much a question as it is an
24 affirmative statement. Do you really think that in
25 that five- or six-hour period nobody had alerted him

1 to what he had done? And the statement he makes is
2 not so much a validation as, "I shot Val at the
3 house?" The rest of it is completely, "I don't know.
4 I don't know, momma, what's going on."

5 Curtis Windom, essentially, climbed a tower with
6 a sniper scope that day -- the calm fellow with the
7 bifocals that works at the post office that nobody
8 has ever talked to who suddenly shoots people in a
9 blind rage. And everybody goes: Why? What
10 happened?

11 The State doesn't know what happened. There's
12 no motive for any of this. Not a motive that would
13 justify killing anyone. There is no sense to any of
14 this.

15 These acts cry out themselves: "Understand me.
16 Make some sense out of me."

17 We can't. We are all as horrified that these
18 things happen. But they happen every single day,
19 day-in/day out. We are almost inured to it; it
20 happens so much. What we say is, "What in the world
21 is going on," but nobody pays any attention to figure
22 out why.

23 How does the brain tick? They don't know. They
24 form opinions about all of this. Everything that
25 Curtis Windom did showed an indifference to human

1 life. A careless, reckless act reasonably certain to
2 kill.

3 That's second degree murder unless you're able
4 to somehow reach in and unscrew that head and come to
5 the conclusion that everything he did that day was in
6 fact not the rampage that they suggest it was and
7 figure out beyond every reasonable doubt that, yea,
8 that's exactly what he did. He wanted every person
9 to die when he did that.

10 If you are firm in that, if you are convinced
11 beyond a reasonable doubt, every reasonable doubt,
12 that you can read into that mind and say, yes, that
13 intent was there, then he should be found guilty of
14 first degree murder.

15 Anything short of that, anything short of that
16 real firm conviction that "I know what he thought
17 when he pulled those triggers," is a depraved mind.

18 And that's what Curtis Windom, on the 7th of
19 February had -- a depraved, reckless mind,
20 indifferent to anyone that came in his path.

21 I'm not asking you to forgive him, but I'm
22 asking you to at least be intellectual enough to
23 remove yourself from the very tempting emotional
24 response of saying, "Shut up. I don't want to hear
25 you anymore. I don't want to listen to all this.

1 These are just words."

2 These aren't just words. These are facts we
3 live by. If the law didn't recognize these
4 distinctions, I wouldn't be talking about them. If
5 people didn't do these things, we wouldn't have these
6 distinctions. Every time somebody pulls a trigger,
7 they want somebody to die? It may mean they have
8 lost it.

9 Everybody that testified, even people testifying
10 against him, said, "That's not the Curtis Windom we
11 have always known. Something happened. He clicked.
12 He snapped. I have never seen him like that. It was
13 something wrong with that boy that day. I don't know
14 why."

15 They don't know why and you don't know why.
16 Thank you.

17 THE COURT: Thank you, counsel. State.

18 MR. ASHTON: Most of the facts that Mr. Leinster
19 has just relayed to you are an operation of his
20 mind. What Mr. Leinster says the facts are or what
21 I say the facts are aren't evidence. The only
22 evidence is what the witnesses say the facts are.

23 Mr. Leinster is attempting to develop some kind
24 of hybrid mental health defense -- hopefully, because
25 you'll think that killing four people is just so

1 crazy, it doesn't make any sense.

2 But he had an expert in the operation of the
3 human mind on the witness stand and the ability to
4 ask that expert any question he wanted to about the
5 operation of Curtis Windom's mind. And what did he
6 ask him?

7 He didn't ask him anything about Curtis Windom's
8 mind. He asked him about the mind of some kid in
9 Texas. Mr. Leinster didn't even tell Dr. Kirkland
10 the facts of this case. I had to tell Dr. Kirkland
11 the facts of this case.

12 And when Dr. Kirkland, who is an expert in the
13 operation of the mind, heard the facts of this case,
14 what did he say? No. He wasn't in a fugue state.
15 He had the ability to plan, intend and premeditate
16 everything he did.

17 So, Mr. Leinster wants you to ignore the
18 testimony of his own witness and to accept his
19 testimony instead, except he's not on the witness
20 stand and he can't testify.

21 Blind rage? Do you see blind rage anywhere in
22 here? Anger, absolutely. Blind rage? Blind rage is
23 rage out of control. Someone in blind rage does not
24 take a gun, having killed two people, go into the
25 bedroom and empty out the old shells on the bed and

1 pick up five new ones off the bed and reload his
2 gun. That's not blind rage.

3 Now, I want to warn you against something
4 semantically very tempting, and that is the language
5 of second degree murder.

6 Now, second degree murder and manslaughter are
7 called lesser included offenses. It's a very
8 important term: Lesser and included. The reason is
9 because whenever you commit a first degree murder,
10 you also commit a second degree murder and
11 manslaughter.

12 Every premeditated murder is a murder which a
13 person of ordinary judgment knows is reasonably
14 certain to kill. Every first degree is done with ill
15 will, hatred, spite, evil intent and of such a nature
16 the act itself indicates an indifference to human
17 life.

18 Don't be tempted away from the language. The
19 language of second degree murder fits all these
20 crimes and so does the language of manslaughter.

21 What you have to do is start out with first
22 degree murder. The Judge is going to tell you don't
23 look at the lesser until you have determined whether
24 the main crime is charged. She is going to tell you:
25 If, therefore, you find the main accusation is not

1 proved beyond a reasonable doubt, then you look at
2 the lesser.

3 Look at each one of these crimes. Are you
4 convinced beyond a reasonable doubt that he
5 consciously decided to kill Johnny Lee?

6 What other possible interpretation of these
7 events is there? There is no blind rage. There is
8 four very clearly delineated gunshots for maximum
9 affect to murder. There is a plan.

10 He walks down -- he doesn't shoot anybody on
11 this street walking down, even though he is in the
12 blind, uncontrolled rage supposedly. He doesn't even
13 shoot Kenny Williams. He's only got one bullet left
14 in the gun, and he is saving that. He is saving that
15 for Valerie. He walks in, he says to her, "I'm
16 through. I'm through. I have had it." And then he
17 shoots her.

18 But what is supposed to have been in his mind?
19 We know he wasn't crazy. He was not legally insane.
20 That's not even a defense here.

21 What was he mad at her about? Jealousy
22 perhaps? Perhaps something. We don't have to prove
23 his motive. It's not one of the elements of the
24 crime. All we have to prove is that he consciously
25 decided to kill.

1 And, ladies and gentlemen, when you pick up a
2 gun, having just killed somebody, and you point out
3 another person and pull that trigger and shoot them
4 through the heart, I think it's a pretty good guess
5 you meant to kill them. In fact, in this case
6 there's no question about it.

7 Now the doctor told you -- Mr. Leinster has him
8 doing some kind of gunslinger thing down here. The
9 evidence from Cassandra Hall is that he picked up the
10 gun and fired at her.

11 The evidence from the medical examiner is again
12 the angle of the bullet was only one inch lower on
13 the entry than on the exit. So, in other words, the
14 bullet only went up one inch the entire length of the
15 body. That's just as consistent with her leaning
16 back.

17 She sees the gun and leans back and gets shot.
18 He says you can't tell. It's certain from the angle
19 that it came in here and came out the top. But what
20 difference does it make what angle he shot her from?

21 The question is: Did he intend her to die when
22 he shot her? Of course he did. He went and reloaded
23 the gun. What Mr. Leinster would have you think was
24 in his mind, when he reloaded that gun, it was not to
25 kill some more people.

1 He walks out. He sees Kenny Williams. He
2 didn't shoot Kenny the first time because he was
3 saving that bullet for Valerie. He comes out. He's
4 got five. He can waste one on Kenny.

5 He looks at him. He doesn't scream at him. He
6 pulls off a shot. He looks at him and says, "I don't
7 like police ass niggers anyway." Bam. He shoots
8 him. What's in his mind?

9 He doesn't like Kenny Williams. He thinks Kenny
10 Williams is an informer. As long as he's taking care
11 of business, he might as well take care of Kenny,
12 too.

13 He sits back here and he waits. People are
14 trying to take the gun away from him. He wouldn't
15 give it to them. Why? What is he keeping the gun
16 for? So he can keep the blind, uncontrollable rage?
17 Why doesn't he shoot his brother or the other two
18 people? Or why doesn't he shoot Mary Law?

19 He doesn't have anything against them because he
20 is saving the last four for somebody else. He knows
21 Mary works at the Maxey Center. He knows Mary is
22 going to find out, as everything one knows, Valerie
23 has been shot; and he's waiting for her.

24 He walks to the corner and shoots her twice.
25 Now, remember, each one of these victims, he said

1 something to them before he killed them. "I want my
2 money, nigger." "I'm through. I'm through, Val."
3 "I don't like police ass niggers anyway." And, of
4 course, we don't know what he said to Mary Lubin but
5 he said something.

6 It's not a blind rage. He wants to tell them
7 why they are going to die, and he told each and every
8 one of them why they would die.

9 Ladies and gentlemen, there is no question in
10 this case that these people died because Curtis
11 Windom wanted them to die. There is no question in
12 this case that Kenny Williams would be dead today but
13 for a slight movement from his body -- slight
14 movement.

15 The defendant in this case is guilty of first
16 degree murder, four counts of first degree murder.

17 MR. LEINSTER: How many?

18 MR. ASHTON: Thank you for correcting me,
19 Mr. Leinster. Three counts.

20 MR. LEINSTER: Thank you.

21 MR. ASHTON: And one count of attempted murder.
22 He didn't care about these people. Once you accept
23 the idea that killing people is okay, then this makes
24 perfect sense. It's the only offense we take at
25 taking a human life that makes us find this

1 unbelievable.

2 Once you suspend that, there's no problem in
3 believe -- let's assume these people were all
4 animals. They were dogs and they were rabid or they
5 were annoying us. Once you accept that it's okay to
6 kill to resolve your problems, this makes perfect
7 sense. Take care of everything all at once.

8 Please listen very carefully to the Judge's
9 instructions on the law. When you go back you're
10 going to have all this evidence. The video tapes
11 that you have, if you want to look at them -- there's
12 one of Mr. Windom and one of this apartment.

13 If you want to look at those, just ask and we'll
14 bring you back out and show them to you. Please give
15 the Judge your very careful attention to these
16 instructions. Thank you for the attention you have
17 given us.

18 I think when you have done all that there is no
19 question in your mind the defendant is guilty of all
20 these charges. Thank you.

21 THE COURT: Counsel approach the bench, please.

22 (The following is a bench conference.)

23 THE COURT: Did you get it?

24 MR. ASHTON: Here it is. Here's the
25 justifiable. This is for you.

1 Now where this actually needs to go was
2 mistaken. It needs to go before the last paragraph
3 of the introduction of homicide. That's where it
4 normally goes anyway.

5 THE COURT: Which one? This one?

6 MR. ASHTON: Both of them, the justifiable and
7 the excusable.

8 THE COURT: Okay. So they will go -- well, now
9 when we hand it to them, it's not going to be --

10 MR. ASHTON: I understand that. That's not
11 going to be a big problem.

12 THE COURT: So, I'll read it right there. And
13 the other thing, this instruction right here, I need
14 to strike that out there.

15 MR. ASHTON: Yes.

16 THE COURT: Where it says it's the Judge's job
17 to decide what the sentence will be. I'm going to
18 have to cross it out. I can reprint it all after I
19 do the instructions, but I'm not going to read it.

20 MR. ASHTON: We could white it out and recopy
21 it. That might be easier. I'll just white it out,
22 and you can Xerox it and that way they will have a
23 clean one.

24 THE COURT: I think I better.

25 MR. ASHTON: Whatever you'd like.

1 THE COURT: Anything else before I start the
2 instructions?

3 MR. ASHTON: No, Your Honor.

4 MR. LEINSTER: No.

5 THE COURT: Okay.

6 (End of bench conference.)

7 THE COURT: Members of the jury: I thank you
8 for your attention during this trial. Please pay
9 close attention to the instructions I am about to
10 give you. I will be sending a copy of these
11 instructions back to the jury room with you so you
12 will have them.

13 Curtis Windom, the defendant in this case, has
14 been accused of the crimes of three counts of murder
15 in the first degree and one count of attempt to
16 commit murder in the first degree.

17 As to the three counts of murder in the first
18 degree: Murder in the first degree includes the
19 lesser crimes of murder in the second degree and
20 manslaughter, all of which are unlawful.

21 A killing that is excusable or was committed by
22 the use of justifiable deadly force is lawful. The
23 killing of a human being is justifiable homicide and
24 lawful if necessarily done while resisting an attempt
25 to murder or commit a felony upon the defendant or to

1 commit a felony in any dwelling or house in which the
2 defendant was at the time of the killing.

3 Excusable homicide: The killing of a human
4 being is excusable and, therefore, legal under any
5 one of the following three circumstances:

6 One, when the killing is committed by accident
7 and misfortune in doing any lawful act by lawful
8 means with usual ordinary caution and without any
9 unlawful intent or;

10 Two, when the killing occurs by accident or
11 misfortune in the heat of passion, upon any sudden
12 and sufficient provocation. The heat of passion must
13 be sufficient to render the defendant unconscious of
14 his act, or;

15 Three, when the killing is committed by accident
16 and misfortune resulting from a sudden combat if a
17 dangerous weapon is not used and the killing is not
18 done in a cruel or unusual manner.

19 Dangerous weapon is any weapon that, taking into
20 account the manner in which it's used, is likely to
21 produce death or great bodily harm.

22 I now instruct you on the circumstances that
23 must be proved before Curtis Windom may be found
24 guilty of murder in the first degree or any lesser
25 crime.

1 If you find Johnny Lee, Valerie Davis or Mary
2 Lubin were killed by Curtis Windom, you will then
3 consider the circumstances surrounding the killing in
4 deciding if the killing was first degree murder or
5 was second degree murder or was manslaughter or
6 whether the killing was excusable or resulted from
7 justifiable use of deadly force.

8 Murder in the first degree: In count one,
9 before you can find the defendant guilty of the first
10 degree premeditated murder of Johnny Lee, the State
11 must prove the following three elements beyond a
12 reasonable doubt:

13 First, that Johnny Lee is dead. Two, the death
14 was caused by the criminal act or agency of Curtis
15 Windom. And, three, there was a premeditated killing
16 of Johnny Lee.

17 Killing with premeditation is killing after
18 consciously deciding to do so. The decision must be
19 present in the mind at the time of the killing.

20 The law does not fix the exact period of time
21 that must pass between the formation of the
22 premeditated intent to kill and the killing.

23 The period of time must be long enough to allow
24 reflection by the defendant. The premeditated intent
25 to kill must be formed before the killing.

1 The question of premeditation is a question of
2 fact to be determined by you from the evidence.

3 It will be sufficient proof of premeditation if
4 the circumstances of the killing and the conduct of
5 the accused convince you beyond a reasonable doubt of
6 the existence of premeditation at the time of the
7 killing.

8 If a person has a premeditated design to kill
9 one person and, in attempting to kill that person
10 actually kills another person, the killing is
11 premeditated.

12 In considering the evidence, you should consider
13 the possibility that although that evidence may not
14 convince you that the defendant committed the main
15 crime of which he is accused, there may be evidence
16 that he committed another crime that -- excuse me.
17 Let me start over.

18 In considering the evidence, you should consider
19 the possibility that although the evidence may not
20 convince you that the defendant committed the main
21 crime of which he is accused, there may be evidence
22 that he committed other acts that would constitute a
23 lesser included crime.

24 Therefore, if you decide that the main
25 accusation was not or has not been proved beyond a

1 reasonable doubt, you will next need to decide if the
2 defendant is guilty of any lesser included crime.

3 The lesser crime indicated in the definition of
4 murder in the first degree are murder in the second
5 degree and manslaughter.

6 As to murder in the second degree, before you
7 can find the defendant guilty of a second degree
8 murder, the State must prove the following three
9 elements beyond a reasonable doubt:

10 Number one, that Johnny Lee is dead. Number
11 two, the death was caused by the criminal act or
12 agency of Curtis Windom. And, number three, there
13 was an unlawful killing of Johnny Lee by an act
14 imminently dangerous to another and evincing a
15 depraved mind regardless of human life.

16 An act is one eminently dangerous to another and
17 evincing a depraved mind regardless of human life if
18 it is an act or series of acts that, one, a person of
19 ordinary judgment would know is reasonably certain to
20 kill or do serious bodily injury to another and, two,
21 is done from ill will, hatred, spite, or evil intent
22 or, three, is of such a nature the act itself
23 indicates indifference to human life.

24 In order to convict Curtis Windom of second
25 degree murder, it's not necessary for the State to

1 prove the defendant had a premeditated intent to
2 cause death.

3 Manslaughter. Before you can find the defendant
4 guilty of manslaughter, the State must prove the
5 following two elements beyond a reasonable doubt.

6 Number one, that Johnny Lee is dead. Number
7 two, the death was caused by the, (a), intentional
8 act of Curtis Windom or, (b), the culpable negligence
9 of Curtis Windom.

10 However, the defendant cannot be guilty of
11 manslaughter if the killing was justifiable or
12 excusable homicide as I have previously explained
13 those terms.

14 I'll now define culpable negligence for you.
15 Each of us has a duty to act reasonably towards
16 others. If there's a violation of that duty without
17 any conscious intention to harm, that violation is
18 negligence. But culpable negligence is more than a
19 failure to use ordinary care towards others.

20 In order for negligence to be culpable, it must
21 be gross and flagrant. Culpable negligence is a
22 course of conduct showing reckless disregard of human
23 life or of the safety persons exposed to its
24 dangerous effects or such an entire want of care as
25 to raise a presumption of a conscious indifference to

1 its consequences or which shows wantonness or
2 recklessness or a grossly careless disregard for the
3 safety and welfare of the public or such an
4 indifference to the right of others as is equivalent
5 to an intentional violation of such rights.

6 The negligent act or omission must have been
7 committed with utter disregard for the safety of
8 others. Culpable negligence is consciously doing an
9 act or following a course of conduct that the
10 defendant must have known or reasonably should have
11 known was likely to cause great bodily harm.

12 As you know there were three victims in the
13 three counts of first degree murder. The
14 instructions are identical. The victims' names are
15 the only thing different in each of the
16 instructions.

17 The instructions have been printed out for each
18 one of the victims but both counsel for the State and
19 defense have agreed that it wouldn't be necessary to
20 read the entire instruction three times with the
21 understanding that you know that the instruction is
22 the same for each of the three victims.

23 In count two, the victim was Valerie Davis; and
24 in count three, the victim is Mary Lubin. So, unless
25 you particularly want to hear the instruction three

1 times, I will go on and continue with the
2 instructions and pick up after that with the
3 instructions on the second degree and manslaughter,
4 as well as the original charge of first degree
5 murder.

6 Okay. As to count four, attempted murder in the
7 first degree. Before you can find the defendant
8 guilty of the attempted first degree premeditated
9 murder of Kenny Williams, the State must prove the
10 following three elements beyond a reasonable doubt:

11 Number one, that Curtis Windom had a
12 premeditated intent to kill Kenneth Williams; that
13 Curtis Windom did some act toward killing Kenneth
14 Williams that went beyond just thinking or talking
15 about it. And, number three, that Curtis Windom
16 would have committed premeditated murder of Kenneth
17 Williams except that he failed.

18 Killing with premeditation is killing after
19 consciously deciding to do so. The decision must be
20 present in the mind at the time of the killing.

21 The law doesn't fix the exact period of time
22 that must pass between the formation of the
23 premeditated intent to kill and the killing.

24 The period of time must be long enough to allow
25 reflection by the defendant. The premeditated intent

1 to kill must be formed before the killing.

2 The question of premeditation is a question of
3 fact to be determined by you from the evidence. It
4 will be sufficient proof of premeditation if the
5 circumstances of the killing and the conduct of the
6 accused convince you beyond a reasonable doubt of the
7 existence of premeditation at the time of the
8 killing.

9 If a person has a premeditated design to kill
10 one person and, in attempting to kill that person
11 actually kills another person, the killing is
12 premeditated.

13 In considering the evidence, you should consider
14 the possibility that although the evidence may not
15 convince you the defendant committed the main crime
16 of which he is accused, that being the attempted
17 premeditated first degree murder, there may be
18 evidence that he committed other acts that would
19 constitute a lesser included crime.

20 Therefore, if you decide the main accusation has
21 not been proved beyond a reasonable doubt, you should
22 next decide if the defendant is guilty of any lesser
23 included crime. The lesser included crimes indicated
24 in the definition of attempted murder of the first
25 degree are attempted murder of the second degree and

1 attempted manslaughter.

2 Before you can find the defendant guilty of the
3 attempted second degree murder of Kenny Williams, the
4 State must prove the following three elements beyond
5 a reasonable doubt:

6 One, that there was an unlawful attempt to kill
7 Kenneth Williams by an act imminently dangerous to
8 another and evincing a depraved mind regardless of
9 human life.

10 Two, that Curtis Windom did some act toward
11 killing Kenneth Williams that went beyond thinking or
12 talking about it.

13 And, three, that Curtis Windom would have
14 committed the murder of Kenneth Williams except that
15 he failed.

16 An act is one imminently dangerous to another
17 and evincing a depraved mind regardless of human life
18 if it's an act or series of acts that: One, a person
19 of ordinary judgment would know is reasonably certain
20 to kill or do bodily -- serious bodily injury to
21 another and, two, is done with ill will, hatred,
22 spite or evil intent and, three, is of such a nature
23 that the act itself indicates an indifference to
24 human life.

25 In order to convict Curtis Windom of attempted

1 second degree murder, it's not necessary for the
2 State to prove the defendant had a premeditated
3 intent to cause death.

4 Before you can find the defendant guilty of
5 attempted manslaughter, the State must prove the
6 following two elements beyond a reasonable doubt:

7 Number one, that Curtis Windom did some
8 intentional act toward killing Kenneth Williams that
9 went beyond just thinking or talking about it;

10 And, two, that Curtis Windom would have killed
11 Kenneth Williams except that he failed. However, the
12 defendant cannot be guilty of attempted manslaughter
13 if the killing was either justifiable or excusable
14 homicide as I have previously explained those terms.

15 The defendant has entered a plea of not guilty.
16 This means that you must presume or believe the
17 defendant is innocent. The presumption stays with
18 the defendant as to each material allegation in the
19 indictment through each stage of the trial until it
20 has been overcome by the evidence to the exclusion of
21 and beyond a reasonable doubt.

22 To overcome the defendant's presumption of
23 innocence, the State has the burden of proving the
24 following two elements:

25 Number one, the crimes with which the defendant

1 is charged were committed.

2 And, two, the defendant is the person who
3 committed those crimes.

4 The defendant is not required to prove
5 anything. Whenever the words reasonable doubt are
6 used, you must consider the following:

7 A reasonable doubt is not a possible doubt, a
8 speculative, imaginary or forced doubt. Such a doubt
9 must not influence you to return a verdict of not
10 guilty if you have an abiding conviction of guilt.

11 On the other hand, if, after carefully
12 considering, comparing and weighing all the evidence
13 there is not an abiding conviction of guilt, or if,
14 having a conviction, it's one which is not stable but
15 one which waivers and vacillates, then the charge is
16 not proved beyond every reasonable doubt and you must
17 find the defendant not guilty because the doubt is
18 reasonable.

19 It is to the evidence introduced upon this trial
20 and to it alone that you are to look for that proof.
21 A reasonable doubt as to guilt of the defendant may
22 arise from the evidence, conflict in the evidence or
23 the lack of evidence.

24 If you have a reasonable doubt you should find
25 the defendant not guilty. If you have no reasonable

1 doubt, you should find the defendant guilty.

2 It's up to you to decide what evidence is
3 reliable. You should use your common sense in
4 deciding which is the best evidence and which
5 evidence should not be relied upon in considering
6 your verdict.

7 You may find some of the evidence not reliable
8 or less reliable than other evidence.

9 You should consider how the witnesses acted, as
10 well as what they said.

11 Some of the things you should consider are:

12 One, did the witness seem to have an opportunity
13 to see and know the things about which the witness
14 testified?

15 Two, did the witness seem to have an accurate
16 memory?

17 Three, was the witness honest and
18 straightforward in answering the attorneys'
19 questions?

20 Four, did the witnesses have -- excuse me. Did
21 the witness have some interest in how the case should
22 be decided?

23 Five, does the witness' testimony agree with the
24 other testimony and other evidence in this case?

25 Six, did the witness at some other time make a

1 statement that is inconsistent with the testimony he
2 gave in court?

3 And, seven, was it proved that witness had been
4 convicted of a crime?

5 You may rely upon your own conclusion about the
6 witness. A juror may believe or disbelieve all or
7 any part of the evidence or the testimony of any
8 witness.

9 Expert witnesses are like other witnesses with
10 one exception. The law permits the expert witness to
11 give his opinion. However, an expert's opinion is
12 only reliable when given on a subject about which you
13 believe him to be an expert.

14 Like other witnesses, you may believe or
15 disbelieve all or any part of an expert's testimony.

16 The constitution requires the State to prove
17 its' accusations against the defendant. It's not
18 necessary for the defendant to disprove anything, nor
19 is the defendant required to prove his innocence.

20 It's up to the State to prove the defendant's
21 guilty by evidence.

22 The defendant exercised a fundamental right by
23 choosing not to be a witness in this case. You must
24 not view this as an admission of guilt or be
25 influenced in any way by his decision. No juror

1 should ever be concerned the defendant did or did not
2 take the stand to give testimony in this case.

3 These are some of the general rules that apply
4 to your discussions. You must follow these rules in
5 order to your return a lawful verdict.

6 One, you must follow the laws as set out in
7 these instructions. If you fail to follow the law,
8 your verdict will be a miscarriage of justice.

9 There is no reason to fail to follow the law in
10 this case. All of us are depending on you to make a
11 wise and legal decision in this matter.

12 Two, this case must be decided only upon the
13 evidence you heard from the answers of the witness
14 and you have seen in the form of exhibits and from
15 these instructions.

16 Three, this case must not be decided for or
17 against anyone because you feel sorry for anyone or
18 because you're angry at anyone.

19 Four, remember; the lawyers are not on trial.
20 Your feelings about them should not influence your
21 decision in this case.

22 Five, your duty is to determine if the defendant
23 is guilty or not guilty in accord with the law.

24 Six, whatever verdict you render must be
25 unanimous; that is, each juror must agree to the same

1 verdict.

2 Seven, it's entirely proper for a lawyer to talk
3 to a witness about what testimony the witness would
4 give if called to the courtroom. The witness should
5 not be discredited for talking to a lawyer about his
6 testimony.

7 Eight, feelings of prejudice, bias or sympathy
8 are not legally reasonable doubts and should not be
9 discussed by you in any way. Your verdict must be
10 based on your views of the evidence and on the law
11 contained in these instructions.

12 Deciding a verdict is exclusively your job. I
13 cannot participate in that decision in any way.
14 Please disregard anything that I may have said or
15 that I have done that makes you think I have
16 preferred one verdict over another.

17 Only one verdict may be returned as to the -- as
18 to each crime charged. This verdict must be
19 unanimous; that is, all of you must agree to the same
20 verdict. The verdict must be in writing; and, for
21 your convenience, the necessary forms for your
22 verdicts have been prepared for you. Where are the
23 verdict forms? Counsel approach the bench.

24 (The following is a bench conference.)

25 THE COURT: Where are the verdict forms?

1 MR. ASHTON: I gave them to Mr. Leinster.

2 That's the last I saw of them.

3 THE COURT: Where are they, Ed?

4 MR. LEINSTER: I thought you had them.

5 THE COURT: I don't have them. All I have is
6 the instructions.

7 MR. ASHTON: I think you can tell them what it's
8 going to say. It's first degree, second degree --

9 THE COURT: Wait a minute.

10 MR. ASHTON: It's as charged, first degree
11 murder -- I can't believe this -- guilty of the
12 lesser included offense of second degree murder with
13 a firearm.

14 THE COURT: With firearm. Okay.

15 MR. ASHTON: Guilty of the lesser included
16 offense of manslaughter with a firearm and not
17 guilty. That's for one through three. Count four is
18 same thing with the word attempt in each one.

19 THE COURT: Okay, as charged. Okay. Wait a
20 minute.

21 MR. ASHTON: Attempted manslaughter with a
22 firearm.

23 THE COURT: Is it attempted second degree with a
24 firearm?

25 MR. ASHTON: Right. And attempted manslaughter

1 with a firearm.

2 THE COURT: I haven't got them. I have never
3 seen them.

4 MR. ASHTON: I think you've got them.

5 MR. LEINSTER: If I happened to stick them in
6 with my file, I don't have any file with me.

7 MR. ASHTON: I can have them redone. My
8 secretary is not here so it may take a little bit
9 longer.

10 THE COURT: If you have a form, Esta can type
11 it.

12 Wait a minute. As charged of attempted second
13 degree murder, firearm, and only one lesser?

14 MR. ASHTON: No. No. The as-charged is first
15 degree of attempted murder in the first degree.

16 MR. LEINSTER: And the lesser, attempted
17 second. And three is attempted manslaughter.

18 THE COURT: And not guilty.

19 MR. ASHTON: And not guilty.

20 THE COURT: Okay.

21 (End of bench conference.)

22 THE COURT: Okay. The verdict forms will be
23 presented to you. And they, basically, will read,
24 Case Number CR92-1305, State of Florida versus Curtis
25 Windom.

1 As to count one, "We, the jury, find the
2 defendant" -- and then there will be a line as to
3 each one of the choices. And the first choice will
4 be guilty, as charged, of murder in the first degree
5 with a firearm.

6 The second choice will be, "We, the jury, find
7 the defendant guilty of the lesser included of second
8 degree murder with a firearm."

9 The third choice will be, "We, the jury, find
10 the defendant guilty of the lesser included of
11 manslaughter with a firearm."

12 And the fourth choice will be not guilty.

13 Now for each of the first three counts, that
14 will be the four choices that you will have. The
15 verdict forms are going to have the victim's name on
16 each one? It should.

17 MR. ASHTON: No, Your Honor. It says count one,
18 count two, count three, count four.

19 THE COURT: Okay. I guess in the
20 instructions -- you will have to compare the
21 instruction. You will have in writing which victim
22 is count one, two and three. We wouldn't have the
23 names on the actual verdict form, but you can compare
24 it to the instructions you will have.

25 As to count four, your choices will be, "We, the

1 jury, find the defendant guilty as charged of
2 attempted murder in the first degree."

3 Your second choice will be, "We, the jury, find
4 the defendant guilty of the lesser included of
5 attempted second degree murder with a firearm."

6 And the third choice will be, "We, the jury,
7 find the defendant guilty of lesser included of
8 manslaughter with a firearm."

9 And the fourth choice will be not guilty. And
10 then at the bottom, "So say we all," dated at
11 Orlando, this blank day of August. And then there's
12 a place for the foreperson to sign.

13 In just a few moments you will be taken to the
14 jury room by the court deputy. The first thing you
15 should do is elect a foreman. The foreman presides
16 over your deliberations like the chairman of a
17 meeting. It's the foreman's job to sign and date the
18 verdict form when all of you have agreed on a verdict
19 in this case.

20 The foreman will bring the verdict back to the
21 courtroom when you return. Either a man or a woman
22 may serve as foreman of a jury.

23 Your verdict finding the defendant either guilty
24 or not guilty must be unanimous. The verdict must be
25 the verdict of each juror, as well as the jury as a

1 whole.

2 In closing, let me remind you that it is
3 important for you to follow the law spelled out in
4 these instructions in reaching your verdict. There
5 are no other laws that apply to this case. Even if
6 you do not like the laws that must be applied, you
7 must use them. For two centuries we have agreed to a
8 constitution and to live by the law. No one of us
9 have the right to violate rules we all share.

10 Counsel approach the bench.

11 (The following is a bench conference.)

12 THE COURT: Okay. Where's the one about several
13 count? It's not in these instructions.

14 MR. ASHTON: I noticed that. I don't think we
15 really need it unless you want it.

16 MR. ASHTON: I noticed that after we were
17 talking.

18 THE COURT: I certainly want to give him a
19 chance to have it. Do you know what we're talking
20 about?

21 MR. LEINSTER: Yes.

22 MR. ASHTON: It's 2.08(a)-- no, it's 2.08. The
23 other way, Judge. Back with the preliminary
24 instructions. Right after the verdict one. I think
25 it's 2.08(a).

1 THE COURT: Okay. Next?

2 MR. ASHTON: Next one over, I think.

3 THE COURT: Here we go.

4 THE COURT: You want it read?

5 MR. LEINSTER: Yes.

6 THE COURT: Okay.

7 (End of bench conference.)

8 THE COURT: There's one other an additional
9 instruction that I didn't include, and I'm going to
10 include it now.

11 A separate crime is charged in each count of the
12 indictment. And while they have been tried together,
13 each crime and the evidence applicable to it must be
14 considered separately and a separate verdict returned
15 as to each.

16 A finding of guilty or not guilty as to one
17 crime must not affect your verdict as to the other
18 crimes charged. I think that will do it. Okay.
19 Counsel approach the bench one more time.

20 (The following is a bench conference.)

21 THE COURT: Are you satisfied with instructions
22 as read?

23 MR. ASHTON: Yes, Your Honor.

24 MR. LEINSTER: Yes.

25 THE COURT: Okay. When are we going to have the

1 verdict forms?

2 MR. ASHTON: I'm writing it out. If you could
3 have Esta type it, I have forms here.

4 THE COURT: I'll do it if I have to. Eddie
5 suggested we not send the gun or bullets back.

6 MR. ASHTON: I would like to send the gun but
7 not the bullets.

8 THE COURT: He's concerned in this particular
9 case. If they wanted to see the gun, they can come
10 here. I don't care if you pass it around now. But I
11 don't want to send it back there. He just feels --
12 normally, it's okay. But this particular case --

13 MR. ASHTON: I'd like to send it back. But
14 whatever you want to do is fine. Not sending live
15 bullets, obviously --

16 THE COURT: I never do that. Our concern is
17 somehow -- not that they did but there's too many
18 people in this courtroom to take such a chance. Do
19 you have any objection of not sending the gun back?

20 MR. LEINSTER: Why would I object?

21 THE COURT: I don't think you would, but I've
22 got to get a record you did or didn't. And the
23 tapes -- are we going to send either tape back? I
24 would suggest we don't send either tape back. If
25 they want to look at it, they can come out and ask

1 for it.

2 MR. LEINSTER: (Nods head.)

3 THE COURT: Okay.

4 (End of bench conference.)

5 THE COURT: That's all the instructions. And
6 now we're going to put it your hands. We're going to
7 send you back to the jury room. We will send back
8 the evidence. I'm not going to send the gun and
9 bullets back. If you want to see those things,
10 though, you're welcome to see it. Just knock on the
11 door and the court deputy will tell -- you will tell
12 the court deputy you will want to see them. We will
13 bring you back in here to see the gun. You can look
14 at it as long as you want.

15 You can't try to fire it, but we want you to do
16 it as long as you want. But we don't want the gun
17 and bullets going back there.

18 Also, there are two videos in evidence. If you
19 want to see either one of those -- one of them is the
20 apartment and the other one in the one that you saw
21 in the room with the defendant and his mother.

22 If you want to see either one of those, knock on
23 the door; we'll play them for you in here.
24 Otherwise, you will have all the evidence presented
25 during the trial back there.

1 And we'll also send back a copy of the jury
2 instructions, as well as the verdict forms as soon as
3 we get those.

4 Okay. The two alternates, please standby here;
5 and I'm going to send the other jurors into the jury
6 room. If you want lunch, then knock on the door.
7 They will bring you lunch. You're sequestered as of
8 right now.

9 (Jury goes out at 11:30 a.m.)

10 THE COURT: Okay. As to the two alternates,
11 that's Ms. Lansing and Mrs. Hughes, I can't release
12 you from your jury duty at this time. Depending on
13 whatever the verdict is, if there is a verdict of
14 guilty of murder in the first degree, then we go into
15 a penalty phase. That wouldn't be this week.

16 Therefore, we need to keep you on standby for
17 when we set it for the penalty phase. That takes
18 about a day. We haven't set the date yet. So, what
19 we need to get from the two of you is your business
20 phone, your home phone, your business address, and
21 your home address so we can get in touch with you.

22 How about having them write it down? They can
23 come up to the clerk, and we'll write it down. I can
24 release you for today.

25 MR. ASHTON: I think you're also --

1 THE COURT: Not to read --

2 MR. ASHTON: Right.

3 THE COURT: Also, because you're potential
4 jurors to the penalty phase, you still can't read any
5 accounts of this case. So you can't read the paper
6 tomorrow morning and you can't look at the news until
7 after we finish with the penalty phase.

8 So, it's just as if you are on the jury because
9 you could very well be. After you disband something
10 could happen to one of the other twelve. Do not even
11 discuss it with anyone.

12 MR. ASHTON: Usually, what we do is send a copy
13 of the indictment back so that they don't have a
14 problem figuring out which count goes with that
15 unless the defense has an objection.

16 MR. LEINSTER: I don't want to be ultra silly
17 about this.

18 MR. ASHTON: There's a provision in the rules
19 that allows a copy of the indictment to go back, the
20 charges.

21 MR. LEINSTER: The problem is that just the
22 language, "We, the Grand Jury," that's been a
23 standard objection in case law and so forth. I don't
24 raise that as a general rule as far as the pretrial
25 thing but --

1 THE COURT: How about the fact that the
2 instructions have -- well, they don't even say count
3 one. They don't say count two.

4 Unless I write it on there, they won't know
5 which count is which.

6 MR. LEINSTER: Just put down count one refers
7 to --

8 MR. ASHTON: I'd rather have them have the
9 charging document.

10 THE COURT: I'm going to send the charging
11 document back over the defense objection.

12 MR. LEINSTER: Okay.

13 THE COURT: Let me see. This has some writing
14 up there.

15 MR. ASHTON: Unsealed, no bond, capias.

16 THE COURT: That doesn't sound good. We could
17 make a copy of it and just have that taken off.
18 That's the date it was filed. Any objection other
19 than what you --

20 MR. LEINSTER: No.

21 MR. ASHTON: It's three pages?

22 THE COURT: Uh-huh. Okay. I will just get it
23 copied. Do you have an machine over here to copy?

24 MR. ASHTON: No, I don't. I'll be glad to do it
25 for you.

1 THE COURT: I know Ed is going to find those
2 things.

3 MR. LEINSTER: I'll frame them at home.

4 MR. ASHTON: State of Florida, four verdict
5 forms.

6 (Court recesses at 11:40 a.m. awaiting the
7 verdict.)

8 * * * *

9 (The following proceedings commenced at
10 2:10 p.m.)

11 THE COURT: Where is the tape machine?

12 MR. LEINSTER: Right in front.

13 MR. ASHTON: Right in front of you.

14 THE COURT: Let's bring them in.

15 MR. ASHTON: Before we bring them in --

16 THE COURT: Wait a minute.

17 MR. ASHTON: I told Mr. Leinster I'm not
18 planning on publishing the audio part, just the
19 officer talking. And I don't know if they saw
20 anything prejudicial but they may. I'm going to turn
21 the audio down, if that's the agreement with Mr.
22 Leinster, as well.

23 MR. LEINSTER: (Makes saluting gesture.)

24 MR. ASHTON: (Makes saluting gesture.) For the
25 record, that's agreeing, as well.

1 MR. LEINSTER: I'm saving my energy.
2 (Discussion off record.)
3 THE COURT: Have a seat. I understand you
4 wanted to see the tape of the apartment?
5 JUROR NUMBER 153: Yes, ma'am.
6 THE COURT: Okay. We'll play it now. Let the
7 record reflect the defense and both counsel are
8 here.
9 MR. ASHTON: With the Court's permission, I'll
10 fast forward. This is just a reading of the search
11 warrant, if that's all right.
12 THE COURT: (Nods head.)
13 (Video tape is played.)
14 THE COURT: Okay. Is there anything else you
15 wanted to see while you're out?
16 JUROR NUMBER 153: No, ma'am.
17 THE COURT: You may go back to the jury room.
18 (Jury is out at 2:40 p.m.)
19 THE COURT: Okay. The jury is out of the room.
20 Anything else we need to take up before we recess
21 until they return?
22 THE COURT: Okay. We're in recess.
23 (The following proceedings commenced at 3:00
24 p.m.)
25 THE COURT: Okay. I understand we have a

1 verdict, so we can bring in the jury.

2 (Short pause.)

3 THE COURT: Everybody is present. State,
4 defense and defendant.

5 MR. ASHTON: You're getting feedback on your
6 microphone.

7 THE COURT: I'll sit back. I was getting her to
8 get the file.

9 THE COURT: Will counsel to state and defense
10 come up here for a second while they are trying to
11 get the jury?

12 (The following is a bench conference.)

13 THE COURT: In the event this has to go to a
14 penalty stage --

15 MR. LEINSTER: The unlikely event.

16 THE COURT: If it happens, I'd like to know if
17 we've got a date set.

18 MR. LEINSTER: I'll come back in to town next
19 Tuesday from the weekend. Anything after that is
20 okay with me.

21 THE COURT: You'll be coming in on the first?
22 Coming back on the first?

23 MR. LEINSTER: The 8th.

24 THE COURT: The 8th, okay. I was thinking the
25 18th. How about September the 18th?

1 MR. ASHTON: I have a trial with Judge White
2 starting the 14th.

3 THE COURT: Are you going to be through by that
4 Friday?

5 THE COURT: I wouldn't guarantee it. I mean,
6 it's possible.

7 THE COURT: The one other date I've got is the
8 23rd.

9 MR. ASHTON: That would be okay for me.

10 MR. LEINSTER: What is it?

11 THE COURT: It's a Wednesday.

12 MR. ASHTON: I know. I want to be able to tell
13 them.

14 MR. LEINSTER: You could go ahead and pencil it
15 in.

16 THE COURT: We need to tell them now; that's the
17 problem.

18 MR. LEINSTER: Okay. Let's go ahead and do
19 this, and I'll call the office.

20 (End of bench conference.)

21 THE COURT: I understand you have reached a
22 verdict in the case?

23 FOREMAN: Yes, Your Honor.

24 THE COURT: Would you please give it to the
25 court deputy.

1 COURT DEPUTY: (Tenders document to the Court.)

2 THE COURT: Madam Clerk, would you, please,
3 publish the four verdicts?

4 MADAM CLERK: Case Number CR92-1305, State of
5 Florida versus Curtis Windom, verdict as to count
6 one:

7 "We, the jury, find the defendant guilty of
8 murder in the first degree as charged in the
9 indictment."

10 Verdict as to count two:

11 "We, the jury, find the defendant guilty of
12 murder in the first degree as charged in the
13 indictment."

14 Verdict as to count three:

15 "We, the jury, find the defendant guilty of
16 murder in the first degree as charged in the
17 indictment."

18 Verdict as to count four:

19 "We, the jury, find the defendant guilty of
20 attempted murder in the first degree with a firearm
21 as charged in the indictment. So, say we all, dated
22 this 28th day of August, Orlando, Florida, George
23 Guffey, Foreman.

24 THE COURT: Would the defense like the jury
25 polled?

1 MR. LEINSTER: Yes.

2 THE COURT: Would you please pole the jury?

3 MADAM CLERK: Cathy Dawson, is your verdict?

4 MS. DAWSON: Yes.

5 MADAM CLERK: Cheryl Cooper, is this your
6 verdict?

7 MS. COOPER: Yes.

8 MADAM CLERK: George Guffey, is this your
9 verdict?

10 MR. GUFFEY: Yes.

11 MADAM CLERK: Rosemarie Lister, is this your
12 verdict?

13 MS. LISTER: Yes.

14 MADAM CLERK: Gregory Tague, is this your
15 verdict?

16 MR. TAGUE: Yes.

17 MADAM CLERK: Christine Walton, is this your
18 verdict?

19 MS. WALTON: Yes.

20 MADAM CLERK: Julia Hamm, is this your verdict?

21 MS. HAMM: It is.

22 MADAM CLERK: Nicola Minniear, is this your
23 verdict?

24 MS. MINNIEAR: Yes.

25 MADAM CLERK: Patricia Conklin, is this your

1 verdict?

2 MS. CONKLIN: Yes.

3 MADAM CLERK: Craig Phillips, is this your
4 verdict?

5 MR. PHILLIPS: Yes.

6 MADAM CLERK: Deborah Sudimak, is this your
7 verdict?

8 MS. SUDIMAK: Yes.

9 MADAM CLERK: Carney Petillo, is this verdict
10 your?

11 MS. PETILLO: Yes.

12 THE COURT: Would counsel for the defendant and
13 the defendant please rise.

14 (Short pause.)

15 THE COURT: Curtis Windom, you have been found
16 guilty by a jury of your peers in this four-count
17 indictment.

18 At this time I'm adjudicating you guilty and
19 you're remanded to the sheriff's custody.

20 We'll be setting this for a penalty phase, and
21 we are trying to establish a date between the
22 attorneys and me. I want to say it's going to be the
23 23rd, but we need to make sure that's going to work.

24 Is that going to work for all of you? The 23rd
25 of September would mean you'd come back here, and we

1 would have, basically, a mini-trial for the
2 determination of the sentence in this case for your
3 recommendation.

4 Is the 23rd of September going to work for
5 y'all? Do y'all need to check and see if it's going
6 to work?

7 MR. LEINSTER: I do, yea.

8 MR. ASHTON: I'm all ready for that date.

9 MR. LEINSTER: Can I use the phone here?

10 THE COURT: Uh-huh.

11 (Short pause.)

12 MR. LEINSTER: Yea.

13 THE COURT: Okay. Then September 23rd we'll
14 need all of you back here at 9:30 in the morning to
15 begin the penalty phase of this case.

16 Now, since you're going to be coming back on
17 this case, that means you still can't read any
18 reports about the case nor listen to any newspaper
19 coverage about the case.

20 There is very likely going to be something about
21 this in the paper and maybe on the news. I don't
22 know. But you're going to have to avoid any kind of
23 contact with this case until after the 23rd.

24 I anticipate -- and let me confirm with the
25 attorneys -- that this will take only one day; is

1 that correct?

2 MR. ASHTON: That would be my anticipation.

3 THE COURT: And that's going to be a Wednesday,
4 September 23rd. Is that your anticipation, too,
5 Mr. Leinster?

6 MR. LEINSTER: Yes.

7 THE COURT: Count on one day, the 23rd of
8 September. You want to write it down? I'll be glad
9 to give it to you in writing.

10 We're going to have to notify the -- what we're
11 going to ask you to do is to sign your name and your
12 number where we can reach you at work and/or home,
13 wherever we can get you so that we -- if anything
14 should happen, we can notify you.

15 But I have no reason to believe this would not
16 happen on September 23rd. Is there anything else for
17 the record?

18 MR. ASHTON: No, Your Honor, nothing I can think
19 of.

20 MR. LEINSTER: No.

21 THE COURT: Okay. Why don't we just let the
22 jury go back into the jury room and fill that out,
23 get their things; and we'll be in recess until
24 September 23rd for this case. Thank you very much
25 for your time.

1 (Jury is out at 3:07 p.m.)

2 THE COURT: Okay. Then we'll be in recess on
3 this case until the 23rd and in this court until
4 Monday at nine o'clock.)

5 (End of proceedings.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2 CERTIFICATE OF REPORTER

3 STATE OF FLORIDA:

4 COUNTY OF ORANGE

5 I, SARAH MARTIN LIGHTSEY, Registered Professional
6 Reporter, Official Court Reporter and Notary Public in and
7 for the State of Florida at Large:8 DO HEREBY CERTIFY that the foregoing proceedings were
9 taken before me at the time and place therein designated;
10 that my shorthand notes were thereafter transcribed under
11 my supervision; and the foregoing pages numbered 1 through
12 ____ are a true and correct record of the aforesaid
13 proceedings.14 I FURTHER CERTIFY that I am not a relative, employee,
15 attorney or counsel of any of the parties, nor relative or
16 employee of such attorney or counsel, or financially
17 interested in the foregoing action.18 WITNESS MY HAND AND SEAL this, the ____ day of
19 _____, 1993, in the CITY OF ORLANDO, COUNTY OF
20 ORANGE, STATE OF FLORIDA.21
22
23 _____
24 Sarah Martin Lightsey
25 Official Court Reporter
Ninth Judicial Circuit

CAPITAL CASE

No. _____

IN THE
Supreme Court of the United States

CURTIS WINDOM,
Petitioner,

v.

STATE OF FLORIDA,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
FLORIDA SUPREME COURT

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

DEATH WARRANT SIGNED
Execution Scheduled: August 28, 2025, at 6:00 p.m.

APPENDIX K

Circuit Court for the Ninth Judicial Circuit, Orange County, Florida,
Transcript of Trial Proceedings – Supplemental Record, SupplR.267-392

C 11
8/26/92

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO.: CR92-1305

Plaintiff,

vs.

CURTIS WINDOM

Defendant.

SECOND SUPPLEMENTAL
WITNESS LIST

FILED IN OFFICE
CRIMINAL DIVISION
92 AUG 26 AM 8:25
TOM CARLSON
CLERK OF CIRCUIT COURT
ORANGE COUNTY FL

COMES NOW the Defendant, CURTIS WINDOM by and through the undersigned attorney an files this his second supplemental witness list in the above-styled cause.

DEFENSE WITNESS LIST:

1. Mae Tatum: 14767 Ernie Street
Winter Garden, Florida
2. Andre Walker: 782 Klondike Road
Winter Park, Florida

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by FAX and hand delivery to Office of the State Attorney: 250 N. Orange Avenue, Orlando, Florida 32801 this the 25th day of August, 1992.

Ed Leinster

ED LEINSTER, Esquire
1302 E. Robinson Street
Orlando, FL 32801
(407) 422-3937

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305
SUPREME CT. NO. 80,830

INFORMATION FOR:
MURDER IN THE FIRST DEGREE
(3 counts)
ATTEMPTED MURDER IN THE FIRST DEGREE

STATE OF FLORIDA

Plaintiff,

-VS-

CURTIS WINDOM

Defendant,

RECEIVED
JED 98 1993
PUBLIC DEFENDER'S OFFICE
7th CIR. APP. DIV.

TRANSCRIPT OF
VOLUME IV

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305
SUPREME CT. NO: 80,830

INFORMATION FOR:
MURDER IN THE FIRST DEGREE (3 COUNTS)
ATTEMPT TO COMMIT MURDER IN THE FIRST
DEGREE

STATE OF FLORIDA,

Plaintiff,

-vs-

CURTIS WINDOM

Defendant,

VOLUME I-IV

Transcript of Trial Proceedings
held on February 25-28, 1992

Volume I of IV
Volume II of IV
Volume III of IV
Volume IV of IV

1-196
197-404
405-520
521-732

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305
SUPREME CT. NO: 80,830

INFORMATION FOR:
MURDER IN THE FIRST DEGREE (3 COUNTS)
ATTEMPT TO COMMIT MURDER IN THE FIRST
DEGREE

STATE OF FLORIDA,

Plaintiff,

-VS-

CURTIS WINDOM

Defendant,

VOLUME I

January 25, 1993	Transcript of Penalty Phase Proceedings held on September 23, 1992	1-113
------------------	---	-------

VOLUME II

January 15, 1993	Transcript of Sentencing Proceedings held on November 10, 1992	114-134
------------------	---	---------

VOLUME III

February 8, 1992	Charging Affidavit	135-137
February 8, 1992	Order of Commitment/Order Probable Cause	138
February 10, 1992	Advice to Defendant	139
February 25, 1992	Motion To Withdraw	140-142
February 25, 1992	Order Allowing Withdrawal w/attachments	143-146
February 25, 1992	Notice of Appearance, Request For Copy Of Charge, Waiver of Appearance At Arraignment Pre-Trial Conferences, Written Plea	147-148
February 25, 1992	Demand For Discovery and Disclosure of Brady Material	149-150
February 28, 1992	Notice of Appearance, Request For Copy Of Charge, Waiver of Personal Appearance and Written Plea of Not Guilty	151-152

March 3, 1992	Indictment	153-155
March 10, 1992	State's List of Witnesses	156
March 11, 1992	State's Witness List	157
March 11, 1992	State's Response To Notice of Intent to Participate in Discovery	158
March 12, 1992	Order	159
March 26, 1992	Supplemental State's Response to Notice of Intent to Participate in Discovery	160
March 30, 1992	Supplemental State's Response to Notice of Intent to Participate in Discovery	161
April 8, 1992	Motion To Sever w/attachments	162-165
April 13, 1992	Supplemental State's Response to Notice of Intent to Participate in Discovery	166
April 22, 1992	Supplemental State's Witness List	167
April 22, 1992	Supplemental State's Response To Notice of Intent to Participate in Discovery	168
April 29, 1992	Motion For Partial Indigency for Purpose of Costs	169-170
May 13, 1992	Financial Affidavit	171-172
May 13, 1992	Court Minutes	173
May 26, 1992	Motion to Continue	174-175
May 27, 1992	Motion for Continuance/Notice of Trial	176
May 29, 1992	Court Minutes/Order	177
June 3, 1992	Amended State's Witness List	178
June 29, 1992	Order of Partial Indigency	179-181
July 10, 1992	Supplemental State's Witness List	182
July 10, 1992	Supplemental State's Response To Notice of Intent to Participate in Discovery	183
July 17, 1992	Motion to Suppress	184-185
July 17, 1992	Motion For Discovery	186-187
July 27, 1992	Motion For Appointment of Expert	188

PAGE 3 (CONTINUED)

July 28, 1992	Supplemental State's Response To Notice of Intent to Participate in Discovery	189
August 10, 1992	Motion For Pre-Trial Jorors Addresses	190-191
August 10, 1992	Motion For Discovery	192-193
August 10, 1992	Motion For Juror Questionnaire to Supplement Voir Dire	194-197
August 10, 1992	Motion For Additional Peremptory Challenges or To Declare Florida Statute 913.08(1)(a) Unconstitutional	198-199
August 10, 1992	Motion to Preclude Challenge For Cause	200-201
August 10, 1992	Motion For List of Prospective Jurors In Advance of Trial	202-203
August 11, 1992	Motion To Transcribe Video	204
August 11, 1992	Witness List	205-206
August 14, 1992	Order	207
August 14, 1992	Court Minutes/Order	208
August 19, 1992	Psychiatric Evaluation	209
August 24, 1992	Supplemental Witness List	210
August 24, 1992	Court Minutes	211
August 25, 1992	Jury Questionnaire	212-261
August 25, 1992	Jury Trial Court Minutes	262-266

VOLUME IV

August 26, 1992	Second Supplemental Witness List	267
August 28, 1992	Indictment w/Jury Instructions	268-299
August 28, 1992	Third Supplemental Witness List	300
August 28, 1992	Verdict As To Count I-IV	301-304
August 28, 1992	Judgment	305-306
August 28, 1992	Charges/Costs/Fees	307
August 28, 1992	Court Minutes/Order	308

PAGE 4 (CONTINUED)

September 10, 1992	Order of Indigency	309-310
September 16, 1992	Penalty Phase State's Witness List	311
September 22, 1992	Motion to Continue	312-313
Septmeber 23, 1992	Jury Instructions	314-317
September 23, 1992	Verdict Count I-III	318-320
September 23, 1992	Court Minutes/Order	321
September 23, 1992	Court Minutes	322-323
October 30, 1992	Mitigating Factors	324-325
November 5, 1992	Court Minutes	326
November 9, 1992	Supplemental State's Response To Notice Of Intent to Participate in Discovery	327
November 10, 1992	Sealed PSI	328
November 10, 1992	Defendant's Proposed Penalty Phase Instructions	329-351
November 10, 1992	Jury Instructions	352-354
November 10, 1992	Sentencing Order	355-363
November 10, 1992	Court Minutes/Order	364
November 10, 1992	Name and Address of Victim	365-368
November 10, 1992	Restitution Order	369
November 10, 1992	Sentencing Guidelines Scoresheet	370
November 10, 1992	Sentence	371-379
November 24, 1992	Notice of Appeal	380
December 1, 1992	Affidavit of Insolvency for Purpose of Appeal/Order Appointing Counsel	381
December 18, 1992	Directions To The Clerk	382
December 18, 1992	Statement of Judicial Acts To Be Reviewed	383-384
December 18, 1992	Designation	385-386
December 18, 1992	Motion For Transcription of Proceedings	387-388
December 18, 1992	Amended Notice of Appeal	389

PAGE 5 (CONTINUED)

December 30, 1992

Order for Transcription of Proceedings

390-391

February 23, 1993

Clerk's Certificate

392

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305
SUPREME CT. NO: 80,830

INFORMATION FOR:
MURDER IN THE FIRST DEGREE (3 COUNTS)
ATTEMPTED MURDER IN THE FIRST DEGREE

STATE OF FLORIDA,

Plaintiff,

-vs-

CURTIS WINDOM

Defendant,

INDEX TO EVIDENCE

STATE

August 26, 1992	State Exhibit #1	Cassette Tape
August 26, 1992	State Exhibit #2 (BY ORDER ONLY)	Street Diagram
August 26, 1992	State Exhibit #3 (BY ORDER ONLY)	Street Diagram
August 26, 1992	State Exhibit #4	Sealed Plastic Bag w/Bullet Victim: Davis
August 26, 1992	State Exhibit #5	Sealed Plastic Bag w/ 1 Fired Cartridge
August 26, 1992	State Exhibit #6	Sealed Plastic Bag w/ 4 Fired Cartridges
August 26, 1992	State Exhibit #7	Wal Mart Receipt
August 26, 1992	State Exhibit #8	Sealed Plastic Bag w/ tray of rounds
August 26, 1992	State Exhibit #9	Sealed Plastic Bag Ammo Box

August 26, 1992	State Exhibit #10 (BY ORDER ONLY)	Lubin's Door Panel
August 26, 1992	State Exhibit #11	Sealed Plastic Bag w Bullet Victim: Lubin
August 26, 1992	State Exhibit #12	Sealed Plastic Bag w Bullet Victim: Lubin
August 26, 1992	State Exhibit #13 (BY ORDER ONLY)	Gun
August 26, 1992	State Exhibit #14	Sealed Plastic Bag W/ 3 Fired Cartridge
August 26, 1992	State Exhibit #15	Sealed Plastic Bag w/ one Bullet Victim Williams
August 26, 1992	State Exhibit #16	Sealed Plastic Bag W/ 4 Bullets in Glas Jars Victim: Lee
August 26, 1992	State Exhibit #17	Prints of Curtis Windom
August 26, 1992	State Exhibit #18a	Photo-Victim: Lee
August 26, 1992	State Exhibit #18b	Photo-Victim: Lee
August 26, 1992	State Exhibit #18c	Photo-Victim: Lee
August 26, 1992	State Exhibit #18d	Photo-Victim: Lee
August 26, 1992	State Exhibit #18e	Photo-Victim: Lee
August 26, 1992	State Exhibit #18f	Photo-Victim: Lee
August 26, 1992	State Exhibit #18g	Photo-Victim: Lee
August 26, 1992	State Exhibit #19a	Photo-Victim: Davis
August 26, 1992	State Exhibit #19b	Photo-Victim: Davis
August 26, 1992	State Exhibit #19c	Photo-Victim: Davis
August 26, 1992	State Exhibit #19d	Photo-Victim: Davis
August 26, 1992	State Exhibit #19e	Photo-Victim: Davis
August 26, 1992	State Exhibit #20a	Photo-Victim: Lubin
August 26, 1992	State Exhibit #20b	Photo-Victim: Lubin
August 26, 1992	State Exhibit #20c	Photo-Victim: Lubin

August 26, 1992	State Exhibit #20d	Photo-Victim: Lubin
August 26, 1992	State Exhibit #20e	Photo-Victim: Lubin
August 26, 1992	State Exhibit #20f	Photo-Victim: Lubin
August 26, 1992	State Exhibit #20g	Photo-Victim: Lubin
August 26, 1992	State Exhibit #20h	Photo-Victim: Lubin
August 26, 1992	State Exhibit #20i	Photo-Victim: Lubin
August 26, 1992	State Exhibit #20j	Photo-Victim: Lubin
August 26, 1992	State Exhibit #21	Photo Lineup

DEFENSE

August 14, 1992	Defense Exhibit #1 (See attached affidavit)	Composite Search Warrant Et al
August 27, 1992	Defense Exhibit #1	Cassette Tape

STATE

November 5, 1992	State Exhibit #1	Copy of Statement
November 5, 1992	State Exhibit #2	Copy of Statement

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

INFORMATION FOR:

MURDER IN THE FIRST DEGREE
(3 counts)
ATTEMPTED MURDER IN THE FIRST
DEGREE

STATE OF FLORIDA

Plaintiff,

-VS-

CURTIS WINDOM

Defendant,

AFFIDAVIT

After a careful and complete search of the Court file, it appears
that no Composite search warrant, et al marked as Defense exhibit # 1
on August 14, 1992 was filed by State Attorney prior to Trial.
is contained in it.

Dated this 24 day of February, 1993.

FRAN CARLTON
Clerk of the Circuit a
County Courts
BY Jaqueline O. R. St.
Deputy Clerk

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
ORANGE COUNTY, FLORIDA FILED IN OPEN COURT

FALL TERM, 1991

THIS 3 DAY OF Mar. 1992

Fran Carlton, Clerk

THE STATE OF FLORIDA

INDICTMENT BY Carroll A. Knox D.C.
12:03 PM

vs.

COUNT I: MURDER IN THE FIRST DEGREE 782.04
COUNT II: MURDER IN THE FIRST DEGREE 782.04
COUNT III: MURDER IN THE FIRST DEGREE 782.04
COUNT IV: ATTEMPT TO COMMIT MURDER IN THE
FIRST DEGREE 782.04 and 777.04

CURTIS WINDOM

NO: CR92-1305

DIV. 11

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

The Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Orange, upon their oaths do present that:

CURTIS WINDOM

did, on the 7th day of February, 1992 in Orange County, Florida, in violation of Florida Statute 782.04, from a premeditated design to effect the death of JOHNNIE LEE, murder JOHNNIE LEE, in the County and State aforesaid by shooting him with a firearm.

COUNT II

And the Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Orange, upon their oaths do further present that CURTIS WINDOM did, on the 7th day of February, 1992 in Orange County, Florida in violation of Florida Statute 782.04 from a premeditated design to effect the death of VALERIE DAVIS, murder VALERIE DAVIS in the County and State aforesaid, by shooting her with a firearm

FILED IN OPEN COURT
THIS 28 DAY OF Aug. 1992

Fran Carlton, Clerk
P. Wanholtz D.C.

COUNT III

And the Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Orange, upon their oaths do further present that CURTIS WINDOM did, on the 7th day of February, 1992 in Orange County, Florida in violation of Florida Statute 782.04 by a premeditated design to effect the death of MARY LUBIN in the County in the County and State aforesaid, murder MARY LUBIN by shooting her with a firearm.

COUNT IV

And the Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Orange, upon their oaths do further present that CURTIS WINDOM did, on the 7th day of February, 1992 in Orange County, Florida in violation of Florida Statute 777.04 and 782.04 from a premeditated design to effect the death of KENNETH WILLIAMS in the County and State aforesaid attempt to murder KENNETH WILLIAMS by shooting him with a firearm.

A TRUE BILL

J. H. Van...
VICE-Foreman of the Grand Jury

As authorized and required by law, I have advised the Grand Jury
returning this indictment.

Lawson Lamar
LAWSON LAMAR, STATE ATTORNEY
Ninth Judicial Circuit of Florida

Filed and presented in Open Court, in the presence of the Grand
Jury this 3 day of March, 1992.

FRAN CARLTON
Clerk of the Circuit Court

By: *Carl Thomas*
Deputy Clerk

MURDER - FIRST DEGREE
F.S. 782.04(1)(a)

Before you can find the defendant guilty of the First Degree Premeditated Murder of VALERIE DAVIS, the State must prove the following three elements beyond a reasonable doubt:

1. VALERIE DAVIS is dead.
2. The death was caused by the criminal act or agency of CURTIS WINDOM.
3. There was a premeditated killing of VALERIE DAVIS.

"Killing with premeditation" is killing after consciously deciding to do so. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.

The question of premeditation is a question of fact to be determined by you from the evidence. It will be sufficient proof of premeditation if the circumstances of the killing and the conduct of the accused convince you beyond a reasonable doubt of the existence of premeditation at the time of the killing.

If a person has a premeditated design to kill one person and in attempting to kill that person actually kills another person, the killing is premeditated.

MANSLAUGHTER
F.S. 782.07

Before you can find the defendant guilty of Manslaughter, the State must prove the following two elements beyond a reasonable doubt:

1. VALERIE DAVIS is dead.
2. The death was caused by the
 - (a) intentional act of CURTIS WINDOM.
 - (b) culpable negligence of CURTIS WINDOM.

However, the defendant cannot be guilty of Manslaughter if the killing was either justifiable or excusable homicide as I have previously explained those terms.

I will now define "culpable negligence" for you. Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of the human life, or of the safety of persons exposed to its dangerous effects, or such an entire want of care as to raise a presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard for the safety and welfare of the public, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights.

The negligent act or omission must have been committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonably should have known, was likely to cause great bodily harm.

MURDER - SECOND DEGREE
F.S. 782.04(2)

Before you can find the defendant guilty of Second Degree Murder, the State must prove the following three elements beyond a reasonable doubt:

1. VALERIE DAVIS is dead.
2. The death was caused by the criminal act or agency of CURTIS WINDOM.
3. There was an unlawful killing of VALERIE DAVIS, by an act imminently dangerous to another and evincing a depraved mind regardless of human life.

An act is one "imminently dangerous to another and evincing a depraved mind regardless of human life" if it is an act or series of acts that:

1. a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another, and
2. is done from ill will, hatred, spite, or an evil intent, and
3. is of such a nature that the act itself indicates an indifference to human life.

In order to convict CURTIS WINDOM of Second Degree Murder, it is not necessary for the State to prove the defendant had a premeditated intent to cause death.

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO. CR92-1305
DIVISION 11

STATE OF FLORIDA,

Plaintiff,

vs.

CURTIS WINDOM

Defendant,

JURY INSTRUCTIONS

2.01 INTRODUCTION TO FINAL INSTRUCTIONS

Members of the jury, I thank you for your attention during this trial. Please pay attention to the instructions I am about to give you.

2.02 STATEMENT OF CHARGE

CURTIS WINDOM, the Defendant in this case, has been accused of the crimes of 3 Counts of Murder in the First Degree and One Count of Attempt to Commit Murder in the First Degree.

INTRODUCTION TO HOMICIDE

In this case CURTIS WINDOM is accused of three counts of Murder in the First Degree.

Murder in the First Degree includes the lesser crimes of Murder in the Second Degree and Manslaughter, all of which are unlawful.

A killing that is excusable or was committed by the use of justifiable deadly force is lawful.

→ If you find JOHNNIE LEE, VALERIE DAVIS or MARY LUBIN were killed by CURTIS WINDOM you will then consider the circumstances surrounding the killing in deciding if the killing was First Degree Murder or was Second Degree Murder or Manslaughter, or whether the killing was excusable or resulted from justifiable use of deadly force.

JUSTIFIABLE HOMICIDE

The killing of a human being is justifiable homicide and lawful if necessarily done while resisting an attempt to murder or commit a felony upon the defendant, or to commit a felony in any dwelling house in which the defendant was at the time of the killing.

EXCUSABLE HOMICIDE

The killing of a human being is excusable, and therefore lawful under any one of the following three circumstances:

1. When the killing is committed by accident and misfortune in doing any lawful act by lawful means with usual ordinary caution and without any unlawful intent, or
2. When the killing occurs by accident or misfortune in the heat of passion, upon any sudden and sufficient provocation. The heat of passion must be sufficient to render the defendant unconscious of his act, or
3. When the killing is committed by accident and misfortune resulting from a sudden combat, if a dangerous weapon is not used and the killing is not done in a cruel or unusual manner.

"Dangerous weapon" is any weapon that, taking into account the manner in which it is used, is likely to produce death or great bodily harm.

I now instruct you on the circumstances that must be proved before Curtis Windom may be found guilty of Murder in the First Degree or any lesser crime.

MURDER - SECOND DEGREE
F.S. 782.04(2)

Before you can find the defendant guilty of Second Degree Murder, the State must prove the following three elements beyond a reasonable doubt:

1. JOHNNIE LEE is dead.
2. The death was caused by the criminal act or agency of CURTIS WINDOM.
3. There was an unlawful killing of JOHNNIE LEE, by an act imminently dangerous to another and evincing a depraved mind regardless of human life.

An act is one "imminently dangerous to another and evincing a depraved mind regardless of human life" if it is an act or series of acts that:

1. a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another, and
2. is done from ill will, hatred, spite, or an evil intent, and
3. is of such a nature that the act itself indicates an indifference to human life.

In order to convict CURTIS WINDOM of Second Degree Murder, it is not necessary for the State to prove the defendant had a premeditated intent to cause death.

MANSLAUGHTER
F.S. 782.07

Before you can find the defendant guilty of Manslaughter, the State must prove the following two elements beyond a reasonable doubt:

1. JOHNNIE LEE is dead.
2. The death was caused by the
 - (a) intentional act of CURTIS WINDOM.
 - (b) culpable negligence of CURTIS WINDOM.

However, the defendant cannot be guilty of Manslaughter if the killing was either justifiable or excusable homicide as I have previously explained those terms.

I will now define "culpable negligence" for you. Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of the human life, or of the safety of persons exposed to its dangerous effects, or such an entire want of care as to raise a presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard for the safety and welfare of the public, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights.

The negligent act or omission must have been committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonably should have known, was likely to cause great bodily harm.

2.02(a) WHEN THERE ARE LESSER INCLUDED CRIMES OR ATTEMPTS

In considering the evidence, you should consider the possibility that although the evidence may not convince you that the defendant committed the main crime of which she is accused, there may be evidence that she committed other acts that would constitute a lesser included crime. Therefore, if you decide that the main accusation has not been proved beyond a reasonable doubt, you will next need to decide if the defendant is guilty of any lesser included crime. The lesser crimes indicated in the definition of Murder in the First Degree are: Murder in the Second Degree and Manslaughter.

2.02(a) WHEN THERE ARE LESSER INCLUDED CRIMES OR ATTEMPTS

In considering the evidence, you should consider the possibility that although the evidence may not convince you that the defendant committed the main crime of which she is accused, there may be evidence that she committed other acts that would constitute a lesser included crime. Therefore, if you decide that the main accusation has not been proved beyond a reasonable doubt, you will next need to decide if the defendant is guilty of any lesser included crime. The lesser crimes indicated in the definition of Murder in the First Degree are: Murder in the Second Degree and Manslaughter.

2.02(a) WHEN THERE ARE LESSER INCLUDED CRIMES OR ATTEMPTS

In considering the evidence, you should consider the possibility that although the evidence may not convince you that the defendant committed the main crime of which she is accused, there may be evidence that she committed other acts that would constitute a lesser included crime. Therefore, if you decide that the main accusation has not been proved beyond a reasonable doubt, you will next need to decide if the defendant is guilty of any lesser included crime. The lesser crimes indicated in the definition of Murder in the First Degree are: Murder in the Second Degree and Manslaughter.

MANSLAUGHTER
F.S. 782.07

Before you can find the defendant guilty of Manslaughter, the State must prove the following two elements beyond a reasonable doubt:

1. MARY LUBIN is dead.
2. The death was caused by the
 - (a) intentional act of CURTIS WINDOM.
 - (b) culpable negligence of CURTIS WINDOM.

However, the defendant cannot be guilty of Manslaughter if the killing was either justifiable or excusable homicide as I have previously explained those terms.

I will now define "culpable negligence" for you. Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of the human life, or of the safety of persons exposed to its dangerous effects, or such an entire want of care as to raise a presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard for the safety and welfare of the public, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights.

The negligent act or omission must have been committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonably should have known, was likely to cause great bodily harm.

2.02(a) WHEN THERE ARE LESSER INCLUDED CRIMES OR ATTEMPTS

In considering the evidence, you should consider the possibility that although the evidence may not convince you that the defendant committed the main crime of which ~~he~~ she is accused, there may be evidence that ~~he~~ she committed other acts that would constitute a lesser included crime. Therefore, if you decide that the main accusation has not been proved beyond a reasonable doubt, you will next need to decide if the defendant is guilty of any lesser included crime. The lesser crimes indicated in the definition of Attempted Murder in the First Degree are: Attempted Murder in the Second Degree and Attempted Manslaughter.

MURDER - SECOND DEGREE
F.S. 782.04(2)

Before you can find the defendant guilty of Second Degree Murder, the State must prove the following three elements beyond a reasonable doubt:

1. MARY LUBIN is dead.
2. The death was caused by the criminal act or agency of CURTIS WINDOM.
3. There was an unlawful killing of MARY LUBIN, by an act imminently dangerous to another and evincing a depraved mind regardless of human life.

An act is one "imminently dangerous to another and evincing a depraved mind regardless of human life" if it is an act or series of acts that:

1. a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another, and
2. is done from ill will, hatred, spite, or an evil intent, and
3. is of such a nature that the act itself indicates an indifference to human life.

In order to convict CURTIS WINDOM of Second Degree Murder, it is not necessary for the State to prove the defendant had a premeditated intent to cause death.

ATTEMPTED MURDER - SECOND DEGREE

Before you can find the defendant guilty of the Attempted Second Degree Murder of Kenneth Williams, the State must prove the following three elements beyond a reasonable doubt:

1. There was an unlawful attempt to kill KENNETH WILLIAMS by an act imminently dangerous to another and evincing a depraved mind regardless of human life.
2. CURTIS WINDOM did some act toward killing KENNETH WILLIAMS that went beyond just thinking or talking about it.
3. CURTIS WINDOM would have committed the murder of KENNETH WILLIAMS except that he failed.

An act is one "imminently dangerous to another and evincing a depraved mind regardless of human life" if it is an act or series of acts that:

1. a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another, and
2. is done from ill will, hatred, spite, or an evil intent, and
3. is of such a nature that the act itself indicates an indifference to human life.

In order to convict CURTIS WINDOM of Attempted Second Degree Murder, it is not necessary for the State to prove the defendant had a premeditated intent to cause death.

ATTEMPTED MANSLAUGHTER

Before you can find the defendant guilty of Attempted Manslaughter, the State must prove the following two elements beyond a reasonable doubt.

1. CURTIS WINDOM did some intentional act toward killing KENNETH WILLIAMS that went beyond just thinking or talking about it.
2. CURTIS WINDOM would have killed KENNETH WILLIAMS except that he failed.

However, the defendant cannot be guilty of Attempted Manslaughter if the killing was either justifiable or excusable homicide as I have previously explained those terms.

2.03 PLEA OF NOT GUILTY; REASONABLE DOUBT; AND BURDEN OF PROOF

The defendant has entered a plea of not guilty. This means you must presume or believe the defendant is innocent. The presumption stays with the defendant as to each material allegation in the indictment through each stage of the trial until it has been overcome by the evidence to the exclusion of an beyond a reasonable doubt.

To overcome the defendant's presumption of innocence the State has the burden of proving the following two elements:

1. The crimes with which the defendant is charged were committed.
2. The defendant is the person who committed the crimes.

The defendant is not required to prove anything.

Whenever the words "reasonable doubt" are used you must consider the following:

A reasonable doubt is not a possible doubt, a speculative, imaginary or forced doubt. Such a doubt must not influence you to return a verdict of not guilty if you have an abiding conviction of guilt. On the other hand, if, after carefully considering, comparing, and weighing all the evidence, there is not an abiding conviction of guilt, or, if, having a conviction, it is one which is not stable but one which wavers and vacillates, then the charge is not proved beyond every reasonable doubt and you must find the defendant not guilty because the doubt is reasonable.

It is to the evidence introduced upon this trial, and to it alone, that you are to look for that proof.

A reasonable doubt as to the guilt of the defendant may arise from the evidence, conflict in the evidence, or lack of evidence.

If you have a reasonable doubt, you should find the defendant not guilty. If you have no reasonable doubt, you should find the defendant guilty.

2.04 WEIGHING THE EVIDENCE

It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence, and which evidence should not be relied upon in considering your verdict. You may find some of the evidence not reliable, or less reliable than other evidence.

You should consider how the witnesses acted, as well as what they said. Some things you should consider are:

1. Did the witness seem to have an opportunity to see and know the things about which the witness testified?
2. Did the witness seem to have an accurate memory?
3. Was the witness honest and straightforward in answering the attorneys' questions?
4. Did the witness have some interest in how the case should be decided?
5. Does the witness' testimony agree with the other testimony and other evidence in the case?
6. Did the witness at some other time make a statement that is inconsistent with the testimony he gave in court?
7. Was it proved that the witness had been convicted of a crime?

You may rely upon your own conclusion about the witness. A juror may believe or disbelieve all or any part of the evidence or the testimony of any witness.

2.04(a) EXPERT WITNESSES

Expert witnesses are like other witnesses, with one exception -- the law permits an expert witness to give his opinion.

However, an expert's opinion is only reliable when given on a subject about which you believe him to be an expert.

Like other witnesses, you may believe or disbelieve all or any part of an expert's testimony.

2.04(d) DEFENDANT NOT TESTIFYING

The constitution requires the State to prove its accusations against the defendant. It is not necessary for the defendant to disprove anything. Nor is the defendant required to prove his innocence. It is up to the State to prove the defendant's guilt by evidence.

The defendant exercised a fundamental right by choosing not be a witness in this case. You must not view this as an admission of guilt or be influenced in any way by his decision.

No juror should ever be concerned that the defendant did or did not take the stand to give testimony in the case.

2.05 RULES FOR DELIBERATION

These are some general rules that apply to your discussion. You must follow these rules in order to return a lawful verdict:

1. You must follow the law as it is set out in these instructions. If you fail to follow the law, your verdict will be a miscarriage of justice. There is no reason for failing to follow the law in this case. All of us are depending upon you to make a wise and legal decision in this matter.
2. This case must be decided only upon the evidence that you have heard from the answers of the witnesses (and have seen in the form of the exhibits in evidence) and these instructions.
3. This case must not be decided for or against anyone because you feel sorry for anyone, or are angry at anyone.
4. Remember, the lawyers are not on trial. Your feelings about them should not influence your decision in this case.
5. Your duty is to determine if the defendant is guilty or not guilty, in accord with the law.
6. Whatever verdict you render must be unanimous, that is, each juror must agree to the same verdict.
7. It is entirely proper for a lawyer to talk to a witness about what testimony the witness would give if called to the courtroom. The witness should not be discredited by talking to a lawyer about his testimony.
8. Feelings of prejudice, bias, or sympathy are not legally reasonable doubts and they should not be discussed by any of you in any way. Your verdict must be based on your views of the evidence and on the law contained in these instructions.

2.07 CAUTIONARY INSTRUCTION

Deciding a verdict is exclusively your job. I cannot participate in that decision in any way. Please disregard anything I may have said or done that made you think I preferred one verdict over another.

2.08 VERDICT

Only one verdict may be returned as to each crime charged. This verdict must be unanimous, that is all of you must agree to the same verdict. The verdict must be in writing and for your convenience the necessary forms for your verdict have been prepared for you. They are as follows:

2.09 SUBMITTING CASE TO JURY

In just a few moments you will be taken to the jury room by the bailiff. The first thing you should do is elect a foreman. The foreman presides over your deliberations, like a chairman of a meeting. It is the foreman's job to sign and date the verdict form when all of you have agreed on a verdict in this case. The foreman will bring the verdict back to the courtroom when you return. Either a man or a woman may be foreman of a jury.

Your verdict finding the defendant either guilty or not guilty must be unanimous. The verdict must be the verdict of each juror, as well as of the jury as a whole.

In closing, let me remind you that it is important that you follow the law spelled out in these instructions in deciding your verdict. There are no other laws that apply to this case. Even if you do not like the laws that must be applied, you must use them. For two centuries we have agreed to a constitution and to live by the law. No one of us has the right to violate rules we all share.

MURDER - FIRST DEGREE
F.S. 782.04(1)(a)

Before you can find the defendant guilty of the First Degree Premeditated Murder of JOHNNIE LEE, the State must prove the following three elements beyond a reasonable doubt:

1. JOHNNIE LEE is dead.
2. The death was caused by the criminal act or agency of CURTIS WINDOM.
3. There was a premeditated killing of JOHNNIE LEE.

"Killing with premeditation" is killing after consciously deciding to do so. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. [The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing]

The question of premeditation is a question of fact to be determined by you from the evidence. It will be sufficient proof of premeditation if the circumstances of the killing and the conduct of the accused convince you beyond a reasonable doubt of the existence of premeditation at the time of the killing.

If a person has a premeditated design to kill one person and in attempting to kill that person actually kills another person, the killing is premeditated.

ATTEMPTED MURDER - FIRST DEGREE

Before you can find the defendant guilty of the Attempted First Degree Premeditated Murder of Kenneth Williams, the State must prove the following three elements beyond a reasonable doubt:

1. CURTIS WINDOM had a premeditated intent to kill KENNETH WILLIAMS.

2. CURTIS WINDOM did some act toward killing KENNETH WILLIAMS that went beyond just thinking or talking about it.

3. CURTIS WINDOM would have committed the premeditated murder of KENNETH WILLIAMS except that he failed.

"Killing with premeditation" is killing after consciously deciding to do so. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.

The question of premeditation is a question of fact to be determined by you from the evidence. It will be sufficient proof of premeditation if the circumstances of the killing and the conduct of the accused convince you beyond a reasonable doubt of the existence of premeditation at the time of the killing.

If a person has a premeditated design to kill one person and in attempting to kill that person actually kills another person, the killing is premeditated.

MURDER - FIRST DEGREE
F.S. 782.04(1)(a)

Before you can find the defendant guilty of the First Degree Premeditated Murder of MARY LUBIN, the State must prove the following three elements beyond a reasonable doubt:

1. MARY LUBIN is dead.
2. The death was caused by the criminal act or agency of CURTIS WINDOM.
3. There was a premeditated killing of MARY LUBIN.

"Killing with premeditation" is killing after consciously deciding to do so. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.

The question of premeditation is a question of fact to be determined by you from the evidence. It will be sufficient proof of premeditation if the circumstances of the killing and the conduct of the accused convince you beyond a reasonable doubt of the existence of premeditation at the time of the killing.

If a person has a premeditated design to kill one person and in attempting to kill that person actually kills another person, the killing is premeditated.

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO.: CR92-1305

Plaintiff,

vs.

CURTIS WINDOM

Defendant.

THIRD SUPPLEMENTAL
WITNESS LIST

COMES NOW the Defendant, CURTIS WINDOM by and through the undersigned attorney an files this his third supplemental witness list in the above-styled cause.

DEFENSE WITNESS LIST:

1. Julie Harp: 1095 Lincoln Terrace
Winter Garden, Florida
2. Eric Brown: 3719 Tam Drive
Orlando, Florida

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by FAX and hand delivery to Office of the State Attorney: 250 N. Orange Avenue, Orlando, Florida 32801 this the 25th day of August, 1992.

Ed Leinster

ED LEINSTER, Esquire
1302 E. Robinson Street
Orlando, FL 32801
(407) 422-3937

IN THE CIRCUIT COURT, IN AND
FOR ORANGE COUNTY, FLORIDA

DIVISION 11

CASE NUMBER CR92-1305

INDICTMENT FOR:
MURDER IN THE FIRST DEGREE

STATE OF FLORIDA,
Plaintiff,
vs.
CURTIS WINDOM,
Defendant.

FILED IN OPEN COURT
THIS 28 DAY OF Aug., 1992
BY Fran Carlton, Clerk
P. Warhol, 2 D.C.

VERDICT AS TO COUNT I

✓ WE, THE JURY, FIND DEFENDANT GUILTY OF MURDER IN THE
FIRST DEGREE AS CHARGED IN THE INDICTMENT.

WE, THE JURY FIND DEFENDANT GUILTY OF THE LESSER
INCLUDED OFFENSE OF MURDER IN THE SECOND DEGREE
WITH A FIREARM.

WE, THE JURY FIND DEFENDANT GUILTY OF THE LESSER
INCLUDED OFFENSE OF MANSLAUGHTER WITH A FIREARM.

WE, THE JURY FIND DEFENDANT NOT GUILTY.

SO, SAY WE ALL THIS 28 DAY OF AUGUST, 1992,
ORLANDO, FLORIDA.


FOREMAN OR FOREWOMAN

IN THE CIRCUIT COURT, IN AND
FOR ORANGE COUNTY, FLORIDA

DIVISION 11

CASE NUMBER CR92-1305

INDICTMENT FOR:
MURDER IN THE FIRST DEGREE

STATE OF FLORIDA,
Plaintiff,
vs.
CURTIS WINDOM,
Defendant.

FILED IN OPEN COURT
THE 28 DAY OF Aug. 1992
BY P. Warholick D.C.

VERDICT AS TO COUNT II

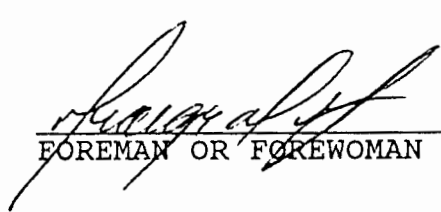
☒ WE, THE JURY, FIND DEFENDANT GUILTY OF MURDER IN THE
FIRST DEGREE AS CHARGED IN THE INDICTMENT.

☐ WE, THE JURY FIND DEFENDANT GUILTY OF THE LESSER
INCLUDED OFFENSE OF MURDER IN THE SECOND DEGREE
WITH A FIREARM.

☐ WE, THE JURY FIND DEFENDANT GUILTY OF THE LESSER
INCLUDED OFFENSE OF MANSLAUGHTER WITH A FIREARM.

☐ WE, THE JURY FIND DEFENDANT NOT GUILTY.

SO, SAY WE ALL THIS 28 DAY OF AUGUST, 1992,
ORLANDO, FLORIDA.


FOREMAN OR FOREWOMAN

IN THE CIRCUIT COURT, IN AND
FOR ORANGE COUNTY, FLORIDA

DIVISION 11

CASE NUMBER CR92-1305

INDICTMENT FOR:
MURDER IN THE FIRST DEGREE

STATE OF FLORIDA,
Plaintiff,
vs.
CURTIS WINDOM,
Defendant.

FILED IN OPEN COURT
THIS 28 DAY OF Aug. 1992
Frank Carlton, Clerk
BY P. Warholik D.C.

VERDICT AS TO COUNT III

✓
WE, THE JURY, FIND DEFENDANT GUILTY OF MURDER IN THE
FIRST DEGREE AS CHARGED IN THE INDICTMENT.

WE, THE JURY FIND DEFENDANT GUILTY OF THE LESSER
INCLUDED OFFENSE OF MURDER IN THE SECOND DEGREE
WITH A FIREARM.

WE, THE JURY FIND DEFENDANT GUILTY OF THE LESSER
INCLUDED OFFENSE OF MANSLAUGHTER WITH A FIREARM.

WE, THE JURY FIND DEFENDANT NOT GUILTY.

SO, SAY WE ALL THIS 28 DAY OF AUGUST, 1992,
ORLANDO, FLORIDA.


FOREMAN OR FOREWOMAN

INDICTMENT FOR: ATTEMPTED
MURDER IN THE FIRST DEGREE

STATE OF FLORIDA,
Plaintiff,
vs.
CURTIS WINDOM,
Defendant.

FILED IN OPEN COURT
THIS 28 DAY OF Aug., 1992
BY Fran Carlton, Clerk
P. Waholick D.C.

VERDICT AS TO COUNT IV

WE, THE JURY, FIND DEFENDANT GUILTY OF ATTEMPTED
MURDER IN THE FIRST DEGREE WITH A FIREARM AS CHARGED
IN THE INDICTMENT.

WE, THE JURY FIND DEFENDANT GUILTY OF THE LESSER INCLUDED OFFENSE OF ATTEMPTED MURDER IN THE SECOND DEGREE WITH A FIREARM.

WE, THE JURY FIND DEFENDANT GUILTY OF THE LESSER INCLUDED OFFENSE OF ATTEMPTED MANSLAUGHTER WITH A FIREARM.

WE, THE JURY FIND DEFENDANT NOT GUILTY.

SO, SAY WE ALL THIS 21 DAY OF AUGUST, 1992,
ORLANDO, FLORIDA.

FOREMAN OR FOREWOMAN

Probation Violator

Community Control Violator

Retrial

Resentence

State of Florida

v.

Curtis Windom

Defendant

In the Circuit Court, Ninth Judicial Circuit, NINTH JUDICIAL CIRCUIT COURT

in and for Orange County, Florida

Division 11

Case Number

CR92-1305

28

Aug. 92

Dr. P. Weholic, M.D.

J U D G M E N T

The defendant, Curtis Windom, being personally before this court represented by Ed Leinster, the attorney of record, and the state represented by Jeff Ashton, and having

- ☒ been tried and found guilty by jury/ by court of the following crime(s)
☐ entered a plea of guilty to the following crime(s)
☐ entered a plea of nolo contendere to the following crime(s)

OR4456 PG2675

4202501 ORANGE CO. FL.
09/03/92 11:58:30am

Count	Crime	Offense Statute Number(s)	Degree of Crime	OBTS Number
1	Murder in the First Degree	782.04	Capital	4957435
2	Murder in the First Degree	782.04	Capital	
3	Murder in the First Degree	782.04	Capital	
4	Attempt to Commit Murder in the First Degree	782.04 777.04	Life	

☒ and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED that the defendant is hereby ADJUDICATED GUILTY of the above crime(s).

☐ and pursuant to section 943.325, Florida Statutes, having been convicted of attempts or offenses relating to sexual battery (ch.794) or lewd and lascivious conduct (ch.800) the defendant shall be required to submit blood specimens.

☐ and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

State of Florida











v.

Curtis Windom

Defendant

Case Number CR92-1305

FINGERPRINTS OF DEFENDANT

1. Right Thumb	2. Right Index	3. Right Middle	4. Right Ring	5. Right Little
				
6. Left Thumb	7. Left Index	8. Left Middle	9. Left Ring	10. Left Little
				

Fingerprints taken by: P/S M. Wallen 08-28-92
Name

Deputy
Title

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the defendant, Curtis Windom, and that they were placed thereon by the defendant in my presence in open court this date.

DONE AND ORDERED in open court in ORANGE County, Florida
this 28th day of August, 19 92.

[Signature]
Judge

32-37 (7/92)

RECORDED & RECORD VERIFIED
Martha O. Haynie
County Comptroller, Orange Co., FL

OR4456 PG267F

State of Florida
v.

In the Circuit Court, NINTH Judicial Circuit
in and for ORANGE County, Florida
Division 11
Case Number CR 92-1305

Curtis Windom

Defendant

FILED IN OPEN COURT
THIS 28 DAY OF Aug, 1992
BY Fran Carlton, Clerk
P. W. Scholte D.C.

CHARGES/COSTS/FEES

The defendant is hereby ordered to pay the following sums if checked:

- ☒ \$50.00 pursuant to section 960.20, Florida Statutes (Crimes Compensation Trust Fund).
☒ \$3.00 as a court cost pursuant to section 943.25(3), Florida Statutes (Criminal Justice Trust Fund).
☒ \$2.00 as a court cost pursuant to section 943.25(13), Florida Statutes (Criminal Justice Education by Municipalities and Counties).

☐ A fine in the sum of \$_____ pursuant to section 775.0835, Florida Statutes. (This provision refers to the optional fine for the Crimes Compensation Trust Fund and is not applicable unless checked and completed. Fines imposed as a part of a sentence to section 775.083, Florida Statutes are to be recorded on the sentence page(s).)

☐ \$20.00 pursuant to section 939.015, Florida Statutes (Handicapped and Elderly Security Assistance Trust Fund).

☐ A 10% surcharge in the sum of \$_____ pursuant to section 775.0836, Florida Statutes (Handicapped and Elderly Security Assistance Trust Fund).

☒ A sum of \$200 pursuant to section 27.3455, Florida Statutes (Local Government Criminal Justice Trust Fund).

☐ A sum of \$_____ pursuant to section 939.01, Florida Statutes (Prosecution/Investigative Costs).

☐ A sum of \$_____ pursuant to section 27.56, Florida Statutes (Public Defender Fees).

☐ Restitution in accordance with attached order.

☐ Other _____

DONE AND ORDERED in open court in ORANGE County, Florida,
this 28th day of August, 1992.

Barth J. Russell
Judge

☒ COURT MINUTES ☒ ORDER (PLEA/SENTENCING/RELEASE)

IN THE CIRCUIT COURT IN AND FOR ORANGE
COUNTY, FLORIDA

STATE OF FLORIDA
VS

CASE CR92-1305
DIVISION 11

Curtis Windom

CHARGED WITH:

1,2,3) Murder in the First Degree
4) Attempt to Commit Murder in the First Degree

COURT OPENED AT 3 PM, 8/28/92 HONORABLE D.J. Russell JUDGE

ASSISTANT PUBLIC DEFENDER _____ ASSISTANT STATE ATTORNEY Jeff Ashton

COURT REPORTER S. Lightsey COURT DEPUTY E. Velazquez

This case came on this date for _____ Plea _____ Sentencing ☒ Trial _____ Pre-Trial.

The Defendant was _____ present, _____ not present, ☒ present with Counsel Ed Leinster

_____ Plea of not guilty withdrawn. ☒ Defendant tried and found guilty of: Defendant sworn and pled _____ Guilty to:

_____ Nolo Contendere to: as chgd, Cts. 1,2,3 + 4

_____ Defendant reserves right to appeal _____ Adjudication of Guilt withheld, finding of guilt entered.

☒ Defendant adjudged guilty. ☒ \$5.00 C.C. ☒ \$20.00 C.C.F. ☒ \$200.00 C.J.T.F. or _____ \$50.00 C.J.T.F. (27.3455)

_____ P.S.I. ORDERED. It is hereby Ordered that the Department of Corrections submit P.S.I. or a scoresheet of Defendant and deliver a written report of same to the undersigned Judge within two working days before

sentencing STATUS Gail

☒ Penalties Phase Sept. 23, 1992, at 9:30 A.M., Courtroom V

_____ P.S.I. Bond set at _____. _____ P.D.R. ORDERED. _____ P.S.I. waived.

SENTENCING:

_____ Adjudication of guilt was withheld, a finding of guilt entered.

_____ Defendant adjudged guilty. _____ \$5.00 C.C. _____ \$20.00 C.C.F. _____ \$200.00 C.J.T.F. (27.3455) or _____ \$50.00 C.J.T.F.

SENTENCE: _____

_____ RELEASE - Defendant is Ordered released from custody as to this case only.

DONE AND ORDERED this 28 day of August, 1992.

D.J. Russell
CIRCUIT JUDGE

FILED IN OPEN COURT THIS 28 DAY OF Aug., 1992. Distribution: _____ Surety/Cash Bond

FRAN CARLTON, Clerk of the CIRCUIT/COUNTY Courts.

by: P.A. Warholik
DEPUTY CLERK in attendance.

☒ Defendant
☒ Probation/Parole
☒ Court Deputy
_____ S.O. on

COURT RECESSED at _____.

32-60(B) (9/89)

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA.

CASE NO.: CR92-1305

STATE OF FLORIDA,
Plaintiff,

vs.

CURTIS WINDOM
Defendant.

FILED IN OFFICE
CRIMINAL DIVISION
92SER10 PD 2:52
CLERK

ORDER OF INDIGENCY

THIS CAUSE having come to be heard before me upon the Defendant's Motion for Indigency for Purposes of Costs and the Court having granted a partial indigency Order for 11 of the State's 34 witnesses' and the Court being otherwise fully advised in the premises it is thereupon:

ORDERED AND ADJUDGED as follows:


1. That said Motion be and same is hereby GRANTED for the remaining 23 State's witnesses.

2. The Clerk of the County Court is hereby Ordered to issue subpoenas upon presentation of a praecipe and notice of taking deposition.

3. The Office of the Sheriff's Department is hereby Ordered to serve said subpoenas once issued.

It is further ORDERED that the Board of County Commissioners is hereby Ordered to pay all costs of subpoenas and service of process for the depositions.

DONE AND ORDERED in Orlando, Orange County, Florida this
the 9th day of September, 1992.


DOROTHY J. RUSSELL
Circuit Judge

COPIES TO:

Ed Leinster, Esquire: 1302 E. Robinson Street, Orlando, Florida
32801

Jeff Ashton, Esquire: Office of State Attorney, 250 N. Orange
Avenue, Orlando, Florida 32801

IN THE (CIRCUIT) (COUNTY) COURT, IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA

CASE NUMBER CR92-1305

VS

DIVISION 11

CURTIS WINDOM,

PENALTY PHASE
STATE'S WITNESS LIST

COMES NOW the State of Florida, pursuant to Florida Rules of Criminal Procedure 3.220(a), and in response to the Defendant's Demand for Discovery discloses the following names and addresses of all persons known to the prosecutor to have information which may be relevant to the offense charged, and to any defense with respect thereto:

PAT REILLY - Orange County Sheriff's Office - Narcotics Division

ROBERT TURNER - c/o Pat Reilly - Orange County Sheriff's Office
Narcotics Division

BILL CRUMMETT - Division of Alcohol, Tobacco, & Firearms - 80 N. Hughey
Avenue #429 Orlando, FL

MARY JACKSON - 400 W. Robinson Street #837 - Orlando, FL. 32802

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Defendant or his Attorney of Record by mail/delivery this 16 day of September, 19 92.

LAWSON LAMAR, STATE ATTORNEY

"ATTACHMENT A"

BY: 

ASSISTANT STATE ATTORNEY

Telephone number: 836-2405
JEFFREY L. ASHTON
Florida Bar No. 318337

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN
AND FOR ORANGE COUNTY, FLORIDA.

STATE OF FLORIDA,

Plaintiff,

vs

CASE NO: CR92-1305

file

CURTIS WINDOM

Defendant.

//

MOTION TO CONTINUE

COMES NOW the Defendant, CURTIS WINDOM, by and through his undersigned attorney and moves this Court for an Order continuing the death penalty hearing scheduled for September 23, 1992 and as grounds therefore would show:

1. That the Penalty portion of the Defendant's trial set to begin September 23, 1992.

2. That the Defendant's mother, Lena Windom, who is an important defense witness is unavailable due to hospitalization for amputation of her leg. Surgery was performed on September 16, 1992, and additional surgery may be necessary. The witness will testify to matters relevant to Statutory and Non-Statutory mitigating factors. Moreover, the witness' health is such that an adverse jury decision could cause serious complications.

3. Defense counselors are attempting to determine from the witness' physician when she will be available to testify.

4. The Assistant State Attorney, Jeff Ashton, Esquire, was unavailable on Friday to state his position, however, counsel will continue to try to contact him.

FILED IN OFFICE
CRIMINAL DIVISION
92 SEP 22 PM 2:16
FRANK CARLTON
CLERK OF CIRCUIT COURT
ORANGE COUNTY, FL

*7-21-92
Def's
mother
is being
released -
this motion
is most
EP*

ED LEINSTER, P.A.
ATTORNEY AT LAW
1302 E. ROBINSON STREET
ORLANDO, FLORIDA 32801
(407) 422-3937

5. That this Motion is advanced in good faith and not for purposes of unjust delay.

WHEREFORE the Defendant respectfully requests this Honorable Court to enter an order continuing the death penalty hearing on September 23, 1992.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail delivery to Office of the State Attorney, 250 N. Orange Avenue, Orlando, Florida 32801 this 21st day of September, 1992.



ED LEINSTER, ESQUIRE
1302 East Robinson Street
Orlando, Florida 32801
407/422-3937

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO. CR92-1305

STATE OF FLORIDA,

Plaintiff,

vs.
CURTIS WINDOM,

Defendant.

FILED IN OPEN COURT

THIS 23 DAY OF Sept, 1992

BY Nyan Garton, Clerk
P. Wanholtz D.C.

JURY INSTRUCTIONS

Ladies and gentlemen of the jury, it is now your duty to advise the court as to what punishment should be imposed upon the defendant for his crime of Murder in the First Degree. As you have been told, the final decision as to what punishment shall be imposed is the responsibility of the judge; however, it is your duty to follow the law that will now be given you by the court and render to the court an advisory sentence based upon your determination as to whether sufficient aggravating circumstances exist to justify the imposition of the death penalty and whether sufficient mitigating circumstances exist to outweigh any aggravating circumstances found to exist. Your advisory sentence as to what sentence should be imposed on this defendant is entitled by law and will be given great weight by this court in determining what sentence to impose in this case. It is only under rare circumstances that this court could impose a sentence other than what you recommend.

Your advisory sentence should be based upon the evidence that you have heard while trying the guilt or the innocence of the defendant and evidence that has been presented to you in these proceedings.

The aggravating circumstances that you may consider are limited to any of the following that are established by the evidence.

1. The defendant has been previously convicted of another capital offense or of a felony involving the use of violence to some person;
 - a. The crime of Murder in the First Degree is a capital felony
 - b. The crime of Attempted Murder in the First Degree is a felony involving the use of violence to another person.
2. The crime for which the defendant is to be sentenced was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification.

The Victim Impact Evidence is not an aggravating circumstance.

If you find the aggravating circumstances do not justify the death penalty, your advisory sentence should be one of life imprisonment without possibility of parole for 25 years.

Should you find sufficient aggravating circumstances do exist, it will then be your duty to determine whether mitigating circumstances exist that outweigh the aggravating circumstances. Among the mitigating circumstances you may consider, if established by the evidence, are:

1. That the crime for which the defendant is to be sentenced was committed while he was under the influence of extreme mental or emotional disturbance;
2. The victim was a participant in the defendant's conduct or consented to the act;
3. The defendant was an accomplice in the offense for which he is to be sentenced but the offense was committed by another person and the defendant's participation was relatively minor;
4. The defendant acted under extreme duress or under the substantial domination of another person;
5. The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired;
6. The age of the defendant at the time of the crime;
7. Any other aspect of the defendant's character or record, and any other circumstance of the offense.

Each aggravating circumstance must be established beyond a reasonable doubt before it may be considered by you in arriving at your decision.

If one or more aggravating circumstances are established, you should consider all the evidence tending to establish one or more mitigating circumstances and give that evidence such weight as you feel it should receive in reaching your conclusion as to the sentence that should be imposed.

A mitigating circumstance need not be proved beyond a reasonable doubt by the defendant. If you are reasonably convinced that a mitigating circumstance exists, you may consider it as established.

The sentence that you recommend to the Court must be based upon the facts as you find them from the evidence and the law. You should weigh the aggravating circumstances against the mitigating circumstances, and your advisory sentence must be based on these considerations.

In these proceedings it is not necessary that the advisory sentence of the jury be unanimous.

The fact that the determination of whether a majority of you recommend a sentence of death or sentence of life imprisonment in this case can be reached by a single ballot should not influence you to act hastily or without due regard to the gravity of these proceedings. Before you ballot, you should carefully weigh, sift and consider the evidence, and all of it, realizing that human life is at stake, and bring to bear your best judgment in reaching your advisory sentence.

If a majority of the jury determine that CURTIS WINDOM should be sentenced to death, your advisory sentence will be:

A majority of the jury, by a vote of _____ to _____, advise and recommend to the Court that it impose the death penalty upon CURTIS WINDOM

On the other hand, if by six or more votes, the jury determines that CURTIS WINDOM should not be sentenced to death, your advisory sentence will be:

The jury advises and recommends to the Court that it impose a sentence of life imprisonment upon CURTIS WINDOM without possibility of parole for 25 years

You will now retire to consider your recommendation. When you have reached an advisory sentence in conformity with these instructions, that form of recommendation should be signed by your foreman and returned to the Court.

IN THE CIRCUIT COURT, IN AND
FOR ORANGE COUNTY, FLORIDA

Division 11

Case No. CR92-1305

INFORMATION FOR:

STATE OF FLORIDA,
Plaintiff,

COUNT I MURDER IN THE FIRST
DEGREE

vs.

CURTIS WINDOM,
Defendant.

FILED IN OPEN COURT
THIS 23 DAY OF Sept. 1992
BY P. Warholiz, Clerk
D.C.

VERDICT COUNT I

✓
A majority of the jury, by a vote of 12 to 0,
advise and recommend to the Court that it impose the
death penalty upon CURTIS WINDOM for the First Degree
Murder of JOHNNIE LEE.

The jury advises and recommends to the Court that it
impose a sentence of life imprisonment upon CURTIS
WINDOM without possibility of parole for 25 years.

SO SAY WE ALL.

ORLANDO, FLORIDA DATED THIS 23 DAY OF SEPTEMBER 1992



FOREMAN OR FOREWOMAN

IN THE CIRCUIT COURT, IN AND
FOR ORANGE COUNTY, FLORIDA

Division 11

Case No. CR92-1305

INFORMATION FOR:

STATE OF FLORIDA,
Plaintiff,

COUNT II MURDER IN THE FIRST
DEGREE

vs.

CURTIS WINDOM,
Defendant.

FILED IN OPEN COURT,
THIS 23 DAY OF Sept., 1992
BY Fran Carlton, Clerk
D.C.

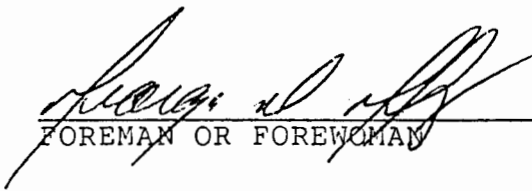
VERDICT COUNT II

✓
A majority of the jury, by a vote of 12 to 0,
advise and recommend to the Court that it impose the
death penalty upon CURTIS WINDOM for the First Degree
Murder of VALERIE DAVIS

— The jury advises and recommends to the Court that it
impose a sentence of life imprisonment upon CURTIS
WINDOM without possibility of parole for 25 years.

SO SAY WE ALL.

ORLANDO, FLORIDA DATED THIS 23 DAY OF SEPTEMBER 1992


FOREMAN OR FOREWOMAN

IN THE CIRCUIT COURT, IN AND
FOR ORANGE COUNTY, FLORIDA

Division 11

Case No. CR92-1305

INFORMATION FOR:

STATE OF FLORIDA,

Plaintiff,

vs.

CURTIS WINDOM,

Defendant.

COUNT III MURDER IN THE FIRST
DEGREE

FILED IN OPEN COURT
THIS 23 DAY OF Sept, 1992
BY Fran Carlton, Clerk
P. Wanholtz D.C.

VERDICT COUNT III

✓
A majority of the jury, by a vote of 12 to 0,
advise and recommend to the Court that it impose the
death penalty upon CURTIS WINDOM for the First Degree
Murder of MARY LUBIN.

— The jury advises and recommends to the Court that it
impose a sentence of life imprisonment upon CURTIS
WINDOM without possibility of parole for 25 years.

SO SAY WE ALL.

ORLANDO, FLORIDA DATED THIS 23 DAY OF SEPTEMBER 1992

[Signature]
FOREMAN OR FOREWOMAN

☒ COURT MINUTES ☒ ORDER (PLEA/SENTENCING/RELEASE)

IN THE CIRCUIT COURT IN AND FOR ORANGE
COUNTY, FLORIDA

STATE OF FLORIDA
VS

CASE CR92-1305

DIVISION 11

CURTIS WINDOM

CHARGED WITH: INDICTMENT 1,2,3) MURDER IN THE FIRST DEGREE 782.04

4) ATTEMPT TO COMMIT MURDER IN THE FIRST DEGREE 782.04 & 777.04

COURT OPENED AT 5PM, 9/23/92 HONORABLE DOROTHY J. RUSSELL JUDGE

ASSISTANT PUBLIC DEFENDER ASSISTANT STATE ATTORNEY JEFF ASHTON/JANNA BRENNAN

COURT REPORTER S. Hutson COURT DEPUTY E. VELAZQUEZ

This case came on this date for Plea Sentencing Trial Pre-Trial. ☒ Bifurcation

The Defendant was present, not present, ☒ present with Counsel ED LEINSTER Kirk Borch

Plea of not guilty withdrawn. Defendant tried and found guilty of: Defendant sworn and pled Guilty to:

Nolo Contendere to:

Defendant reserves right to appeal Adjudication of Guilt withheld, finding of guilt entered.

Defendant adjudged guilty. \$5.00 C.C. \$50.00 C.C.F. \$200.00 C.J.T.F. or \$50.00 C.J.T.F. (27.3455)

☒ P.S.I. ORDERED. It is hereby Ordered that the Department of Corrections submit P.S.I. or a scoresheet of Defendant and deliver a written report of same to the undersigned Judge within two working days before sentencing. STATUS Jail

Sentencing set for Nov. 10, 1992, at 9:15 A.M., Courtroom V

P.S.I. Bond set at P.D.R. ORDERED. P.S.I. waived.

SENTENCING:

Adjudication of guilt was withheld, a finding of guilt entered.

Defendant adjudged guilty. \$5.00 C.C. \$50.00 C.C.F. \$200.00 C.J.T.F. (27.3455) or \$50.00 C.J.T.F.

SENTENCE:

As to all 3 counts - A majority of the Jury by a Vote 12 to 0 advise and recommend to the Court that it impose the death penalty upon Curtis Windom for Murder in the First Degree

(4) to be addressed at time of sentencing

RELEASE - Defendant is Ordered released from custody as to this case only.

DONE AND ORDERED this 23 day of Sept, 1992.

Dorothy J. Russell
CIRCUIT JUDGE

FILED IN OPEN COURT THIS 23 DAY OF Sept, 1992. Distribution: Surety/Cash Bond

FRAN CARLTON, Clerk of the CIRCUIT/COUNTY Courts.

by: P. A. Warholick
DEPUTY CLERK in attendance.

☒ Defendant
☒ Probation/Parole
☒ Court Deputy
☐ S.O. on

COURT RECESSED at

IN THE NINTH JUDICIAL CIRCUIT
COURT IN AND FOR ORANGE
COUNTY, FLORIDA

CRIMINAL DIVISION
COURT MINUTES

COURT OPENED at 10:40 A.M., September 23, 1992, with the following
Officers present: HONORABLE DOROTHY J. RUSSELL, Circuit Judge presiding;
Jeff Ashton and Janna Brennan, Assistant State Attorneys; Patricia Warholc,
Deputy Clerk; Eddie Velazquez, Court Deputy and Susan Hutson as Court Reporter.

CR92-1305 - STATE OF FLORIDA VS. CURTIS WINDOM

4 INDICTMENT: 1,2,3) MURDER IN THE FIRST DEGREE
4) ATTEMPT TO COMMIT MURDER IN THE FIRST
DEGREE

The defendant, Curtis Windom, appeared with Counsel, Ed Leim, having
previously been found and adjudicated guilty as charged in the Indictment.

Counsel for the Defense made a motion for Continuance; said Motion was
denied.

The Jury, as a whole, including the alternates, were present for the
Bifurcation portion of this Trial.

The State waived Opening Statements at this time.

Counsel for the Defense presented Opening Statements to the Jury.

1. Victoria Ward, was sworn and testified for the State.

The State announced rest.

COURT RECESSED at 11:30 A.M., September 23, 1992, until 12:45 P.M.,
September 23, 1992.

COURT OPENED at 1:22 P.M., September 23, 1992, with all Officers present.

COURT RECESSED at 1:30 P.M., September 23, 1992, until 2:35 P.M.,
September 23, 1992.

COURT OPENED at 3:00 P.M., September 23, 1992, with all Officers present.

The Defense announced rest.

Closing arguments were presented to the Jury by both Counsel for the
State and the Defense.

The Jury was charged and retired at 3:45 P.M., returning at 4:35 P.M.,
with the following recommendation:

FILED IN OFFICE
CRIMINAL DIVISION
92-0235-AM-11
CLERK OF CIRCUIT COURT
ORANGE COUNTY, FL

VERDICT COUNT I

A MAJORITY OF THE JURY, BY A VOTE OF 12 to 0,
ADVISE AND RECOMMEND TO THE COURT THAT IT
IMPOSE THE DEATH PENALTY UPON CURTIS WINDOM
FOR THE FIRST DEGREE MURDER OF JOHNNIE LEE.

VERDICT COUNT II

A MAJORITY OF THE JURY, BY A VOTE OF 12 to 0,
ADVISE AND RECOMMEND TO THE COURT THAT IT
IMPOSE THE DEATH PENALTY UPON CURTIS WINDOM
FOR THE FIRST DEGREE MURDER OF VALERIE DAVIS.

VERDICT COUNT III

A MAJORITY OF THE JURY, BY A VOTE OF 12 to 0,
ADVISE AND RECOMMEND TO THE COURT THAT IT
IMPOSE THE DEATH PENALTY UPON CURTIS WINDOM
FOR THE FIRST DEGREE MURDER OF MARY LUBIN.

SO SAY WE ALL.

ORLANDO, FLORIDA DATED THIS 23 DAY OF SEPTEMBER 1992.

/s/ GEORGE D. GUFFEY

FOREMAN OR FOREWOMAN

Count IV to be addressed at time of sentencing.

The Jury was not polled.

A Pre-Sentence Investigation was ordered with sentencing date set
for November 10, 1992, at 9:15 A.M.

COURT RECESSED at 5:00 P.M., September 23, 1992; subject to call.

FRAN CARLTON, CLERK OF THE CIRCUIT AND COUNTY COURTS

BY Patricia Warholic, Deputy Clerk in attendance.

Patricia Warholic

JA DI 11-2-91
IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN
AND FOR ORANGE COUNTY, FLORIDA.

STATE OF FLORIDA,

Plaintiff,

vs

CASE NO: CR92-1305

CURTIS WINDOM

Defendant.
_____ /

MITIGATING FACTORS

COMES NOW the Defendant, CURTIS WINDOM, by and through his undersigned attorney and files this list of mitigating factors which the Defendant feels are supported by evidence presented at trial:

1. Florida Statute 921.141(a), the defendant has no significant history of prior criminal activity as supported by Defendant's mother's testimony that he had been a good son and had never been in trouble before, and that his actions weren't like Curtis.

2. Florida Statute 921.144(e), the Defendant acted under extreme duress or under the substantial domination of another person, supported by testimony that the Defendant was not himself and he was not acting the way he normally did.

WHEREFORE the Defendant respectfully requests this Honorable Court to consider the above as mitigating factors herein.

3. The witness that testified at trial indicated that Curtis Windom's actions in the day of the offenses were

totally uncharacteristic of him.

4. That Curtis Windom assisted people in the community.

5. That Curtis Windom is a good father in that he supported and took care of his children.

6. That Curtis Windom saved his sister from drowning.

7. That Curtis Windom saved another individual from being shot during a dispute over \$20.00.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by HAND delivery to Office of the State Attorney, 250 N. Orange Avenue, Orlando, Florida 32801 and to The Honorable Dorothy Russell, Circuit Judge, 65 E. Central Blvd., Orlando, Florida 32801 this 27th day of October, 1992.



ED LEINSTER, ESQUIRE
1302 East Robinson Street
Orlando, Florida 32801
407/422-3937

☒ COURT MINUTES
☐ ORDER (MOTION HEARING)

IN THE CIRCUIT COURT IN AND
FOR ORANGE COUNTY, FLORIDA
CASE NO: CR92-1305
DIVISION 11

STATE OF FLORIDA
VS

Curtis Windom

CHARGED WITH: 1, 2, 3) Murder In The First Degree

4) Attempt to Commit Murder In The First Degree

COURT OPENED AT 2pm 11-5-92 HONORABLE Dorothy J. Russell JUDGE PRESIDING

ASST. PUBLIC DEFENDER _____ ASST. STATE ATTORNEY Jeff Hinton

COURT REPORTER Sally Lightsey COURT DEPUTY Fred Samms

This case came on this date for hearing on Mitigating Factors

The Defendant was _____ Present, _____ Not Present, ☒ Present with Counsel Ed Lester

The Rule of Sequestration was invoked.
STATE WITNESSES SWORN AND TESTIFIED: _____

STATE EXHIBITS ADMITTED INTO EVIDENCE:

- ① Statement dtd 8-2-91 C/I 91-201880
- ② Statement dtd 12-3-91 C/I 91-320887
- (Composites)

DEFENSE WITNESSES SWORN AND TESTIFIED:

- ① Arlene Windom
- ② Willie Mae Rich
- ③ Mary Jackson
- ④ Charlene Mobley

DEFENSE WITNESSES SWORN AND TESTIFIED:

- ⑤ Julie Harp

DEFENSE EXHIBITS ADMITTED INTO EVIDENCE:

COURT EXHIBITS ADMITTED INTO EVIDENCE:

The Court took under advisement; deferred ruling.

☒ RULING: Mitigating Arguments to be submitted
by all parties prior to Sentencing on 11/10/92,
in written form.

DONE AND ORDERED this 5th day of November, 19 92

Dorothy J. Russell
CIRCUIT/COUNTY JUDGE

FILED IN OPEN COURT this

5th day of November, 19 92

FRAN CARLTON, CLERK OF THE CIRCUIT/COUNTY COURTS.

BY [Signature] D.C.

COURT RECESSED AT 11/5/92

DISTRIBUTION:

- ☒ Surety/Cash Bond
- ☒ Defendant
- ☒ Probation/Parole
- ☒ Court Deputy
- ☐ S.O. on _____

7-4-92
DIS-90

IN THE CIRCUIT COURT, IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO. CR92-1305

vs.

DIVISION 11

CURTIS WINDOM

**** SUPPLEMENTAL ****

STATE'S RESPONSE TO NOTICE OF INTENT TO PARTICIPATE IN DISCOVERY

COMES NOW the State of Florida, pursuant to Florida Rules of Criminal Procedure 3.220(a), and in response to Defendant's Notice of Intent to Participate In Discovery discloses the existence of the following information and material within the State's possession or control, which defense counsel will be permitted to inspect, copy, test or photograph at a mutually convenient time arranged after contacting the undersigned Assistant State Attorney:

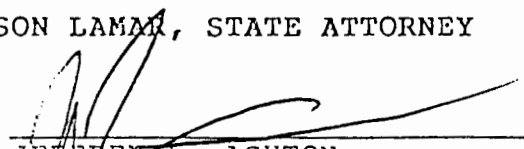
- | | | | |
|--------|--|-------|-------|
| (i) | Persons having information - See Witness List (ATTACHMENT "A") | YES | NO |
| (ii) | Statements by persons | _____ | _____ |
| (iii) | Statements by accused | _____ | _____ |
| (iv) | Co-defendant statements | _____ | _____ |
| (v) | Grand jury testimony of accused | _____ | _____ |
| (vi) | Objects from accused | _____ | _____ |
| (vii) | CI information | _____ | _____ |
| (viii) | Electronic surveillance | _____ | _____ |
| (ix) | Search and seizure information | _____ | _____ |
| (x) | Reports of experts | _____ | _____ |
| (xi) | Physical evidence not obtained from accused | _____ | _____ |
| (xii) | Information negating guilt | _____ | _____ |

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Defendant or his Attorney of Record by mail/delivery this 9 day of November, 1992.

TO: Ed Leinster, Esquire
1302 E. Robinson Street
Orlando, FL. 32801

LAWSON LAMAR, STATE ATTORNEY

Supplemental discovery
FDLE lab report SD 1 thru SD 2

By: 
JEFFREY L. ASHTON
Florida Bar No. 318337
Assistant State Attorney
(407) 836-2405

FILED IN OFFICE
ORIGINAL DISCOVERY
NOV 9 1992
ORANGE COUNTY, FLA.
CIRCUIT COURT

SEALED PSI

DO NOT OPEN WITHOUT
WRITTEN ORDER OF DSR
COURT NO. CR92-1305
ST. VS Burtia Windom
DATE 11-10-92

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

STATE OF FLORIDA,

Plaintiff

vs

CURTIS WINDOM,

Defendant.

FILED IN OPEN COURT

THIS 10 DAY OF Nov, 1992
By [Signature] Fran Carlton, Clerk
D.C.

DEFENDANT'S PROPOSED PENALTY PHASE INSTRUCTION NO. 1

(Strike "...and, second, whether there are
mitigating circumstances sufficient to out-
weigh the aggravating circumstances, if any."
And insert immediately before the last sentence
- p. 77 of the preliminary burden of proof
instruction)

If you find that there are such sufficient aggravating
circumstances that would justify the imposition of the death
penalty, then you must consider the evidence in mitigation. It
will be your duty to determine whether there are sufficient
aggravating circumstances to outweigh the mitigating circumstances
beyond a reasonable doubt.

Fla. Stand. Jury Inst. (Crim.)(former)

_____ GRANTED

_____ DENIED

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

STATE OF FLORIDA,

Plaintiff

vs

CURTIS WINDOM,

Defendant.

_____ /

DEFENDANT'S PROPOSED PENALTY PHASE INSTRUCTION NO. 2

The State bears the burden to show that the aggravating factors outweigh the mitigating factors.

Arango v. State, 411 So.2d 172, 174 (Fla. 1982)

Mullaney v. State, 421 U.S. 684 (1975)

State v. Dixon, 283 So.2d 1 (Fla. 1973)

See also Alvord v. State, 322 So.2d 533 (Fla. 1975)

_____ GRANTED

_____ DENIED

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

STATE OF FLORIDA,

Plaintiff

vs

CURTIS WINDOM,

Defendant.

_____ /

DEFENDANT'S PROPOSED PENALTY PHASE INSTRUCTION NO. 3

A mitigating circumstance need not be proved beyond a
reasonable doubt by the Defendant.

_____ GRANTED

_____ DENIED

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

STATE OF FLORIDA,

Plaintiff

vs

CURTIS WINDOM,

Defendant.

_____ /

DEFENDANT'S PROPOSED PENALTY PHASE INSTRUCTION NO. 4

The death penalty is warranted only for the most aggravating and unmitigated of crimes. The law does not require that death be imposed in every conviction in which a particular set of facts occur. Thus, even though the factual circumstances may justify the sentence of death by electrocution, this does not prevent you from exercising your reasoned judgment and recommending life imprisonment.

Chenault v. Stynchcombs, 581 F.2d 444, 448 (5th Cir. 1978)

Downs v. State, 386 So.2d 788 (Fla. 1980)

Alvord v. State, 322 So.2d 533, 540 (Fla. 1975)

Florida Statutes 921.001 (1985)

_____ GRANTED
_____ ✓ _____ DENIED

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

STATE OF FLORIDA,

Plaintiff

vs

CURTIS WINDOM,

Defendant.


_____ /

DEFENDANT'S PROPOSED PENALTY PHASE INSTRUCTION NO. 4A

With regard to your recommendation of life or death, the Court hereby instructs you that the death penalty is intended for only the most aggravated and unmitigated of cases.

State v. Dixon, 283 So.2d 1 (Fla. 1973)

GRANTED

_____ 

DENIED

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

STATE OF FLORIDA,

Plaintiff

vs

CURTIS WINDOM,

Defendant.

DEFENDANT'S PROPOSED PENALTY PHASE INSTRUCTION NO. 5

The purpose of considering aggravating and mitigating circumstances is to engage in a character analysis of the Defendant to ascertain whether the ultimate penalty of death is called in his particular case.

Elledge v. State, 346 So.2d 998 (Fla. 1977)

_____ GRANTED

_____ DENIED

2 X

336

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

STATE OF FLORIDA,

Plaintiff

vs

CURTIS WINDOM,

Defendant.

_____ /

DEFENDANT'S PROPOSED PENALTY PHASE INSTRUCTION NO. 6

The Legislature has established eleven (11) Statutory
aggravating factors, but you will be instructed on only _____
number, since those are the only ones arguably applicable to the
Defendant.

_____ GRANTED

_____ ☒ DENIED

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

STATE OF FLORIDA,

Plaintiff

vs

CURTIS WINDOM,

Defendant.

DEFENDANT'S PROPOSED PENALTY PHASE INSTRUCTION NO. 7

In order that you might better understand and be guided concerning the matter in which you should consider the enumerated mitigating circumstances, the Court hereby instructs you that:

You may consider as a mitigating factor any aspect of a Defendant's character or background or any of the circumstances of the offense that the Defendant offers as a basis for a sentence less than death. The circumstances listed in the Statute and these Instructions merely indicate the principal factors to be considered.

Lockett v. Ohio, 438 U.S. 586, 98 S.Ct. 2954, 52 L.Ed.2d 973 (1978)

Songer v. State, 365 So.2d 696 (Fla. 1978)

GRANTED

DENIED

*Withdrawn
bec. already
included*

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

STATE OF FLORIDA,

Plaintiff

vs

CURTIS WINDOM,

Defendant.

_____ /

DEFENDANT'S PROPOSED PENALTY PHASE INSTRUCTION NO. 8

With regard to your decision to recommend life or death, the Court hereby instructs you that there is nothing which would suggest that the decision to afford an individual defendant mercy violates our Constitution. You are empowered to decline to recommend the penalty phase of death, even if you find one or more aggravating circumstances and no mitigating circumstances.

GRANTED
DENIED

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

STATE OF FLORIDA,

Plaintiff

vs

CURTIS WINDOM,

Defendant.

DEFENDANT'S PROPOSED PENALTY PHASE INSTRUCTION NO. 9

In determining whether to recommend life imprisonment or death, the procedure you are to follow is not a mere counting process of X number of aggravating circumstances and Y number of mitigating circumstances, but, rather, you are to exercise a reasoned judgment as to what factual situations can be satisfied by life imprisonment in light of the totality of the circumstances.

State v. Dixon, 283 So.2d 1, 10 (Fla. 1973)

Alford v. State, 307 So.2d 433, 444 (Fla. 1975)

Alford v. State, 322 So.2d 533, 540 (Fla. 1975)

Huckaby v. State, 343 So.2d 34 (Fla. 1977)

GRANTED
DENIED

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

STATE OF FLORIDA,

Plaintiff

vs

CURTIS WINDOM,

Defendant.

_____ /

DEFENDANT'S PROPOSED PENALTY PHASE INSTRUCTION NO. 10

It must be emphasized that the procedure to be followed by the jury is not a mere counting process of the number of aggravating circumstances and the number of mitigating circumstances, but, rather a reasoned judgment as to what factual situations require the imposition of death and which can be satisfied by life imprisonment in light of the totality of the circumstances present.

State v. Dixon, 283 So.2d 1, 10 (Fla. 1973)

_____ GRANTED
_____ DENIED

Same of RICH 39

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

STATE OF FLORIDA,

Plaintiff

vs

CURTIS WINDOM,

Defendant.

_____ /

DEFENDANT'S PROPOSED PENALTY PHASE INSTRUCTION NO. 10A

You are to use a reasoned judgment as to what factual situations require the imposition of death and which can be satisfied by life imprisonment in light of the totality of circumstances present. You are not to use a counting process in determining whether aggravating circumstances outweigh mitigating circumstances.

_____ GRANTED

_____ DENIED

340
2-11-92
S.M.W.

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

STATE OF FLORIDA,

Plaintiff

vs

CURTIS WINDOM,

Defendant.

DEFENDANT'S PROPOSED PENALTY PHASE INSTRUCTION NO. 11

In order that you might better understand and be guided concerning the manner in which you should consider the enumerated aggravating circumstances, the Court hereby instructs you that:

The aggravating circumstances specified in these instructions are exclusive. In deciding whether or not to recommend the death penalty, no other factor or circumstances may be used as aggravating circumstances.

Purdy v. State, 343 So.2d 4 (Fla. 1977)

Miller v. State, 373 So.2d 882 (Fla. 1979)

GRANTED
DENIED

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

STATE OF FLORIDA,

Plaintiff

vs

CURTIS WINDOM,

Defendant.

DEFENDANT'S PROPOSED PENALTY PHASE INSTRUCTION NO. 11

In order that you might better understand and be guided concerning the manner of aggravating circumstance (h), the Court hereby instructs you that:

What is intended to be included in the category of heinous, atrocious and cruel are those capital crimes where the actual commission of the capital felony was accompanied by such additional acts as to set the crime apart from the norm of capital felonies - the consciousness tortuous to the victim.

Cooper v. State, 336 So.2d 1133, 1140 (Fla. 1976)

State vs Dixon, 293 So.2d 1 (Fla. 1973)

Godfrey v. Georgia, ___ U.S. ___, 100 S. Ct. 1959, ___ L.Ed.2d ___ (19__)

McKinny v. State, 579 So.2d 80 (1991)

GRANTED

DENIED

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

STATE OF FLORIDA,

Plaintiff

vs

CURTIS WINDOM,

Defendant.

_____ /

DEFENDANT'S PROPOSED PENALTY PHASE INSTRUCTION NO. 12

Heinous means extremely wicked or shockingly evil; atrocious means outrageously wicked and vile; and cruel means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others.

State vs Dixon, 283 So.2d 1 (Fla. 1973)

Williams v. State, 574 So.2d 136 (Fla. 1991)

_____ GRANTED

_____ DENIED

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

STATE OF FLORIDA,

Plaintiff

vs

CURTIS WINDOM,

Defendant.

DEFENDANT'S PROPOSED PENALTY PHASE INSTRUCTION NO. 13

You are further instructed that acts committed after the death of the victim are not relevant in considering whether the homicide was "especially heinous, atrocious, or cruel".

Halliwell v State, 323 So.2d 557 (Fla. 1975)

Godfrey v. Georgia, ___ U.S. ___, 100 S.Ct. 1759, ___ L.Ed.2d ___

(19__)

GRANTED

DENIED

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

STATE OF FLORIDA,

Plaintiff

vs

CURTIS WINDOM,

Defendant.

DEFENDANT'S PROPOSED PENALTY PHASE INSTRUCTION NO. 14

You are further instructed that premeditation does not make
a killing "especially heinous, atrocious, or cruel".

Armstrong v State, 399 So.2d 953 (Fla. 1981)

Lewis v. State, 398 So.2d 432 (Fla. 1981)

_____ GRANTED

_____ DENIED

Opelka

✓med

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

STATE OF FLORIDA,

Plaintiff

vs

CURTIS WINDOM,

Defendant.

DEFENDANT'S PROPOSED PENALTY PHASE INSTRUCTION NO. 15

You are instructed that the aggravating circumstances which you may consider are limited to those listed in the Statute and about which you have just been instructed.

The mitigating circumstances which you may consider are unlimited and you may consider any evidence presented at trial or the sentencing proceeding in mitigation of the Defendant's sentence.

Florida Statute, 921.141(5)(6) (1991)

Proffit v. Florida, 428 U.S. 242 (1976)

Elledge v. State, 346 So.2d 998 (Fla. 1977)

_____ GRANTED

_____ DENIED

not list
346

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

STATE OF FLORIDA,

Plaintiff

vs

CURTIS WINDOM,

Defendant.

_____ /

DEFENDANT'S PROPOSED PENALTY PHASE INSTRUCTION NO. 16

The aggravating circumstances of heinous, atrocious or cruel may only be applied in torturous murders. Torturous murders are those that show extreme and outrageous depravity as exemplified either by:

- a. the desire to inflict a high degree of pain, or
- b. utter indifference to, or enjoyment of, the suffering of another.

_____ GRANTED

_____ DENIED

W/D

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

STATE OF FLORIDA,

Plaintiff

vs

CURTIS WINDOM,

Defendant.

DEFENDANT'S PROPOSED PENALTY PHASE INSTRUCTION NO. 17

You should not at this time have formed any opinions as to an appropriate penalty to recommend. You have not yet heard all of the evidence on the matter of penalty, the arguments of counsel and the instruction on the law.

GRANTED

DENIED

w/d

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

STATE OF FLORIDA,

Plaintiff

vs

CURTIS WINDOM,

Defendant.

_____ /

DEFENDANT'S PROPOSED PENALTY PHASE INSTRUCTION NO. 18

The State has the burden of proving the existence of sufficient aggravating circumstances to justify the death penalty, as well as the burden of proving that those aggravating circumstances outweigh any mitigating circumstances or circumstances that exist.

_____ GRANTED

_____ DENIED

W/AL

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

STATE OF FLORIDA,

Plaintiff

vs

CURTIS WINDOM,

Defendant.

DEFENDANT'S PROPOSED PENALTY PHASE INSTRUCTION NO. 19

The Defendant does not have the burden to prove that a recommendation of life imprisonment is appropriate. Rather, the State has the burden of proving that a recommendation of death is appropriate.

GRANTED

 ✓
DENIED

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

STATE OF FLORIDA,

Plaintiff

vs

CURTIS WINDOM,

Defendant.

DEFENDANT'S PROPOSED PENALTY PHASE INSTRUCTION NO. 20

Mercy is a consideration which may be considered by a jury in
recommending sentence.

GRANTED

✓

DENIED

See prepared instructions

CR92-1305

Ladies and gentlemen of the jury, it is now your duty to advise the court as to what punishment should be imposed upon the defendant for his crime of Murder in the First Degree. As you have been told, the final decision as to what punishment shall be imposed is the responsibility of the judge; however, your advisory sentence as to what sentence should be imposed on this defendant is entitled by law and will be given great weight by this court in determining what sentence to impose in this case. It is only under rare circumstances that this court could impose a sentence other than what you recommend. It is your duty to follow the law that will now be given you by the court and render to the court an advisory sentence based upon your determination as to whether sufficient aggravating circumstances exist to justify the imposition of the death penalty and whether sufficient mitigating circumstances exist to outweigh any aggravating circumstances found to exist.

Your advisory sentence should be based upon the evidence that you have heard while trying the guilt or innocence of the defendant and evidence that has been presented to you in these proceedings.

The aggravating circumstances that you may consider are limited to any of the following that are established by the evidence:

1. The crime for which the defendant is to be sentenced was committed while he was engaged or an accomplice in the commission of burglary;
2. The crime for which the defendant is to be sentenced was committed for financial gain;
3. The crime for which the defendant is to be sentenced was especially heinous, atrocious or cruel.

"Heinous" means extremely wicked or shockingly evil.

"Atrocious" means outrageously wicked and vile. "Cruel" means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others. The kind of crime intended to be included as heinous, atrocious, or cruel is one accompanied by additional acts that show that the crime was conscienceless or pitiless and was unnecessarily torturous to the victim.

4. The crime for which the defendant is to be sentenced was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

FILED IN OPEN COURT,

THIS 10 DAY OF Nov, 1992

Fran Carlton, Clerk

BY [Signature] D.C.

The state may not rely upon a single aspect of the offense to establish more than a single aggravating circumstance. Therefore, if you find that two or more of the aggravating circumstances are supported by a single aspect of the offense, you may only consider that as supporting a single aggravating circumstance. For example, the commission of a capital felony during the course of a burglary and done for pecuniary gain relates to the same aspect of the offense and may be considered as being only a single aggravating circumstance.

If you find the aggravating circumstances do not justify the death penalty, your advisory sentence should be one of life imprisonment without possibility of parole for 25 years.

Should you find sufficient aggravating circumstances do exist, it will then be your duty to determine whether mitigating circumstances exist that outweigh the aggravating circumstances. Among the mitigating circumstances you may consider, if established by the evidence, are:

1. Curtis Lee Windom has no significant history of prior criminal activity;
2. Any other aspect of the defendant's character, background or record, and any other circumstance of the offense.

Each aggravating circumstance must be established beyond a reasonable doubt before it may be considered by you in arriving at your decision.

If one or more aggravating circumstances are established, you should consider all the evidence tending to establish one or more mitigating circumstances and give that evidence such weight as you feel it should receive in reaching your conclusion as to the sentence that should be imposed.

A mitigating circumstance need not be proved beyond a reasonable doubt by the defendant. If you are reasonably convinced that a mitigating circumstance exists, you may consider it as established.

The sentence that you recommend to the court must be based upon the facts as you find them from the evidence and the law. You should weigh the aggravating circumstances against the mitigating circumstances, and your advisory sentence must be based on these considerations.

In these proceedings it is not necessary that the advisory sentence of the jury be unanimous.

The fact that the determination of whether you recommend a sentence of death or sentence of life imprisonment in this case can be reached by a single ballot should not influence you to act hastily or without due regard to the gravity of these proceedings. Before you ballot you should carefully weigh, sift and consider the evidence, and all of it, realizing that human life is at stake, and bring to bear your best judgment in reaching your advisory sentence.

If a majority of the jury determine that Curtis Lee Windom should be sentenced to death, your advisory sentence will be:

A majority of the jury, by a vote of ____ to ____, advise and recommend to the court that it impose the death penalty upon Curtis Lee Windom.

On the other hand, if by six or more votes the jury determines that Joseph Katabami Osterman should not be sentenced to death, your advisory sentence will be:

The jury advised and recommends to the court that it impose a sentence of life imprisonment upon Curtis Lee Windom without possibility of parole for 25 years.

You will now retire to consider your recommendation. When you have reached an advisory sentence in conformity with these instructions, that form of recommendation should be signed by your foreman and returned to the court.

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN
AND FOR ORANGE COUNTY, FLORIDA

CASE NO.: CR 92-1305
DIVISION: 11

STATE OF FLORIDA,
Plaintiff,

VS

CURTIS WINDOM,
Defendant.

FILED IN OPEN COURT

THIS 10 DAY OF Nov, 1992
BY Fran Carlton, Clerk
D.C.

SENTENCING ORDER

The Defendant was tried before this Court on August 25, 1992 through August 28, 1992. The jury found the Defendant guilty of all four counts of the Indictment (Count I: Murder in the First Degree of Johnnie Lee; Count II: Murder in the First Degree of Valerie Davis; Count III: Murder in the First Degree of Mary Lubin; and Count IV: Attempt to Commit Murder in the First Degree of Kenneth Williams). The same jury reconvened on September 23, 1992, and evidence and argument in support of aggravating factors and arguments for mitigation were heard as to Counts I, II, and III. That same day, the jury returned a 12-0 recommendation that the Defendant be sentenced to death in the electric chair on each of the three counts. The Court received a written summary of the mitigating factors the Defense relies on for sentencing as well as a written Pre-Sentencing Argument. In addition, on November 5, 1992, the Court heard additional evidence presented by the Defense for purposes of mitigation. The Court set final sentencing for this date, November 10, 1992.

The Court, having heard the evidence presented in both the guilt phase and penalty phase in addition to the mitigation evidence offered at the separate hearing November 5, 1992, having had the benefit of argument both in favor of and in opposition to the death penalty, finds as follows:

A) AGGRAVATING FACTORS

1. The Defendant has been previously convicted of another capital offense or of a felony involving the use or threat of violence to the person.

The Defendant killed three people and seriously wounded a fourth on February 7, 1992. He was found guilty as charged on all four counts on this indictment. Each capital felony serves as a previous conviction for the others and each of the First Degree Murder Charges and the Attempted First Degree Murder are considered felonies involving the use of violence to some person for purposes of aggravation of the other First Degree Murder Charges. This aggravating circumstance was proved beyond a reasonable doubt.

2. The capital crimes were homicides and were committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

Jack Lockett testified that he had talked with the Defendant the morning of the shootings. In their discussion, the Defendant asked Jack if Johnnie Lee had won money at the dog track and Jack said, "Yes, \$114." The Defendant said Johnnie Lee owed him \$2,000. When the Defendant learned Johnnie had won money at the track, he said to Jack, "My nigger, you're gonna read about me." He further said that he was going to kill Johnnie Lee. That same day at 11:51 a.m. (per the sales slip and the sales clerk) the Defendant purchased a .38 caliber revolver and a box of fifty .38 caliber shells from Abner Yonce at Walmart in Ocoee. Mr. Yonce remembered the sale and recalled there was nothing unusual about the Defendant and that he was "calm as could be."

Within minutes of that purchase, the Defendant pulled up in his car next to where Johnnie Lee was standing talking to two females and Jack Lockett on the sidewalk. All three testified that the Defendant's car was close and the Defendant leaned across the passenger side of the vehicle and shot Johnnie Lee twice in the back. (Johnnie Lee's back was towards the Defendant and there was no evidence he even saw the Defendant.) Pamela Fikes, one of the two

females standing with the victim heard the Defendant say, "...my motherfucking money, nigger," to the victim. After the victim fell to the ground, the Defendant got out of the car, stood over the victim and shot him twice more from the front at very close range. (The medical examiner testified that the shots in the back would have killed him almost instantly.) The Defendant then ran towards the apartment where Valerie Davis, his girlfriend and mother of one of his children, lived. (The Defendant lived with Valerie Davis off and on.) She was on the phone, and her friend Cassandra Hall had just arrived at the apartment and was present when the Defendant shot Valerie once in the left chest area within seconds of arriving in the apartment and with no provocation. Dr. Anderson testified that the bullet pierced both lobes of the heart chamber and exited her back. It was a fatal wound which caused rapid blood loss, and he estimated she would have had some function for one to two minutes after being shot. Ms. Hall said he clicked the gun at her as she ran from the apartment. She heard the Defendant say he couldn't take it any more and that he was through right before he fired the shot. Valerie had been on the phone with two other women at the time she was shot. The testimony from Latroxy Sweeting who was on the phone was that right before she heard the "bang" she heard the Defendant say, "I'm tired, I'm through," and then heard Valerie say, "What's wrong...." Maxine Sweeting who was the other woman on the telephone heard Valerie ask what was wrong with him and he said he cannot take it any more. She further recalled hearing Valerie say, "Curt, I'm on the phone with Troxy and Mother."

From the apartment, the Defendant went outside, encountered Kenneth Williams on the street, and shot him in the chest at very close range. Mr. Williams saw the gun but did not think the Defendant would shoot him. Right before he was shot, he turned slightly and deflected the bullet somewhat. Although he was in the hospital for about 30 days and the wound was serious, he did not die. He

said the Defendant did not look normal--his eyes were "bugged out like he had clicked." Another witness nearby heard the Defendant say right before he shot, "I don't like police ass niggers." Kenneth Williams had to be told by the police what happened to him, as the bullet knocked him down immediately. He said he and the Defendant had a good relationship; and, as with most of the witnesses who testified, had known the Defendant most of his life.

From there, the Defendant ended up behind Brown's Bar where three guys, including the Defendant's brother, were trying to take the weapon from him. By that time, Valerie's mother had learned that her daughter had been shot, so she had left work in her car and was driving down the street. The Defendant saw her stop at the stop sign, went over to the car where he said something to her and then fired at her, hitting her twice, and killing her.

After the fourth shooting, the Defendant's brother got the gun from the Defendant and put it in Mary Law's purse. Ms. Law had a serious drug problem at the time and didn't realize at first she had the gun. Ultimately, the police learned she had the gun and she turned it over to the officers.

There was never any question about who shot the four victims. There were numerous witnesses, most of whom had known the victims as well as the Defendant most of their lives. Identity was not an issue. Many of the witnesses testified that the Defendant was not himself, he looked confused, he was not a violent person, that he looked crazed when they saw him. This area of Winter Garden is a high drug area; however, evidence that these shootings might be drug related was kept from the jury based on defense motions.

Further, there was no evidence that any of the victims were armed or that any of them made any threatening motions towards the Defendant. In each case, the Defendant approached them and shot them at close range

with incredible accuracy. Those who died, were dead almost instantly. He had known them all well for many years. When there were several people present, he did not shoot randomly, but rather selected certain victims, and shot them with little or no warning in some cases saying just a few words which would indicate he had a reason for selecting each victim. Others he could have shot, such as his brother and others who were with the victims, he did not shoot. He had said he was going to shoot Johnnie Lee, bought a gun, and proceeded methodically on the brief shooting spree. He fired so many rounds, he had to reload. Each encounter was so brief the victim either did not even see the Defendant or had no time to react.

3. The State had asked the Court to find two additional aggravating factors--that the capital felony was especially heinous, atrocious, or cruel and that at least one of the capital felonies was committed to prevent lawful arrest. The Court found before the sentencing phase proceeded to the jury that these factors were not proved beyond a reasonable doubt; therefore, the Court did not allow Counsel to argue that to the jury and the Court neither finds, nor has it considered, either of these factors.

Victim Impact evidence was not considered as an aggravator and was given no weight.

None of the other aggravating factors enumerated by statute is applicable to this case and none other was considered by this Court.

Nothing, except as previously indicated in paragraphs 1 and 2 above, was considered in aggravation.

B. MITIGATING FACTORS

STATUTORY MITIGATING FACTORS

The Defense has requested the Court to consider the following statutory mitigating circumstances:

1. The Defendant has no significant history of prior criminal activity. His mother said he was a good boy. The P.S.I. that was ordered for the non-capital offense (Attempted

Murder in the First Degree), shows he had been arrested for Battery on July 5, 1991, but that was Nolle Prossed on October 21, 1991; and he was arrested for Trafficking in Cocaine (with minimum mandatory penalties) and Delivery of Cocaine and Possession of Cocaine on December 6, 1991, but all of these charges were Nolle Prossed in State Court after his arrest for Murder. There was evidence he had been targeted as a suspect in a drug sweep, but that effort against him was stopped once he had the Murder charges against him. Except for these arrests, the Defendant's record was clean and the Court gave that mitigator some weight.

2. The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance. This appeared to be the thrust of the Defendant's defense. Dr. Robert Kirkland had been appointed to examine him and he testified at trial. Defense counsel elicited evidence of the psychiatric condition called a "fugue state." This state can last years, such as when an ordinary person disappears and ends up across the country four years later and then recalls his past. Or the "fugue state" can last seconds or minutes where there is short, frenzied, senseless behavior. It is a depersonalization because of stress or pressure. An example of this latter type of fugue is the young college student practicing his batting stroke and accidentally killing his father. He suffered a severe psychotic reaction (a fugue) wherein he then killed his mother and brother. The doctors determined the killing of his father set off the fugue state which led to the second killing which was done in a frenzy. However, it was determined the third killing was coldly thought out to conceal the crime. The violence lasted only minutes.

Doctor Kirkland testified he found no diagnostic finding to indicate the Defendant was in a fugue state, that it was not reasonable or likely, but that it was possible. No basis for any source of stress was presented at trial, and only through defense motions to exclude certain evidence regarding drugs, was there any indication of possible sources of stress. A video tape taken of the Defendant talking with his mother alone in a room at the Winter Garden Police Department (approximately 5 hours after the shootings) was played when the Defendant's mother testified for her son. (At the sentencing phase she was in the courtroom, but did not testify.) The tape shows the Defendant sitting there while his mother does most of the talking. She said she was "trying to get him back in his mind" as he was not himself and he was burning up with fever. His remarks that were audible were things like, "Mama, what have I done?" He also said he was hungry. He stretches and appears relaxed. The Court finds the possibility of the Defendant's being in a "fugue state" or suffering from any mental or emotional disturbance extremely

unlikely based on Dr. Kirkland's evaluation and the events that immediately preceded the shootings; however, the Court considered it and attempted to attribute such a condition to the Defendant, but it is just so far-fetched and inconsistent with the facts of this case that only very slight weight was given to this factor.

3. The Defendant acted under extreme duress or under the substantial domination of another person. The one victim and many of the witnesses did say the Defendant was not himself and was not acting the way he normally does when they saw him that day with the gun. There's no question he was upset about something or he would not have shot these victims, but it would be sheer speculation to determine what that was. There was no evidence any of these victims had threatened him, although the witnesses for mitigation on November 5, stated that Mary Lubin had said if he touched her daughter again she would retaliate. The testimony from them was that he had beat up Valerie Davis previously. He was not under the substantial domination of another person, however. The Court gave this mitigator little weight.

4. The age of the Defendant at the time of the crime. The Defendant was 26 at the time. Dr. Kirkland's examination indicated there was no brain impairment or history of thought disorder or depression. The Defendant's age at the time of the crime is not a mitigating factor, and is given no weight.

NON-STATUTORY MITIGATING FACTORS

The Defendant has asked the Court to consider the following non-statutory mitigating factors:

1) That the Defendant assisted people in the community. Julie Harp, Willie Mae Rich, Mary Jackson, Charlene Mobley all testified at the pre-sentence hearing on November 5th that the Defendant was a good father who supported his children and actively participated in their care and was never violent with them. Some of the Defense witnesses testified that he gave children and people in the community financial assistance, clothes, diapers, food, flowers for birthdays, donations to the church, etc. However, none of them knew of any job he had and said the only income they knew of was from betting on races and winning the lottery often. The Defendant (at a previous hearing several months before trial on his Motion to have the Defendant Declared Partially Insolvent for Purposes of Costs) said he had been unemployed over the last year. When asked how he had lived for the past year, he answered, "She (Valerie) had money." He did say, "I run across money." The only explanation he had for

how he runs across money when questioned was through gambling. He also testified that Valerie alone had paid for his car and that she had a lot of money before they ever got together. The Court finds it difficult to believe that the Defendant had enough income to support his own three children (two by Julie Harp, ages 1 and 3, and one child by Valerie Davis, age 17 months) much less to be as benevolent as described by the witnesses. The Court will accept he may have spent time with his children and may have provided them with some of their support, even though the source of that support is dubious. This Court gives this factor a little weight.

2) That the Defendant is a good father and that he supported and took care of his children. This is addressed in the previous non-statutory mitigator and the same weight given.

3) That the Defendant saved his sister from drowning. Jerline Windom, the Defendant's sister, testified that she was about 12 years old and the Defendant was 8 or 9 years old at the time. She was in a swimming pool with other people. She was drowning in 8 feet of water and the Defendant saved her. Although commendable, this occurred 17 years ago, and is given very little weight in mitigation of his sentence at age 26.

4) That the Defendant saved another individual from being shot during a dispute over \$20. Defense presented Mr. Scarlet on November 10, 1992, to say Defendant stopped him from shooting Defendant's cousin over \$20 by giving him \$20. If true, this is given very little weight.

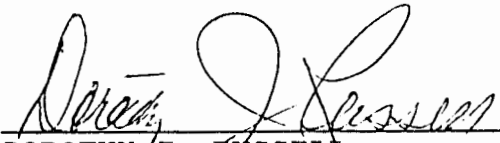
The Court has very carefully considered and weighed the aggravating and mitigating circumstances found to exist in this case, being ever mindful that human life is at stake in the balance. The Court finds, as did the jury, that the aggravating circumstances present in this case outweigh the mitigating circumstances present.

Accordingly, it is

ORDERED AND ADJUDGED that the Defendant, CURTIS LEE WINDOM, is hereby sentenced to death for the murder of the victim, JOHNNIE LEE; sentenced to death for the murder of VALERIE DAVIS; and sentenced to death for the murder of MARY LUBIN. Each sentence is to run consecutive to each other. The Defendant is hereby committed to the custody of the Department of Corrections of the State of Florida for execution of this sentence as provided by law.

May God have mercy on his soul.

DONE AND ORDERED IN Orlando, Orange County, Florida this
10th day of November 1992.


DOROTHY J. RUSSELL
CIRCUIT JUDGE

COPIES FURNISHED TO:

Mr. Jeff Ashton, Assistant State Attorney, 250 N. Orange Ave.,
Orlando, Florida 32801
Mr. Ed Leinster, Esq., 1302 East Robinson Street, Orlando, FL
32801
Mr. Curtis Lee Windom, Defendant


Judicial Assistant

☒ COURT MINUTES ☒ ORDER (PLEA/SENTENCING/RELEASE)

IN THE CIRCUIT COURT IN AND FOR ORANGE
COUNTY, FLORIDA

STATE OF FLORIDA
VS

CASE CR92-1305

DIVISION 11

CURTIS WINDOM

CHARGED WITH: 1, 2, 3) MURDER IN THE FIRST DEGREE 782.04

4) ATTEMPT TO COMMIT MURDER IN THE FIRST DEGREE 782.04 777.04

COURT OPENED AT 9:20 a.m. 11/10/92 HONORABLE DOROTHY J. RUSSELL JUDGE

ASSISTANT PUBLIC DEFENDER _____ ASSISTANT STATE ATTORNEY JEFF ASHTON/J. BRENNAN

COURT REPORTER Ginny Wood COURT DEPUTY E. VELAZQUEZ

This case came on this date for Plea ☒ Sentencing Trial Pre-Trial.

The Defendant was present, not present, ☒ present with Counsel ED LEINSTER

Plea of not guilty withdrawn. Defendant tried and found guilty of: Defendant sworn and pled Guilty to
Nolo Contendere to:

Defendant reserves right to appeal Adjudication of Guilt withheld, finding of guilt entered.

Defendant adjudged guilty. \$5.00 C.C. \$50.00 C.C.F. \$200.00 C.J.T.F. or \$50.00 C.J.T.F. (27.3455)

P.S.I. ORDERED. It is hereby Ordered that the Department of Corrections submit P.S.I. or a scoresheet of Defendant and deliver a written report of same to the undersigned Judge within two working days before sentencing. STATUS _____.

Sentencing set for _____, 19____, at _____ M., Courtroom _____

P.S.I. Bond set at _____ P.D.R. ORDERED. P.S.I. waived.

SENTENCING:

Adjudication of guilt was withheld, a finding of guilt entered.

☒ Defendant adjudged guilty. \$5.00 C.C. \$50.00 C.C.F. \$200.00 C.J.T.F. (27.3455) or \$50.00 C.J.T.F.

SENTENCE:

At 1, 2, 3) Death

At 1, 2, 3 Consecutive

At 4) 22 years DOC w/cr 278 days T/S (3 years min)
Consecutive to At 3

RELEASE - Defendant is Ordered released from custody as to this case only.

DONE AND ORDERED this 10th day of November, 1992.

Set
John Henry Scarlett

Dorothy J. Russell
CIRCUIT JUDGE

FILED IN OPEN COURT THIS 10 DAY OF November, 1992.
FRAN CARLTON, Clerk of the CIRCUIT/COUNTY Courts.

by: [Signature]
DEPUTY CLERK in attendance.

Distribution: Surety/Cash Bond
☒ Defendant
☒ Probation/Parole
☒ Court Deputy
S.O. on

COURT RECESSED at 11/10/92

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA
Plaintiff,

CASE NO. CR92-1305

DIVISION 11

vs.

CURTIS WINDOM,
Defendant.

FILED IN OPEN COURT
THIS 10 DAY OF Nov, 1992
BY Fran Carlton, Clerk
D.C.

NAME AND ADDRESS OF VICTIM

As required by Florida Statute 944.605, the State Attorney hereby provides the Sheriff with the name and latest address of the victim's family to be delivered to the Department of Corrections (DOC) with other documents required by Florida statute 944.17 before the DOC can accept an inmate for service of his or her sentence.

Unless otherwise requested by the victim's family or personal representative, the DOC will notify the family or the personal representative within six (6) months before the inmate's release.

MARY LUBIN (DECEASED)
VICTIM

ADDRESS

☒ This information is not available

☐ There is no identifiable victim in this case
other than the State of Florida.

Filed this 11 day of Nov, 1992.

JEFFREY L. ASHTON
Assistant State Attorney
Florida Bar No. 318337
Post Office Box 1673
Orlando, Florida 32801
Telephone: (407) 836-2405

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA
Plaintiff,

CASE NO. CR92-1305

DIVISION 11

vs.

CURTIS WINDOM,
Defendant.

FILED IN OPEN COURT
THIS 10 DAY OF Nov, 1992
Fran Carlton, Clerk
D.C.

NAME AND ADDRESS OF VICTIM

As required by Florida Statute 944.605, the State Attorney hereby provides the Sheriff with the name and latest address of the victim's family to be delivered to the Department of Corrections (DOC) with other documents required by Florida statute 944.17 before the DOC can accept an inmate for service of his or her sentence.

Unless otherwise requested by the victim's family or personal representative, the DOC will notify the family or the personal representative within six (6) months before the inmate's release.

JOHNNIE LEE (DECEASED)
VICTIM

ADDRESS

☒ This information is not available

☐ There is no identifiable victim in this case
other than the State of Florida.

Filed this 11 day of Nov, 1992.

JEFFREY L. ASHTON
Assistant State Attorney
Florida Bar No. 318337
Post Office Box 1673
Orlando, Florida 32801
Telephone: (407) 836-2405

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA
Plaintiff,

CASE NO. CR92-1305

DIVISION 11

VS.

CURTIS WINDOM,

Defendant.

FILED IN OPEN COURT

THIS 10 DAY OF Nov. 1992
BY Fran Carlton, Clerk
D.C.

NAME AND ADDRESS OF VICTIM

As required by Florida Statute 944.605, the State Attorney hereby provides the Sheriff with the name and latest address of the victim's family to be delivered to the Department of Corrections (DOC) with other documents required by Florida statute 944.17 before the DOC can accept an inmate for service of his or her sentence.

Unless otherwise requested by the victim's family or personal representative, the DOC will notify the family or the personal representative within six (6) months before the inmate's release.

VALERIE DAVIS (DECEASED)
VICTIM

ADDRESS

☒ This information is not available

☐ There is no identifiable victim in this case
other than the State of Florida.

Filed this 11 day of Nov, 1992.

JEFFREY L. ASHTON
Assistant State Attorney
Florida Bar No. 318337
Post Office Box 1673
Orlando, Florida 32801
Telephone: (407) 836-2405

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA
Plaintiff,

CASE NO. CR92-1305

DIVISION 11

vs.

CURTIS WINDOM,
Defendant.

FILED IN OPEN COURT

THIS 10 DAY OF Nov, 1992
BY Fran Carlton, Clerk D.C.

NAME AND ADDRESS OF VICTIM

As required by Florida Statute 944.605, the State Attorney hereby provides the Sheriff with the name and latest address of the victim's family to be delivered to the Department of Corrections (DOC) with other documents required by Florida statute 944.17 before the DOC can accept an inmate for service of his or her sentence.

Unless otherwise requested by the victim's family or personal representative, the DOC will notify the family or the personal representative within six (6) months before the inmate's release.

KENNETH M. WILLIAMS
VICTIM

815 E. STORY ROAD
ADDRESS

WINTER GARDEN, FL. 34787

[] This information is not available

[] There is no identifiable victim in this case
other than the State of Florida.

Filed this 11 day of Nov, 1992.

JEFFREY L. ASHTON
Assistant State Attorney
Florida Bar No. 318337
Post Office Box 1673
Orlando, Florida 32801
Telephone: (407) 836-2405

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO. CR92-1305

vs

DIVISION 11

CURTIS WINDOM

RESTITUTION ORDER

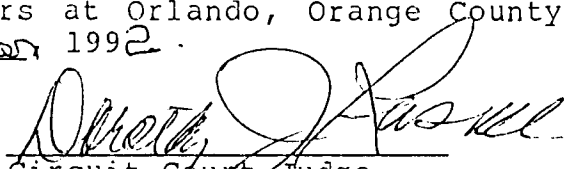
THIS CAUSE came on to be heard upon proper notice on the matter of what restitution, if any, the Defendant should be required to make pursuant to Sec. 775.089, Florida Statutes. Therefore, it is

ORDERED AND ADJUDGED as follows:

1. ✓ Restitution is not ordered as it is not applicable.
2. Restitution is not ordered due to the financial resources of the Defendant.
3. Based either upon the preponderance of the evidence presented or the victim's claim and the Defendant's agreement, this Court finds that Defendant's offense directly or indirectly caused damage or loss to the victim. The Defendant shall pay to _____, as restitution the sum of _____.

4. Sections 775.089(5) and (10), Florida Statutes, provide that an order of restitution may be enforced by the State or a victim named in the order in the same manner as a judgment in a civil action, and that any default in payment of restitution may be collected by any means authorized by law for enforcement of a judgment.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida this 10 day of November, 1992.


Circuit Court Judge

Copies to:
Office of the State Attorney
Defense Counsel
Defendant
Victim (via State Attorney)

FILED IN OPEN COURT

THIS 10 DAY OF Nov, 1992

Fran Carlton, Clerk

BY  D.C.

SENTENCING GUIDELINES SCORESHEET

1. Primary Docket Number CR92-1305	2. Additional Docket Numbers	3. OBTS Number	4. Category: <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9
5. Name (Last Name First) WINDOM, CURTIS	6. Date of Birth 1/29/56	7. Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F	8. Race: <input checked="" type="checkbox"/> B <input type="checkbox"/> W <input type="checkbox"/> Other
11. Judge at Sentencing RUSSEL	12. Date of Offense 2/7/92	13. Date of Sentence 11/10/92	9. Violation <input type="checkbox"/> Prob <input type="checkbox"/> CC
		14. <input type="checkbox"/> Plea <input checked="" type="checkbox"/> Trial	10. County ORANGE
			15. DOC Number

OFFICE USE ONLY

POINTS

I. PRIMARY OFFENSE AT CONVICTION

Counts	Degree	Statute	Description	POINTS
1	LIFE	782.04&777.04	Att. Murder 1st Degree w/ FIREARM	1. 165

II. ADDITIONAL OFFENSES AT CONVICTION

Counts	Fel/Misd	Degree	Statute	Description	POINTS

(Continue on Separate Page)

III. A. PRIOR RECORD

Counts	Fel/Misd	Degree	Statute	Description	POINTS

(Continue on Separate Page)

III. B. SAME CATEGORY PRIORS (categories 3, 5 and 6 only)

III. C. PRIOR DUI CONVICTIONS (category 1 only)

IV. LEGAL STATUS AT TIME OF OFFENSE

(1) no restrictions	(2) legal constraint	D.C.	POINTS

V. VICTIM INJURY

Number of Scoreable Victim Injuries	Degree of Injury	POINTS
	none or no contact	
	slight or contact but no penetration	
	moderate or penetration	
	severe or death	

KENNETH WILLIAMS

FILED IN OPEN COURT
THIS 10 DAY OF Nov, 1992
Fran Carlton, Clerk
TOTAL POINTS 186

RECOMMENDED SENTENCE

PERMITTED SENTENCE

TOTAL SENTENCE IMPOSED

REASONS FOR DEPARTURE

JUDGE RUSSEL

PREPARER ASHTON

OFFICE USE ONLY

TS.	CC.	Prob.
SP.	CJ.	FF.

Defendant Curtis Wind Case Number CR92-1305 JTS Number 4957435

FILED IN OPEN COURT

SENTENCE

THIS 10 DAY OF Nov, 1992

(As to Count One)

Fran Carlton, Clerk

D.C.

The defendant, being personally before this court, accompanied by the defendant's attorney of record, Ed Leinster, and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

(Check one if applicable.)

☒ and the Court having on 8-28-92 deferred imposition of sentence until this date.
(date)

☐ and the Court having previously entered a judgment in this case on _____ now resentsences the defendant. (date)

☐ and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control.

IT IS THE SENTENCE OF THE COURT THAT:

☐ The defendant pay a fine of \$ _____, pursuant to section 775.083, Florida Statutes, plus \$ _____ as the 5% surcharge required by section 960.25, Florida Statutes.

☒ The defendant is hereby committed to the custody of the Department of Corrections.

☐ The defendant is hereby committed to the custody of the Sheriff of Orange County, Florida.

☐ The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

TO BE IMPRISONED (CHECK ONE; UNMARKED SECTIONS ARE INAPPLICABLE.):

☐ For a term of natural life.

☒ ~~to await the imposition of death~~ to await the imposition of Death.

☐ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

If "split" sentence, complete the appropriate paragraph.

☐ Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.

☐ However, after serving a period of _____ imprisonment in _____, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

CONSECUTIVE/
CONCURRENT

It is further ordered that the sentence imposed for this count shall run _____ Consecutive to _____ Concurrent with (check one) the sentence set forth in count _____ above.

SPECIAL PROVISIONS(As to Count One)

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:

Firearm

It is further ordered that the 3-year minimum imprisonment provisions of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count.

Firearm

(Police Officer Weapon)

It is further ordered that the 3-year minimum imprisonment provisions of section 775.0875, Florida Statutes, is hereby imposed for the sentence specified in this count.

Drug Trafficking

It is further ordered that the _____ mandatory minimum imprisonment provisions of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

Controlled Substance

Within 1,000 Feet of School

It is further ordered that the 3-year minimum imprisonment provisions of section 893.13(1)(e)1, Florida Statutes, is hereby imposed for the sentence specified in this count.

Habitual Felony Offender

The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Habitual Violent
Felony Offender

The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.

Law Enforcement
Protection Act

It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with section 775.0823, Florida Statutes.

Capital Offense

It is further ordered that the defendant shall serve no less than 25 years in accordance with the provisions of section 775.082(1), Florida Statutes.

Short-Barreled Rifle,
Shotgun, Machine Gun

It is further ordered that the 5-year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count.

Continuing
Criminal Enterprise

It is further ordered that the 25-year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in this count.

Other Provisions:

Retention of Jurisdiction

The court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983).

Jail Credit

It is further ordered that the defendant shall be allowed a total of _____ days as credit for time incarcerated before imposition of this sentence.

Prison Credit

It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing.

SENTENCE

(As to Count Two)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, Ed Leinster, and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

(Check one if applicable.)

☒ and the Court having on 8-28-92 deferred imposition of sentence until this date.
(date)

☐ and the Court having previously entered a judgment in this case on _____ now resentsences the defendant. (date)

☐ and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control.

IT IS THE SENTENCE OF THE COURT THAT:

☐ The defendant pay a fine of \$ _____, pursuant to section 775.083, Florida Statutes, plus \$ _____ as the 5% surcharge required by section 960.25, Florida Statutes.

☒ The defendant is hereby committed to the custody of the Department of Corrections.

☐ The defendant is hereby committed to the custody of the Sheriff of Orange County, Florida.

☐ The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

TO BE IMPRISONED (CHECK ONE; UNMARKED SECTIONS ARE INAPPLICABLE.):

☐ For a term of natural life.

☒ ~~For a term of~~ to await the imposition of Death

☐ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

If "split" sentence, complete the appropriate paragraph.

☐ Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.

☐ However, after serving a period of _____ imprisonment in _____, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

CONSECUTIVE/
CONCURRENT

It is further ordered that the sentence imposed for this count shall run ☒ Consecutive to _____ Concurrent with (check one) the sentence set forth in count 1 above.

Defendant

Curtis W. Windom

Case Number

CF-12-1305

SPECIAL PROVISIONS

(As to Count Two)

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:

Firearm

It is further ordered that the 3-year minimum imprisonment provisions of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count.

Firearm

(Police Officer Weapon)

It is further ordered that the 3-year minimum imprisonment provisions of section 775.0875, Florida Statutes, is hereby imposed for the sentence specified in this count.

Drug Trafficking

It is further ordered that the _____ mandatory minimum imprisonment provisions of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

Controlled Substance

Within 1,000 Feet of School

It is further ordered that the 3-year minimum imprisonment provisions of section 893.13(1)(e)1, Florida Statutes, is hereby imposed for the sentence specified in this count.

Habitual Felony Offender

The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Habitual Violent
Felony Offender

The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.

Law Enforcement
Protection Act

It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with section 775.0823, Florida Statutes.

Capital Offense

It is further ordered that the defendant shall serve no less than 25 years in accordance with the provisions of section 775.082(1), Florida Statutes.

Short-Barreled Rifle,
Shotgun, Machine Gun

It is further ordered that the 5-year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count.

Continuing
Criminal Enterprise

It is further ordered that the 25-year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in this count.

Other Provisions:

Retention of Jurisdiction

The court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983).

Jail Credit

It is further ordered that the defendant shall be allowed a total of _____ days as credit for time incarcerated before imposition of this sentence.

Prison Credit

It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing.

SENTENCE

(As to Count Three)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, Ed Leinster and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

(Check one if applicable.)

☒ and the Court having on 8-28-92 deferred imposition of sentence until this date.
(date)

☐ and the Court having previously entered a judgment in this case on _____ now resentsences the defendant. (date)

☐ and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control.

IT IS THE SENTENCE OF THE COURT THAT:

☐ The defendant pay a fine of \$ _____, pursuant to section 775.083, Florida Statutes, plus \$ _____ as the 5% surcharge required by section 960.25, Florida Statutes.

☒ The defendant is hereby committed to the custody of the Department of Corrections.

☐ The defendant is hereby committed to the custody of the Sheriff of Orange County, Florida.

☐ The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

TO BE IMPRISONED (CHECK ONE; UNMARKED SECTIONS ARE INAPPLICABLE.):

☐ For a term of natural life.

☒ ~~For a term of natural life~~ to AWAIT imposition of Death.

☐ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

If "split" sentence, complete the appropriate paragraph.

☐ Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.

☐ However, after serving a period of _____ imprisonment in _____, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

**CONSECUTIVE/
CONCURRENT**

It is further ordered that the sentence imposed for this count shall run ☒ Consecutive to _____ Concurrent with (check one) the sentence set forth in count 2 above.

Defendant

Curtis Windom

Case Number

CR 12-1305

SPECIAL PROVISIONS

(As to Count Three)

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:

Firearm

It is further ordered that the 3-year minimum imprisonment provisions of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count.

Firearm

(Police Officer Weapon)

It is further ordered that the 3-year minimum imprisonment provisions of section 775.0875, Florida Statutes, is hereby imposed for the sentence specified in this count.

Drug Trafficking

It is further ordered that the _____ mandatory minimum imprisonment provisions of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

Controlled Substance

Within 1,000 Feet of School

It is further ordered that the 3-year minimum imprisonment provisions of section 893.13(1)(e)1, Florida Statutes, is hereby imposed for the sentence specified in this count.

Habitual Felony Offender

The defendant is adjudicated a habitual felony offender and has been sentenced an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Habitual Violent
Felony Offender

The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.

Law Enforcement
Protection Act

It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with section 775.0823, Florida Statutes.

Capital Offense

It is further ordered that the defendant shall serve no less than 25 years in accordance with the provisions of section 775.082(1), Florida Statutes.

Short-Barreled Rifle,
Shotgun, Machine Gun

It is further ordered that the 5-year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count.

Continuing
Criminal Enterprise

It is further ordered that the 25-year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in this count.

Other Provisions:

Retention of Jurisdiction

The court retains jurisdiction over the defendant pursuant to section 947.16(3) Florida Statutes (1983).

Jail Credit

It is further ordered that the defendant shall be allowed a total of _____ days as credit for time incarcerated before imposition of this sentence.

Prison Credit

It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing.

Defendant Curtis Wir

Case Number CR92-130

JTS Number 4957435

SENTENCE

(As to Count FOUR)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, Ed Leinster, and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

(Check one if applicable.)

☒ and the Court having on 8-28-92 deferred imposition of sentence until this date.
(date)

☐ and the Court having previously entered a judgment in this case on _____ now resentsences the defendant. (date)

☐ and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control.

IT IS THE SENTENCE OF THE COURT THAT:

☐ The defendant pay a fine of \$ _____, pursuant to section 775.083, Florida Statutes, plus \$ _____ as the 5% surcharge required by section 960.25, Florida Statutes.

☒ The defendant is hereby committed to the custody of the Department of Corrections.

☐ The defendant is hereby committed to the custody of the Sheriff of Orange County, Florida.

☐ The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

TO BE IMPRISONED (CHECK ONE; UNMARKED SECTIONS ARE INAPPLICABLE.):

☐ For a term of natural life.

☒ For a term of 22 years.

☐ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

If "split" sentence, complete the appropriate paragraph.

☐ Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.

☐ However, after serving a period of _____ imprisonment in _____, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

CONSECUTIVE/
CONCURRENT

It is further ordered that the sentence imposed for this count shall run ☒ Consecutive to _____ Concurrent with (check one) the sentence set forth in count 3 above.

Defendant

Curtis Windom

Case Number

Cr-12-1305

SPECIAL PROVISIONS

(As to Count Four)

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:

Firearm

☒ It is further ordered that the 3-year minimum imprisonment provisions of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count.

Firearm

(Police Officer Weapon)

___ It is further ordered that the 3-year minimum imprisonment provisions of section 775.0875, Florida Statutes, is hereby imposed for the sentence specified in this count.

Drug Trafficking

___ It is further ordered that the _____ mandatory minimum imprisonment provisions of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

Controlled Substance

Within 1,000 Feet of School

___ It is further ordered that the 3-year minimum imprisonment provisions of section 893.13(1)(e)1, Florida Statutes, is hereby imposed for the sentence specified in this count.

Habitual Felony Offender

___ The defendant is adjudicated a habitual felony offender and has been sentenced an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Habitual Violent
Felony Offender

___ The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.

Law Enforcement
Protection Act

___ It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with section 775.0823, Florida Statutes.

Capital Offense

___ It is further ordered that the defendant shall serve no less than 25 years in accordance with the provisions of section 775.082(1), Florida Statutes.

Short-Barreled Rifle,
Shotgun, Machine Gun

___ It is further ordered that the 5-year minimum provisions of section 790.221(2) Florida Statutes, are hereby imposed for the sentence specified in this count.

Continuing
Criminal Enterprise

___ It is further ordered that the 25-year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in this count.

Other Provisions:

Retention of Jurisdiction

___ The court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983).

Jail Credit

☒ It is further ordered that the defendant shall be allowed a total of 278 days as credit for time incarcerated before imposition of this sentence.

Prison Credit

___ It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing.

Defendant

Curtis Windom

Case Number

CR92-1305

Other Provisions, continued:

Consecutive/Concurrent
As To Other Counts

____ It is further ordered that the sentence imposed for this count shall run
(check one) ____ consecutive to ____ concurrent
with the sentence set forth in count ____ of this case.

Consecutive/Concurrent
As To Other Convictions

____ It is further ordered that the composite term of all sentences imposed for
the counts specified in this order shall run
(check one) ____ consecutive to ____ concurrent
with the following:
(check one)

____ any active sentence being served.

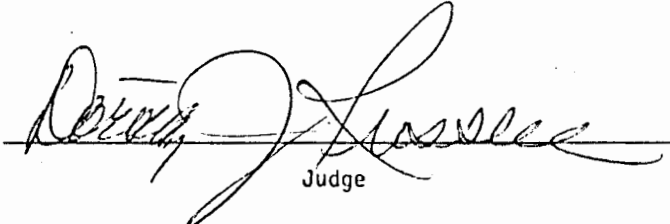
____ specific sentences: _____

In the event the above sentence is to the Department of Corrections, the Sheriff of ORANGE
County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at
the facility designated by the department together with a copy of this judgment and sentence and any other
documents specified by Florida Statute.

The defendant in open court was advised of the right to appeal from this sentence by filing notice of
appeal within 30 days from this date with the clerk of this court and the defendant's right to the assistance
of counsel in taking the appeal at the expense of the State on showing of indigency.

In imposing the above sentence, the court further recommends _____

DONE AND ORDERED in open court at ORANGE County, Florida,
this 10th day of November 1992.


Judge

CRIMINAL DIV.
CIRCUIT COURT

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN
AND FOR ORANGE COUNTY, FLORIDA

CASE NO. CR92-1305

STATE OF FLORIDA

Plaintiff,

vs.

CURTIS WINDOM

Defendant,

NOTICE OF APPEAL

COMES NOW the Defendant in the above-styled cause
CURTIS WINDOM, and takes and enters his appeal to the Fifth
District Court of Appeal the sentence imposed on November 10,
1992.

FILED IN OFFICE
CRIMINAL DIVISION
92 NOV 24 PM 4:15
ORANGE COUNTY, FL

All parties are called upon to take notice of the
entry of this appeal.

I HEREBY CERTIFY that copy of the foregoing has been
furnished to the Office of the State Attorney, 250 N. Orange
Avenue, Orlando, Florida 32801, by U.S. Mail delivery this
23RD day of NOVEMBER, 1992.

Ed Leinster

ED LEINSTER, ESQUIRE
1302 E. Robinson Street
Orlando, Florida 32801
(407) 422-3937

11/25/92
Received
C-2D
CC Superior Court
County AAG, c SA 11, Judge Robert

8

STATE OF FLORIDA,
Plaintiff,

-VS-

CURTIS WINDOM

Defendant.

IN THE CIRCUIT COURT
IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO. CR92-1305

AFFIDAVIT OF INSOLVENCY FOR PURPOSE OF APPEAL

STATE OF FLORIDA
COUNTY OF ORANGE

FILED
CLERK
ORANGE
COUNTY
FLORIDA
NOV 25 1992

Personally appeared before me, the above named Defendant, CURTIS WINDOM, who, being first duly sworn by me, deposes and says under oath that he/she is totally insolvent and utterly unable to pay the charges, costs or fees in this cause, either in whole or part; that he/she has no property or other means of payment, either in his/her possession or under his/her control and that he/she has not divested himself/herself of any property, either real or personal, for the purpose of receiving benefit from this oath; that he/she, at this time, is wholly without funds and, unless this Court makes and enters an Order adjudging this Defendant insolvent for purposes of appeal, he/she will be deprived of his/her rights under the law. This Affiant offers himself/herself up to the Court now or at such future time as the Court may see fit for the purpose of further examination into his/her insolvency.

Affiant further says that he/she has been informed that a lien for the value of the services rendered by the Public Defender/Court Appointed Counsel may be filed and impressed by law on any property he/she now has, or may hereafter have; and that Affiant has further been informed that, before any such lien is filed and impressed, he/she will be provided with a notice of hearing for purposes of being heard as to any such lien.

Curtis Windom

SIGNATURE OF AFFIANT

Sworn to and subscribed before me this

20th day of November, 19 92.

FRAN CARLTON, Clerk

by [Signature]
Deputy Clerk NOTARY EXP. 11-23-93
COMMISSION # AF 726595

ORDER

Based on the foregoing Affidavit, the above-named Defendant is hereby adjudged insolvent for purposes of appeal and the Public Defender of the Ninth Judicial Circuit/Court Appointed Counsel, _____, is hereby appointed as counsel to represent the Defendant in the appeal in the above-styled cause.

DONE AND ADJUDGED in Orange County Courthouse in Orlando, Florida, this 25 day of Nov, 19 92

[Signature]
JUDGE OF THE COURT

cc: Public Defender/Court Appointed Counsel
32-47 (9/89)

CC Supreme Court 12/2/92

IN THE CIRCUIT COURT, NINTH JUDICIAL
CIRCUIT, CRIMINAL JUSTICE DIVISION,
IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO. 80,830
CIRCUIT CASE NO. CR92-1305
DIVISION 11

CURTIS WINDOM,

Defendant, Appellant,

vs.

STATE OF FLORIDA,

Plaintiff, Appellee.

FILED IN OFFICE
CRIMINAL DIVISION
92 DEC 19 PM 2:54
CLERK OF CIRCUIT COURT
ORANGE COUNTY, FL

DIRECTIONS TO THE CLERK

The Clerk of the above-styled Court is directed to prepare the "automatic" Record on Appeal in the above-styled cause pursuant to Florida Rule of Appellate Procedure 9.200(a)(1), including the transcripts specified in the Designation to the Court Reporter.

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail/hand delivery to the State Attorney, 250 North Orange Avenue, Orlando, Florida and the Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927, this 19th day of December, 1992.

JOSEPH W. DuROCHER
PUBLIC DEFENDER

BY: 

KELLY B. SIMS
Fla. Bar No. 0492760
Assistant Public Defender
One North Orange Avenue
Suite 500
Orlando, Florida 32801
(407) 836-2162

IN THE CIRCUIT COURT, NINTH JUDICIAL
CIRCUIT, CRIMINAL JUSTICE DIVISION,
IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO. 80,830
CIRCUIT CASE NO. CR92-1305
DIVISION 11

CURTIS WINDOM,

Defendant, Appellant,

vs.

STATE OF FLORIDA,

Plaintiff, Appellee.

FILED IN OFFICE
CRIMINAL JUSTICE DIVISION
SECT 12 PM 2:54
CLERK OF CIRCUIT COURT
ORANGE COUNTY, FL

STATEMENT OF JUDICIAL ACTS TO BE REVIEWED

COMES NOW the Defendant, Appellant, CURTIS WINDOM, by
and through the undersigned attorney, to state the following acts
of the lower tribunal which are in error and upon which he shall
rely for appeal:

1. The lower tribunal erred in denying defense motions
pre, during, and post trial.
2. The lower tribunal erred in accepting the Jury's
verdict of guilty on all charges.
3. The Jury's verdict was contrary to the weight of the
evidence.
4. The lower tribunal erred in adjudicating the
Defendant guilty.
5. The lower tribunal erred in sentencing the
Defendant.

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by mail/hand delivery to the State Attorney, 250 North

Orange Avenue, Orlando, Florida and the Supreme Court of Florida,
500 South Duval Street, Tallahassee, Florida 32399-1927, this
18th day of December, 1992.

JOSEPH W. DuROCHER
PUBLIC DEFENDER

BY: Kelly B. Sims

KELLY B. SIMS
Fla. Bar No. 0492760
Assistant Public Defender
One North Orange Avenue
Suite 500
Orlando, Florida 32801
(407) 836-2162

IN THE CIRCUIT COURT, NINTH JUDICIAL
CIRCUIT, CRIMINAL JUSTICE DIVISION,
IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO. 80,830
CIRCUIT CASE NO. CR92-1305
DIVISION 11

CURTIS WINDOM,

Defendant, Appellant,

vs.

STATE OF FLORIDA,

Plaintiff, Appellee.

FILED IN OFFICE
CRIMINAL DIVISION
CLERK OF CIRCUIT COURT
ORANGE COUNTY, FL

52 DEC 19 PM 2:53

FILED IN OFFICE
CRIMINAL DIVISION

I. DESIGNATION

Plaintiff, Appellant, CURTIS WINDOM, files this Designation to Reporter and directs Sally Lightsey, Sue Hutson, and Ginny Wood, to transcribe an original and two (2) copies of the following portions of the trial and/or other proceeding to be used in this appeal:

1. The entire trial proceeding including voir dire recorded by the Reporter Sally Lightsey on August 24, 25, 26, 27, and 28, 1992, before the Honorable Dorothy J. Russell.

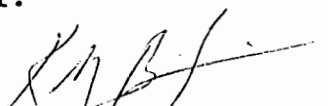
2. The entire Penalty Phase proceeding recorded by the Reporter Sue Hutson on September 23, 1992, before the Honorable Dorothy J. Russell.

3. The entire sentencing proceeding recorded by the Reporter Ginny Wood on November 10, 1992, before the Honorable Dorothy J. Russell.

4. The Court Reporter is directed to file the original and two (2) copies with the clerk of the lower tribunal.

C - Ck-Reporters - 8/24-28/ Lightsey, 9/23/92 Hutson, 11/10/92 Wood

I, Counsel for Appellant, certify that satisfactory financial arrangements have been made with the court reporter for preparation of the transcript, in that the appellant has been found indigent and the Public Defender has been appointed to represent appellant in this appeal.



KELLY B. SIMS
Assistant Public Defender
Counsel for Appellant

II. REPORTER'S ACKNOWLEDGMENT

1. The foregoing designation was served on _____, 19____ and received on _____, 19____.
2. Satisfactory arrangements have () have not () been made for payment of the transcript cost. These financial arrangements were completed on _____, 19____.
3. Number of trial or hearing days _____.
4. Estimated number of transcript pages _____.
5. Transcript will be completed on _____ or an extension of time is needed until _____.


DATE: _____

Official Court Reporter

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand/mail delivery to the Office of the State Attorney, 250 North Orange Avenue, Suite 400, Orlando, Florida 32801, and Sally Lightsey, Sue Hutson, and Ginny Wood, Official Court Reporters, Orange County Courthouse, Room 439, 65 East Central, Orlando, Florida, this the 18th day of December, 1992.

JOSEPH W. DUROCHER
PUBLIC DEFENDER

BY: _____


KELLY B. SIMS
Fla. Bar No. 0492760
Assistant Public Defender
One North Orange Avenue
Suite 500
Orlando, Florida 32801
(407) 836-2162

IN THE CIRCUIT COURT, NINTH JUDICIAL
CIRCUIT, CRIMINAL JUSTICE DIVISION,
IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO. 80,830
CIRCUIT CASE NO. CR92-1305
DIVISION 11

CURTIS WINDOM,
Defendant, Appellant,

vs.

STATE OF FLORIDA,
Plaintiff, Appellee.

FILED IN OFFICE
CLERK OF COURT
ORANGE COUNTY, FL
SEP 13 PM 2:53

MOTION FOR TRANSCRIPTION OF PROCEEDINGS

COMES NOW the Defendant, Appellant, CURTIS WINDOM, by and through the undersigned attorney, and moves this Honorable Court to enter its Order directing the Court Reporter to transcribe all notes taken at the following proceedings in the above-styled cause:

1. The entire trial proceeding including voir dire recorded by the Reporter Sally Lightsey on August 24, 25, 26, 27, and 28, 1992, before the Honorable Dorothy J. Russell.
2. The entire Penalty Phase proceeding recorded by the Reporter Sue Hutson on September 23, 1992, before the Honorable Dorothy J. Russell.
3. The entire sentencing proceeding recorded by the Reporter Ginny Wood on November 10, 1992, before the Honorable Dorothy J. Russell.

The Defendant, Appellant, would show unto the Court that said Order is requested in preparation for an appeal taken in the

above-styled cause.

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand/mail delivery to the Office of the State Attorney, 250 North Orange Avenue, Suite 400, Orlando, Florida 32801, and The Official Court Reporters, Orange County Courthouse, Room 439, 65 East Central, Orlando, Florida, Orlando, Florida, this the 19th day of December, 1992.

JOSEPH W. DuROCHER
PUBLIC DEFENDER

BY: KMB

KELLY B. SINS
Fla. Bar No. 0492760
Assistant Public Defender
One North Orange Avenue
Suite 500
Orlando, Florida 32801
(407) 836-2162

IN THE CIRCUIT COURT, NINTH JUDICIAL
CIRCUIT, CRIMINAL JUSTICE DIVISION,
IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO. 80,830
CIRCUIT CASE NO. CR92-1305
DIVISION 11

CURTIS WINDOM,

Defendant, Appellant,

VS.

STATE OF FLORIDA,

Plaintiff, Appellee.

AMENDED
NOTICE OF APPEAL

NOTICE IS GIVEN that the Defendant, Appellant, CURTIS WINDOM, appeals to the Florida Supreme Court the Orders of this Court rendered on the 28th day of August and the 10th day of November, 1992. The nature of the Order is final Order of Judgment and Sentence.

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand/mail delivery to the State Attorney, 250 North Orange Avenue, Orlando, Florida and the Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927, this 10th day of December, 1992.

JOSEPH W. DUROCHER
PUBLIC DEFENDER

BY:

KELLY B. SIMS
Fla. Bar No. 0492760
Assistant Public Defender
One North Orange Avenue
Suite 500
Orlando, Florida 32801
(407) 836-2162

RECORDED & RECORD VERIFIED
Martha A. Haynie
County Comptroller, Orange Co., FL

FILED IN OFFICE
CRIMINAL JUSTICE DIVISION
92 DEC 19 PM 2:54
CLERK OF CIRCUIT COURT
ORANGE COUNTY, FL

OR 4502 PG 4357

IN THE CIRCUIT COURT, NINTH JUDICIAL
CIRCUIT, CRIMINAL JUSTICE DIVISION,
IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO. 80,830
CIRCUIT CASE NO. CR92-1305
DIVISION 11

CURTIS WINDOM,

Defendant, Appellant,

vs.

STATE OF FLORIDA,

Plaintiff, Appellee.

ORDER FOR TRANSCRIPTION OF PROCEEDINGS

THIS CAUSE having come on to be heard before me, and the
Court being fully advised in the premises, it is

ORDERED AND ADJUDGED that the Defendant, Appellant's
Motion for Transcription of Proceedings be and the same is hereby
granted and the Court Reporter is directed to
transcribe all notes taken at the following proceedings in the
above-styled cause:

1. The entire trial proceeding including voir dire
recorded by the Reporter Sally Lightsey on August 24, 25, 26, 27,
and 28, 1992, before the Honorable Dorothy J. Russell.
2. The entire Penalty Phase proceeding recorded by the
Reporter Sue Hutson on September 23, 1992, before the Honorable
Dorothy J. Russell.
3. The entire sentencing proceeding recorded by the
Reporter Ginny Wood on November 10, 1992, before the Honorable
Dorothy J. Russell.

FILED IN OFFICE
CRIMINAL
JUL 25 1992
CLERK OF CIRCUIT COURT
ORANGE COUNTY, FL

C/CT. Adm.

DONE AND ORDERED in Chambers, at Orlando, Orange County,
Florida, this the 30th day of December, 1992.

Dorothy J. Russell
DOROTHY J. RUSSELL, CIRCUIT JUDGE,
CRIMINAL JUSTICE DIVISION

I HEREBY CERTIFY that a copy of the foregoing has
been furnished by hand/mail delivery to the Office of the State
Attorney, 250 North Orange Avenue, Suite 400, Orlando, Florida
32801, and The Official Court Reporters, Orange County Courthouse,
Room 439, 65 East Central, Orlando, Florida, and the Office of the
Public Defender, 1 North Orange Avenue, Suite 500, Orlando,
Florida, this the 30th day of December, 1992.

Beverly Keen
Judicial Assistant

CASE NO: CR92-1305

392

CAPITAL CASE

No. _____

IN THE

Supreme Court of the United States

CURTIS WINDOM,

Petitioner,

v.

STATE OF FLORIDA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
FLORIDA SUPREME COURT

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

DEATH WARRANT SIGNED
Execution Scheduled: August 28, 2025, at 6:00 p.m.

APPENDIX L

Circuit Court for the Ninth Judicial Circuit, Orange County, Florida,
Transcript of Trial Proceedings – Supplemental Record, SupplR.393-595

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305
SUPREME CT. NO: 80,830

INFORMATION FOR:
MURDER IN THE FIRST DEGREE
(3 counts)
ATTEMPT TO COMMIT MURDER IN THE
FIRST DEGREE

STATE OF FLORIDA

Plaintiff,

-vs-

CURTIS WINDOM

Defendant,

RECEIVED
SEP 8 1993
PUBLIC DEFENDER'S OFFICE
2th CIR. APP. DIV.

SUPPLEMENTAL TRANSCRIPT OF RECORD

93165
FB 10-18-

IN THE CIRCUIT COURT OF
NINTH JUDICIAL CIRCUIT,
FOR ORANGE COUNTY, FLORID.

CASE NO: CR92-1305
SUPREME CT NO: 80,830

INFORMATION FOR:
MURDER IN THE FIRST DEGREE
(3 counts)
ATTEMPT TO COMMIT MURDER
IN THE FIRST DEGREE

STATE OF FLORIDA

Plaintiff,

-vs-

CURTIS WINDOM

Defendant,

SUPPLEMENTAL RECORD

July 8, 1993	Transcript of Motion RE: Insolvency held on March 29, 1992	393-422
August 16, 1993	Transcript of Status Conference Proceedings held on May 13, 1992	423-451
August 26, 1993	Transcript of Status Hearing Proceedings held on August 24, 1992	452-469
July 7, 1993	Transcript of Mitigation Hearing Proceedings held on November 5, 1992	470-546
July 20, 1993	Transcript of Motion to Suppress Proceedings held on August 14, 1993	547-581
August 31, 1993	Affidavit Non Proceedings Court Reporter for November 6, 1992	582
September 7, 1993	Affidavit non existent item Copies of two video tapes which where introduced at Trial	583
September 7, 1993	Affidavit of non existent item Copies of the two statements introduced by the State at the November 5, 1992 hearing regarding mitigation (Included in original record on appeal)	584
July 30, 1993	Supplemental Directions to the clerk	585-589
July 30, 1993	Supplemental Designation to the Court Reporter	590-594
September 7, 1993	Clerk's certificate	595

1
2 IN THE CIRCUIT COURT, 9th JUDICIAL
3 CIRCUIT, CRIMINAL JUSTICE DIVISION
4 IN AND FOR ORANGE COUNTY, FLORIDA

5 STATE OF FLORIDA,

6 PLAINTIFF,

7 VS.

CASE NO. CR92-1305

8 CURTIS WINDOM,

9 DEFENDANT.
10 _____/

11 MOTION IN RE: INSOLVENCY

12 BEFORE

13 THE HONORABLE DOROTHY J. RUSSELL

14
15 REPORTED BY DON GUNDERSON
16 OFFICIAL COURT REPORTER, RPR
17 ON MARCH 29, 1992
ORANGE COUNTY COURTHOUSE
ORLANDO, FLORIDA 32801

18 A P P E A R A N C E S:

19 JEFFREY L. ASHTON, ESQUIRE
20 ASSISTANT STATE ATTORNEY
21 250 NORTH ORANGE AVENUE, SUITE 400
ORLANDO, FLORIDA
APPEARING ON BEHALF OF THE STATE OF FLORIDA

22 ROY EDWARD LEINSTER, ESQUIRE
23 1302 E. ROBINSON STREET
24 ORLANDO, FLORIDA
APPEARING ON BEHALF OF THE DEFENDANT

25
COPY

I N D E X

1		
2		
3	TESTIMONY OF CURTIS WINDOM	4, 20 & 25
4		
5	TESTIMONY OF GLORIA JEAN WINDOM	11 & 21
6		
7	ARGUMENT OF MR. ASHTON	22 & 27
8		
9		
10		
11		
12	CERTIFICATE OF REPORTER	30
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 MAY 29, 1992, 9:15 A.M.

2 STATE OF FLORIDA VS. CURTIS WINDOM, CR92-1305

3 THE COURT: Curtis Windom.

4 There is a motion to sever and a motion to
5 declare the defendant insolvent for purposes of costs.

6 MR. LEINSTER: I'd like to take up the insolvency
7 issue first.

8 THE COURT: Where is Mr. Windom?

9 Is he here?

10 MR. LEINSTER: Back row, third one.

11 THE COURT: Never mind.

12 Okay?

13 MR. LEINSTER: I'm assuming you have a copy of the
14 financial affidavit that was filed in this case?

15 THE COURT: Yes. It looks like one of the divorce
16 affidavits.

17 Actually, he's unemployed because he has no
18 job.

19 State have anything you want to comment on?

20 MR. ASHTON: Yes, Your Honor.

21 There's one thing in the affidavit I know to
22 be untrue that I know from the investigation of the
23 case. Mr. Windom does own a vehicle, a rather
24 expensive one.

25 I would like Mr. Windom placed under oath and

1 questioned to the matters contained in the affidavit.

2 I can't honestly believe nowhere in the world
3 does Mr. Windom have a penny. So I question that.

4 THE COURT: Is he under oath? They're all under
5 oath right now?

6 Do you want to ask him any questions?

7 MR. ASHTON: Yes.

8 WHEREUPON,

9 CURTIS WINDOM,

10 was called as a witness by the State and, after having been
11 previously duly sworn, was examined and testified on his oath
12 as follows:

13 MR. ASHTON: Would you state your name, please.

14 MR. WINDOM: Curtis Windom.

15 MR. ASHTON: MR. Windom, do you own a car?

16 MR. WINDOM: Yeah.

17 MR. ASHTON: What kind of car do you own?

18 MR. WINDOM: '88 Nissan Maxima.

19 MR. ASHTON: I don't know if the Court --?

20 THE COURT: '88 --

21 MR. ASHTON: Nissan Maxima.

22 When did you purchase that?

23 MR. WINDOM: Sometime last year.

24 MR. ASHTON: Last year? And what did you purchase
25 it with?

1 MR. WINDOM: Cash money.

2 MR. ASHTON: Cash money? How much cash money?

3 MR. WINDOM: Like \$8,500.

4 MR. ASHTON: \$8,500? Who did you buy it from?

5 MR. WINDOM: Came from an auction.

6 MR. ASHTON: Did you equip it with any special

7 stereo equipment?

8 MR. WINDOM: Yeah, there was stereo equipment in

9 it.

10 MR. ASHTON: Did you put additional stereo

11 equipment in it?

12 MR. WINDOM: Yup.

13 MR. ASHTON: How much did you pay for that?

14 MR. WINDOM: I don't know what that set price was.

15 MR. ASHTON: Do you have an idea was it's more

16 than a thousand dollars?

17 MR. WINDOM: Nope, I don't think so.

18 MR. ASHTON: More than five hundred dollars?

19 MR. WINDOM: Probably right in that range.

20 MR. ASHTON: Did you pay cash for that?

21 MR. WINDOM: Yeah.

22 MR. ASHTON: Where did you get the cash with which

23 you bought your car?

24 MR. WINDOM: My girlfriend took care of it.

25 MR. ASHTON: Your girlfriend?

1 MR. WINDOM: Yes.

2 MR. ASHTON: Would that be Valerie Davis?

3 MR. WINDOM: Yeah.

4 MR. ASHTON: Valerie Davis had \$8,500 in cash?

5 MR. WINDOM: She had more than that.

6 MR. ASHTON: Where did she get it from?

7 MR. WINDOM: She had it when me and her got

8 together.

9 MR. ASHTON: How have you been employed over the

10 last year?

11 MR. WINDOM: Over the last year?

12 MR. ASHTON: Yes.

13 MR. WINDOM: Unemployed.

14 MR. ASHTON: Unemployed?

15 MR. WINDOM: Yes.

16 MR. ASHTON: How have you been living over the

17 last year, that is money to live on?

18 MR. WINDOM: She had the money.

19 MR. ASHTON: So for the last year Valerie Davis

20 has been paying your every expense?

21 MR. WINDOM: Not every expense because on the

22 street I gamble.

23 MR. ASHTON: Didn't you buy a car for Valerie

24 Davis's mother, Mary Lubin (ph)?

25 MR. WINDOM: No, no, sir.

1 MR. ASHTON: For the past year you, you have had
2 absolutely no income and no cash anywhere in the world?
3 MR. WINDOM: Well, I run across money, I run
4 across money.
5 MR. ASHTON: How much money have you run across in
6 the last year?
7 MR. WINDOM: I wouldn't say because it come and
8 it's gone; you know, you know, don't amount --
9 MR. ASHTON: You've had hired Mr. Leinster; is
10 that correct?
11 MR. WINDOM: No.
12 MR. ASHTON: You haven't?
13 MR. WINDOM: No, my family did.
14 MR. ASHTON: Your family did? Who in your family
15 hired Mr. Leinster?
16 MR. WINDOM: Probably my sister Gloria.
17 MR. ASHTON: Your sister?
18 MR. WINDOM: Gloria.
19 MR. ASHTON: How much did she pay Mr. Leinster?
20 MR. WINDOM: I don't know, I didn't talk to him.
21 MR. ASHTON: You have no idea how much somebody
22 paid for Mr. Leinster in representing you in this
23 murder?
24 MR. WINDOM: No.
25 MR. ASHTON: Okay, where did she get money from?

1 MR. WINDOM: I don't know.

2 MR. ASHTON: She get it, Valerie Davis --?

3 MR. WINDOM: I don't know.

4 MR. ASHTON: You don't know?

5 MR. WINDOM: No.

6 MR. ASHTON: People have been supporting you,
7 buying you cars, paying for your lawyer for the last
8 year and you have no idea where any of the money is
9 coming from?

10 MR. WINDOM: She out there.

11 MR. ASHTON: Your Honor, I would object to him
12 being found partially indigent because of his
13 credibility. His testimony is simply incredible.

14 THE COURT: What about this car, why haven't you
15 sold the car? You don't need it where you are.

16 MR. WINDOM: Since I've been here I ain't never
17 talked to the lawyer.

18 THE COURT: Never talked to Mr. Leinster in the
19 entire time he's --?

20 MR. WINDOM: Since I've been here.

21 THE COURT: Have you ever been, have you ever
22 talked to him?

23 MR. WINDOM: When I first came I saw him, and I
24 was, it was like I was on the fifth floor and I had
25 just seen him that --

1 THE COURT: Did you talk to him?

2 MR. WINDOM: No, ma'am.

3 THE COURT: How did you happen to see him?

4 MR. WINDOM: He was on the fifth floor and I was
5 on the fifth floor.

6 THE COURT: What was he doing on the fifth floor?

7 MR. WINDOM: Came and said he was supposed to try
8 to help me. That's the last time I seen of him.

9 THE COURT: How long were you all together?

10 MR. WINDOM: Not long because --

11 THE COURT: How long?

12 MR. WINDOM: I ain't seen him two minutes.

13 THE COURT: All right.

14 Why didn't you tell us about the car? Why
15 isn't this included on this asset --

16 MR. LEINSTER: The car's being held by the state.

17 THE COURT: The state has the car?

18 MR. ASHTON: It was taken into evidence by the
19 Winter Garden Police Department at the time of the
20 murder because it was involved.

21 I don't know, as far as I know Mr. Windom
22 still owns the car -- unless Mr. Leinster knows
23 something different.

24 THE COURT: Can he get the car to sell?

25 MR. ASHTON: I don't know.

1 MR. LEINSTER: If he gets the car back I'll
2 withdraw the motion.

3 I have this problem with the statutes in the
4 state, if they intend to forfeit -- I assume they're
5 going to, intending to forfeit as being involved in a
6 felony.

7 MR. ASHTON: I don't know, Your Honor. All I know,
8 the affidavits said he did not own a car. I knew he
9 did. That's all I was saying.

10 As far as I know, it was taken in evidence at
11 the time of the murder. What happened to it since
12 then, I don't honestly know.

13 THE COURT: If he can't get the car to sell he
14 can't pay Mr. Leinster the money.

15 MR. ASHTON: I'd point out it's not so much he has
16 the car to sell, this man has spent large amounts of
17 cash in the last year, the source of it is in question.
18 And \$8,500 would not be enough to pay a lawyer to
19 represent someone with a murder charge.

20 I'm concerned about large amounts of cash
21 keep paying Mr. Windom's bills. I don't know where any
22 of it's coming from. I find that somewhat lacking in
23 crediblilty.

24 That's my point.

25 THE COURT: Is Gloria here? We can ask Gloria

1 where he gets the money to pay Mr. Leinster and how
2 much.

3 WHEREUPON,

4 GLORIA JEAN WINDOM,
5 was called as a witness by the State and, after having been
6 first duly sworn, was examined and testified on her oath as
7 follows:

8 MR. ASHTON: Please state your name.

9 GLORIA WINDOM: Gloria Jean Windom.

10 MR. ASHTON: How are you related to the defendant?

11 GLORIA WINDOM: I'm his sister.

12 MR. ASHTON: He's indicated a moment ago that you
13 made arrangements and paid his attorney in this case.

14 Is that correct?

15 GLORIA WINDOM: Yes, I been helping him out.

16 MR. ASHTON: How much money did you pay his
17 lawyer?

18 GLORIA WINDOM: So far I think it's about fifteen
19 thousand, so far.

20 MR. ASHTON: Fifteen thousand dollars?

21 GLORIA WINDOM: (Nods head.)

22 MR. ASHTON: Can you tell us where you came up
23 with fifteen thousand dollars to pay Mr. Leinster?

24 GLORIA WINDOM: Well, different people been
25 helping out; we got different people been helping us

1 out.

2 I been catching the lottery.

3 Everything we, we get --

4 THE COURT: Catching the lottery?

5 GLORIA WINDOM: Yes.

6 THE COURT: What did you win?

7 GLORIA WINDOM: Twice I won three thousand, twice;
8 and then most every other day I catching a ticket for
9 five hundred dollars or three-thirty.

10 I been catching good ones, me and my mom.

11 MR. ASHTON: You're saying you won three thousand
12 dollars in the Florida Lottery on two occasions, and
13 every other day you get about five hundred from the
14 lottery?

15 GLORIA WINDOM: Mostly. Sometimes three-thirty.
16 But different people been helping out.

17 THE COURT: The names of the people?

18 GLORIA WINDOM: Well, it's quite a --

19 THE COURT: Name them.

20 GLORIA WINDOM: Willie Mae.

21 THE COURT: Who's Willie Mae?

22 GLORIA WINDOM: She's a friend.

23 THE COURT: What's her last name?

24 GLORIA WINDOM: Clark, I think.

25 THE COURT: How much has she helped out with?

1 GLORIA WINDOM: It ain't been added up, just come
2 up with certain amounts.

3 THE COURT: They come over and just hand out
4 money?

5 GLORIA WINDOM: Sometimes might come over say she
6 got a 20, 30 dollars, whatever; sometimes she just --

7 THE COURT: About how much has she given?

8 GLORIA WINDOM: I'm not really sure.

9 THE COURT: A thousand? Five hundred? Twenty?

10 GLORIA WINDOM: I'm not really sure. I wasn't
11 really keeping up with that. I didn't know I had to
12 come and say that.

13 THE COURT: It could have been much as a thousand?
14 Five hundred?

15 GLORIA WINDOM: No.

16 MR. ASHTON: Besides Willie Mae Clark who has
17 given you the most money?

18 GLORIA WINDOM: Well, most money when I been
19 catching the lottery.

20 THE COURT: Where do you cash in your lottery
21 tickets?

22 GLORIA WINDOM: Went to Tallahassee.

23 MR. ASHTON: Went to Tallahassee when?

24 GLORIA WINDOM: Right. Well, I went about two
25 months ago.

1 MR. ASHTON: Okay, they wrote you a check for
2 three thousand dollars on two different occasions?

3 GLORIA WINDOM: Wrote a check for twenty-five
4 hundred then, plus I caught a ticket for four hundred.
5 I cashed it in at the little convenience store.

6 It would be in the computer.

7 MR. ASHTON: You cashed a ticket for four hundred
8 at a convenience store?

9 GLORIA WINDOM: Yeah, at the thing they call
10 Peacock, yes.

11 MR. ASHTON: So when the convenience store, you
12 gave them a ticket, they gave you four hundred dollars?

13 GLORIA WINDOM: Yes, four hundred cash, right.
14 Publix.

15 MR. ASHTON: What Publix? Where?

16 GLORIA WINDOM: Publix, Winter Garden.

17 MR. ASHTON: Publix on Highway 50 and Dillard?

18 GLORIA WINDOM: Yes, I guess that's what you call
19 it.

20 MR. ASHTON: They gave you four hundred cash?

21 GLORIA WINDOM: Four hundred cash.

22 THE COURT: When else did you collect three
23 thousand dollars from Tallahassee?

24 GLORIA WINDOM: That's been about, it was a little
25 before this took place.

1 THE COURT: Before what took place?

2 GLORIA WINDOM: About the, before the shooting and
3 all of that took place.

4 MR. ASHTON: That was back in February. So it
5 would have been January.

6 GLORIA WINDOM: I don't, I wouldn't really say
7 when it was; about like January, February. Not really
8 sure but it, they have it.

9 THE COURT: They wrote you a check for twenty-five
10 hundred dollars about two months ago? And they wrote
11 you another check in January or February for how much?

12 GLORIA WINDOM: For twenty-five hundred.

13 MR. ASHTON: What happened to the other five
14 hundred?

15 GLORIA WINDOM: Well -- happened to the other
16 five?

17 MR. ASHTON: You said you won --?

18 GLORIA WINDOM: Right. Because you can, when you
19 cash, you can when, when you catch over six hundred
20 dollars you have to go to Tallahassee. As long as it's
21 under six hundred dollars you can cash it at the store.

22 MR. ASHTON: You said you won three thousand
23 dollars twice but only collected --

24 GLORIA WINDOM: Twenty-nine, it was 29, really 29.

25 MR. ASHTON: So what was the check for?

1 GLORIA WINDOM: What?

2 THE COURT: The check you got from Tallahassee,
3 how much was it?

4 GLORIA WINDOM: For twenty-five hundred.

5 MR. ASHTON: Twenty-five hundred? But you won
6 three thousand.

7 Where is the other five hundred?

8 GLORIA WINDOM: When I had the other ticket, it's
9 the four hundred they give me, the ticket, paid me at
10 Publix, paid me cash.

11 THE COURT: The four hundred you received is part
12 of the three thousand?

13 GLORIA WINDOM: Yes.

14 MR. ASHTON: So you cashed in part of the ticket
15 at Publix then?

16 GLORIA WINDOM: You can't cash the twenty-five
17 hundred dollar ticket at Publix. Have to go to
18 Tallahassee --

19 THE COURT: I thought you could collect up to six
20 hundred dollars?

21 GLORIA WINDOM: I said 25. You can't, can't at
22 Publix.

23 THE COURT: You cashed four hundred instead of six
24 hundred?

25 GLORIA WINDOM: Yeah.

1 MR. ASHTON: Any reason why you did it that way?

2 GLORIA WINDOM: It wasn't, that's how much the
3 ticket was worth, four hundred.

4 THE COURT: You got it straight? I sure don't.

5 GLORIA WINDOM: If you can cash a ticket for two
6 hundred, four hundred, six hundred; but the ticket that
7 I caught, it was for four hundred.

8 THE COURT: When you went to Tallahassee you were
9 not collecting on that four hundred dollar ticket?
10 That's separate from the other two three thousand
11 dollars tickets; am I correct?

12 GLORIA WINDOM: Right.

13 See, I --

14 THE COURT: So when you went to Tallahassee to
15 collect the three thousand dollars on two separate
16 occasions what did they write the check for?

17 GLORIA WINDOM: For twenty-five hundred.

18 See, look, I had two separate tickets, one
19 straight, one box, .50 straight .50 cent box; .50 cent
20 straight for twenty-five hundred, .50 cent box for four
21 hundred.

22 THE COURT: You said straight --?

23 GLORIA WINDOM: Straight, talking about the --

24 THE COURT: We're obviously in the wrong business.

25 MR. ASHTON: Ask a question. All of these

1 winnings are, should these all be in your, your
2 personal name, Gloria Windom --

3 GLORIA WINDOM: Some of them, yeah. It was all
4 the -- some in my name of --

5 MR. ASHTON: -- if we checked?

6 GLORIA WINDOM: My sister's name. Sometimes I
7 don't cash my tickets. Some might be in Ehrline.

8 MR. ASHTON: If I called the Lotto Commission how
9 much money are their records going to show they gave to
10 Gloria Windom?

11 GLORIA WINDOM: Well, for, since I've been
12 catching it, probably about, might be at least ten
13 thousand dollars.

14 MR. ASHTON: They should have records of giving
15 you ten thousand dollars?

16 GLORIA WINDOM: It should be. I'm not saying yes,
17 I know, because, exactly ten thousand. I know twice,
18 at least six thousand. I just had, catch a five
19 hundred, sometimes three-thirty. I don't know exactly
20 what they add up to. It would be, could be up to ten
21 thousand.

22 This time I did cash a ticket; sister cash a
23 ticket for me.

24 MR. ASHTON: What is her name?

25 GLORIA WINDOM: Ehrline Windom. Sometimes they

1 will, might put them on my mama.

2 I don't know, I catch a ticket as good as
3 anybody.

4 MR. ASHTON: When you go to Tallahassee they put
5 it in the name of the person that they give the money
6 to?

7 GLORIA WINDOM: Right.

8 MR. ASHTON: Now, you're saying you got four
9 hundred dollars cash from Publix?

10 GLORIA WINDOM: Four hundred cash from Publix.

11 MR. ASHTON: So that's, how much total have you
12 won? Ten thousand dollars?

13 GLORIA WINDOM: Listen, I'm not for sure exactly
14 how much I have won all together because I never --

15 MR. LEINSTER: Ask this question, have you ever
16 gotten any money from Curtis Windom?

17 GLORIA WINDOM: Ever gotten money from Curtis?
18 Not really, no.

19 MR. LEINSTER: He's never given you any money to
20 hold for me?

21 GLORIA WINDOM: No, never give me money to hold.

22 MR. LEINSTER: Do you know if Mr. Windom made any
23 money in the last year?

24 GLORIA WINDOM: He used to go to the races, they
25 race things; they used to make bets.

1 MR. LEINSTER: Has he been winning the lottery,
2 too, in the last year? Has he gotten lucky in the
3 lottery in the last year, too?

4 GLORIA WINDOM: Ask him, I don't know.

5 THE COURT: Wait a minute, stand still.

6 Have you won any lottery money?

7 MR. WINDOM: I ain't been playing the lottery; I
8 gamble, street gamble.

9 THE COURT: How much do you make gambling in a
10 month?

11 MR. WINDOM: Quite a bit.

12 THE COURT: How much?

13 MR. WINDOM: Sometimes, sometimes I win two
14 thousand a day, sometimes I win a thousand a day.

15 THE COURT: What do you, did you do with all --?

16 MR. WINDOM: Sometimes four thousand.

17 THE COURT: What did you do with all that money,
18 couple of thousand dollars a day?

19 MR. WINDOM: Sometimes I give to my mother and
20 tell her to hold onto it, or something like that there.

21 THE COURT: How much has your mother got of your
22 money?

23 MR. WINDOM: Not got none now. I doesn't always
24 win.

25 Saying she don't have no money now; that been

1 a period of time she, when I bought the car she gave me
2 money, had to draw a big amount of money out of the
3 bank.

4 THE COURT: That was your money? Your mother's
5 money?

6 MR. WINDOM: Valerie's money.

7 MR. ASHTON: Valerie is one of the victims, Your
8 Honor.

9 MR. WINDOM: That was around that time last year
10 when I bought the car, she drew the money out of the
11 bank.

12 THE COURT: Whose name is the money, whose account
13 name?

14 MR. WINDOM: It, was I believe it was in her name
15 and Billie Reid Arthur's (ph) name.

16 MR. ASHTON: All right, you, do you have -- where
17 did the fifteen thousand dollars come from that you got
18 to pay Mr. Leinster?

19 MR. WINDOM: Gloria telling you, anything I get,
20 hold to my sister; when she have extra money, when they
21 have extra money.

22 THE COURT: How many sisters do you have?

23 GLORIA WINDOM: I have four sisters, besides me.

24 THE COURT: What are names of the sisters who have
25 helped you pay Mr. Leinster?

1 GLORIA WINDOM: Ehrline and Jerline.

2 THE COURT: Ehrline and Jerline? Can you spell
3 -- G-E-R-L- --?

4 GLORIA WINDOM: Jerline, J-E-R-L-I-N-E.

5 THE COURT: Ehrline, Jerline and, and you have
6 paid Mr. Leinster all the money he's received?

7 Is that true or false?

8 GLORIA WINDOM: I told you, everytime I did get
9 anything, when I catch a lotto, whatever, anything I
10 can get hold of I give it to him.

11 I ain't been keeping -- all I want to do is
12 try to help my brother. I don't care a poor old man
13 give it me, I want to help my brother. If I can do
14 something to help him, I help him.

15 THE COURT: Thanks.

16 Anything else?

17 MR. ASHTON: Only that to my recollection of the
18 lottery laws, local merchants are only allowed to pay
19 you fifty dollars, not four hundred. That must be done
20 in Tallahassee.

21 I'd like an opportunity to investigate to
22 determine whether in fact the Windoms have been so
23 extraordinarily lucky in the lottery in the last six
24 months.

25 THE COURT: Even if they have, even if you have a

1 perjury case here, how is that going to get us past the
2 money situation?

3 MR. ASHTON: Your Honor, in order to support an
4 insolvency it's the defendant's burden to prove that.
5 It's normally done by affidavit; normal cases, we don't
6 object.

7 In this case since you have such a
8 proliferation of cash flowing around with no known
9 source, I believe the defendant's credibility is in
10 question.

11 If the Court based on the evidence does not
12 feel the affidavit to be sufficiently credible to show
13 indigency, the Court should not find indigency.

14 THE COURT: I can't find where he has money, other
15 than two thousand dollars a day gambling, at best;
16 which he does not have access to, apparently because
17 he's given it to somebody. And he says his mother has
18 none of his money now.

19 MR. ASHTON: I think this is a ruling the Court's
20 obviously going to have to make.

21 It's always my position it's the defendant's
22 position, burden to prove he doesn't have money, not
23 the state's to prove he does.

24 Based on that legal distinction, I submit at
25 this time point the defendant has not sufficiently

1 proven he doesn't have any money.

2 If it's the Court opinion legally it's the
3 Court's burden to find money, then obviously we haven't
4 shown any money. We'll have to go with that.

5 That's always been my legal position, it's
6 their burden. They haven't established it at this
7 point.

8 If in fact the witnesses are lying, if it's
9 fifteen thousand dollars not from the lottery, we have
10 a source of cash out there somewhere that, for the
11 benefit at least of Mr. Windom. And I think that it
12 would be incumbent upon Mr. Windom to establish the
13 source of the fund and to establish that they are, it's
14 not his money. Because if it's his money, then he's
15 not indigent.

16 Or, it's not money to which he can access to
17 pay the cost of Mr. Leinster --

18 THE COURT: He's telling me he has no money, has
19 given all the money to his mother. She has done
20 whatever she has done with it; bought the car.

21 MR. ASHTON: If in fact at the time of his arrest
22 he had money and subject to that gave it all to his
23 mother, we are at a, have a right to know why money --

24 THE COURT: Have we asked him, did he give all the
25 money to --

1 MR. ASHTON: I'll ask. What money did you have at
2 the time you were arrested? How much money?

3 MR. WINDOM: Which money I have at the time I was
4 arrested?

5 MR. ASHTON: How much money did you have anywhere
6 in the world?

7 MR. WINDOM: I had a little money with my
8 girlfriend.

9 MR. ASHTON: Approximately how much was that?

10 MR. WINDOM: I don't know, she has saved. I don't
11 know how much it was.

12 MR. ASHTON: You don't? Could it have been ten
13 thousand dollars?

14 MR. WINDOM: Could have been.

15 MR. ASHTON: It could have been, you just don't
16 know?

17 MR. WINDOM: No, I --

18 THE COURT: Where is that money now?

19 Mr. WINDOM: Safe got stolen.

20 THE COURT: What?

21 MR. WINDOM: Safe got stolen the same exact date
22 this happened.

23 THE COURT: The safe got stolen that had the money
24 in it?

25 MR. WINDOM: Every dime.

1 THE COURT: Which safe? Where was the safe kept?

2 MR. WINDOM: In my girlfriend's house.

3 MR. ASHTON: In the apartment, 11th Street

4 apartment?

5 MR. WINDOM: No.

6 MR. ASHTON: You don't mean Valerie Davis's

7 apartment?

8 MR. WINDOM: No.

9 MR. ASHTON: This is another girl's apartment?

10 MR. WINDOM: Right.

11 MR. ASHTON: What's her name?

12 MR. WINDOM: Julie Harp (ph).

13 MR. ASHTON: Julie Harp's apartment on the day of

14 the murder? And after that it was gone?

15 MR. WINDOM: When I was here, I probably give

16 about two weeks I heard that my safe got stolen.

17 MR. ASHTON: Have you talked to Julie Harp to try

18 to get some of the money back?

19 MR. WINDOM: I talked to her.

20 MR. ASHTON: What did she say?

21 MR. WINDOM: She say her brother fucked her up,

22 her brother fucked her up.

23 MR. ASHTON: Anybody --

24 THE COURT: What does that mean?

25 MR. WINDOM: She say her brother stole the money

1 and done something with it. Even though she had the
2 car to the shop, he wouldn't help to get the car out
3 the shop; she say he wouldn't help her to get the car
4 out of the shop.

5 MR. ASHTON: Anybody else you gave money to?

6 MR. WINDOM: No, I never given no other money, no
7 person, none.

8 MR. ASHTON: When was the last time you gave money
9 to your mother?

10 MR. WINDOM: Probably, probably like November,
11 October, somewhere in there.

12 MR. ASHTON: At this point, Your Honor, I think
13 what we have is basically a morass, basically going to
14 come down, as I said, to the legal question whether
15 it's the defendant's burden to prove he doesn't have
16 any or the Court's, state's burden to show he does.

17 In this case, as I said, it's the state's
18 position it's his burden. He hasn't met it.

19 THE COURT: There's a strong presumption in jail,
20 I don't think, think they let him gamble. But I don't
21 think he has, he has money.

22 If you find out otherwise, we'll go after the
23 money and perjury charges, if you can show perjury
24 here.

25 I am going to find he is insolvent for

1 purposes of costs.

2 Now what I need to do is set some limits on
3 the costs.

4 What are you looking at?

5 MR. LEINSTER: Judge, I couldn't give an
6 intelligent answer to that right now. I'm going to
7 have to go through a lot of the discovery to figure out
8 which witnesses probably need to be deposed, which are
9 just immaterial to the case.

10 I can get back to you with that information.

11 THE COURT: What I'm going to do is grant a
12 limited amount of costs to be determined upon some kind
13 of affidavit, or some kind of statement from you as to
14 what's reasonable. I'll decide what I think is
15 reasonable on the costs.

16 I don't want to set any carte blanche because
17 these people couldn't possibly come up with family
18 money. That lady's luckier than anybody I saw, if
19 she's telling the truth. Frankly, I don't find it very
20 credible but I can't say otherwise.

21 Your other motion?

22 MR. LEINSTER: I would like to reserve that for
23 another day. This has actually taken a lot longer than
24 I thought we were going to spend, on the costs.

25 THE COURT: We didn't know it was going to be so

1 incredibly interesting.

2 MR. LEINSTER: I didn't either.

3 I'd like to call that up another day.

4 MR. ASHTON: I have no objection as long as it's
5 fairly soon. If the severance is granted, obviously
6 logistically there's a great deal we need to do.

7 THE COURT: You can get a date from Esta right
8 now, if you want to.

9 (May 29, 1993, 9:45 a.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

STATE OF FLORIDA:

COUNTY OF ORANGE:

I, Donald E. Gunderson, Official Court Reporter of the Ninth Judicial Circuit of Florida, do hereby certify pursuant to Florida Statute 29, that I was authorized to and did report in stenographic shorthand the foregoing proceedings, and that thereafter my stenograph shorthand notes were transcribed to typewritten form by the process of computer-aided transcription, and that pages 3 through 29, inclusive, contain a true and correct transcription of my shorthand notes taken therein.

WITNESS MY HAND this 8th day of July, 1993, in the City of Orlando, County of Orange, State of Florida.

A handwritten signature in dark ink, appearing to read 'D. Gunderson', is written over a horizontal line.

DONALD E. GUNDERSON, RPR

OFFICIAL COURT REPORTER

1 IN THE CIRCUIT COURT OF THE
2 NINTH JUDICIAL CIRCUIT IN AND
3 FOR ORANGE COUNTY, FLORIDA,
4 CRIMINAL JUSTICE DIVISION

5 **STATE OF FLORIDA,**

6 Plaintiff,

7 vs.

8 **CURTIS WINDOM,**

9 Defendant.

Information No.: CR92-1305

Division 11

COPY

CLERK OF COURT
ORANGE COUNTY, FL

MAY 16 PM 3:36

FILED IN OFFICE
CRIMINAL DIVISION

10 **STATUS CONFERENCE**

11 **BEFORE**

12 **THE HONORABLE DOROTHY J. RUSSELL**

13
14 Reported by Ginny Wood, CVR-CM
15 In Courtroom V250
16 Orange County Courthouse
17 Orlando, Florida
18 Wednesday, May 13, 1992
19 4:38 - 4:48 p.m.

20 **APPEARANCES:**

21 **JANNA BRENNAN, ATTORNEY**
22 Assistant State Attorney
23 250 North Orange Avenue, Suite 400
24 Orlando, Florida 32801
25 Appearing on behalf of the state.

KURT BARCH, ESQUIRE
Law Offices of Ed Leinster
1302 East Robinson Street
Orlando, Florida 32801
Appearing on behalf of the defendant.

* * * * *

GINNY WOOD, CVR-CM
Official Court Reporter
Ninth Judicial Circuit

P R O C E E D I N G S

Wednesday, May 13, 1992

4:38 p.m.

THE COURT: This is a status conference on Curtis Windom. I don't know that it's necessary, but I had him -- in an abundance of caution, in case Leinster would happen to show up and ask for him.

So you're Mr. Barch. Right?

MR. BARCH: Right.

THE COURT: Kurt Barch.

MR. BARCH: But I'm not asking for him. He doesn't need to be here.

THE COURT: All right.

MR. BARCH: In fact, Mr. Leinster expressed his surprise that he was going to be transported here so -- for this.

THE COURT: Well, I want to make sure that this thing is on schedule ready to go to trial when it's set because I don't want to get up to the trial week to find out something hasn't happened.

MR. BARCH: Sure.

THE COURT: I know Mr. Leinster filed a motion that he's never called up for a hearing.

MR. BARCH: Yes. Motion for partial indigency. And I think one of the reasons it wasn't called up is because

1 Mr. Ashton had required an affidavit from the defendant.
2 I have a copy of it for the State Attorney.

3 MS. BRENNAN: Judge, we'd still like to have that.

4 MR. BARCH: Yes. They still want a hearing. So
5 let's see if we can get a date then on that motion for
6 indigency. We can do it at their pleasure.

7 THE COURT: Well, has he filed an affidavit?

8 MS. BRENNAN: Just now.

9 MR. BARCH: Right. I got it signed --

10 THE COURT: Where is it? Let me see it.

11 MR. BARCH: -- today, and I gave the original.

12 He claims to not be working, of course. He
13 isn't; he's in jail.

14 THE COURT: He's in jail.

15 MR. BARCH: And not to have any assets.

16 THE COURT: Well, how did he pay you all?

17 MR. BARCH: I have no idea. I'm not --

18 THE COURT: Well, Ed doesn't come cheap.

19 MR. BARCH: Yeah. I'm sure that his family may
20 have, but I'm not -- I wasn't there when they did the
21 initial --

22 THE COURT: This is like a divorce affidavit. I
23 need to know what kind of assets he has. He says --
24 Well, here it is. No cash; no real estate; no auto.

25 You want this set for a different time?

1 MS. BRENNAN: We want the motion for partial
2 indigency set for a hearing, yes.

3 THE COURT: You want it set for a hearing?

4 MS. BRENNAN: Yes.

5 THE COURT: You have reason to believe he has other
6 assets?

7 MS. BRENNAN: Yes. Other than zero, yes.

8 MR. BARCH: Well, how much time did they need to
9 ferret out his secreted assets?

10 THE COURT: Well, I'm not sure. I know I'm not
11 going to surprise them with it and make them do it today,
12 but --

13 MR. BARCH: No.

14 THE COURT: -- the problem is he's probably wanting
15 it to do some kind of discovery, in which case this would
16 stall the case. That's why I'm concerned about letting
17 it be set off.

18 You want -- Is it that you want Ashton to do
19 this motion as opposed to you, or you think he knows more
20 about it?

21 MS. BRENNAN: He definitely knows more about the
22 assets than me. I just spoke to him briefly on a break
23 upstairs, and he happened to mention this to me, that he
24 definitely wanted to see the affidavit and call that up
25 for a hearing because he had a feeling that the affidavit

1 was going to come back zero. "I have nothing."

2 THE COURT: All right. Now, what hours is he doing
3 trial in front of Judge Perry?

4 MS. BRENNAN: I think they stop at 5 o'clock I
5 think, because I think Judge Perry's been doing some sort
6 of trial at night, also.

7 THE COURT: Yes, he's been doing night trial.

8 COURT DEPUTY: He's available in the mornings
9 because they start at 1 o'clock, 1:30.

10 THE COURT: What are we doing Friday morning? I
11 know we can't do it tomorrow morning because we're up to
12 our ears in defendants. What if we could do it Friday
13 morning?

14 MR. BARCH: Now, if this man's family has assets,
15 like his mother and father, that really has nothing --

16 THE COURT: We don't count the family's.

17 MR. BARCH: Right. I just wanted to make sure that
18 wasn't what she was talking about.

19 THE COURT: I know. I've seen defendants come in
20 and they say they don't have something, and I know Jimmy
21 Elliot had a house that he owned with some family member
22 and he claimed to have nothing. So there are lots of
23 things he could have.

24 MR. BARCH: I have no problem at all with giving the
25 State Attorney reasonable time to seek out anything that

1 they want. However, I would like to be able to have
2 enough time to complete discovery; and there's a lot of
3 witnesses in this case.

4 THE COURT: Well, that's the point. If -- It
5 appears -- To be blunt with you, it appears that
6 somebody's dragging their feet specifically to get a
7 continuance in this case, which I don't --

8 MR. BARCH: I assure you it isn't Mr. Leinster
9 because normally they don't require an affidavit from the
10 defendant.

11 THE COURT: On an affidavit of insolvency? I do.

12 MR. BARCH: Yeah, but usually it's done -- I don't
13 know. I had to run down there specifically to do it, and
14 I did it as quickly as I could.

15 THE COURT: Well, yes, we do require an affidavit.

16 MR. BARCH: Well, they usually just place him under
17 oath and question him and --

18 THE COURT: Well, but the bottom line is he's never
19 asked for it. April 29 he files the motion for partial
20 indigency. How long has he been in the case?

21 MR. BARCH: I don't know. I assumed that maybe he
22 was --

23 THE COURT: Notice of appearance, February 25.

24 MR. BARCH: Maybe he was making the effort to try
25 to see if the State would agree to it. But in any event,

1 let's try to get the hearing as quick as we can.

2 THE COURT: Well, I think maybe Friday morning at
3 8:45 would be good.

4 MR. BARCH: Okay. Fine with me.

5 THE COURT: So we'll need to have the defendant
6 brought down.

7 Now, what else has to be done in this case to
8 get this thing ready for trial?

9 MR. BARCH: The only thing I could suggest to you --
10 Well, I guess they would still want to cross-examine him;
11 but if he's here and it would save time, effort and money
12 to examine him now on what his assets are, you could do
13 it now and not have to transport him again. But there
14 again, do as you please. I mean, I'm just trying to save
15 this Court --

16 MS. BRENNAN: Judge, Mr. Ashton is more
17 knowledgeable than me.

18 THE COURT: When this was set, we didn't know
19 Mr. Ashton was going to be in a murder case in front of
20 Judge Perry. That was our problem on this.

21 MR. BARCH: Okay.

22 THE COURT: I just want to move this case along, and
23 it looks like nothing's being done and motions that are
24 filed aren't even being called up. And I can't afford to
25 just have this thing languish here in my docket.

1 MR. BARCH: Well, at least this motion's being
2 called up anyway.

3 Now, the State Attorney won't need any further
4 notice of this, will they?

5 THE COURT: I shouldn't think so. Will you --

6 MS. BRENNAN: No. I can give it to Mr. Ashton.

7 THE COURT: -- give it to Mr. Ashton?

8 Okay. Is there anything else that needs to be
9 done that the defense is asking for that he's not going
10 to be ready for trial? Any reason to believe --

11 MR. BARCH: Well, there is a pending motion to
12 sever.

13 THE COURT: Motion to sever? When was he planning
14 to call that up? That was filed April the 8th. He's
15 never set it for a hearing.

16 You can see why I might be concerned about
17 this.

18 MR. BARCH: Yeah, that might . . . I think it would
19 be a good idea to see if that couldn't be heard at or
20 near the same time. Maybe it can't be done Friday, but
21 maybe --

22 THE COURT: It can't be done Friday. I don't have
23 the time.

24 MR. BARCH: -- maybe next week the nearest time you
25 have available.

1 THE COURT: Next week's a trial week, unfortunately.

2 MR. BARCH: Okay.

3 THE COURT: So we'd have to set it the following
4 week. Of course, that doesn't affect the fact that --

5 MR. BARCH: No. We can still continue to work on
6 the case so that can be heard all the way up until just
7 -- well, it should be heard --

8 THE COURT: Well, we would do it the week before is
9 the only thing I could do.

10 What I want you to do is to go to Esta and get
11 a time, not next week during a trial week but the
12 following week, which is the week of the 25th.

13 MR. BARCH: Okay.

14 THE COURT: And get a time for the motion to sever.
15 How long do you need?

16 MR. BARCH: Well, that's a good question. I would
17 think that at least thirty minutes. Can I ask for thirty
18 and then if Mr. Leinster needs less time, we can let you
19 know?

20 THE COURT: Well, his argument is that these four
21 counts are not sufficiently related. Either they are or
22 they aren't; and I don't know how he's going to argue for
23 thirty minutes about it.

24 MR. BARCH: Well, it would seem to me that there
25 might -- if, since that's a factual issue, there's going

1 to have to be either testimony or affidavits presented as
2 to whether or not they're sufficiently --

3 THE COURT: The charging document says they all
4 happened on February the 7th.

5 MR. BARCH: Okay.

6 THE COURT: Does the State have any idea what this
7 case is about?

8 MS. BRENNAN: Yes, I do.

9 THE COURT: And does it all -- Is this going to be
10 something you're going to have to bring in witnesses, or
11 is this something that's pretty much clear from the
12 arrest affidavit?

13 MS. BRENNAN: Should be clear from the affidavit.
14 If not --

15 MR. BARCH: Okay.

16 MS. BRENNAN: -- I'm sure the officers from Winter
17 Garden will come in. It won't be a problem for us to get
18 them to come in on a hearing.

19 MR. BARCH: I don't think thirty minutes is an
20 extraordinarily long length of time actually for a
21 hearing, Judge.

22 THE COURT: On whether this all happened at one
23 time? I would say that if it all happened at the same
24 time and three people got shot or somebody got killed --
25 Okay. Three people got killed. -- and it all happened

1 within thirty minutes of each other, they're pretty much
2 related.

3 MR. BARCH: Okay. I'm not privy to the facts. This
4 isn't my client, but I was just -- You asked me how much
5 time, and I gave you a figure.

6 If it would be better for --

7 THE COURT: Where is Leinster today?

8 MR. BARCH: I have no idea.

9 THE COURT: What do you mean you don't know where he
10 is? He's the attorney on this case and you're coming in
11 for him. Why is it you're here and he's not?

12 MR. BARCH: You know, I really didn't ask why, and I
13 don't mean to be -- I'm not trying to be a smart aleck or
14 anything. I just -- They told me to handle this hearing
15 today, and I didn't really say, "Well, why can't he?"
16 any more so, I suppose, than any employee asks why I
17 should or shouldn't do something. But I don't think that
18 was anything that he necessarily had to be here for
19 because I think we pretty much were able to explain to
20 the Court what the status of the case was.

21 THE COURT: All right. Why don't you just get a
22 time from Esta, and then you can send out notice to the
23 State on it.

24 MR. BARCH: Okay.

25 THE COURT: Okay. But let him know that we are

1 concerned about this.

2 MR. BARCH: Okay.

3 THE COURT: And we'll see somebody at a quarter to
4 nine on Friday.

5 MR. BARCH: It might be a good guess that it'll be
6 me, but --

7 THE COURT: I know it'll be you. If it's anybody,
8 it'll be you. In fact, you may be trying the case. So I
9 hope you're going to know some facts by next month.

10 MR. BARCH: But now let me say that I have a hearing
11 on a motion to dismiss in Seminole County on a civil
12 case, which is my case; and --

13 THE COURT: When? Friday?

14 MR. BARCH: Friday. So I suspect you will see
15 Mr. Leinster.

16 THE COURT: Yeah. We'll hold our breath.

17 MR. BARCH: Okay. Well, that's all I need then.

18 THE COURT: You need to go around to see Esta and
19 get the time on the other part.

20 (Whereupon, at 4:50 p.m., the foregoing proceedings
21 were concluded.)

22 * * * * *

23

24

25

CERTIFICATE OF REPORTER**STATE OF FLORIDA****COUNTY OF ORANGE**

I, GINNY WOOD, CVR-CM, Official Court Reporter of the Ninth Judicial Circuit, Florida, do hereby certify that I was authorized to and did report the foregoing proceedings by Stenomask operation, and that thereafter my tapes were transcribed and reduced to typewriting by me, and that the pages numbered 2 through 12, inclusive, contain a full, true and correct transcription of my tapes taken herein.

Witness my hand this 11th day of August, 1993, in the City of Orlando, State of Florida.

GINNY WOOD, CVR-CM
Official Court Reporter
Ninth Judicial Circuit

1 IN THE CIRCUIT COURT OF THE
2 NINTH JUDICIAL CIRCUIT IN AND
3 FOR ORANGE COUNTY, FLORIDA,
CRIMINAL JUSTICE DIVISION

4 STATE OF FLORIDA,

5 Plaintiff,

6 vs.

7 VERA DENISE JONES,

8 Defendant.

Information No.: CR92-11788

Division 10

9
10
11 VOP PLEA AND SENTENCING

12 BEFORE

13 THE HONORABLE RICHARD F. CONRAD

14 Reported by Ginny Wood, CVR-CM
15 In Courtroom B360
16 Orange County Courthouse
17 Orlando, Florida
18 Thursday, July 15, 1993
19 8:35 - 8:38 a.m.

20 APPEARANCES:

21 SIMONE ROSENBERG, ATTORNEY
22 Assistant State Attorney
23 250 North Orange Avenue, Suite 400
24 Orlando, Florida 32801
25 Appearing on behalf of the state.

JUNIOR A. BARRETT, ESQUIRE
Assistant Public Defender
1 North Orange Avenue, Suite 500
Orlando, Florida 32801
Appearing on behalf of the defendant.

* * * * *

GINNY WOOD, CVR-CM
Official Court Reporter
Ninth Judicial Circuit

P R O C E E D I N G S

Thursday, July 15, 1993

8:35 a.m.

THE CLERK: CR92-11788, State of Florida versus Vera Denise Jones.

MR. BARRETT: Good morning, Your Honor.

Ms. Jones is present and with the Court's permission would like to withdraw her plea.

THE COURT: I was looking around for you. It's kind of like a voice coming out of the wilderness.

MR. BARRETT: I apologize.

THE COURT: Remind me I need to talk to you about your morning sessions. You understand what I'm talking about?

MR. BARRETT: I'm not sure.

THE COURT: What you are planning on doing today?

MR. BARRETT: Okay. I understand.

THE COURT: All right. Good morning, Mr. Barrett. How are you doing?

MR. BARRETT: Yes, Your Honor. Ms. Jones is present in the courtroom and, with the Court's permission, would like to withdraw her previously-entered plea of not guilty and enter a plea of guilty to violation of probation.

THE COURT: Okay. Where is Ms. Jones?

1 MR. BARRETT: In the second row.

2 (Whereupon, the defendant was duly sworn by the
3 Court.)

4 THE COURT: Correct me if I'm not wrong, Ms. Jones,
5 but this is what? July 15. Right?

6 THE DEFENDANT: Mm-hmm, today's date is July 15.

7 THE COURT: Didn't we have our last meeting together
8 in January of this year?

9 THE DEFENDANT: Yes.

10 THE COURT: And I'd say and you've already violated
11 your probation?

12 THE DEFENDANT: Yes.

13 THE COURT: Good grief.

14 Have you read your plea form and discussed that
15 with your attorney?

16 THE DEFENDANT: Yes.

17 THE COURT: Any questions?

18 THE DEFENDANT: No.

19 THE COURT: All right, ma'am. You're charged in
20 case number 92-11788 with violating your probation. How
21 do you plead?

22 THE DEFENDANT: Guilty.

23 THE COURT: I'm going to accept your plea of guilty.
24 The finds you guilty of violating your probation and it's
25 revoked.

1 Mr. Barrett?

2 MR. BARRETT: Your Honor, the reason for violation
3 was substantive misdemeanor charge, which is indicated on
4 the affidavit of violation. She has been sentenced to
5 180 days. I believe she's still doing the remainder of
6 the time on that charge.

7 I believe originally there was some restitution
8 that was involved, which is at this point paid -- I guess
9 this Court might have told her at one point that if she
10 paid the Court costs, he would terminate it. Court cost
11 is still outstanding.

12 THE COURT: I am going to satisfy the court costs,
13 and you're sentenced to a period of one year in the
14 Orange County Jail. You're entitled to 53 days credit
15 for time served. And that sentence will run consecutive
16 to any sentence you're now serving.

17 Thank you.

18 (Whereupon, at 8:38 a.m., the foregoing proceedings
19 were concluded.)

20 * * * * *

CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF ORANGE

I, GINNY WOOD, CVR-CM, Official Court Reporter of the Ninth Judicial Circuit, Florida, do hereby certify that I was authorized to and did report the foregoing proceedings by Stenomask operation, and that thereafter my tapes were transcribed and reduced to typewriting by me, and that the pages numbered 2 through 4, inclusive, contain a full, true and correct transcription of my tapes taken herein.

Witness my hand this 11th day of August, 1993, in the City of Orlando, State of Florida.

GINNY WOOD, CVR-CM
Official Court Reporter
Ninth Judicial Circuit

1 IN THE CIRCUIT COURT OF THE
2 NINTH JUDICIAL CIRCUIT IN AND
3 FOR ORANGE COUNTY, FLORIDA,
CRIMINAL JUSTICE DIVISION

4 STATE OF FLORIDA,

5 Plaintiff,

6 vs.

7 JAMES OLIVER EDWARDS,

8 Defendant.

Information No.: CR90-5248 and
CR91-13158

Division 15

9
10
11 SENTENCING PROCEEDINGS

12 BEFORE

13 THE HONORABLE JAMES C. HAUSER

14 Reported by Ginny Wood, CVR-CM
15 In Courtroom T237
16 Orange County Courthouse
17 Orlando, Florida
18 Thursday, December 17, 1992
19 2:18 - 2:28 p.m.

20 APPEARANCES:

21 CAROLYN VAN ZANT, ATTORNEY
22 Assistant State Attorney
23 250 North Orange Avenue, Suite 400
24 Orlando, Florida 32801
25 Appearing on behalf of the state.

DEBBIE MATTHEWS, ATTORNEY
Assistant Public Defender
1 North Orange Avenue, Suite 500
Orlando, Florida 32801
Appearing on behalf of the defendant.

* * * * *

GINNY WOOD, CVR-CM
Official Court Reporter
Ninth Judicial Circuit

P R O C E E D I N G S

Thursday, December 17, 1992

2:18 p.m.

THE CLERK: CR91-13158, CR90-5248, James Oliver Edwards.

THE COURT: Has the State had the opportunity to look at the presentence investigation?

MS. VAN ZANT: Yes, Your Honor, I have.

THE COURT: Are there any additions or corrections?

MS. VAN ZANT: None that I'm aware of, Judge.

THE COURT: Has the defense had the opportunity to look at a presentence investigation?

MS. MATTHEWS: Yes, Your Honor.

THE COURT: Any additions or corrections?

MS. MATTHEWS: No.

THE COURT: Recommendation from the State?

MS. VAN ZANT: Judge, we are requesting that this defendant be sentenced as a habitual offender. If I could have a moment.

THE COURT: You may.

MS. MATTHEWS: Yes, Your Honor. There was another case, CR90-5248, which we had agreed that his two-years supervised probation would be changed to have a sentence to run concurrent with this.

THE COURT: Thank you.

1 MS. VAN ZANT: I agree with that, Judge.

2 For the record, I'd ask Mr. Edwards if he is
3 the same James Edwards who was sentenced in CR90-5248
4 here in Orange County on December 3, 1991.

5 THE COURT: Is that correct, Mr. Edwards?

6 MS. MATTHEWS: That's the case that you're on
7 probation on right now.

8 THE DEFENDANT: Yes, sir.

9 MS. VAN ZANT: Likewise, if he is the same James
10 Oliver Edwards who was sentenced in case 81-3696 (sic)
11 for the offense of robbery on November 16, 1982.

12 THE COURT: That doesn't make any sense. What was
13 the number on that?

14 MS. VAN ZANT: CR81-3996 (sic).

15 THE COURT: How could he have been convicted of a
16 robbery in '82 with an '81 number?

17 MS. VAN ZANT: Very easily, Judge.

18 MR. MARRERO: Arrested in 1981; convicted in 1982.

19 THE COURT: Oh, I'm sorry. I thought the robbery
20 took place in 1982. Never mind.

21 Is that you, Mr. Edwards?

22 THE DEFENDANT: Yes, sir.

23 MS. VAN ZANT: I would submit these for the Court
24 and indicate that the last conviction was in 1990, well
25 within the five years, and indicate that Mr. Edwards does

1 then qualify as a habitual offender.

2 THE COURT: What's the recommendation from the
3 defense?

4 MS. MATTHEWS: Your Honor, we had spoken with the
5 Court, and you had recommended -- you had said you would
6 go with the recommended guideline sentence. At the time,
7 we thought he would score lower, and you had said if
8 there's three years Department of Corrections, that you
9 would not decide yet if you would habitualize or not.

10 THE COURT: Anything you'd like to tell me?

11 THE DEFENDANT: Yes, sir, Your Honor.

12 I'd first like to state for my case here, the
13 -- for the grand theft case which I committed, which I
14 wanted him to be here but I seen he's not here, that at
15 the time when the case were committed that I had just got
16 released from jail. The same victim helped me got out of
17 jail and -- 'cause I still working with him. And he
18 agreed with my bondsman that he'll allow me continue
19 working with him to pay the bondsman off.

20 While I'm out waiting bond on the same charge,
21 the charge -- one charge was two years probation. That's
22 what I'm on trial for here.

23 So while I'm still waiting and working with the
24 same owner of the check, at the end of the year he laid
25 me off back in November; and I been talking with a friend

1 of mine. And one day he took me out to the job to work
2 and I told him I was looking for a job. He told me he
3 would like to go back and try to work with us. And the
4 boss man told me he would hire me in a moment.

5 So I told him I -- He ask me concerning my boss
6 man's payroll check because he saw it laying on the desk.
7 So I told him that the boss man keep the check there in
8 the office.

9 So one Sunday back in November I was sitting
10 home to my apartment, and the same friend of mine, he had
11 broke in the owner office and got the check and called me
12 up on my phone and told me to meet him inside the office.
13 But a hour later he came to my home with the check.

14 And we talked and I discussed the matter, how
15 the owner sign the check and everything; and that day he
16 left, I didn't know he left with my ID and my own
17 personal check card belonging to Publix, which he first
18 attempt -- I find out later he first attempt to cash a
19 check down there.

20 THE COURT: So you're saying you didn't do this?

21 THE DEFENDANT: No, sir. Okay. What I did -- I
22 wasn't partaking in --

23 THE COURT: Were you going to get some of the money
24 from this?

25 THE DEFENDANT: The two checks that were cashed down

1 to the Publix --

2 THE COURT: Were you going to get some of that
3 money?

4 THE DEFENDANT: No, sir. See, he took my ID card
5 and also my check card to attempt to cash the check down
6 to the Publix. That's where when you ordered the
7 handwriting sample, my handwriting, when it came up in
8 came up inconclusive (sic) or whatever.

9 THE COURT: Okay. You made your point.

10 Anything else you want to tell me?

11 THE DEFENDANT: Yes, sir. I'm saying this, Your
12 Honor. I realize my wrong, my fault in this. I was
13 under a lot of pressure at the time, and I was trying to
14 get myself together at the moment because I was just
15 getting out of jail; and since then I've been
16 incarcerated from October 22, I have really considered my
17 lifestyle. I know I need better change my lifestyle.

18 And if the Court would have mercy, I'm asking,
19 I'm begging the Court for a chance. I mean, the only
20 really criminal what my record shows, my previous record
21 shows here. I said the only time, the only way I was
22 forced to participate in that crime there because I --
23 first I was going to get my bondsman and try to stay out
24 of jail, and that's when my boss had laid me off.

25 THE COURT: All right. This is what the Court --

1 Yes, Ms. Van Zant?

2 MS. VAN ZANT: Judge, I would like an opportunity to
3 respond. My -- First of all, I don't really want to take
4 exception to defense counsel, but I don't have a clear
5 memory of the Court making a determination --

6 THE COURT: I think it's discretionary with the
7 Court.

8 MS. MATTHEWS: It is discretionary with the Court.

9 MS. VAN ZANT: I don't remember the Court indicating
10 you would go with a guideline sentence.

11 THE COURT: I think it's discretionary with the
12 Court.

13 MS. VAN ZANT: Certainly the Court can -- it is
14 within the Court's discretion. I would remind the
15 Court, of course, obviously then you have to make
16 findings on the record that would indicate that the
17 protection of the community does not require that the
18 defendant be sentenced as a habitual. Certainly that's
19 up to the conscience of the Court.

20 However, I would like to point out to the Court
21 that the defendant has a juvenile record starting back in
22 1974.

23 THE COURT: Mm-hmm.

24 MS. VAN ZANT: His adult record starts in 1977 and
25 he seems to have perhaps -- Let's see. Between 1978 and

1 -- There is a period between 1978 and '81 that he didn't
2 commit any crimes, but from then -- and then we do see
3 him go from 1982 'til '87; but other than that, he seems
4 to have consistently managed to be in some sort of
5 criminal problems every year. He has an extensive
6 criminal history; and it's the State of Florida's
7 position that, even though this is not a violent crime
8 that Mr. Edwards is before the Court for, given his
9 lengthy and extensive criminal history, that the
10 community does require that he be sentenced as a
11 habitual.

12 THE COURT: All right. I'm going to make a finding
13 of fact that he is not a threat to society.

14 I'm going to sentence the defendant to eight
15 years Department of Corrections in case CR91-13158. I'll
16 give him credit for 60 days time served. Restitution in
17 the amount of \$365 will be payable to -- Is it Hodges
18 Roofing, I believe?

19 MS. VAN ZANT: Curtis Hodges, Hodges Roofing.

20 THE COURT: All right. In case number CR90-5248,
21 I'm going to -- I'll revoke his probation and I'm going
22 to sentence him to thirty months Department of
23 Corrections. I'll give him credit for 147 days time
24 served. It shall run concurrent with any other sentence
25 he's now serving.

1 Anything further from the State?

2 Anything further from the defense?

3 MS. VAN ZANT: Judge, I'm not certain that if the
4 Court determines that the defendant is not a habitual
5 offender that eight years is an appropriate sentence for
6 uttering --

7 THE COURT: The maximum would be five?

8 MS. MATTHEWS: Yes, maximum of five.

9 MS. VAN ZANT: -- uttering a forged instrument.

10 THE COURT: I tell you what I'm going to do.

11 MS. VAN ZANT: With all due respect to this Court,
12 I'm not certain that just putting on the record that the
13 defendant is not a threat to society is sufficient.

14 THE COURT: Well, it may not be. Here's where the
15 Court is coming from. The amount and controversy in the
16 case was a check in the amount of \$365.

17 MS. MATTHEWS: Your Honor, I believe no money was
18 received.

19 THE COURT: All right.

20 MS. VAN ZANT: That is accurate, Judge. There would
21 be no restitution.

22 THE COURT: All right. So there would be no
23 restitution.

24 MS. MATTHEWS: There'd be no restitution. There'd
25 be no restitution.

1 THE COURT: The defendant does have a list of
2 forgery cases. I'm going to sentence the defendant to
3 five years Department of Corrections, which would be the
4 maximum the Court can sentence him to. I'll give him
5 credit for 60 days.

6 In case number CR90-5248, I'll revoke his
7 probation and sentence him to thirty months Department of
8 Corrections consecutive. That means in addition to the
9 prior five-year sentence.

10 Defense has a right to file an appeal. Any
11 appeal must be in writing and filed within thirty days.

12 THE DEFENDANT: Your Honor, could I say something?

13 THE COURT: I've already sentenced you, sir.

14 THE DEFENDANT: Right. Can I still say something?

15 THE COURT: Well, I didn't sentence you as a
16 habitual. Keep talking and I may change my mind.

17 MS. MATTHEWS: I'll talk with him.

18 THE COURT: Okay. Thank you.

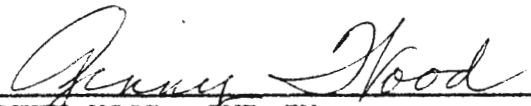
19 (Whereupon, at 2:28 p.m., the foregoing proceedings
20 were concluded.)

21 * * * * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
CERTIFICATE OF REPORTER**STATE OF FLORIDA****COUNTY OF ORANGE**

I, GINNY WOOD, CVR-CM, Official Court Reporter of the Ninth Judicial Circuit, Florida, do hereby certify that I was authorized to and did report the foregoing proceedings by Stenomask operation, and that thereafter my tapes were transcribed and reduced to typewriting by me, and that the pages numbered 2 through 10, inclusive, contain a full, true and correct transcription of my tapes taken herein.

Witness my hand this 11th day of August, 1993, in the City of Orlando, State of Florida.


GINNY WOOD, CVR-CM
Official Court Reporter
Ninth Judicial Circuit

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

Case No. CR92-1305

Division No: 11

CURTIS WINDOM,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

COPY

FILED IN OFFICE
OF THE CLERK
ORANGE COUNTY
FLORIDA
AUG 26 1992
[Signature]

IN RE: STATUS HEARING

BEFORE: Hon. Dorothy Russell
Circuit Judge

DATE: August 24, 1992

LOCATION: Orange County Courthouse
Orlando, Florida

REPORTED BY: SARAH E. LIGHTSEY, RPR, CCR
Official Court Reporter

ON BEHALF OF PLAINTIFF: MR. JEFF ASHTON, ESQUIRE
Assistant State Attorney
250 North Orange Avenue
Suite 400
Orlando, Florida 32801

ON BEHALF OF DEFENDANT: MR. ED LEINSTER, ESQUIRE
1302 East Robinson Street
Orlando, Florida 32801

P R O C E E D I N G S

(Proceedings commenced at 3:03 p.m.)

THE COURT: Okay. I understand that you have completed the trial in that case so you're available to start tomorrow?

MR. ASHTON: The jury is out tomorrow, so I see no reason why I couldn't.

THE COURT: For the record, we do have Mr. Leinster and his client, Curtis Windom, in the courtroom.

Is there anything we need to take up before the trial? I have a couple of things if you don't but go ahead.

MR. LEINSTER: Why don't you go ahead.

THE COURT: Well, the first thing is were you going to request any special questionnaire for the jurors?

MR. LEINSTER: We submitted a questionnaire on one of the motions.

THE COURT: Are you requesting that they complete the questionnaire?

MR. LEINSTER: Yes.

THE COURT: Has the State had a chance to look over it?

MR. ASHTON: I did and I thought that we had

1 discussed that and you had indicated that you were
2 just going to do the general; and then anybody who
3 had responses that appeared to be unusual, we would
4 do individual that way. So, I didn't look that
5 closely at the questionnaire. At least, that was my
6 recollection.

7 MR. LEINSTER: It was a fairly general
8 questionnaire. It's, basically, pretrial matters,
9 publicity, things like that.

10 MR. ASHTON: I thought it was the death penalty
11 question.

12 MR. LEINSTER: There is that element to it,
13 also.

14 MR. ASHTON: I thought you had said you didn't
15 want to use it or we weren't.

16 THE COURT: I don't mind using the questionnaire
17 tomorrow. And if we're going to use it, this is the
18 way I'd prefer to use it: That we go over 8:30 in
19 the morning -- as I understand, the general procedure
20 now -- it's been a long time since I participated in
21 a first degree murder case.

22 However, as I understand now, we have the jurors
23 over in another building;, and we can go over there.
24 I can present the questionnaire at 8:30. They can
25 fill it out after I give them the general

1 instructions as far as death penalty and let them
2 fill it out.

3 I can come back here and do my regular morning
4 things at nine o'clock, and they can be filling that
5 out.

6 MR. ASHTON: That's what we have been doing,
7 Your Honor. The only other thing you need to make
8 sure we get is a -- obviously, the defendant can't
9 accompany us.

10 THE COURT: A waiver? We need the waiver from
11 the defendant that he would waive his presence at
12 this part we would do over there.

13 MR. LEINSTER: That's fine.

14 THE COURT: Well, do you want to talk to him
15 about that?

16 MR. LEINSTER: You understand what's being said?

17 THE DEFENDANT: (Shakes head.)

18 MR. LEINSTER: Okay. Questionnaires, which I
19 have arranged to ask jurors their feelings about
20 certain things, are going to be presented to them for
21 them to fill out so they can be given back to me and
22 the Court so I'll know what their feelings are about
23 certain things before we even talk to them.

24 But they don't want to have to take you over
25 while they go through the process of taking these

1 forms over for the jurors to fill out.

2 You don't have any problem not being there, do
3 you?

4 THE DEFENDANT: Huh-uh.

5 THE COURT: Your lawyer would be there, and the
6 State would be there, and I would be there; but you
7 would not be there. Do you have a problem with that?

8 THE DEFENDANT: No.

9 THE COURT: Okay. All right. So at 8:30
10 tomorrow morning we can take the questionnaire over
11 there and I'll read them the preliminary instructions
12 about that.

13 MR. ASHTON: Well, there is an error in the
14 preliminary questionnaire instructions.

15 THE COURT: Are you talking his instruction or
16 mine?

17 MR. ASHTON: His. The one that he submitted
18 that I have here.

19 THE COURT: What is it?

20 MR. ASHTON: If you'll look at the paragraph,
21 that paragraph that starts if there's a second phase,
22 it says whether the aggravating circumstances
23 outweigh the mitigating circumstances. That's
24 backward. It should be whether the mitigating
25 circumstances outweigh the aggravated circumstances.

1 THE COURT: I'll tell you what: Let me take 30
2 seconds, and I'll give you the instruction I have
3 because it may be we use -- we may not use the first
4 sheet. Wait just a minute.

5 (Short Pause.)

6 THE COURT: Okay. Why don't y'all take a look
7 at this. This is what I prefer to use.

8 MR. ASHTON: This looks like the one I used with
9 Judge Perry, the last one I had with him.

10 THE COURT: Probably, yes. We got it from the
11 same place. While they are reading that, Esta, can
12 you make sure the jury room will have these jurors
13 ready at 8:30 instead of ten?

14 MS. POIT: (Nods head.)

15 MR. ASHTON: The introductory, the two-page
16 introduction is fine. As far as the questionnaire,
17 whichever one you want to use.

18 THE COURT: Okay. Then as far as Mr. Leinster's
19 proposed instruction to them, I don't mind starting
20 where it says the attached questionnaire is designed
21 to obtain information with respect to your
22 qualifications to sit as jurors in the pending case
23 and go on with that from there after I read this but
24 just leave -- what you say in the beginning of your
25 note to the prospective jurors is covered in this.

1 MR. LEINSTER: I don't have any problem.

2 THE COURT: Okay. So, I'll start where it says
3 the attached questionnaire. All right. What else
4 did you want to bring up, Mr. Leinster?

5 MR. LEINSTER: It may be premature. I have
6 spoken to Dr. Kirland since he gave us the written
7 findings, and I know what Mr. Ashton's position is;
8 and this is something that will come up sooner or
9 later.

10 Dr. Kirland describes a theory called fugue
11 state which might be induced by the trauma of killing
12 someone; i.e., you kill one person and then go into a
13 fugue state. I have asked him whether or not, given
14 the state of the art as it exists, even if he knew
15 everything that he could possibly know about Curtis
16 Windom from birth, medically and economically,
17 socially, whether or not he could ever be in a better
18 position to say, yes, he was in the fugue state or we
19 recognize that as a theoretical possibility from the
20 medical literature. He says that's the best he would
21 ever be able to do.

22 I have not advanced an insanity defense in this
23 case because I don't think -- simply because there is
24 a first degree murder or three of them that it
25 necessarily requires that anybody advance a theory of

1 defense that they don't have any good faith belief
2 exists.

3 Nothing in my questions with my client, nothing
4 in my observation of his demeanor or nothing about
5 any of the conversations with a myriad of people that
6 know him and so forth lead me to the question of was
7 he insane other than the fact he doesn't have any
8 prior violent history.

9 I do find it compelling that Dr. Kirland says it
10 is a possibility that the initial trauma of shooting
11 Johnny Lee may have led to the rest of the situation.

12 Now, I know the State's position is going to be
13 it's an all-or-nothing deal; that the State of
14 Florida recognizes legal insanity or they don't.
15 They recognize intoxication and they don't --
16 anything short of that, however hybrid it may be, is
17 not going to be considered.

18 Just to sort of let you know where I am at this
19 point, I intend to call Dr. Kirland at some point. I
20 think the State would be moving a ruling on that at
21 some point. I wanted to alert you to that position
22 before we get there.

23 THE COURT: In the defense's case on the guilt
24 phase or the penalty phase, if it gets to that?
25 Which?

1 MR. LEINSTER: At the defense phase (sic).

2 THE COURT: In the guilt phase?

3 MR. LEINSTER: Yes, ma'am.

4 MR. ASHTON: I was going to say I will be filing
5 a motion in limine as to that because there is very
6 clear case law on that issue.

7 I would need to have that heard prior to the
8 defense's opening unless the defense would agree not
9 to raise it -- he just told me that this afternoon.

10 If the defendant will agree not to raise that or
11 refer to that until I have had a chance to get the
12 court to rule on that, we can do it right before he
13 wants to argue it.

14 Otherwise, I'll be filing a motion and do a
15 pretrial hearing during a break or something.

16 Basically, my understanding of the case law
17 indicates that psychiatric testimony is only
18 admissible in an insanity defense or in a voluntary
19 intoxication defense; or, most recently, there was a
20 case that expanded to an epileptic defense.

21 But I think the case law is pretty clear that
22 you can't -- there is no hybrid diminished
23 responsibility sort of mental health defense claim.
24 We can argue that more after the case law.

25 MR. LEINSTER: I can tell you right now that

1 it's not going to affect my opening statement not to
2 refer to that. This is something that,
3 theoretically, can cut both ways.

4 As I say, this is probably sort of the front end
5 of the scientific field on this at this point. It
6 would probably not be in my advantage to go into an
7 area that turns out to backfire.

8 I want to alert you: I have had that
9 conversation with Dr. Kirland.

10 THE COURT: Then you are not going to mention it
11 in your opening statement?

12 MR. LEINSTER: It's not necessary.

13 THE COURT: Then you are not going to?

14 MR. LEINSTER: That's right.

15 THE COURT: Stop talking like a lawyer and
16 answer me.

17 MR. LEINSTER: Want a yes or no?

18 THE COURT: Yes.

19 MR. LEINSTER: I can do that.

20 THE COURT: What else did you want to bring up?

21 MR. LEINSTER: That's it.

22 THE COURT: That's your only problems here?

23 MR. LEINSTER: By no means. I have a million of
24 them but not with this case.

25 THE COURT: All right. Mr. Ashton.

1 MR. ASHTON: That's it. I, obviously, haven't
2 had a chance to speak with Dr. Kirland; so if the
3 Court allowed him to testify, I would need some time
4 to talk to him. But aside from that, I don't.

5 THE COURT: Okay. You can figure a time in
6 between breaks to talk to him, can't you?

7 MR. ASHTON: If that becomes necessary, I will
8 do that, yes.

9 THE COURT: Okay. And Mr. Windom, are you
10 satisfied with the representation of your attorney
11 thus far?

12 THE DEFENDANT: I can't really say because I
13 don't really know what's really going on because I'm
14 just saying it look like I am in the blind. I don't
15 know about the investigation. I never ain't got no
16 motion of discovery whatever. You know what I'm
17 saying?

18 I don't know what's going on. I can't really
19 say. Like I'm saying, he did come and talked to me
20 three times. We ain't had a ten-minute conversation
21 yet.

22 THE COURT: I don't want him to tell him on the
23 record what's going on. Is there some way you can
24 talk to him before tomorrow and alert him as to what
25 is going on in his defense?

1 MR. LEINSTER: I will be happy to tell him again
2 what's going on.

3 THE COURT: Last time you were here, you wanted
4 his witnesses to come in and talk to you and you told
5 him to persuade them to come in. Did he do that for
6 you?

7 MR. LEINSTER: Some. What we are now getting is
8 a rash of last-minute people who suddenly are
9 cropping up, including family. As a matter of fact,
10 I went out to the jail today to see Eddie Windom, who
11 was, unfortunately, at the Genesis building.

12 THE COURT: His brother?

13 MR. LEINSTER: His brother. Although I have
14 kept my phone lines from my office to my home open
15 after hours and although I have told his sister who
16 has been the spearhead of all of this ever since day
17 one, please bring them in -- I have said that in
18 court -- I'm still getting people in the last minute
19 who are bringing up things they should have brought
20 to my attention a long time.

21 I can't go out and beat the bushes of Winter
22 Garden and Central Florida to make a case for
23 Curtis. I have told Curtis exactly what is going on
24 as far as where we have been, and I have talked to
25 him about his version of events, if any.

1 So, I have a clue of what's going to be
2 presented in court. I have a pretty good idea of
3 what is going on in Curtis' head. Whether or not he
4 can see into mine is another story.

5 I will try to clarify for his benefit, but it's
6 not as though we haven't talked. I know I have been
7 out there at least three times.

8 THE COURT: I want to make sure he doesn't walk
9 into the trial and not understand what is going to
10 happen.

11 If you talk to him even in the holding cell, I
12 do want him to feel comfortable that he's got good
13 representation and the case is going the best way it
14 can for him.

15 MR. LEINSTER: I'll be happy to do that. I
16 would point out that if the case doesn't go to his
17 satisfaction, I suspect he'll be dissatisfied
18 regardless of what I do.

19 THE COURT: I know. But I would like to at
20 least start the trial thinking that he's satisfied
21 with the representation of his attorney.

22 MR. LEINSTER: I'll talk to him when we finish
23 here.

24 THE COURT: Okay. The other thing is are any of
25 the witnesses that either of you would call in jail?

1 MR. ASHTON: I have already given the court
2 deputy the name of one witness in jail.

3 THE COURT: In state or federal custody?

4 MR. ASHTON: State custody at 33rd Street.

5 THE COURT: And what about your witnesses?

6 MR. LEINSTER: Eddie Windom is one and strictly
7 through the grapevine is another 11th-hour witness, a
8 Nathaniel Watkins, who is in Seminole County.

9 THE COURT: So does this mean that you're going
10 to want us to do a transport order to bring him here?

11 MR. LEINSTER: I don't know how long it takes
12 you to put that together. We are, obviously, going
13 to spend a couple days before we get to that point.
14 By then I will know.

15 MR. ASHTON: My understanding is Nathaniel is in
16 federal custody. It's more complex than this court
17 issue an order to get them back. Our experience is
18 they are not cooperative.

19 THE COURT: They are not at all cooperative. We
20 have cases where the defendant is in custody and
21 haven't got the defendant back.

22 MR. LEINSTER: All I'm getting is, "By the way,
23 we got a call that we need to call Nathaniel Watkins
24 who is arrested in a drug operation and he is in the
25 Seminole County jail." So --

1 THE COURT: Well, I'm not a fortune teller, but
2 I'm having trouble thinking we're going to get this
3 person back here next week -- this week. This week.
4 So, I don't know if it's somebody who is critical to
5 your case or not. He was arrested in the drug sweep
6 a week or two ago?

7 MR. LEINSTER: Right.

8 MR. ASHTON: He was interviewed about the case.
9 So he wouldn't be a surprise witness for me. I know
10 what his testimony is.

11 THE COURT: Well, if the State has any means by
12 which they can get somebody from the Seminole County
13 jail, I would certainly appreciate efforts because
14 I'm not sure I can get him back.

15 MR. ASHTON: If he is in federal custody -- and
16 I assume he is -- we are no more powerful than the
17 Court is.

18 THE COURT: We have dealt with it in this
19 division.

20 MR. ASHTON: It's a nightmare trying to get
21 people back. If there's anything we can do to help,
22 but I doubt there is.

23 THE COURT: The questionnaires, are they here?

24 MR. LEINSTER: I can have them here in half an
25 hour.

1 THE COURT: Esta has said she checked with the
2 jury room and we can probably get a group together at
3 8:45. Is anybody seeking individual voir dire in
4 this case?

5 MR. LEINSTER: I think we discussed that, that
6 we would take that as it came.

7 THE COURT: That's true. So we're going to wait
8 and see the questionnaires first.

9 MR. LEINSTER: Yea.

10 THE COURT: Is there anything else that we need
11 to get straight? Otherwise, we are on tract for
12 tomorrow. Is everybody ready to proceed?

13 MR. LEINSTER: Yes.

14 MR. ASHTON: We are.

15 THE COURT: Okay. Very good. I'll see you at
16 8:45 over there. But today you are going to bring
17 enough --

18 MR. LEINSTER: How many?

19 THE COURT: Fifty jurors.

20 MR. LEINSTER: I'll bring you 60 in case you
21 lose them.

22 THE COURT: Mr. Ashton, I understand that the
23 State does the juror instructions on a first degree
24 murder case?

25 MR. ASHTON: Unless you do them yourself, yes.

1 THE COURT: I prefer you do it. Give me a
2 break. But I want them before the last day. Can you
3 do that, even if we have to have an early charge
4 conference?


5 MR. ASHTON: I'll have them done today. They
6 are on a word processor so they are real quick.

7 (Proceedings concluded at 3:24 p.m.)
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER

2
3 STATE OF FLORIDA:

4 COUNTY OF ORANGE

5
6 I, SARAH MARTIN LIGHTSEY, Registered Professional
7 Reporter, Official Court Reporter and Notary Public in and
8 for the State of Florida at Large:9 DO HEREBY CERTIFY that the foregoing proceedings were
10 taken before me at the time and place therein designated;
11 that my shorthand notes were thereafter transcribed under
12 my supervision; and the foregoing pages numbered 1 through
13 17 are a true and correct record of the aforesaid
14 proceedings.15 I FURTHER CERTIFY that I am not a relative, employee,
16 attorney or counsel of any of the parties, nor relative or
17 employee of such attorney or counsel, or financially
18 interested in the foregoing action.19 WITNESS MY HAND AND SEAL this, the 24th day of
20 July, 1993, in the CITY OF ORLANDO, COUNTY OF ORANGE,
21 STATE OF FLORIDA.22 
23 Sarah Martin Lightsey, R.P.R.
24 Official Court Reporter
25 Ninth Judicial Circuit

IN THE CIRCUIT COURT, 9TH JUDICIAL
CIRCUIT, CRIMINAL JUSTICE DIVISION
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

PLAINTIFF,

DIVISION 11
CASE NO. CR92-1305

VS.

CURTIS WINDOM,

DEFENDANT.

CLERK OF CIRCUIT COURT
ORANGE COUNTY, FL

03 JUL 20 AM 8:28

MOTION TO SUPPRESS PROCEEDINGS

BEFORE

THE HONORABLE DOROTHY J. RUSSELL

ORANGE COUNTY COURTHOUSE
ORLANDO, FLORIDA 32801
AUGUST 14, 1993
BOBBY V. TIMMS, RPR-CF
OFFICIAL COURT REPORTER

A P P E A R A N C E S:

JEFFREY ASHTON, ESQUIRE
ASSISTANT STATE ATTORNEY
250 NORTH ORANGE AVENUE
ORLANDO, FLORIDA 32801
APPEARING FOR THE PLAINTIFF

ED LEINSTER, ESQUIRE
1302 EAST ROBINSON STREET
ORLANDO, FLORIDA 32801
APPEARING FOR THE DEFENDANT

P R O C E E D I N G S

- - - -

THE COURT: ARE WE READY ON CURTIS
WINDOM?

MR. LEINSTER: YES. THE MOTION TO
SUPPRESS -- DO YOU HAVE THE AFFIDAVIT AND
SEARCH WARRANT?

THE COURT: I DON'T.

MR. ASHTON: I HAVE A COPY IN MY FILE.
I GUESS THIS IS GOING TO NEED TO BE ATTACHED
AS A PART OF THIS MOTION, BUT IF I CAN GET
THE CLERK TO MAKE A COPY. THIS IS MY ONLY
COPY.

I HAVE THE WARRANT, THE AFFIDAVIT, ALL
THE ATTACHMENTS AND THE INVENTORY AND THE
RECEIPT.

THE COURT: THANK YOU.

DO YOU WANT THIS MARKED IN EVIDENCE OR
ANYTHING FOR THE HEARING?

MR. LEINSTER: YES.

THE COURT: DEFENSE EXHIBIT 1.

(DEFENDANT'S EXHIBIT 1 MARKED)

THE COURT: WHAT ABOUT THE SEARCH
WARRANT?

MR. LEINSTER: THE SEARCH WARRANT,

1 YOU'LL FIND, REFERS TO EVIDENCE OF A FELONY
2 BEING COMMITTED, AND IT SAYS SOMETHING IN
3 TERMS OF THE NATURE OF THE FELONY, AND IN
4 TERMS OF PROBABLE CAUSE, REFERS TO AN
5 AFFIDAVIT OF LIEUTENANT FUSCO (PH).

6 THAT AFFIDAVIT, ON THE OTHER HAND --
7 NATURALLY WHAT THEY DO, WHEN YOU REFER TO
8 AFFIDAVITS THAT PROVIDE THE PROBABLE CAUSE,
9 IS TO INCORPORATE THEM BY A REFERENCE AS A
10 CERTAIN EXHIBIT.

11 IN THIS PARTICULAR CASE, THE WARRANT
12 ITSELF SIMPLY SAYS THE AFFIDAVIT OF THE
13 LIEUTENANT. IT SAYS NOTHING ABOUT IT BEING
14 ATTACHED AND REALLY DOESN'T REFER TO WHICH
15 AFFIDAVIT THAT WE ARE EVEN TALKING ABOUT.

16 WHEN YOU GO TO THE AFFIDAVIT OF FUSCO,
17 WHICH IS APPARENTLY DENOMINATED, NOT IN THE
18 WARRANT, BUT AS EXHIBIT C, WHAT HE SAYS IS
19 THAT THERE WAS A SLAYING, MURDER AT THIS
20 RESIDENCE. AND FROM THERE WE LEAD TO THE
21 CONCLUSION THAT THERE MUST BE EVIDENCE THERE
22 THAT THEY CAN FIND GUNS OR OTHER EVIDENCE
23 RELATING TO A HOMICIDE.

24 MY COMPLAINT ABOUT THE SEARCH WARRANT
25 IS THAT INITIALLY IT DOESN'T DESCRIBE

1 ANYTHING ABOUT THE FELONY. IT RELIES ON THE
2 AFFIDAVIT TO DISCUSS THE FACT THAT THEY WERE
3 LOOKING FOR EVIDENCE OF A HOMICIDE.

4 FOR BASIS OF PROBABLE CAUSE, HE SEEMS
5 TO RELY ON AN AFFIDAVIT, AND THERE IS AN
6 AFFIDAVIT IN THAT PACKAGE, BUT IT DOES NOT
7 REFER SPECIFICALLY TO THAT AFFIDAVIT AS
8 BEING THE ONE THAT WE'RE TALKING ABOUT. IT
9 DOES NOT INCORPORATE IT BY REFERENCE.

10 THEN, IF YOU GO TO THE SUBSTANCE OF THE
11 EVIDENCE, EVEN IF YOU CONSIDER IT TO BE PART
12 OF THE WARRANT, IT DOES NOT PROVIDE ANY
13 PROBABLE CAUSE TO THINK THAT ANYTHING WOULD
14 BE FOUND IN THAT RESIDENCE.

15 THE COURT: STATE?

16 MR. ASHTON: I WILL RESPOND TO THE TWO
17 MATTERS THAT ARE THE SUBJECT OF THE MOTION.

18 THE MOTION DOES NOT CHALLENGE THE
19 PROBABLE CAUSE IN THE AFFIDAVIT. I WILL
20 ARGUE THAT. THE COURT WOULD UNDERSTAND THAT
21 I HAVE NOT RESEARCHED THAT.

22 THE ONLY THING THAT IS REQUIRED TO BE
23 IN A SEARCH WARRANT IS INDICATED IN 933.047,
24 WHICH INDICATES THAT THE WARRANT SHALL BE
25 SIGNED BY HIM, THAT BEING THE MAGISTRATE, IN

1 THE NAME OF HIS OFFICE TO ANY SHERIFF OR
2 DEPUTY POLICE OFFICER, PERSON AUTHORIZED BY
3 LAW TO EXECUTE, PROCESS -- THERE IS NO
4 SUGGESTION HERE THAT THE PROPERTY
5 DESCRIPTION IS INSUFFICIENT OR THE PERSON
6 NAMED FOR THE PROPERTY SPECIFIED, AND TO
7 BRING THE PROPERTY IN, THE PERSON ARRESTED
8 IN CONNECTION THEREWITH BEFORE THE COURT.

9 THERE IS NO REQUIREMENT IN THE BODY OF
10 THE WARRANT THAT THE WARRANT INDICATE WHICH
11 PARTICULAR FELONY THE COURT HAS FOUND
12 PROBABLE CAUSE. THE COURT BELIEVES EVIDENCE
13 WILL BE FOUND. RELATED TO IN THE
14 RESIDENCE -- BAD GRAMMAR THERE.

15 THE OTHER ARGUMENT IS -- THE PURPOSE OF
16 A WARRANT IS TO PROPERLY LIMIT THE SCOPE OF
17 AN OFFICER'S SEARCH TO SPECIFY WHERE HE IS
18 TO SEARCH AND TO GIVE HIM THE AUTHORITY TO
19 DO THAT. NONE OF THOSE THINGS REQUIRE THE
20 COURT TO SPECIFY WHAT THE FELONY IS.

21 AS FAR AS INCORPORATION OF THE
22 AFFIDAVIT, THERE'S NO REQUIREMENT THAT THE
23 SEARCH WARRANT SPECIFICALLY USE THE WORDS
24 QUOTE, INCORPORATED BY REFERENCE. THAT'S
25 NOT REQUIRED.

1 THE OTHER POINT IS THE PROBABLE CAUSE.
2 I WOULD JUST SUBMIT TO THE COURT THAT THAT
3 ISSUE HAS ALREADY BEEN DETERMINED BY JUDGE
4 DAWSON, AND THAT UNDER THE GOOD FAITH
5 EXCEPTION IT'S NOT SUBJECT TO
6 RECONSIDERATION BY THIS COURT, BUT EVEN IF
7 IT IS, I THINK THAT CLEARLY THE WARRANTS ARE
8 SET FOR SUFFICIENT PROBABLE CAUSE TO BELIEVE
9 THAT EVIDENCE WOULD BE FOUND AT THAT
10 RESIDENCE, SINCE THAT IS THE RESIDENCE WHERE
11 ONE OF THE MURDERS WERE COMMITTED.

12 IF THERE IS ANY QUESTIONS THE COURT
13 HAS, I WOULD BE GLAD TO RESPOND.

14 THE COURT: I AM GOING TO DENY THE
15 MOTION TO SUPPRESS, FINDING THAT THE WARRANT
16 SUBSTANTIALLY COMPLIES WITH ANY
17 REQUIREMENTS, THAT IT'S SPECIFIED WHAT THE
18 REASON FOR THE WARRANT WAS. I FEEL LIKE THE
19 AFFIDAVIT IS WITH THE WARRANT, AND
20 CERTAINLY, ALTHOUGH IT DOESN'T SAY
21 INCORPORATED BY REFERENCE, IT'S THERE, AND
22 IT'S PART OF THE WHOLE PACKET, AND THE
23 SEARCH WARRANT IS LEGAL AND SUFFICIENT.

24 WHAT'S YOUR NEXT MOTION?

25 MR. LEINSTER: I HAD FILED A MOTION TO

1 TRANSCRIBE THE VIDEO. I TALKED TO
2 MR. ASHTON BEFORE THIS HEARING, AND THEY ARE
3 NOT EVEN PLANNING, IT APPEARS, TO USE THE
4 VIDEO. THIS WAS A VIDEO OF MR. WINDOM
5 TALKING TO HIS MOTHER AT THE POLICE STATION.
6 THE POLICE LEAVE THE AREA, OR APPARENTLY
7 LEAVE THE AREA, LEAVING THEM TO TALK FREELY.

8 INITIALLY WHEN I HAD BEEN PRESENTED
9 WITH THAT, I QUESTIONED THE LEGITIMACY OF
10 THAT PROCEDURE. I'VE SEEN THE TAPE,
11 HOWEVER, AND THE TAPE IS PROBABLY MORE
12 HELPFUL. IF THERE IS SUCH A THING, IN THIS
13 CASE, THAN IT IS DAMAGING, SO I'M NOT
14 CONCERNED WITH THAT. BUT IT'S ALSO RATHER
15 DIFFICULT TO HEAR WHAT HIS MOTHER IS SAYING.
16 SHE'S DISTRAUGHT.

17 SHE TALKS ABOUT HE NEEDS A DOCTOR AND
18 SO FORTH, BUT A LOT OF IT IS DIFFICULT TO
19 HEAR. BUT IF THEY'RE NOT GOING TO BE USING
20 THAT AS EVIDENCE, THEN IT'S REALLY NOT, I
21 SUPPOSE. THEIR JOB TO GIVE ME A TRANSCRIPT
22 OF THE THING. AND I WILL JUST HAVE TO WORRY
23 ABOUT THE AUDIBILITY OF IT IF I CHOSE TO USE
24 IT.

25 MR. ASHTON: UNLESS THE DEFENSE IS

1 PLANNING SOME MENTAL HEALTH DEFENSE, I DON'T
2 PLAN TO USE IT BECAUSE WE DON'T NEED IT IN
3 THIS CASE. WITH THAT CAVEAT IN MIND -- WE
4 DON'T HAVE A TRANSCRIPT OF THE TAPE AND WE
5 DON'T PLAN ON HAVING ONE MADE. BUT IF HE
6 WANTS TO, HE CAN DO THAT.

7 MR. LEINSTER: IN LINE WITH WHAT HE
8 JUST SAID, THE MENTAL HEALTH DEFENSE, THE
9 LAST MOTION WE ALREADY DISCUSSED, AND THE
10 STATE AGREED TO THE APPOINTMENT OF AN EXPERT
11 TO EVALUATE HIM, THE RULE DID NOT CALL FOR
12 MY HAVING TO FILE A MOTION, BUT I SAID I
13 WOULD AT THE LAST HEARING, JUST TO BRING THE
14 FILE IN ORDER OF WHAT WE'VE DONE IN COURT.

15 I ALSO TOLD THE COURT THAT IN MY
16 OPINION MR. WINDOM IS NOT LEGALLY INSANE.
17 BUT I'M NOT SURE THAT DISPENSES WITH THE
18 ISSUE OF WHAT KIND OF SHAPE HE WAS IN ON
19 THAT PARTICULAR EVENING, AS FAR AS HIS
20 PREMEDITATION, AND I CAN ARGUE A LOT OF
21 FACTORS THAT MAY HAVE BEEN GOING THROUGH HIS
22 BRAIN WHICH MAY OR MAY NOT BE PARTICULARLY
23 BIBLE TO A JURY, BUT AT THIS POINT WE TAKE
24 EVERY SHOT WE CAN.

25 THE COURT HAD INDICATED THAT YOU WOULD

1 BE APPOINTING SOMEBODY TO GO OUT AND TALK TO
2 HIM. I DON'T KNOW IF YOU HAD DONE THAT OR
3 NOT.

4 THE COURT: NO. I WAS WAITING FOR AN
5 ORDER FROM YOU. HE HAS NOT HAD A
6 PSYCHIATRIST SEE HIM YET. IN FACT, YOU
7 DIDN'T EVEN PROVIDE THE OTHER ORDER -- THE
8 ORDER GRANTING THE MOTION UNTIL, WHAT, JULY
9 26TH?

10 MR. LEINSTER: WHICH MOTION?

11 THE COURT: FOR PSYCHIATRIC.

12 AS I RECALL, WE HAD A HEARING BACK IN
13 MAY ON THIS CASE. YOU ASKED FOR PSYCHIATRIC
14 EVALUATION OF YOUR CLIENT TO APPOINT AN
15 EXPERT. AND THEN THE ORDER THAT YOU PREPARED
16 CAME IN ON JULY 27TH, WHICH IS A COUPLE OF
17 MONTHS AFTER THE HEARING, AND IT STILL
18 DIDN'T SPECIFY -- DO YOU HAVE A PARTICULAR
19 PSYCHIATRIST YOU WANTED TO SEE HIM?

20 MR. LEINSTER: WELL, ORDINARILY THE
21 COURT DOESN'T EVEN ASK IF I HAVE A
22 PARTICULAR PERSON IN MIND. YOU GENERALLY
23 JUST APPOINT SOMEONE.

24 NO. I DON'T HAVE ANYONE THAT I PREFER.

25 THE COURT: IS THERE SOME REASON WHY

1 YOU WAITED MORE THAN TWO MONTHS TO GET THE
2 ORDER IN?

3 MR. LEINSTER: I DON'T BELIEVE IT WAS
4 TWO MONTHS AGO WHEN WE CAME IN HERE ON THAT
5 ISSUE.

6 THE COURT: WASN'T IT MAY?

7 MR. LEINSTER: NO.

8 MR. ASHTON: THE LAST NOTATION I HAVE
9 THAT WE WERE TOGETHER WAS MAY 29TH -- THAT'S
10 WHEN WE GOT THE NEW TRIAL ORDER. I DON'T
11 HAVE ANOTHER ONE --

12 MR. LEINSTER: IT HASN'T BEEN THAT
13 LONG.

14 I UNDERSTOOD, RIGHTLY OR WRONGLY, THAT
15 YOU WERE GRANTING THAT AT THAT TIME, AND I,
16 DIDN'T KNOW THAT I NEEDED TO HAVE A WRITTEN
17 ORDER THAT WOULD KICK THAT INTO GEAR. I
18 STILL THINK WE HAVE TIME TO DO THAT.

19 THE COURT: BEFORE THE 24TH?

20 MR. LEINSTER: I WOULD THINK SO, IF
21 SOMEBODY GO OUT AND SEE HIM.

22 THE COURT: ON MAY THE 26TH YOU FILED A
23 MOTION TO CONTINUE SO THAT YOU COULD PREPARE
24 A MOTION FOR PSYCHIATRIC EVALUATION AND TO
25 TAKE DEPOS, THAT WAS YOUR MOTION TO CONTINUE

1 ON MAY 26TH, AND ON JULY THE 27TH IN COMES
2 THE ORDER ON THAT, 'CAUSE AT SOME POINT IN
3 THE MEANTIME IT WAS GRANTED.

4 BOTTOM LINE IS, WE HAVEN'T HAD HIM
5 EVALUATED YET.

6 YOU NEED ONE PSYCHIATRIST?

7 MR. LEINSTER: YES.

8 THE COURT: EITHER ONE OF YOU HAVE ANY
9 PREFERENCE OF THOSE THAT WE GENERALLY
10 APPOINT?

11 MR. ASHTON: (NODS).

12 THE COURT: I GUESS WE ARE GOING TO
13 HAVE TO PICK ONE WHO HAS TIME TO DO IT IN
14 THE NEXT WEEK.

15 MR. ASHTON: IT'S UP TO THE DEFENSE.

16 MR. LEINSTER: I WOULD ASK THAT IT NOT
17 BE DOCTOR GUTMAN.

18 THE COURT: OKAY.

19 WE WILL SEE WHO CAN DO IT WITHIN THE
20 NEXT WEEK AND GET A REPORT IN.

21 IN FACT -- OFF THE RECORD.

22 (DISCUSSION OFF THE RECORD)

23 THE COURT: WHAT'S YOUR NEXT MOTION?

24 MR. LEINSTER: I THINK THAT'S ABOUT IT.
25 WE HAVE THE USUAL MOTIONS REGARDING

1 SELECTION OF JURY AND SO FORTH.

2 TO BE QUITE HONEST. THERE -- I'M NOT
3 TAKING ANY PRIDE OF AUTHORSHIP IN THESE
4 THINGS. THESE HAVE BEEN ARGUED AND DECIDED
5 AND ON AND ON. JUST LIKE A FEDERAL TRIAL, A
6 LOT OF THINGS GET FILED THAT ARE JUST PART
7 OF THE PRO FORMA.

8 THE COURT: YOU ALL WANT TO RESOLVE
9 THESE THINGS NOW?

10 MR. LEINSTER: ACTUALLY, NO. I THINK
11 THAT WE CAN PROBABLY DO THAT, OR YOU CAN
12 JUST DO THE MOTIONS AND THE STATE'S
13 RESPONDING TO THESE MOTIONS ON MANY
14 OCCASIONS -- I'M SURE THAT YOU HAVE ALREADY
15 MADE DECISIONS ON HOW YOU DO THE JURY
16 SELECTION PROCESS ON A FIRST DEGREE MURDER
17 CASE AND I DON'T WANT TO SWAY YOU FROM THE
18 MANNER IN WHICH YOU DO IT.

19 THE COURT: I HAVEN'T HEARD ANYTHING
20 FROM THE STATE.

21 MR. ASHTON: I CAN RESPOND TO THESE
22 WHENEVER YOU LIKE, JUDGE. I'M FAMILIAR WITH
23 ALL THESE. THE LAW IS CLEAR AS TO WHICH
24 ONCE SHOULD OR SHOULD NOT BE GRANTED.

25 THE ONLY ONE THAT'S REALLY LEFT TO THE

1 COURT'S DISCRETION IS THE QUESTION OF A JURY
2 QUESTIONNAIRE, WHICH I WILL SAY NOW THAT MY
3 POSITION ON THIS IS THAT INDIVIDUAL VOIR
4 DIRE SHOULD NOT BE GRANTED AS A GENERAL
5 MANNER, BUT THE PREFERENCE APPROACH IS TO DO
6 GENERAL QUESTIONING, AND IF A JUROR HAS
7 SOMETHING THAT WILL PREJUDICE ANY OF THE
8 OTHERS, TO TAKE THAT INDIVIDUALLY --

9 THE COURT: THERE HAS BEEN SOME
10 PRETRIAL PUBLICITY IN THIS CASE. I THINK I
11 READ SOMETHING MENTIONED IN THIS CASE
12 YESTERDAY.

13 MR. ASHTON: A NUMBER OF PEOPLE WERE
14 ARRESTED IN WINTER GARDEN THAT WERE
15 ASSOCIATED WITH MR. WINDOM.

16 THE COURT: YOU WANTED THEIR ADDRESS
17 AND YOU WANTED --

18 MR. LEINSTER: I DON'T NEED THEIR
19 ADDRESSES AND ALL THAT.

20 THE COURT: HAVE YOU DONE DEPOS YET?

21 MR. LEINSTER: THEY ARE SET FOR THIS
22 COMING WEEK. THEY ARE GETTING TAKEN CARE OF
23 THIS COMING WEEK.

24 THE COURT: YOU ARE DOING DEPOS THE
25 WEEK BEFORE TRIAL?



1 MR. LEINSTER: THAT'S RIGHT.

2 THE COURT: OKAY.

3 SO YOU ARE WITHDRAWING YOUR MOTION FOR
4 THE ADDRESSES OF THE JURORS WITHIN TEN DAYS
5 OF TRIAL? SO THAT'S TEN DAYS FROM NOW.

6 MR. LEINSTER: WE'RE NOT GOING TO GO
7 OUT AND TALK TO EACH JUROR. I AGREE WITH
8 MR. ASHTON, IT'S NOT NECESSARY TO
9 INDIVIDUALLY DO EVERYBODY AS A MATTER OF
10 PRACTICE, FOR STARTERS; SO I'M PERFECTLY
11 CONTENT TO START WITH THE WHOLE PANEL AND
12 DETERMINE ON A PIECEMEAL BASIS WHERE IT MAY
13 BE NECESSARY.

14 THE COURT: YOU ALSO HAD A MOTION FOR
15 ADDITIONAL CHALLENGES FOR CAUSE.

16 MR. LEINSTER: I THINK THE STATE'S
17 POSITION ON THAT IS ACCEPTABLE ALSO. IF IT
18 APPEARS NECESSARY, WE WILL DEAL WITH IT WHEN
19 IT COMES UP.

20 THE COURT: THAT'S REASONABLE. IT WAS
21 FOR ADDITIONAL PEREMPTORY CHALLENGES, AND AS
22 FAR AS THE CHALLENGE FOR CAUSE, TO PRECLUDE
23 THE CHALLENGE FOR CAUSE FOR PEOPLE WHO COULD
24 NOT IMPOSE THE DEATH PENALTY.

25 ANY ARGUMENT ON THAT?

1 MR. ASHTON: THE LAW IS CLEAR AS TO
2 WHAT THE PERIMETERS OF THAT IS. IT'S WITT
3 AND WHITHERSPOON.

4 THE COURT: WITT, W I T T.

5 MR. ASHTON: IF A JUROR IS PREVENTED OR
6 ARE SUBSTANTIALLY IMPAIRED FROM FOLLOWING
7 THE LAW, THEN THEY SHOULD BE EXCLUDED.

8 THE COURT: THAT'S BASICALLY THE
9 RULING. JUST BECAUSE THEY WAVER A LITTLE
10 BIT, I THINK IT'S STILL NOT NECESSARY TO
11 EXCLUDE THEM FROM THE JURY FOR CAUSE, BUT IF
12 THEY JUST ABSOLUTELY CANNOT FOLLOW THE LAW,
13 THAT WOULD BE A PROBLEM.

14 MR. ASHTON: THE CASE SAYS IT'S EITHER
15 CANNOT FOLLOW THE LAW OR THE WORD THEY USE
16 IS SUBSTANTIALLY IMPAIRED. WHICH IS, YOU
17 KNOW, FREQUENTLY TRANSLATED AS VERY
18 DIFFICULT. BUT WHO KNOWS THAT THAT'S WHAT IT
19 REALLY MEANS OR NOT.

20 THE COURT: WE WILL JUST HAVE TO KNOW
21 IT WHEN WE SEE IT.

22 MR. ASHTON: YEAH.

23 MR. LEINSTER: WE ALSO HAVE A COUPLE OF
24 MOTIONS FOR DISCOVERY. ONE OF THEM IS
25 APPARENTLY FOR THE TAPES OF THE 911, I GUESS

1 IT IS.

2 THE COURT: THAT'S ONE WHERE HE THOUGHT
3 THE TRANSCRIPT WASN'T GOOD ENOUGH, THEN HE
4 HAD THE VIDEO THAT HE THOUGHT HE NEEDED THE
5 TRANSCRIPT. THE BEST EVIDENCE, OF COURSE,
6 IS THE TAPES.

7 HAVE YOU GIVEN HIM THE TAPES?

8 MR. ASHTON: THE AUDIO ON THE VIDEO
9 QUALITY IS VERY POOR AND I DO UNDERSTAND
10 THAT. IF THESE TAPES ARE STILL IN THE
11 POSSESSION OF THE WINTER GARDEN POLICE
12 DEPARTMENT, WHICH I IMAGINE THEY ARE. THE
13 DEFENSE CAN GET COPIES BY JUST PROVIDING
14 THEM OR ME WITH BLANK TAPES AND THEY CAN
15 TAPE IT OFF. THAT'S FINE WITH ME.

16 MR. LEINSTER: TO BE HONEST WITH YOU,
17 WHETHER WE GET THOSE OR NOT, IS NOT GOING TO
18 HAVE A PROFOUND IMPACT ON THIS CASE ONE WAY
19 OR THE OTHER. I WOULD EXPECT THAT IN THE
20 PRESENTATION OF THE CASE, THAT WHAT WILL BE
21 SAID BY THE RESPONDING OFFICERS WERE THAT WE
22 HAD A 911 CALL.

23 MR. ASHTON: THEY HAVE A LOT OF 911
24 CALLS.

25 THE COURT: IT WOULD BE HEARSAY IF THEY

1 SAY I SAW CURTIS WINDOM DO SUCH AND SUCH. I
2 WOULDN'T EXPECT THAT TO COME UP.

3 YOU ARE NOT GOING TO USE THE 911 CALLS
4 TAPES AT ALL?

5 MR. ASHTON: NO. THERE WERE SO MANY OF
6 THEM AND WE HAVE THE LIVE WITNESSES. WE
7 GAVE IT BECAUSE WE HAD IT.

8 THE COURT: IF HE WANTS THEM, HE CAN
9 GIVE YOU THE TAPES. IF HE DOESN'T WANT
10 THEM, WE WILL ASSUME HE DOESN'T GIVE YOU THE
11 TAPES.

12 WHAT ABOUT THE MOTION FOR DISCOVERY
13 REGARDING THE EVIDENCE OF THE VICTIM'S
14 TURBULENT CHARACTER?

15 MR. ASHTON: I WILL BE HAPPY TO ALLOW
16 MR. LEINSTER TO GO THROUGH ALL OF THE
17 FACTUAL PORTIONS OF MY FILE.

18 TO MAKE SURE HE HAS EVERYTHING, HE IS
19 WELCOME TO GO THROUGH THE FACT SECTION OF MY
20 FILE. WE HAVE NOT RESEARCHED THESE ISSUES.
21 ANY CRIMINAL FILES WHICH WE HAVE ON ANY OF
22 THE VICTIMS ARE CLOSED PUBLIC RECORD AND BY
23 REQUEST OF MR. VOSE OF OUR OFFICE,
24 MR. LEINSTER CAN HAVE ACCESS TO ANY OF THOSE
25 WHICH ARE PUBLIC RECORDS.

1 THE COURT: ARE YOU TALKING ABOUT
2 VICTIMS RECORDS?

3 MR. ASHTON: NO, NO. IF OUR VICTIMS
4 HAD HAD PRIOR ARRESTS OR CASES WHERE WE
5 PROSECUTED, THEY WOULD AND THEY ARE CLOSED.
6 THOSE WOULD BE PUBLIC RECORD AND HE CAN HAVE
7 THOSE.

8 THE COURT: THOSE WOULD BE IN THE
9 CLERK'S OFFICE, TOO?

10 MR. ASHTON: RIGHT.

11 THE COURT: THERE WAS SOMETHING THAT I
12 READ THAT HAD THE CASES OF THE VICTIM.
13 SOMETHING IN HIS FILE HAD SOME CASE NUMBERS
14 IN IT.

15 MR. ASHTON: YEAH, THERE PROBABLY IS A
16 MOTION TO WITHDRAW BY THE PUBLIC DEFENDER'S
17 OFFICE THAT MENTIONED SOME CASE NUMBERS ON
18 THE VICTIM.

19 IF MR. LEINSTER WANTED TO REQUEST OF
20 MR. VOSE, I'M SURE HE CAN HAVE THOSE FILES.
21 I DO NOT HAVE POSSESSION OF THOSE MYSELF.

22 THE COURT: MR. LEINSTER, HAVE YOU READ
23 THE MOTION TO WITHDRAW BY THE P. D.'S
24 OFFICE, WHERE THEY TALK ABOUT JOHNNY ALBERT
25 LEE'S, ONE, TWO, THREE FELONIES, AND MOST IS

1 WILLIAMS, FOUR FELONY CASES?

2 MR. LEINSTER: YES.

3 THE COURT: IS THE STATE AWARE OF
4 ANYTHING ELSE?

5 MR. ASHTON: NO, YOUR HONOR, I'M NOT.
6 SO THAT THE KNOWLEDGE OF THE ENTIRE STATE
7 ATTORNEY'S OFFICE IS NOT IMPUGNED TO ME I
8 HAVE NOT SEARCHED OUR COMPUTER TO DETERMINE
9 IF ANYTHING ELSE EXISTED. THEY WOULD BE A
10 MATTER OF PUBLIC RECORD. I PERSONALLY DO
11 NOT KNOW OF ANYTHING ELSE.

12 THE COURT: I THINK YOU HAVE ACCESS TO
13 THE SCREEN. DON'T THEY STILL HAVE A SCREEN
14 IN THERE AND YOU JUST CALL UP THE PERSON'S
15 NAME AND IT LISTS ALL THE CASES IN THE
16 CLERK'S OFFICE?

17 MR. ASHTON: CAN YOU DO IT BY
18 MICROFICHE.

19 MR. LEINSTER: ACTUALLY, THE RELEVANCE
20 OF ANY OF THE VICTIMS' PROPENSITY TOWARDS
21 VIOLENCE BECOMES AN ISSUE ONLY IF KNOWN BY
22 THE DEFENDANT AND HAS SOME BEARING ON HIS
23 REACTIONS AT THE TIME. THAT'S MY PROBLEM.

24 THE COURT: ONLY YOU WOULD KNOW THAT.

25 MR. LEINSTER: THAT'S RIGHT.

1 THE COURT: THE STATE HAS SAID THAT YOU
2 COULD SEE THEIR FILES, AND IF YOU WANT TO
3 SEE FILES ON VICTIMS, YOU ARE WELCOME TO SEE
4 THOSE IN THE STATE ATTORNEY'S OFFICE, AND
5 YOU ALSO HAVE ACCESS TO THE CLERK'S OFFICE.
6 YOU WANTED THINGS LIKE EMPLOYMENT -- I DON'T
7 KNOW WHAT THAT WAS, EMPLOYMENT HISTORY OF
8 WHO, THE VICTIM --

9 MR. LEINSTER: I'M NOT CONCERNED ABOUT
10 THAT.

11 THE COURT: WERE YOU ASKING FOR MEDICAL
12 HISTORY AND EMPLOYMENT HISTORY OF THE
13 DEFENDANT AND PSYCHOLOGICAL RECORDS?

14 MR. ASHTON: ANYTHING WE WOULD HAVE
15 ALONG THAT LINE WE WOULD HAVE ALREADY
16 PRESENTED, BUT HE'S WELCOME TO LOOK THROUGH
17 EVER FACT SECTION OF MY FILES.

18 THE COURT: ANY EVIDENCE REGARDING
19 ALCOHOL AND DRUG ABUSE.

20 MR. ASHTON: SAME THING, AND I BELIEVE
21 THAT MR. WINDOM HAS OR HAD A PENDING DRUG
22 TRAFFICKING -- IT'S IN FEDERAL COURT NOW.
23 WE MAY HAVE A FILE ON THAT, BUT IT WOULD BE
24 A PENDING CASE. BUT THAT WOULD NOT BE
25 AVAILABLE IN PUBLIC RECORDS -- I HAVE NOT

1 LOOKED AT IT.

2 MR. LEINSTER: I'M NOT FAMILIAR WITH
3 A PENDING TRAFFICKING CASE.

4 THE COURT: IF YOU HAVE SUCH A THING,
5 YOU NEED TO TALK TO YOUR LAWYER ABOUT IT.

6 HOW MANY TIMES HAVE YOU SEEN YOUR
7 LAWYER, MR. WINDOM?

8 THE DEFENDANT: TWICE.

9 MR. LEINSTER: ABOUT FOUR TIMES SINCE
10 WE LAST SPOKE.

11 THE COURT: HAVE YOU SEEN HIM ABOUT
12 FOUR TIMES THEN?

13 THE DEFENDANT: SINCE WE LAST SPOKE --
14 I JUST REMEMBER TWO TIMES.

15 THE COURT: IS THERE ANYTHING ELSE YOU
16 NEED TO TELL HIM? DON'T TELL ME ABOUT IT.
17 BUT IS THERE ANY TIME YOU NEED TO SEE HIM?

18 HAVE YOU SEEN HIM ENOUGH TO TELL HIM
19 EXACTLY WHAT YOUR DEFENSES ARE AND DISCUSS
20 YOUR CASES WITH HIM?

21 THE DEFENDANT: I DON'T KNOW WHAT --

22 MR. LEINSTER: I WOULD ASSUME THAT HE
23 NOT BE TALKING ABOUT --

24 THE COURT: I JUST WANT TO MAKE SURE
25 THAT HE'S SATISFIED WITH THE REPRESENTATION

1 SO FAR.

2 ARE YOU?

3 THE DEFENDANT: YEAH.

4 THE COURT: OKAY.

5 DO YOU NEED TO SEE MR. LEINSTER ANOTHER
6 TIME, BECAUSE YOUR TRIAL IS COMING UP THE
7 24TH?

8 THE DEFENDANT: WELL, I THINK SO,
9 BECAUSE WHEN YOU ARE SAYING --

10 THE COURT: DON'T TELL ME ANY FACTS
11 NOW.

12 THE DEFENDANT: I THINK SO.

13 THE COURT: YOU THINK YOU'VE SEEN HIM
14 ENOUGH?

15 THE DEFENDANT: I THINK --

16 MR. LEINSTER: I WILL BE SEEING HIM
17 AGAIN.

18 THE COURT: LET ME SAY IT THIS WAY: IF
19 THERE'S ANYTHING ELSE YOU'VE THOUGHT OF THAT
20 YOU HAVEN'T TOLD MR. LEINSTER OR YOU HAVE
21 TOLD HIM AND YOU DON'T THINK THAT HE'S DONE
22 WHAT HE NEEDS TO DO ON IT, FOR GOD SAKES.
23 TELL US NOW THAT THERE IS SUCH A THING.

24 THE DEFENDANT: I JUST FEEL LIKE WE
25 NEED TO TALK AGAIN BEFORE TRIAL.

1 THE COURT: BEFORE YOU LEAVE THIS AREA
2 WE WILL LET YOU ALL -- YOU NEED TO TALK WITH
3 HIM IN THE HOLDING CELL.

4 MR. LEINSTER: I CAN SPEND A LOT BETTER
5 TIME WITH HIM AT THE JAIL.

6 WHILE WE ARE ON THE RECORD, BECAUSE
7 HERE'S MY PROBLEM, IN PUTTING SOME OF THIS
8 TOGETHER, HIS SISTER, GLORIA, IS THE ONE WHO
9 HAS KIND OF SPEARHEADED WHATEVER COORDINATED
10 EFFORT THERE IS OUT IN WINTER GARDEN TO
11 PROVIDE WITNESSES, NOT SO MUCH TO THE
12 EVENTS. BECAUSE THE EVENTS ARE PROBABLY NOT
13 PARTICULARLY QUESTIONABLE FACTUALLY, BUT I
14 HAVE TOLD MR. WINDOM AND HIS SISTER THAT I
15 DON'T KNOW EVERYBODY IN WINTER GARDEN THAT
16 HAS KNOWN CURTIS. BUT I WOULD LIKE TO HAVE
17 AS MANY WARM BODIES THAT I CAN GET TO SAY
18 SOMETHING NICE ABOUT HIM, ANYONE IN THE
19 COMMUNITY THAT IT IS NOT STAMPED BANK ROBBER
20 ON THEM. THAT WOULD COME IN AND SAY THAT
21 CURTIS IS NOT THAT KIND OF GUY THAT IS GOING
22 TO BE SHOWN IN COURT AT THIS TRIAL, AND
23 WE'VE GOT TO TRICKLE IN.

24 I HAD. AT ONE POINT, FOUR PEOPLE COME
25 TO MY OFFICE TOGETHER AND ALL OF THEM WERE

1 QUITE ENTHUSIASTIC ABOUT COMING TO HIS
2 RESCUE. WE PUT ALL THESE PEOPLE ON A
3 WITNESS LIST. THAT WAS HAND-DELIVERED FOUR
4 DAYS AGO, BUT JEFF SAYS HE HASN'T GOTTEN IT
5 THROUGH HIS SYSTEM, YET.

6 THE COURT: I HAD SOMETHING THAT SHOWED
7 ABOUT NINE WITNESSES. I THINK IT WASN'T
8 FILED UNTIL AUGUST THE 10TH.

9 MR. ASHTON: WE RECEIVED A NUMBER OF
10 PLEADINGS FROM MR. LEINSTER ON AUGUST THE
11 10TH BY HAND-DELIVERY, BUT THIS WAS NOT ON
12 IT.

13 IF THESE ARE MERELY PENALTY PHASE
14 WITNESSES, AND THAT IS AN ABSOLUTE
15 GUARANTEE, I DON'T CARE IF I'VE HAD A CHANCE
16 TO TALK TO THEM BEFORE THE GUILT PHASE. IF
17 THEY AREN'T, I OBVIOUSLY NEED TO DEPOSE
18 THEM, TOO.

19 THERE IS ALSO -- I WANT TO JUST DISCUSS
20 THE TRIAL, BECAUSE AS I INDICATED YESTERDAY
21 TO YOU, I HAVE JUST YESTERDAY BEEN PUT IN A
22 CONFLICT SITUATION WITH JUDGE WHITE WITH HER
23 HAVING RECESSED A TRIAL THAT WAS IN
24 PROGRESS. RECESSED IT YESTERDAY FOR TEN DAYS
25 TO COMMENCE AND BE COMPLETED ON THE 24TH,

1 WHICH WOULD BE COMPLETED ON THE 24TH. SHE
2 INDICATED A DESIRE TO HAVE PENALTY PHASE
3 THEREAFTER, WHICH WOULD BE COMPLETED ON THE
4 25TH.

5 YOU SUGGESTED THAT I MOVE TO CONTINUE
6 THAT CASE. I THOUGHT A LOT ABOUT THAT SINCE
7 THEN, AND I HONESTLY DON'T THINK THAT THAT'S
8 IN THE BEST INTEREST OF THE STATE TO DO
9 THAT, BUT WHAT I AM GOING TO DO IS TO FILE A
10 NOTICE OF CONFLICT WITH JUDGE WHITE IN THAT
11 CASE AND IN THIS CASE, AND KIND OF JUST NOT
12 MOVE TO CONTINUE IT, BUT JUST NOTIFY HER OF
13 THE CONFLICT AND SEE WHAT WE CAN WORK OUT.
14 I KNOW YOU SET A WEEK ASIDE, AND I DON'T
15 WANT TO WASTE ANY PART OF THAT.

16 THE COURT: I HAVE SET THE WHOLE WEEK
17 ASIDE. NOTHING IS SET. IT'S BEEN SET SINCE
18 MAY. IN FACT, WE ALL HAD A DISCUSSION AND
19 WE ALL AGREED ON THIS DATE, AND I SET IT
20 OFF.

21 I SAID LEINSTER HOW LONG DO YOU NEED,
22 ASHTON. HOW LONG DO YOU NEED, NEED 30, 60 OR
23 90 DAYS, OR WHATEVER IT WAS, AND WE ALL
24 AGREED ON THIS DATE.

25 MR. ASHTON: AS I INDICATED YESTERDAY,

1 SHE PICKED THE DATE WITHOUT ASKING ANYBODY.
2 SHE JUST PICKED IT.

3 THE COURT: DIDN'T YOU SAY JUDGE I GOT
4 A PROBLEM WITH THAT?

5 MR. ASHTON: WHEN SHE BLURTED OUT THE
6 DATE, IT DIDN'T IMMEDIATELY JUMP IN MY MIND
7 THAT IT IS A CONFLICT.

8 THE COURT: I AM PROBABLY GOING TO SEE
9 HER TODAY AT LUNCH TIME.

10 DOES ANYBODY HAVE ANY OBJECTION TO MY
11 ASKING HER -- WE GOT TO RESOLVE THIS.

12 MR. ASHTON: I WISH YOU WOULD. I WOULD
13 FEEL MUCH MORE COMFORTABLE WITH YOU
14 RESOLVING IT WITH HER THAN ME. IF IT
15 WEREN'T THE FACT THAT IT WAS A TRIAL THAT IS
16 IN THE MIDDLE, I WOULD GO AHEAD AND MOVE TO
17 CONTINUE IT, BUT SINCE IT'S IN THE MIDDLE OF
18 A TRIAL --

19 THE COURT: WE HAVE ABOUT 30 WITNESSES
20 IN THIS CASE. THIS CASE DOESN'T GET BETTER
21 WITH AGE. IN FACT, IT'S PROBABLY ONE THAT
22 GETS WORSE, MORE SO THAN MOST.

23 WE HAVE SET THIS DATE, WE HAD IT A LONG
24 TIME AGO, AND, FRANKLY, I THINK IT'S
25 IMPORTANT TO GET THIS ONE DONE, TOO.

1 IS YOUR OTHER CASE GOING TO GO BEYOND
2 THE 24TH?

3 MR. ASHTON: NO -- WELL, WE HAVE TWO
4 MORE WITNESSES TO PRESENT. THE GUILT PHASE
5 WILL BE OVER ON THE 24TH.

6 THE PENALTY PHASE, SHE SAID SHE WANTED
7 TO DID IT RIGHT AFTER. THAT'S PROBABLY
8 FLEXIBLE, WHEN THAT'S DONE. THAT WILL BE A
9 ONE-DAY THING. SO EVEN IF SHE DOES BOTH, I
10 WILL BE DONE BY WEDNESDAY.

11 THE COURT: HOW LONG DO YOU ALL
12 ANTICIPATE THIS TRIAL WILL TAKE?

13 MR. LEINSTER: A WEEK.

14 THE COURT: A WHOLE WEEK?

15 MR. ASHTON: FIVE DAYS, YEAH. JURY
16 SELECTION IS GOING TO BE A BIG FACTOR IN HOW
17 LONG THAT TAKES. SOMETIMES IT TAKES A DAY,
18 SOMETIMES IT TAKES TWO.

19 ONCE THE CASE HAS STARTED TO BE
20 PRESENTED, THERE ARE A LOT OF WITNESSES, BUT
21 WE'RE NOT GOING TO CALL THEM ALL.

22 MY GUESS IS, THE STATE'S CASE WILL TAKE
23 TWO DAYS.

24 THE COURT: THE DEFENSE CASE?

25 MR. LEINSTER: NOT VERY LONG.

1 THE COURT: WHAT ABOUT THIS -- GO
2 AHEAD.

3 MR. LEINSTER: I WOULD THINK LESS THAN
4 HALF A DAY.

5 THE COURT: SO THAT'S TWO AND A HALF
6 DAYS.

7 WHAT ELSE HAVE WE GOT, CLOSINGS, JURY
8 SELECTION --

9 MR. ASHTON: WE MIGHT ZIP IT IN
10 QUICKER --

11 THE COURT: WHAT ABOUT THIS: I TALK TO
12 JUDGE WHITE TODAY, AND I WOULD BE WILLING TO
13 SAY, ON THE 24TH ARE YOU GOING TO FINISH THE
14 TRIAL AND YOU CAN GUARANTEE YOU ARE GOING TO
15 FINISH IT ON THE 24TH, THEN WE CAN START
16 THIS ONE ON THE 25TH AND IF WE HAVE TO GO
17 INTO SATURDAY, WE HAVE TO GO INTO SATURDAY.
18 THEN SHE HAS TO PUT OFF HER PENALTY PHASE?

19 MR. ASHTON: THAT WOULD BE FINE WITH
20 ME. I WOULD PREFER TO GET IT DONE RIGHT
21 AWAY, BUT I WOULD RATHER ACCOMMODATE IT THIS
22 WAY.

23 THE COURT: IS THAT REASONABLE FOR YOU
24 TOO?

25 MR. LEINSTER: THAT'S FINE. I WILL

1 WORK WITH YOUR SCHEDULE.

2 THE COURT: IT'S NOT MY SCHEDULE YOU
3 ARE WORKING WITH.

4 MR. LEINSTER: IF YOU START INTO A
5 SATURDAY, YOU ARE NOT WORKING ON MY
6 SCHEDULE.

7 THE COURT: MINE EITHER. I DON'T LIKE
8 TO WORK ON SATURDAY.

9 MR. LEINSTER: YOU ARE THE JUDGE AND WE
10 DON'T HAVE TO WORK ON SATURDAY.

11 THE COURT: I DON'T WANT TO GO INTO THE
12 NEXT WEEK TRYING THIS CASE WHEN I'VE GOT 100
13 SET.

14 MR. LEINSTER: WHEN YOU SAY TRYING THIS
15 CASE, ARE WE DOING THE PENALTY PHASE RIGHT
16 AFTER?

17 THE COURT: I DON'T MIND DOING IT RIGHT
18 AFTER, BUT I DON'T MIND PUTTING IT OFF A
19 WEEK --

20 MR. LEINSTER: I DON'T THINK THE TRIAL
21 WILL TAKE FIVE DAYS, NOT COUNTING THE
22 PENALTY PHASE.

23 THE COURT: ANYBODY GOT A PROBLEM DOING
24 IT --

25 MR. LEINSTER: I WOULD LIKE TO PUT IT

1 OFF FOR A WEEK.

2 MR. ASHTON: THERE ARE DEFENSE
3 WITNESSES FOR PENALTY PHASE. THAT WILL BE
4 GOOD.

5 THE COURT: HIS WITNESS LIST CAME IN ON
6 AUGUST 11TH AND THERE ARE NINE WITNESSES ON
7 IT.

8 HAVE YOU GOTTEN A COPY YET?

9 MR. ASHTON: NO.

10 I'M LOOKING AT ONE RIGHT NOW.

11 THE COURT: ARE THEY GUILT OR PENALTY
12 PHASE?

13 MR. LEINSTER: PENALTY.

14 THE COURT: ALL RIGHT.

15 MR. LEINSTER: IF ANYTHING COMES UP, I
16 WILL LET MR. ASHTON KNOW. THE REASON I SAID
17 IT IN OPEN COURT FOR THE BENEFIT OF
18 MR. WINDOM, THIS IS NOT THE FIRST TIME I
19 SAID THIS TO MR. WINDOM, BUT GLORIA NEEDS TO
20 GET THESE PEOPLE IN. AND SHE SAYS SHE WILL.
21 SHE WILL TELL ME SHE WILL BE THIS ON A
22 WEDNESDAY, ON A FRIDAY.

23 IN FACT SHE IS SUPPOSED TO BE IN TODAY
24 TO LOOK AT HIS VIDEO TAPE, AND THEN SHE IF
25 SHE DOESN'T SHOW UP, I CAN'T GO OUT TO

1 WINTER GARDEN AND KNOCK ON DOORS. I DON'T
2 KNOW THESE FOLKS, SO I NEED GLORIA'S HELP IN
3 THIS, CURTIS.

4 THE DEFENDANT: ALL RIGHT.

5 MR. LEINSTER: WHEN YOU TALK TO GLORIA,
6 YOU TELL HER MY OFFICE IS OPEN FROM 9:00 TIL
7 6:00 AND MY PHONE ROTATES TO THE HOUSE AFTER
8 HOURS, AND THEY CAN CALL ME ALL NIGHT LONG.

9 THERE IS NOTHING STANDING IN THE WAY OF
10 ANYBODY REACHING ME THAT WANTS TO SAY
11 SOMETHING IN THIS CASE.

12 THE COURT: CURTIS, THIS IS AN
13 EXTREMELY IMPORTANT CASE, MORE SO TO YOU
14 THAN ANYONE. IF YOU CAN GET YOUR WITNESSES
15 TO TALK TO YOUR LAWYER, IT WOULD CERTAINLY
16 BE TO YOUR ADVANTAGE.

17 THE DEFENDANT: I WILL TRY TO MAKE
18 PHONE CALLS TODAY AND SEE WHAT WE NEED TO
19 DO.

20 THE COURT: OKAY.

21 YOU HAD ANOTHER MOTION TO SEVER, FILED
22 ON APRIL THE 8TH. I DON'T THINK WE HEARD
23 THAT.

24 MR. LEINSTER: NO. WE DIDN'T. I WENT
25 THROUGH THE BUNDY CASE, AND SO I NEVER

1 CALLED IT BACK UP.

2 THE COURT: ARE YOU WITHDRAWING THAT
3 MOTION?

4 MR. LEINSTER: YES.

5 THE COURT: LET ME SEE WHAT ELSE WE
6 HAVE.

7 YOU HAD TWO THAT RELATED TO JURORS.
8 YOU'RE CANCELING OUT BOTH OF THOSE?

9 MOTION FOR LIST OF PROSPECTIVE JURORS
10 IN ADVANCE OF TRIAL.

11 MR. LEINSTER: FORGET IT.

12 THE COURT: THE OTHER ONE WAS THE
13 ADDRESSES WITHIN TEN DAYS.

14 MR. LEINSTER: FORGET IT.

15 THE COURT: THE STATE IS GOING TO
16 COOPERATE. IF HE HAS PROBLEMS GETTING HIS
17 PEOPLE IN -- YOUR PEOPLE IN.

18 MR. ASHTON: TO THE EXTENT THAT I CAN.

19 ONE SUGGESTION I WAS GOING TO MAKE IS
20 THAT WE SET THE DEPOSITIONS AT THE BRANCH
21 COURTHOUSE OUT IN OCOEE.

22 THE COURT: IS THAT OKAY?

23 MR. LEINSTER: WE WILL DO THAT.

24 MR. ASHTON: I THINK WE WILL GET A
25 BETTER RESPONSE WHEN WE ARE OUT THERE CLOSER

1 TO WHERE THESE PEOPLE LIVE.

2 THE COURT: YOU HAVE ALREADY TOLD THEM
3 TO BE A CERTAIN PLACE.

4 MR. LEINSTER: ACCORDING TO JEAN, YES.
5 I'M SURE WE CAN COORDINATE THAT TO CHANGE
6 THEM OVER.

7 MR. ASHTON: IF THEY'VE BEEN
8 SUBPOENAED, PROBABLY NOT.

9 MR. LEINSTER: MY POINT IS, I DON'T
10 CARE.

11 THE COURT: IT SOUND LIKE WINTER GARDEN
12 IS THE PLACE TO DO IT, ONLY BECAUSE THAT'S
13 WHERE THE WITNESSES ARE. SOME MAY OR MAY
14 NOT HAVE TRANSPORTATION, BUT TO THE EXTENT
15 THAT YOU ALL CAN WORK IT OUT AND HAVE IT
16 WHEREVER YOU NEED TO HAVE IT, THAT'S FINE.

17 IF HE'S HAVING TROUBLE GETTING CERTAIN
18 WITNESSES, LET MR. ASHTON KNOW AND, PERHAPS,
19 HE CAN GET AHOLD OF THEM. I NOTICE THAT ONE
20 OR TWO OF THEM WERE NOT SERVED AND MOVED TO
21 MIAMI OR THE ADDRESS DOESN'T EXIST OR
22 SOMETHING LIKE THAT FOR YOUR SENTENCE.

23 MR. ASHTON: YEAH. WE'VE LOST A FEW AND
24 A FEW HAVE BEEN ARRESTED.

25 THE COURT: HALF THE TOWN HAVE BEEN

1 ARRESTED THIS WEEK.

2 MR. ASHTON: ONLY TWO OR THREE OF THEM
3 WERE WITNESSES --

4 THE COURT: WAS THIS FOR THE STATE OR
5 DEFENSE?

6 MR. ASHTON: FOR THE STATE.

7 THE COURT: NONE OF THE DEFENSE
8 WITNESSES WERE ARRESTED.

9 MR. LEINSTER: I DON'T THINK, BUT I
10 REALLY DON'T KNOW. MAYBE SOME POTENTIAL
11 DEFENSE WITNESSES WERE ARRESTED.

12 THE COURT: THAT'S IT FOR THAT CASE.
13 AS TO THIS CASE YOU ARE EXCUSED.

14 MR. ASHTON: IF YOU CAN MAKE A COPY.
15 THAT'S THE ONLY ONE I HAVE.

16 (WHEREUPON, FURTHER DISCUSSION AT THE
17 BENCH WAS HAD OFF THE RECORD, AFTER WHICH
18 THE PROCEEDINGS WERE CONCLUDED)

19

20

21

22

23

24

25

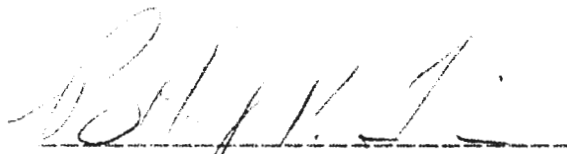
C E R T I F I C A T E

STATE OF FLORIDA:

COUNTY OR ORANGE:

I, BOBBY V. TIMMS, OFFICIAL COURT
REPORTER OF THE NINTH JUDICIAL CIRCUIT OF
FLORIDA, DO HEREBY CERTIFY PURSUANT TO
FLORIDA STATUTE 29, THAT I WAS AUTHORIZED TO
AND DID REPORT IN STENOGRAPHIC SHORTHAND THE
FOREGOING PROCEEDINGS, AND THAT THEREAFTER
MY STENOGRAPH SHORTHAND NOTES WERE
TRANSCRIBED TO TYPEWRITTEN FORM BY THE
PROCESS OF COMPUTER-AIDED TRANSCRIPTION, AND
THAT THE FOREGOING PAGES CONTAIN A TRUE AND
CORRECT TRANSCRIPTION OF MY SHORTHAND NOTES
TAKEN THEREIN.

WITNESS MY HAND THIS 30TH DAY OF JUNE,
1993, IN THE CITY OF ORLANDO, COUNTY OF
ORANGE. STATE OF FLORIDA.


BOBBY V. TIMMS, RPR-CP

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN
AND FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305
Division 11
Supreme Court Case: 80,830

CURTIS WINDOM,
Defendant/Appellant,
vs.
STATE OF FLORIDA,
Plaintiff/Appellee.

CLERK OF DISTRICT COURT
ORANGE COUNTY, FL
JUL 31 AM 10:03
DIVISION 11

A F F I D A V I T

I, SARAH E. LIGHTSEY, Registered Professional
Reporter, Notary Public, State of Florida at Large,

DO HEREBY CERTIFY that after a thorough search of my
stenographic shorthand notes in the above-styled action, I
could find no notes taken by me in this case on
November 6, 1992, before the Honorable Dorothy Russell,
Circuit Judge.

IN WITNESS WHEREOF, I have hereunto affixed my
official signature this 1st day of September, 1993, at
Orlando, Florida.

Sarah E. Lightsey RPR
Sarah E. Lightsey, RPR
Official Court Reporter
Ninth Judicial Circuit

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

INFORMATION FOR:

STATE OF FLORIDA

MURDER IN THE FIRST DEGREE
(3 counts)
ATTEMPT TO COMMIT MURDER IN THE
FIRST DEGREE

Plaintiff,

-vs-

CURTIS WINDOM

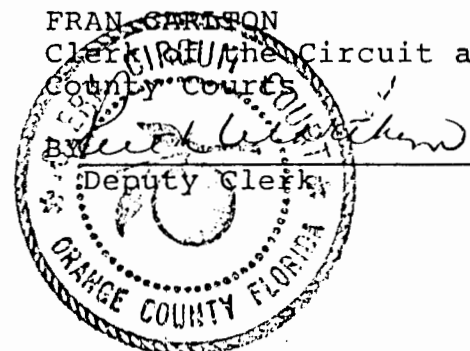
Defendant,

AFFIDAVIT

After a careful and complete search of the Court file, it appears
that no Copies of two video tapes which were introduced at the Trial

is contained in it.

Dated this 7 day of September, 19 93.



IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

INFORMATION FOR:

STATE OF FLORIDA

MURDER IN THE FIRST DEGREE
(3 counts)
ATTEMPT TO COMMIT MURDER
IN THE FIRST DEGREE

Plaintiff,

-vs-

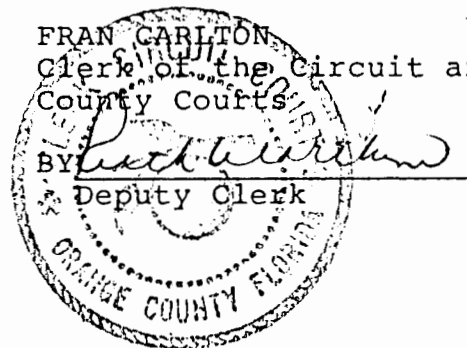
CURTIS WINDOM

Defendant,

AFFIDAVIT

After a careful and complete search of the Court file, it appears
that no Copies of the two statements introduced by the State at the
November 5, 1992 hearing regarding mitigation
is contained in it.

Dated this 7 day of September, 19 93.



IN THE CIRCUIT COURT, NINTH
JUDICIAL CIRCUIT, IN AND FOR
ORANGE COUNTY, FLORIDA

CURTIS WINDOM,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

Circuit Case No. CR-92-1305

Supreme Court Case No. 80,830

SUPPLEMENTAL DIRECTIONS TO THE CLERK

The Clerk of the above-styled court is directed to prepare and transmit to the Appellate Court a supplemental record on appeal in the above-styled cause in accordance with the applicable provision of the Florida Appellate Rules.

The clerk is requested to include within the supplemental record the following:

1. the transcript of the hearing held on August 14, 1992, on Appellant's motion to suppress wherein other motions were considered including a motion to appoint experts and a motion to transcribe a videotape;
2. the transcript of the hearing on November 5, 1992, in which the court heard the testimony of five witnesses regarding mitigating factors;
3. the transcript of the legal argument held November 6, 1992 (if in fact a hearing was held);

FILED IN OFFICE
CRIM. DIVISION
1993 JUL 30 PM 1:55
CLERK OF CIRCUIT COURT
ORANGE COUNTY, FLA.

4. copies of the two video cassette tapes which were introduced at trial (one by the State and one by the defense);

5. the composite search warrant which was introduced as evidence at the suppression hearing;

6. the transcript of the status hearing held May 13, 1992, at 4:40 p.m.;

7. the transcript of the hearing held on May 29, 1992, at 9:12 a.m., regarding a motion to declare Windom insolvent for the purpose of costs;

8. the transcript of the status hearing held August 24, 1992, at 3:00 p.m., where Windom waived his presence for part of the trial;

9. copies of the two statements introduced by the State at the November 5, 1992, hearing regarding mitigation;

10. the supplemental directions to the clerk and supplemental designation to the court reporter.

Respectfully submitted,



CHRISTOPHER S. QUARLES
ASSISTANT PUBLIC DEFENDER
CHIEF, CAPITAL APPEALS
Florida Bar No. 0294632
112 Orange Ave., Suite A
Daytona Beach, FL 32114
(904) 252-3367

COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, Attorney General, 210 N. Palmetto Avenue, Suite 447, Daytona Beach, FL 32114 via his basket at the Fifth District Court of Appeal and mailed to: Ms. Ruth Wortham, Appeal Clerk, Room 153, 65 East Central Avenue, Orlando, FL 32801; and to Mr. Curtis Windom, #368527 (45-1277), P.O. Box 221, Raiford, FL 32083, this 28th day of July, 1993.



CHRISTOPHER S. QUARLES
ASSISTANT PUBLIC DEFENDER

Supreme Court of Florida

MONDAY, JUNE 28, 1993

RECEIVED

JUN 30 1993

PUBLIC DEFENDER'S OFFICE
7th CIR. APP. DIV.

CURTIS WINDOM,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. 80,830

Circuit Court No. CR92-1305
(Orange)

* * * * *

Appellant's Motion to Supplement Record and Separate Request to Toll the Time filed in the above cause is granted and the trial court clerk is hereby directed to supplement the record on appeal with the following:

1. Transcript of the hearing held August 14, 1992, on Appellant's motion to suppress wherein other motions were considered including a motion to appoint experts and a motion to transcribe a videotape.
2. Transcript of the hearing on November 5, 1992, in which the court heard the testimony of five witnesses regarding mitigating factors.
3. Transcript of the legal argument held November 6, 1992 (if in fact a hearing was held).
4. Copies of the two video cassette tapes which were introduced at trial (one by the State and one by the defense).
5. Composite search warrant which was introduced as evidence at the suppression hearing.
6. Transcript of the status hearing held May 13, 1992, at 4:40 p.m.
7. Transcript of the hearing held on May 29, 1992, at 9:12 a.m., regarding a motion to declare Windom insolvent for the purpose of costs.

8. Transcript of the status hearing held August 24, 1992, at 3:00 p.m., where Windom waived his presence for part of the trial.

9. Copies of the two statements introduced by the State at the November 5, 1992, hearing regarding mitigation.

Appellant shall have forty (40) days after receipt of the above supplemental record in which to serve the initial brief.

A True



Sid J. White
Clerk, Supreme Court

TC

cc: Hon. Fran Carlton, Clerk
Mr. Christopher S. Quarles
Ms. Kellie Nielan
Official Court Reporter's Ofc.

IN THE CIRCUIT COURT, NINTH
JUDICIAL CIRCUIT, IN AND FOR
ORANGE COUNTY, FLORIDA

CURTIS WINDOM,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

CIRCUIT CASE NO. CR-92-1305

SUPREME COURT CASE NO. 80,830

SUPPLEMENTAL DESIGNATION TO THE COURT REPORTER

TO: Official Court Reporter's Office
Room 1000
37 North Orange Avenue
Orlando, FL 32801

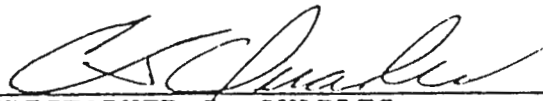
You will please transcribe and file with the clerk of
the court the following, in triplicate:

1. the transcript of the hearing held on August 14,
1992, on Appellant's motion to suppress wherein other motions
were considered including a motion to appoint experts and a
motion to transcribe a videotape;
2. the transcript of the hearing on November 5, 1992,
in which the court heard the testimony of five witnesses
regarding mitigating factors;
3. the transcript of the legal argument held November
6, 1992 (if in fact a hearing was held);
4. the transcript of the status hearing held May 13,
1992, at 4:40 p.m.;
5. the transcript of the hearing held on May 29, 1992,
at 9:12 a.m., regarding a motion to declare Windom insolvent for
the purpose of costs;

FILED IN OFFICE
CRIMINAL DIVISION
1993 JUL 30 PM 1:55
CLERK OF CIRCUIT COURT
ORANGE COUNTY, FL.

6. the transcript of the status hearing held August 24, 1992, at 3:00 p.m., where Windom waived his presence for part of the trial.

Respectfully submitted,




CHRISTOPHER S. QUARLES
ASSISTANT PUBLIC DEFENDER
CHIEF, CAPITAL APPEALS
Florida Bar No. 0294632
112 Orange Ave., Suite A
Daytona Beach, FL 32114
(904) 252-3367

COUNSEL FOR APPELLEANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, Attorney General, 210 N. Palmetto Avenue, Suite 447, Daytona Beach, FL 32114 via his basket at the Fifth District Court of Appeal and mailed to: Ms. Ruth Wortham, Appeal Clerk, Room 153, 65 East Central Avenue, Orlando, FL 32801; Official Court Reporter's Office, Room 1000, 37 North Orange Avenue, Orlando, FL 32801; and to Mr. Curtis Windom, #368527 (45-1277), P.O. Box 221, Raiford, FL 32083, this 28th day of July, 1993.



CHRISTOPHER S. QUARLES
ASSISTANT PUBLIC DEFENDER

ACKNOWLEDGEMENT

1. The foregoing designation was served on July 28, 1993, and received on _____, 1993.

2. Satisfactory financial arrangements have been made for payment of the transcript cost. These financial arrangements were completed by Order filed November 25, 1992.

3. Number of Trial or hearing days: _____.

4. Estimated number of transcript pages: _____.

5. Transcript will be completed on _____, 1993 or an extension of time is needed until _____, 1993.

DATE: _____

Court Reporter

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this acknowledgement (with counsel's designation attached) has been furnished this _____ day of _____, 1993 to the Honorable Frank Habershaw, Clerk, Fifth District Court of Appeal, 300 S. Beach Street, Daytona Beach, FL 32114 and to the following counsel at the address indicated: Office of the Public Defender, Appellate Division, 112 Orange Ave., Suite A, Daytona Beach, FL 32114 and Honorable Robert A. Butterworth, Attorney General, 210 N. Palmetto Avenue, Suite 447, Daytona Beach, FL 32114.

Court Reporter

Supreme Court of Florida

MONDAY, JUNE 28, 1995

RECEIVED

JUN 30 1995

PUBLIC DEFENDER'S OFFICE
7th CIR. APP. DIV.

CURTIS WINDOM,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. 80,830

Circuit Court No. CR92-1305
(Orange)

* * * * *

Appellant's Motion to Supplement Record and Separate Request to Toll the Time filed in the above cause is granted and the trial court clerk is hereby directed to supplement the record on appeal with the following:

- ✓ 1. Transcript of the hearing held August 14, 1992, on Appellant's motion to suppress wherein other motions were considered including a motion to appoint experts and a motion to transcribe a videotape.
- ✓ 2. Transcript of the hearing on November 5, 1992, in which the court heard the testimony of five witnesses regarding mitigating factors.
3. Transcript of the legal argument held November 6, 1992 (if in fact a hearing was held).
4. Copies of the two video cassette tapes which were introduced at trial (one by the State and one by the defense).
- ✓ 5. Composite search warrant which was introduced as evidence at the suppression hearing.
- ✓ 6. Transcript of the status hearing held May 13, 1992, at 4:40 p.m.
- ✓ 7. Transcript of the hearing held on May 29, 1992, at 9:12 a.m., regarding a motion to declare Windom insolvent for the purpose of costs.

8. Transcript of the status hearing held August 24, 1992, at 3:00 p.m., where Windom waived his presence for part of the trial.

9. Copies of the two statements introduced by the State at the November 5, 1992, hearing regarding mitigation.

Appellant shall have forty (40) days after receipt of the above supplemental record in which to serve the initial brief.



Sid J. White
Clerk, Supreme Court

TC

cc: Hon. Fran Carlton, Clerk
Mr. Christopher S. Quarles
Ms. Kellie Nielan
Official Court Reporter's Ofc.

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305

Supreme Court NO: 80,830

STATE OF FLORIDA)
)SS
COUNTY OF ORANGE)

I, FRAN CARLTON, Clerk of the Circuit Court in and for Orange County, Florida,
do hereby certify that the foregoing pages numbered three hundred ninety three
 through five hundred ninety four , inclusive,
contain a correct transcript of the record and judgment in the case of State of
Florida versus Curtis Windom and a true and correct
recital and copy of all papers and proceedings on file in this office that have
directed to be included therein.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the
Circuit Court in and for Orange County, Florida, this 7 day of September, 19 93.

FRAN CARLTON
Clerk of the Circuit Court

BY: *[Signature]*

Deputy Clerk

