

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

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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

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

CASE NO: CR92-1305
SUPREME COURT NO: SC01-2706

INFORMATION FOR:

- 1) FIRST DEGREE MURDER
- 2) FIRST DEGREE MURDER
- 3) FIRST DEGREE MURDER
- 4) ATTEMPTED FIRST DEGREE MURDER

STATE OF FLORIDA

PLAINTIFF,

-vs-

CURTIS WINDHAM

DEFENDANT,

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VOLUME 16
NOVEMBER 1, 2001

COPY OF TRANSCRIPT OF VOLUME 2 OF MOTION FOR POST-
CONVICTION RELIEF HEARING ON JUNE 4-7, 2001

687-883

1 IN THE CIRCUIT COURT, NINTH JUDICIAL CIRCUIT
2 CRIMINAL JUSTICE DIVISION,
3 IN AND FOR ORANGE COUNTY, FLORIDA

4 STATE OF FLORIDA,

5 PLAINTIFF,

6 VS.

CASE NO: CR92-1305_
VOLUME II OF V

7 CURTIS WINDOM

8 DEFENDANT./

9 MOTION FOR POSTCONVICTION RELIEF

10 BEFORE THE HONORABLE

11 STAN STRICKLAND

12 JUNE 4 - 7, 2001

13 REPORTER: SUSAN L. MCGEE, CSR, RPR, RMR
14 ORANGE COUNTY COURTHOUSE
ORLANDO, FLORIDA 32801

15 A P P E A R A N C E S:

16 CHRIS LERNER, ESQUIRE
17 ASSISTANT STATE ATTORNEY
18 415 NORTH ORANGE AVENUE
ORLANDO, FLORIDA 32801
19 APPEARING ON BEHALF OF THE PLAINTIFF

20 BRETT STRAND, ESQUIRE
21 SCOTT MARIO, ESQUIRE
CAPITAL COLLATERAL COUNSEL
22 NORTHERN REGION
P.O. DRAWER 5498
TALLAHASSEE, FLORIDA 32314-5498
23 APPEARING ON BEHALF OF THE DEFENDANT
24
25

ORIGINAL
FILED IN OFFICE
CRIMINAL DIVISION
C. ENGSTRAND
2001 NOV - 1
LYDIA G.
CLERK CIRCUIT
ORANGE CO.

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25

1 **THE COURT:** MR. LERNER, WHENEVER YOU'RE
2 READY.

3 **MR. LERNER:** THANK YOU. I HEARD YOU THIS
4 TIME.

5 **CROSS-EXAMINATION**

6 **BY MR. LERNER:**

7 **Q** DR. BEAVER, JUST BEFORE WE GET STARTED, NOW,
8 HAVE YOU HAD THE OPPORTUNITY TO READ THE FULL, PRETTY
9 MUCH THE FULL TRIAL TRANSCRIPT, INCLUDING THE WITNESSES
10 THAT ARE -- WELL, TO MAKE A LONG STORY SHORT, DID YOU
11 READ, HAVE AN OPPORTUNITY TO READ, LIKE, THE TESTIMONY OF
12 JACK LUCKET AND SOME OF THE OTHER WITNESSES THAT I
13 POINTED OUT TO DR. PINCUS THIS MORNING?

14 **A** YOU KNOW, AT LEAST SOME OF THOSE THINGS I KNOW
15 THAT I HAD LOOKED AT, AND SOME OF THE THINGS THAT YOU
16 MENTIONED HAD ALSO BEEN MENTIONED IN THE STATEMENTS FROM
17 THE -- WHEN THE POLICE DID THEIR INVESTIGATION, AND I
18 HAVE REVIEWED THAT. NOW, WHETHER OR NOT I REVIEWED THE
19 WHOLE -- I DON'T THINK I REVIEWED THE WHOLE TRANSCRIPT,
20 BUT AT LEAST SOME OF THE THINGS THAT YOU WERE TALKING
21 WITH DR. PINCUS ABOUT, YES, I HAD SEEN THOSE THINGS.

22 **Q** OH, HAD YOU HAD AN OPPORTUNITY TO SEE HIS
23 TESTIMONY?

24 **A** YES, I DID.

25 **Q** GOOD. OKAY. SO THAT SHOULD SPEED THINGS

1 ALONG. YOU HEARD ALL THE DIFFERENT PASSAGES I WAS
2 READING FROM THE TRANSCRIPT?

3 A YES, I DID.

4 Q OKAY. WELL, THAT WILL MAKE THINGS A LOT EASIER
5 THEN.

6 WOULDNT YOU SAY THAT IT'S IMPORTANT TO
7 CONSIDER ALL OF THOSE WITNESSES THAT WERE THERE THAT DAY
8 AND ACTUALLY HEARD WHAT MR. WINDOM SAID?

9 A YES.

10 Q AND ONE THING I DIDN'T MENTION WITH DR. PINCUS,
11 DID YOU THINK IT'S IMPORTANT TO CONSIDER THE AFFECT THAT
12 HE DISPLAYED WHEN HE WAS BUYING THE AMMUNITION?

13 A YEAH, COULD BE, YES.

14 Q OKAY. AND IF THE -- WHAT WOULD YOU EXPECT THE
15 AFFECT TO BE?

16 A WELL, THAT'S A GOOD QUESTION.

17 Q BASED ON WHAT HE SAID TO LUCKET?

18 A FAIRLY BLAND.

19 Q THAT'S EXACTLY, YES. SO YOU DO RECALL THOUGH
20 THAT JACK LUCKET DIDN'T MENTION HIM CRYING OR BEING THAT
21 UPSET, BEING ANGRY, BUT NOT EXCEPTIONALLY SO?

22 A RIGHT, THAT'S HOW YOU DISCUSSED IT, YES.

23 Q AND THEN THE STORE CLERK, HE GOES TO THE -- I
24 DON'T REMEMBER WHETHER IT WAS A K-MART OR WAL-MART.

25 A WAL-MART.

1 Q BUYS THE AMMUNITION. THE STORE CLERK DOES NOT
2 RECALL HIM BEING PARTICULARLY UPSET.

3 A CORRECT.

4 Q AND THEN APPARENTLY DURING THIS TIME HE ALSO
5 OBTAINED THE GUN AND LOADED THE GUN AND WENT TO THE PLACE
6 WHERE JOHNNIE LEE WAS?

7 A RIGHT.

8 Q IN HIS CAR?

9 A RIGHT.

10 Q NOW, ALL OF THESE STATEMENTS AND ACTIONS ARE
11 ALSO CONSISTENT, AREN'T THEY, WITH SOMEBODY WHO WANTS TO
12 KILL JOHNNIE LEE BECAUSE HE'S ANGRY AT HIM AND HE WANTS
13 TO KILL HIM?

14 A THEY COULD BE. BUT I THINK THAT, AS I'VE SAID
15 BEFORE, IN LOOKING AT HOW HIS Demeanor AND BEHAVIOR HAD
16 CHANGED IN THAT WEEK, I THINK THAT'S ALSO AN IMPORTANT
17 ELEMENT WHEN YOU BALANCE OUT THOSE THINGS IN LOOKING WHAT
18 OCCURRED.

19 Q WELL, ARE YOU TALKING ABOUT WHEN YOU SAY -- YOU
20 USED THE WORD RATIONAL SEVERAL TIMES.

21 A YES.

22 Q AND I MADE A NOTE TO ASK YOU ABOUT, WHAT IS
23 YOUR DEFINITION OF RATIONAL.

24 A WELL, IT'S USUALLY A LEGAL TERM, NOT
25 NECESSARILY A TERM THAT I WOULD USE DAILY IN MY CLINICAL

1 PRACTICE. RATIONAL, I GUESS I WOULD DEFINE THAT IN TERMS
2 OF HAVING A REASON, UNDERSTANDING OF WHAT YOU'RE DOING,
3 AND THAT MOST OTHER PEOPLE WOULD AGREE THAT THIS WOULD BE
4 A POSSIBLE COURSE OF ACTION GIVEN THE CIRCUMSTANCES.

5 Q OKAY. YOU KNOW, I WONDERED IF YOU MEANT
6 SOMETHING ALONG THOSE LINES. ARE YOU SAYING YOUR
7 DEFINITION OF RATIONAL THEN WOULD FOCUS MORE ON WHAT IS
8 WISE IN THE GREATER SENSE ON A COURSE OF ACTION?

9 A WELL, I THINK THAT BY ADDING THE DESCRIPTION OF
10 WISE, THAT TAKES IT ACTUALLY UP TO ANOTHER LEVEL OF
11 MAKING GOOD DECISIONS. AND THERE'S A DIFFERENCE, I
12 THINK, BETWEEN A RATIONAL DECISION AND A GOOD DECISION.

13 I MAY MAKE A DECISION TO DO SOMETHING AND,
14 FOR EXAMPLE, SOMEBODY WHO KNOWS ME MAY DECIDE THAT --
15 WELL, THEY CAN SEE HOW I MADE THAT DECISION OR CAME TO
16 THAT CONCLUSION, BUT THEY MAY NOT AGREE THAT THAT WAS A
17 GOOD DECISION TO MAKE.

18 Q WELL, IF MR. WINDOM, FOR WHATEVER REASON, WAS
19 SUFFICIENTLY ANGRY AT JOHNNIE LEE THAT HE WANTED TO KILL
20 HIM AND HAD DECIDED THAT HE WANTED TO DO IT IN A WAY THAT
21 WOULD GET HIM IN THE NEWSPAPERS, AS HE TOLD JACK LUCKET,
22 IN A STRICTLY CAUSE AND EFFECT WAY, WHAT HE DID WAS
23 RATIONAL, WASN'T IT, IF THAT WAS HIS GOAL?

24 A WELL, I WOULDN'T CONSIDER THAT GOAL RATIONAL.

25 Q I KNOW.

1 A IF YOU ARE SAYING THAT SHOOTING HIM IN BROAD
2 DAYLIGHT -- IF HIS ONLY GOAL WAS TO KILL HIS CLOSE FRIEND
3 AND GET HIS NAME IN THE NEWSPAPER, THAT, YES, KILLING HIM
4 IN BROAD DAYLIGHT WOULD ACCOMPLISH THAT.

5 Q IN OTHER WORDS, IN A CAUSE AND EFFECT CONTEXT,
6 GIVEN WHAT MR. WINDOM EXPRESSED TO JACK LUCKET, THAT WAS
7 RATIONAL, WAS IT NOT?

8 A WELL, AGAIN, I WOULDN'T CONSIDER IT RATIONAL.
9 BUT IF WE'RE TALKING ABOUT A MEANS TO AN END, YES, IT
10 COULD ACCOMPLISH THAT.

11 Q OKAY, MEANS TO AN END. DIDN'T YOU -- WOULDN'T
12 YOU ALSO SAY THAT THERE WAS AN INCONSISTENCY OVER A
13 PERIOD OF TIME IN AT LEAST ONE OF THE ISSUES THAT
14 MR. WINDOM EXPRESSED AS BEING UPSET WITH JOHNNIE LEE,
15 THAT BEING THIS MONEY ISSUE?

16 A YES, THERE IS A CONFLICT ABOUT THAT AS I
17 UNDERSTAND IT.

18 Q NO, AN INCONSISTENCY. ISN'T THAT WHAT HE TOLD
19 JACK LUCKET THAT HE WAS UPSET ABOUT?

20 A I BELIEVE IT WAS SOMETHING TO THAT EFFECT, YES.

21 Q AND THAT'S WHAT THE LADY WHO WAS THERE -- I
22 THINK IT WAS FISK?

23 A FISK.

24 Q PAMELA FISK SAID THAT HE MENTIONED AS HE SHOT
25 JOHNNIE LEE, THAT THAT WAS MONEY?

1 A RIGHT. BUT ALSO THERE WAS A STATEMENT BY OTHER
2 WITNESSES HE HAD BEEN TOLD THAT JOHNNIE LEE WAS AFTER
3 HIM.

4 Q WHAT OTHER WITNESSES, CAUSE I DID NOT SEE THAT
5 IN THE RECORD?

6 A OKAY. WELL --

7 Q OTHER THAN MR. WINDOM HIMSELF.

8 A OKAY. WELL, LET ME SEE IF I CAN FIND REFERENCE
9 TO THAT. I THOUGHT THAT I RECALLED IT IN ONE OF THE
10 AFFIDAVITS, BUT I COULD BE MISTAKEN.

11 MR. STRAND: IF I COULD BE OF ASSISTANCE, IT
12 DOESN'T APPEAR IN ANY AFFIDAVITS, SO YOU DON'T
13 NEED TO LOOK.

14 THE COURT: THANK YOU. I APPRECIATE THAT.

15 THE WITNESS: OKAY, SORRY.

16 BY MR. LERNER:

17 Q SO BASICALLY YOU'RE DEPENDING ON WHAT
18 MR. WINDOM HIMSELF SAYS --

19 A YES.

20 Q -- FOR THAT? OKAY.

21 WOULD YOU NOT -- WOULD IT NOT BE TRUE
22 THAT, ESPECIALLY IF YOU HAD THIS DISSOCIATIVE-TYPE
23 OPERATION IN ACTION, WOULD IT NOT BE POSSIBLE THAT
24 MR. WINDOM IS SIMPLY -- LET'S SAY THAT HE'S NOT LYING,
25 BUT IF HE DOESN'T REMEMBER PARTS OF WHAT HE DID NOW,

1 WOULD IT NOT BE POSSIBLE THAT HE'S SIMPLY TRYING TO FILL
2 IN A LOGICAL EXPLANATION ->

3 A WELL, THAT'S --

4 Q -- IN EXPLAINING IT TO YOU?

5 A WELL, FIRST OF ALL, THAT'S A POSSIBILITY. BUT
6 AS WE HAVE TALKED -- WELL, I GUESS WE DIDN'T TALK IN THIS
7 DEPOSITION. BUT, YOU KNOW, MY UNDERSTANDING OF THE
8 SITUATION AND TRYING TO UNDERSTAND CLINICALLY THE
9 DISSOCIATIVE AMNESIA, THE ACTUAL EVENT OF ACTUALLY
10 SHOOTING JOHNNIE LEE, THAT TRAUMA OR STRESSFUL EVENT IS
11 WHAT PUT IN MOTION THE DISSOCIATIVE AMNESIA. THAT REALLY
12 TENDS TO BE WHAT YOU SEE WHEN PEOPLE DO HAVE THAT IS SOME
13 TRIGGERING, AN ACTUAL EVENT HAPPENS, BUT THEN TRIGGERS
14 SOME AMNESIA FOR THE EVENTS THAT FOLLOW FOR A PERIOD OF
15 TIME AFTER THAT.

16 SO, WHAT YOU PURPORT IS POSSIBLE. BUT IN
17 TERMS OF MY REVIEW OF THE SITUATION, I THINK IT'S MORE
18 PROBABLE THAT THE AMNESIA, IF YOU WILL, OCCURS AFTER HE
19 ACTUALLY SHOOTS JOHNNIE.

20 Q SURE. WHAT I'M SAYING, SINCE YOU'RE TALKING TO
21 MR. WINDOM AS YOUR SOURCE OF INFORMATION, IF HE HAS,
22 BECAUSE LATER ON REMORSE, CHANGED HIS MIND, WHATEVER,
23 CHOOSES NOT TO REMEMBER PARTS OF THIS --

24 A YES.

25 Q -- HIS RECOLLECTION WOULD NOT BE THE MOST

1 RELIABLE RECOLLECTION?

2 A YES.

3 Q EVEN IF HE'S TELLING YOU WHAT HE PERCEIVES TO
4 BE THE TRUTH?

5 A YES, THAT COULD BE A PROBLEM WITH HIS
6 RECOLLECTION.

7 Q OKAY. NOW, WITH REGARD TO THE DSM-IV AND THIS
8 BUSINESS OF SELECTIVE DISSOCIATIVE STATE, THERE IS SUCH A
9 THING AS SELECTIVE AMNESIA, ISN'T THERE? AND I'M TURNING
10 TO THE POINT, I THINK I'VE GOT IT MAYBE ON THE PRIOR
11 PAGE. YES, THERE.

12 A RIGHT. THEY DO MENTION THIS CONCEPT, BUT IT'S
13 NOT RECOGNIZED AS A DSM-IV DIAGNOSIS.

14 Q BUT IT IS MENTIONED IN DSM-IV AS SOMETHING TO
15 CONSIDER?

16 A YES. BUT DR. MERIN HAD SAID HE HAD
17 DISSOCIATIVE AMNESIA, AND THEN LABELED IT SELECTIVE.
18 THAT'S NOT HOW THEY DEFINE IT IN HERE, THAT'S THE POINT I
19 WAS MAKING I GUESS.

20 Q SO WHILE HE MAY BE OFF, AS AGREEMENT, AS A
21 SPECIFIC DIAGNOSIS, SELECTIVE AMNESIA IS MENTIONED IN
22 THAT PART OF THE DSM-IV ON PAGE 478?

23 A IN THE DESCRIPTION OF AMNESIA IT'S TALKED
24 ABOUT, YES.

25 Q NOW, THE OTHER PROBLEM I WANTED TO BRING OUT,

1 WHEN YOU'VE GOT A SITUATION OF A DISSOCIATIVE STATE OR
2 WHAT APPEARS TO BE A DISSOCIATIVE STATE, I'VE GOT THE
3 LITTLE MARK IN THERE, MALINGERING IS SOMETHING YOU'VE GOT
4 TO BE WORRIED ABOUT MORE IF YOU'RE IN A SETTING LIKE
5 WE'RE IN WHERE SOMEONE'S FACING LEGAL DIFFICULTIES?

6 A YES.

7 Q AND THE DSM-IV SAYS THAT?

8 A YES, IT DOES.

9 Q OKAY. NOW, DID YOU GIVE CONSIDERATION ALSO TO
10 THE -- AND I BELIEVE THAT YOU'VE ONLY HAD ACCESS TO THESE
11 ARREST REPORTS SINCE I TOOK YOUR DEPOSITION; IS THAT
12 CORRECT?

13 A OH, ON THE COCAINE TRIAL?

14 Q YEAH, I FAXED THEM.

15 A YES, YOU DID, YOU FAXED THEM TO ME.

16 Q ISN'T IT TRUE THERE ARE INDICATORS IN THE FAX
17 THAT MR. WINDOM MAY HAVE BEEN MOTIVATED TO DO WHAT HE DID
18 AND TO SHOOT SOME OF THE PEOPLE THAT HE SHOT BECAUSE HE
19 WAS ANGRY ABOUT THIS COCAINE SITUATION?

20 A WELL, I CERTAINLY THINK HE WAS UPSET ABOUT
21 BEING ARRESTED, I THINK THAT THAT WAS PART OF THE
22 EQUATION IN TERMS OF OVERALL DURESS THAT HE WAS UNDER
23 THAT HELPED CULMINATE IN THESE EVENTS, YES.

24 Q THIS WOULD ALSO BE A, NOT ONLY A STRESSOR, BUT
25 ALSO A MOTIVE FOR THE CRIMES THAT HE COMMITTED, WOULD IT

1 NOT?

2 A WELL, IT COULD BE, BUT I DIDN'T BELIEVE THAT
3 WAS THE CASE.

4 Q OKAY. DID YOU GIVE CONSIDERATION TO THE FACT
5 THAT MR. WATKINS HEARD WHAT HE THOUGHT WAS MR. WINDOM SAY
6 SOMETHING ABOUT HE DIDN'T LIKE POLICE ASS --

7 A YES, I KNOW THAT STATEMENT.

8 Q AND WOULDN'T THAT FIT IN TO THE PROBLEM HE WAS
9 IN OF THE FACT THAT THESE ARRESTS HAD INVOLVED A
10 CONFIDENTIAL INFORMANT WHO WAS PROBABLY SOMEONE HE KNEW
11 FROM THE COMMUNITY?

12 A WELL, IT COULD HAVE BEEN, EXCEPT FOR THAT
13 PARTICULAR GENTLEMAN THAT WAS SHOT JUST HAPPENED TO BE
14 WALKING. I MEAN, THERE WASN'T ANY REAL -- AT LEAST AS I
15 UNDERSTAND THE POLICE INVESTIGATION, THAT HE WOULD HAVE
16 KNOWN THAT THAT PERSON WOULD HAPPEN TO BE THERE ON THE
17 STREET AT THAT TIME.

18 Q RIGHT. BUT THAT WOULD INDICATE THAT THIS ISSUE
19 WAS ON HIS MIND AT THE TIME, WOULD IT NOT?

20 A YES, IT COULD HAVE INDICATED THAT.

21 Q WOULD THAT NOT FIT IN WITH THE MURDER HE HAD
22 JUST CREATED BEFORE HE SHOT -- AND WAS IT KENNY
23 WILLIAMS -- BEFORE HE SHOT KENNY WILLIAMS, HE HAD WENT UP
24 TO HIS APARTMENT AND SHOT VALERIE DAVIS?

25 DO YOU RECALL THIS MORNING THE TESTIMONY

1 OF MRS. JACKSON WHO SAID THAT BEFORE ALL OF THIS
2 HAPPENED, SHE WAS DISCUSSING WITH MR. WINDOM THE FACT
3 THAT THERE WAS A RUMOR GOING AROUND THAT VALERIE DAVIS
4 WAS GOING TO INFORM ON HIM?

5 A I REMEMBER YOU BRINGING THAT UP, YES.

6 Q SO WOULD THAT NOT FIT IN AS A POSSIBLE MOTIVE?

7 A YES, IT COULD.

8 Q AGAIN, MEANS TO AN END FOR HIM TO DO WHAT HE
9 DID?

10 A RIGHT. BUT, AGAIN, I THINK THAT ALL OF THESE
11 THINGS GOING ON -- YES, ALL OF THOSE ARE REAL
12 POSSIBILITIES. I THINK THAT THE KEY, AT LEAST FROM MY
13 PERSPECTIVE IN LOOKING AT ALL OF THOSE PARTS, IS HOW THAT
14 ALL CAME TOGETHER, AND SEEING THE CHANGES IN WINDOM
15 CURTIS, OR CURTIS WINDOM'S BEHAVIOR IN THAT, THAT WEEK OR
16 TWO BEFORE THIS ALL TOOK PLACE, THAT THERE APPEARED TO BE
17 AN ABRUPT CHANGE IN HIS PERSON OR HIS Demeanor.

18 SO, YES, MANY FACTORS MAY HAVE GONE INTO
19 THAT KIND OF OVERLOAD THAT RESULTED IN THAT
20 DETERIORATION. BUT, NONETHELESS, I FELT THAT AT THE TIME
21 THAT THE SHOOTINGS OCCURRED, THAT HE WAS IN AN EXTREME
22 EMOTIONAL STATE. NOT THAT THOSE POSSIBILITIES THAT YOU
23 RAISE COULDN'T BE IN THERE, BECAUSE THEY COULD AS YOU
24 TALK ABOUT THEM, BUT THE POINT OF IT IS THAT I THINK
25 THAT, GIVEN THE COMBINATION OF ALL THINGS GOING ON WITH

1 CURTIS WINDOM, HE WAS A MESS.

2 Q BUT YOU COULDN'T SAY, BASED ON THE FACTS, YOU
3 COULDN'T RULE OUT -- YOU CAN'T RULE OUT THE POSSIBILITY,
4 CAN YOU, THAT HE WAS WORKING IN A MEANS TO END CONTEXT?

5 A I DON'T THINK -- NO, I DON'T THINK THAT YOU CAN
6 COMPLETELY RULE THAT OUT. ALTHOUGH, THAT COURSE OF
7 ACTION, IF YOU WILL, AS I UNDERSTAND MR. WINDOM'S
8 HISTORY, WOULD BE QUITE OUT OF CONTEXT FOR HIM.

9 Q SURE.

10 A IF HE HAD A PRIOR HISTORY OF, LET'S SAY, DOING
11 DRUG ENFORCEMENT AND THREATENING PEOPLE OR SHOOTING AT
12 PEOPLE OR, YOU KNOW, A LOT OF ASSAULT AND BATTERY TYPES
13 OF THINGS, THERE WOULD BE MORE OF A FIT. BUT THIS --
14 THIS -- WHAT OCCURRED AND EXTREMENESS OF WHAT HAPPENED,
15 IF YOU WILL, WAS VERY MUCH OUT OF CHARACTER, FROM WHAT I
16 KNOW ABOUT CURTIS WINDOM. AND EVERYBODY THAT I'VE TALKED
17 TO -- AND I GUESS THAT'S WHAT I KEEP COMING BACK TO IS
18 THAT THIS -- YOU KNOW, I CAN'T TELL YOU THAT WASN'T A
19 FACTOR INVOLVED, BUT IF YOU LOOK AT ALL THE THINGS THAT
20 WERE GOING ON, AND THE ABRUPT CHANGES IN HIS BEHAVIOR IN
21 THAT WEEK BEFORE THAT HAPPENED, I THINK THAT THERE WAS A
22 DISTINCT CHANGE IN HIS MENTAL STATUS WHEN THIS ALL
23 OCCURRED.

24 Q LET ME ASK YOU THIS, YOU HAVE SOME EXPERIENCE
25 WITH PEOPLE WHO ARE BRAIN DAMAGED?

1 A YES, I DO.

2 Q IS IT NORMALLY THE CASE THAT THEY HAVE A
3 HISTORY THAT'S CONSISTENT, OF CONDUCT THAT'S CONSISTENT
4 WITH WHATEVER THEIR DEFECT OR DYSFUNCTION IS?

5 A WELL, YOU KNOW, BRAIN -- IT DEPENDS ON THE
6 PERSON AND CIRCUMSTANCE. YOU KNOW, SOME PATIENTS, YOU'RE
7 RIGHT, CAN HAVE A HISTORY OF EMOTIONAL AND BEHAVIOR
8 DYSCONTROL WHERE THEY GET INTO LOTS OF FIGHTS WHEN
9 THEY'RE CHALLENGED IN CERTAIN SITUATIONS, THEY DO LOTS OF
10 ACTING OUT BEHAVIOR BECAUSE THEY DON'T INHIBIT THAT
11 RESPONSE. AT THE SAME TIME, YOU CAN GET, PARTICULARLY
12 WITH ORBITAL FRONTAL PATIENTS, YOU CAN GET THEM BEING
13 FAIRLY DOCILE A LOT OF TIMES UNTIL A CERTAIN TRIGGER THAT
14 OCCURS AND OVERWHELMS THEM.

15 Q WELL, THIS -- I'M SORRY, GO AHEAD.

16 A AND SO, AGAIN, I THINK THAT NEUROLOGICAL ISSUES
17 WITH CURTIS WINDOM PLAY A ROLE, BUT I THINK THEY VERY
18 MUCH IN HIS CASE WERE INTERACTING WITH WHAT WAS GOING ON
19 WITH HIM DURING THIS PERIOD OF TIME. THAT IT REALLY --
20 IT WASN'T JUST THAT, OR IT WASN'T JUST HIS EMOTIONAL
21 STATUS, OR IT WASN'T JUST THE CONFLICT WITH, WITH JOHNNIE
22 LEE, IT WAS THAT CULMINATION OF EVERYTHING THAT RESULTED
23 IN THIS RAMPAGE, I GUESS FOR LACK OF A BETTER
24 DESCRIPTION.

25 Q WELL, LET ME ASK YOU THIS, WOULDN'T YOU AGREE

1 WITH ME THERE REALLY WASN'T MUCH OF A HISTORY OF
2 DYSFUNCTIONAL BEHAVIOR THAT YOU COULD TIE TO, CLEARLY TO
3 BRAIN DAMAGE UP TO THE POINT THAT THIS HAPPENED?

4 A HE DIDN'T HAVE A HISTORY OF THAT KIND OF ACTING
5 OUT, DISINHIBITED BEHAVIOR, NO. HE DID HAVE A HISTORY OF
6 DOING POORLY IN SCHOOL, STRUGGLING THAT WAY, NOT
7 MAINTAINING GOOD EMPLOYMENT, THAT TYPE OF THING BEFORE
8 THIS. AND WHEN YOU TALK WITH THE FAMILY MEMBERS, HE
9 TYPICALLY HAD A GIRLFRIEND THAT USUALLY HELPED TAKE CARE
10 OF THINGS FOR HIM. SO IN THAT WAY HE WAS STILL IN SOME
11 WAYS PRETTY DEPENDENT. AND YOU CAN, IN HINDSIGHT, LOOK
12 AT THAT IN TERMS OF SOME OF HIS LIMITATIONS WITH
13 INTELLECTUAL AND EXECUTIVE FUNCTIONING. BUT HE DIDN'T
14 HAVE THAT HISTORY OF ACTING OUT BEHAVIOR AND EMOTIONAL
15 DISINHIBITION THAT YOU CAN SEE WITH SOME BRAIN INJURED
16 PATIENTS.

17 Q NOW, YOU WOULDN'T NORMALLY HAVE EXPECTED
18 SOMEONE IN MR. WINDOM'S CONDITION TO HAVE BEEN SENT TO
19 YOU AS AN ADULT BY A NEUROLOGIST, WOULD YOU?

20 A NOT IF IT WAS STATIC. I THINK AS YOU AND I
21 TALKED IN DEPOSITION, IT WOULD BE MORE LIKELY THE CASE
22 THAT MR. WINDOM, AS A RESULT, WOULD BE SENT TO ME EITHER
23 IF HE HAD THE RECURRING HEADACHES, WHICH HE HAD BOTH AS
24 AN ADOLESCENT AND ADULT, MIGHT BE SENT TO ME FOR THAT.
25 BUT MORE LIKELY AS AN ADULT IF HE WAS SENT TO ME, IT

1 WOULD BE MORE VOCATIONAL ISSUES BECAUSE OF DIFFICULTY
2 MAINTAINING EMPLOYMENT.

3 MR. LERNER: MAY I HAVE A MOMENT, YOUR
4 HONOR?

5 THE COURT: YES.

6 BY MR. LERNER:

7 Q GETTING BACK TO -- I WANTED TO ASK YOU A COUPLE
8 OF THINGS IN YOUR REPORT.

9 A OKAY.

10 Q HAVE YOU GOT IT IN FRONT OF YOU?

11 A I DO.

12 Q ON PAGE 7.

13 A OKAY. JUST A SECOND. OKAY.

14 Q ON THE LAST PARAGRAPH HE DENIED THAT THERE
15 WAS -- REFERRING TO VALERIE -- HE DENIED THERE HAD BEEN
16 ANY RECENT DISAGREEMENTS OR CONCERNS IN THEIR
17 RELATIONSHIP IN THE WEEKS BEFORE THE SHOOTING. THAT
18 WOULD, BASED ON WHAT THIS MS. JACKSON SAID, PROBABLY BE
19 UNTRUE, WOULDN'T IT?

20 A IN REGARDS TO THINKING THAT SHE MIGHT BE AN
21 INFORMANT, YES, IF THAT CONFLICT WAS GOING ON. WHAT
22 CURTIS WAS TALKING TO ME, AS WE WALKED THROUGH THAT --
23 AND I WASN'T PAYING ATTENTION TO THE STATEMENT BY THE
24 MARY PERSON -- WAS, YOU KNOW, THEIR RELATIONSHIP HAD BEEN
25 KIND OF OFF AND ON, DIFFERENT TIMES ENDED UP LIVING IN

1 SEPARATE RESIDENCES. WHAT HE WAS TALKING TO -- ABOUT TO
2 ME, AS WE WERE DISCUSSING THE RELATIONSHIP, HOW THEY WERE
3 PUTTING TOGETHER AN APARTMENT FOR THE TWO OF THEM WITH
4 HOPES OF ACTUALLY MOVING IN AND RECONSIDERING MARRIAGE,
5 AND LOOKING AT RINGS AND THINGS OF THAT SORT, THAT'S HOW
6 HE TALKED ABOUT THEIR RELATIONSHIP.

7 Q OKAY. NOW, ON PAGE EIGHT.

8 A OKAY.

9 Q ANOTHER THING THAT I FOUND THAT WAS ODD.
10 MR. WINDOM REPORTED TO YOU -- AND THIS IS THE ONE, TWO,
11 THREE, FOUR, FIVE, FIFTH PARAGRAPH DOWN -- HE REPORTS HE
12 HAS NO RECALL OF GOING TO THEIR APARTMENT AND SHOOTING
13 VALERIE DAVIS.

14 A YES.

15 Q AND UP ABOUT -- THEN IF YOU GO DOWN TO THE VERY
16 LAST PARAGRAPH BEFORE THE NEXT TEST RESULTS AND
17 INTERPRETATION.

18 A RIGHT.

19 Q HE REPORTS THAT HE REMEMBERED SOME RECOLLECTION
20 OF MARY LUBIN, VALERIE DAVIS'S MOTHER PULLING UP IN HER
21 CAR, AND BEING CONCERNED THAT MARY WOULD SHOOT HIM FOR
22 HAVING SHOT HER DAUGHTER. SO, OBVIOUSLY, HE MUST HAVE
23 RECALLED THAT HE HAD SHOT THE DAUGHTER AT THAT POINT?

24 A RIGHT. RIGHT. AND I DON'T RECALL, YOU KNOW,
25 WHEN HE AND I WALKED THROUGH THAT WHETHER OR NOT HE WAS

1 COMMUNICATING TO ME THAT HE ACTUALLY HAD RECALLED THE
2 SHOOTING, OR AT THAT TIME -- YOU KNOW, HIS BROTHER AND
3 FRIEND HAD BEEN TRYING TO GET THE GUN AWAY FROM HIM --
4 WHETHER THEY HAD SAID SOMETHING TO HIM AT THAT POINT.
5 BUT, YES, THAT'S HOW HE TALKED TO ME ABOUT IT.

6 Q ISN'T THAT, AGAIN, SUGGESTIVE MAYBE OF WHAT HE
7 TOLD YOU ABOUT WHAT HE REMEMBERS, AT LEAST IN PART, AS A
8 POSSIBLE FILLING IN OF THE BLANKS?

9 A YES, THAT HE HAD SOME FRAGMENTED RECALL OF
10 THAT, WHICH CAN HAPPEN WITH DISSOCIATIVE EXPERIENCES.

11 Q NOW, THIS DISSOCIATIVE EXPERIENCE COULD HAVE
12 BEEN SOMETHING THAT BEGAN AFTER THE SHOOTING; IS THAT
13 CORRECT?

14 A YES. I MEAN, THAT'S OBVIOUSLY NOT HOW -- HOW
15 HE HAS DESCRIBED IT AFTER ALL THIS, BUT THAT CAN HAPPEN,
16 YES.

17 Q WELL, IF THAT HAD HAPPENED, HE WOULDN'T KNOW,
18 WOULD HE, WHEN IT BEGAN? IF YOU CAN'T REMEMBER, HE
19 PROBABLY CAN'T REMEMBER WHEN IT BEGAN EITHER?

20 A WELL, USUALLY WHAT HAPPENS WITH DISSOCIATIVE,
21 THE MEMORY ENGRAM, IF YOU WILL, IS ACTUALLY IN THERE, BUT
22 PSYCHOLOGICALLY THEY BLOCK THEMSELVES FROM REMEMBERING OR
23 RECOGNIZING IT. AND SO FRAGMENTS WILL SOMETIMES POP
24 THROUGH THAT KIND OF PSYCHOLOGICAL BARRIER.

25 Q BUT, IN ANY CASE, IT WOULD BE -- THAT WOULDN'T

1 BE THE BEST SOURCE OF INFORMATION TO RELY ON, WOULD IT,
2 SOMEBODY WHO MAY BE SUFFERING FROM A DISSOCIATIVE STATE?

3 A THAT DOES CREATE PROBLEMS, YES.

4 Q NOW, AS FAR AS MEANS TO AN END, GOING BACK TO
5 WHAT HE WAS SAYING TO JACK LUCKET BEFORE ALL OF THAT
6 BEGAN, WOULD YOU NOT AGREE WITH ME THAT HE MUST HAVE,
7 BASED ON WHAT HE TOLD JACK LUCKET, HAVE BEEN THINKING IN
8 TERMS OF A MORE END RESULT OF THE COURSE OF ACTION THAT
9 HE WAS PLANNING TO ENGAGE IN?

10 A OKAY. I'M SORRY.

11 Q HE TOLD JACK LUCKET AFTER HE SAID HE WAS GOING
12 TO KILL JOHNNIE LEE, HE SAID YOU WILL SEE ME IN THE
13 NEWSPAPERS.

14 A YES.

15 Q SO HE OBVIOUSLY, DID HE NOT, AT LEAST SOMEWHERE
16 IN HIS MIND HAVE THE IDEA THAT THE END RESULT WOULD BE
17 THAT EVERYBODY WOULD KNOW, THAT IT WOULD BE IN THE
18 NEWSPAPERS, IT WOULD BE NO SECRET?

19 A WELL, SHOOTING SOMEBODY IN BROAD DAYLIGHT COULD
20 CERTAINLY RESULT IN THAT, YES.

21 Q SO WOULD HIS STATEMENT TO JACK LUCKET INDICATE,
22 AT THE POINT HE WAS TALKING TO MR. LUCKET, THAT HE WAS
23 ENGAGING IN A MEANS TO AN END THINKING PROCESS,
24 CALCULATING PROCESS, AND CONSIDERING SOME OF THE END
25 RESULTS OF WHAT HE WAS THINKING ABOUT DOING?

1 A IT COULD, ALTHOUGH THAT'S NOT WHAT I BELIEVED
2 HAPPENED.

3 Q AND BASED ON WHAT HE TOLD YOU ABOUT -- AGAIN,
4 BACK ON PAGE EIGHT, ABOUT MARY LUBIN.

5 A OKAY.

6 Q IF WHAT HE SAYS IS TRUE -- AND I KNOW THIS IS
7 POSSIBLY NOT RELIABLE -- BUT IF WHAT HE SAYS IS TRUE,
8 THAT HE WAS THINKING ABOUT THE COURSE OF ACTION VIS-A-VIS
9 MARY LUBIN'S APPEARANCE ON THE SCENE AND GOING THROUGH
10 THE PROCESS OF, OH, NO, I JUST SHOT HER DAUGHTER, SHE
11 CARRIES A GUN, SHE'S LIABLE TO SHOOT ME, AGAIN, THAT IS
12 CAUSE AND EFFECT THINKING, ISN'T IT, MEANS TO AN END?

13 A YES. YES.

14 Q AND ONE OTHER THING I WANTED TO BRING OUT, YOU
15 DON'T THINK HE SUFFERS FROM ANTISOCIAL PERSONALITY
16 DISORDER?

17 A YES.

18 Q AND PART OF THAT IS DEALING, ON HIS HISTORY, OF
19 GOOD INTERACTIONS WITH PEOPLE?

20 A HAVING A RELATIONSHIP WITH OTHER PEOPLE, YES.

21 Q SO, WOULD IT BE YOUR OPINION THAT HE COULD FORM
22 CLOSE FRIENDSHIPS WITH PEOPLE?

23 A WELL, HE HAD KIND OF A STILTED RELATIONSHIP
24 WITH PEOPLE. HE KIND OF KEPT TO HIMSELF, YET HE WOULD BE
25 CARING ABOUT THEM, IN THAT HE WOULD HELP THEM OUT AND DO

1 THINGS FOR THEM.

2 WHEN I TALKED WITH FAMILY MEMBERS AND AN
3 OLDER FRIEND OF THE FAMILY AND STUFF, HE WOULD, YOU KNOW,
4 HE TENDED NOT TO BE VERY DISCLOSING WHEN HE TALKED WITH
5 PEOPLE, REALLY KIND OF KEPT HIS PROBLEMS AND ISSUES TO
6 HIMSELF. THAT DID CREATE SOME BARRIER, IN TERMS OF
7 ATTACHMENTS WITH OTHERS. YET, WOULD SHOW CARING, LIKE
8 COME AND TAKE CARE OF THINGS, MAKE SURE AND STOP BY AND
9 VISIT HIS MOTHER, VISIT THIS OTHER LADY THAT HAD BEEN
10 AROUND DURING HIS GROWING UP YEARS, THINGS OF THAT
11 NATURE.

12 Q BASED ON HIS STATEMENTS THE DAY HE COMMITTED
13 THE MURDERS, WOULDN'T THOSE STATEMENTS INDICATE THAT HE
14 WAS IN TOUCH WITH REALITY TO THE EXTENT THAT HE KNEW WHO
15 THE PEOPLE WERE HE WAS INTERACTING WITH AND HAD A
16 MOTIVATION, AND KNEW WHAT THE MOTIVATION WAS FOR SHOOTING
17 THEM?

18 A WELL, I THINK THAT HE RECOGNIZED WHO AT LEAST
19 SOME OF THE PEOPLE WERE THAT HE SHOT, I DON'T KNOW ABOUT
20 MR. WILLIAMS.

21 Q KENNY WILLIAMS.

22 A KENNY WILLIAMS. I JUST DON'T. THAT'S NOT IN
23 THE PATTERN OF WHAT HAPPENED THAT DAY. SO I DON'T -- I
24 HAVE A HARDER TIME UNDERSTANDING THAT.

25 Q HE DID VERBALIZE A REASON THAT WAS CONSISTENT

1 WITH HIS OWN HISTORY THOUGH?

2 A YES, HE DID. I READ THAT STATEMENT. BUT DO I
3 THINK THAT HE RECOGNIZED PEOPLE THAT HE SHOT, THE ANSWER
4 IS YES, I THINK THAT HE DID. BUT I THINK THAT HE WAS
5 REACTING, AS BEST I CAN DETERMINE IN MY OWN EVALUATION,
6 TO IRRATIONAL THOUGHTS AND BELIEFS ABOUT WHAT WAS GOING
7 ON IN HIS WORLD.

8 Q IN OTHER WORDS, HIS IRRATIONALITY WAS DIRECTED
9 AT THE BASIC RELATIONSHIPS HE HAD WITH THESE PEOPLE?

10 A AT LEAST WITH REGARD TO JOHNNIE LEE AND I THINK
11 TO SOME EXTENT MARY LUBIN PERCEIVED AS SIGNIFICANT
12 THREATS.

13 Q WELL, IF MARY LUBIN HAD SAID -- DID YOU READ
14 ALL OF MRS. JACKSON'S TESTIMONY IN THE MITIGATION
15 HEARING?

16 A I KNOW THAT I'VE READ SOME OF IT.

17 Q OKAY. IF SHE SAID THAT MARY LUBIN HAD, AT THE
18 TIME OF THIS PRIOR PROBLEM BETWEEN VALERIE AND
19 MR. WINDOM, SAID THAT, IF ANYTHING LIKE THAT HAPPENED
20 AGAIN, HE WOULD EITHER SEE ONE OF THEM IN HELL, OR
21 SOMETHING OF THAT TYPE; AND IF SHE DID CARRY A WEAPON,
22 WHICH POSSIBLY WOULD NOT HAVE BEEN UNUSUAL --

23 A RIGHT.

24 Q -- THAT WOULD BE A RATIONAL FEAR ON HIS PART,
25 WOULD IT NOT, THAT SHE MIGHT RETALIATE AGAINST HIM?

1 A YES, A FEAR. BUT HIS ABILITY TO DECIDE WHETHER
2 THAT WAS REALLY GOING TO HAPPEN AND EVALUATE THAT
3 SITUATION AND TAKE SOME OTHER COURSE OF ACTION, I THINK,
4 GOES TO HIS STATE OF MIND AND EMOTIONAL DURESS AT THE
5 TIME THAT THESE EVENTS OCCURRED.

6 Q IN OTHER WORDS, IN DECIDING WHETHER THE WISEST
7 COURSE OF ACTION WAS TO SHOOT HER FIRST OR TO RUN?

8 A CORRECT.

9 Q WRESTLE HER TO THE GROUND, OR WHATEVER HE WAS
10 GOING TO DO?

11 A CORRECT, THE SAME WAY WITH JOHNNIE LEE.

12 Q WELL, THEN AREN'T YOU DISCUSSING AGAIN -- ISN'T
13 YOUR DEFINITION OF RATIONAL EDGING MUCH MORE TOWARDS IN
14 DECIDING WHAT'S THE WISEST COURSE OF ACTION THAN IT IS IN
15 BEING IRRATIONAL, IN THE SENSE OF THINKING, RIGHT NOW I'M
16 THINKING THAT MS. PALMER HERE IS A TREE INSTEAD OF A
17 PERSON?

18 A WELL, WE'RE CERTAINLY -- I DON'T THINK WE'RE IN
19 THAT CATEGORY.

20 Q AREN'T WE TALKING ABOUT IN DECIDING WHETHER THE
21 ULTIMATE OUTCOME IS WISE OR NOT?

22 A WELL, BUT WE'RE THINKING -- FOR EXAMPLE, IF I'M
23 FEELING PARTICULARLY EMOTIONALLY DISTRESSED AND PARANOID,
24 YOU KNOW, AND CARRYING A WEAPON, I'M -- WHETHER OR NOT
25 YOU HAVE YOUR HAND IN YOUR POCKET, YOU'RE GETTING READY

1 TO PULL A GUN OUT AND SHOOT ME, I BETTER DO SOMETHING
2 ABOUT IT BEFORE YOU SHOOT ME FIRST, THAT'S WHAT I'M
3 TALKING ABOUT WITH HIM.

4 Q OKAY.

5 A I DON'T CONSIDER THAT RATIONAL. AND A PRODUCT
6 OF HIM MAKING THOSE CHOICES -- BECAUSE HE IS AROUND
7 JOHNNIE LEE, GREW UP WITH HIM, AS I UNDERSTAND IT. FOR
8 EXAMPLE, HIS DECISION TO VIEW JOHNNIE LEE THAT WAY ON
9 THAT DAY, I BELIEVE, IS A PRODUCT OF A COMBINATION OF THE
10 FACTORS THAT WE TALKED ABOUT TODAY; HIS EXTREME EMOTIONAL
11 DISTRESS OR CONDITION AT THIS TIME THAT THESE HAPPENED,
12 THAT THAT'S WHAT PUSHED HIM OVER. THAT CONDITION WAS A
13 KEY FACTOR, IF YOU WILL, IN PRECIPITATING THAT -- THAT
14 LEVEL OF RESPONSE.

15 Q BUT, AGAIN, DR. BEAVER, ISN'T -- AREN'T THE
16 FACTS EQUALLY SUGGESTIVE OF A PRECONCEIVED DETERMINATION
17 ON MR. WINDOM'S PART TO SIMPLY DRIVE TO WHERE MR. LEE WAS
18 AND SHOOT HIM WITHOUT --

19 A YES, HE CERTAINLY COULD DO THAT, BUT HE HAD --
20 HAD OTHER OPPORTUNITIES TO DO THAT AS WELL. BUT, YOU
21 SEE, WHAT DOESN'T MAKE SENSE TO ME, IF THAT'S HIS ONLY
22 GOAL, I DON'T UNDERSTAND WHY HE WOULDN'T JUST HAVE SHOT
23 JOHNNIE LEE SOMEPLACE, THAT WOULD HAVE BEEN THE END OF
24 IT. BUT HE SHOOTS JOHNNIE LEE, HE SHOOTS VAL DAVIS, HE
25 SHOOTS KEN, KENNETH WILLIAMS, HE SHOOTS MARY LUBIN. THAT

1 PART DOESN'T -- ALL OF THAT CHANGE OF THINGS DOESN'T MAKE
2 SENSE.

3 Q SO WHAT YOU'RE SAYING IS, THAT THE LAST THREE
4 MURDERS APPEAR TO BE MORE OF THE PRODUCT OF EMOTIONALLY
5 BEING AROUSED AND UPSET AND THAT SORT OF THING?

6 A WELL, I THINK THAT THAT'S TRUE, TOO. THAT HE
7 WAS AROUSED AND UPSET, BUT I'M TALKING ABOUT THE TOTALITY
8 OF THE SITUATION.

9 Q WELL, LET'S JUST BACK UP.

10 A HIS BEHAVIOR.

11 Q LET'S BACK UP TO THE FIRST MURDER.

12 A OKAY.

13 Q JUST MR. LEE. AND YOU DID READ THE SUPREME
14 COURT OPINION; IS THAT CORRECT?

15 A I BELIEVE I HAVE.

16 Q WHERE THEY SET ASIDE THE COLD, CALCULATED
17 PREMEDITATED AGGRAVATOR AS TO THE LAST THREE JUST FOR
18 THAT REASON, BECAUSE HE APPEARED TO BE IN -- BY
19 WITNESSES -- IN A MORE EMOTIONAL STATE.

20 IF YOU FOCUS ON THE FIRST MURDER, THE
21 FACTS THAT WE HAVE ARE EQUALLY SUGGESTIBLE, AREN'T THEY,
22 THAT HE JUST DETERMINED HE WAS GOING TO SHOOT MR. LEE,
23 AND HE WAS GONNA GET HIS NAME IN THE NEWSPAPER, AND HE
24 KNEW IT WAS GOING TO BE DONE IN AN OPEN WAY?

25 A AND, AGAIN, AS WE'VE TALKED BEFORE, I THINK

1 THAT IS A POSSIBILITY. BUT BASED UPON MY INFORMATION AND
2 EVALUATION, I THINK A MORE PROBABLE EXPLANATION IS HIS
3 EXTREME EMOTIONAL DURESS IS A KEY FACTOR AS TO WHY THAT
4 HAPPENED. I'M NOT DISPUTING YOUR VERSION ISN'T A
5 POSSIBILITY, BUT IF YOU'RE ASKING ME OF THOSE
6 POSSIBILITIES WHICH DO I THINK IS THE MOST PROBABLE OR
7 MORE PROBABLE THAN THE OTHER, IT IS HIS EMOTIONAL DURESS
8 AT THE TIME.

9 Q DO YOU -- I'M SORRY, ONE LAST QUESTION.

10 A OKAY.

11 Q DO YOU RECALL ANY EXPRESSION ON THE PART OF THE
12 IMPARTIAL WITNESSES THAT TESTIFIED AT THE TRIAL, THAT
13 WOULD BE PAMELA FISK, JACK LUCKET, THE STORE CLERK, AND I
14 THINK THERE WAS ANOTHER WOMAN OR MAN THAT WAS THERE WHEN
15 HE SHOT, DO YOU RECALL ANY INDICATION THAT HE WAS AROUSED
16 OR ANGRY OR CRYING OR ANY EMOTIONAL DISPLAY AT THAT POINT
17 WITH THE LEE MURDER?

18 A I DON'T RECALL.

19 Q WELL, IF THERE WASN'T, THAT WOULD REALLY BE
20 SOMETHING TO CONSIDER, AS OPPOSED TO THE OTHER MURDERS,
21 WHERE HE WAS OBVIOUSLY DISPLAYING EMOTION, WOULDN'T IT?

22 A WELL, FIRST OF ALL, ALWAYS MORE INFORMATION IS
23 IMPORTANT TO CONSIDER.

24 Q SURE.

25 A BUT, SECONDLY, AGAIN, YOU KNOW, A NUMBER OF

1 PEOPLE HAVE TALKED ABOUT THE CHANGES THAT WERE OCCURRING.
2 IN CURTIS IN THE WEEK BEFORE THIS EVENT HAPPENED THAT
3 WERE VERY OUT OF CHARACTER FOR HIM. AND I THINK THAT
4 THAT'S THE LARGER CONTEXT TO PUT THIS.

5 MR. LERNER: OKAY. THANK YOU FOR YOUR
6 PATIENCE.

7 THE COURT: REDIRECT.

8 MR. STRAND: YEAH, JUST A FEW, JUDGE.

9 REDIRECT EXAMINATION

10 BY MR. STRAND:

11 Q NOW, YOU HAD AN OPPORTUNITY TO REVIEW THE
12 POLICE REPORTS IN THE BACKGROUND PACKET --

13 A YES.

14 Q -- IS THAT CORRECT?

15 IN ALL THE BACKGROUND MATERIAL YOU'VE
16 REVIEWED, AND ALL THE TESTIMONY THAT YOU'VE READ, HAVE
17 YOU EVER SEEN ANYTHING THAT THE STATE HAS BROUGHT FORWARD
18 THAT INDICATED THAT VALERIE DAVIS WAS, IN FACT, A
19 CONFIDENTIAL INFORMANT?

20 A NO.

21 Q OKAY. IN ALL THAT SAME MATERIAL THAT YOU
22 REVIEWED, AND TRIAL TESTIMONY, POLICE REPORTS, HAVE YOU
23 EVER SEEN ANY INFORMATION THAT WOULD INDICATE THAT KENNY
24 WILLIAMS WAS, IN FACT, A CONFIDENTIAL INFORMANT?

25 A NOT THAT I RECALL.

1 Q AND WOULDN'T IT BE FAIR TO SAY THAT THE ONLY
2 INFORMATION WE HAVE IS WHAT CURTIS WINDOM BELIEVED?

3 A YES.

4 Q NOW, AGAIN, IN REVIEWING THE POLICE REPORTS,
5 ISN'T IT TRUE THAT THE MORNING OF THE MURDERS, OF THE
6 KILLINGS, THAT CURTIS WINDOM WAS IN THE APARTMENT WITH
7 VALERIE AND LOADED THE GUN AND LEFT AND LEFT VALERIE
8 THERE SAFE AND ALIVE THAT MORNING?

9 A THAT'S MY UNDERSTANDING, YES.

10 Q AND HE LEFT, AND THEN AT SOME POINT SHOT
11 JOHNNIE LEE, CORRECT?

12 A YES, AND CAME BACK TO THE APARTMENT.

13 Q AND SHOT VALERIE?

14 A YES.

15 Q NOW -- NOW, IF -- NOW, YOU HAD AN OPPORTUNITY
16 TO VIEW WHAT'S MARKED AS DEFENSE EXHIBIT NUMBER 3C?

17 A YES.

18 Q AND TURNING TO THE AFFIDAVIT OF JULIE HARP,
19 WHICH IT IS ON --

20 A OKAY.

21 Q AND TAKING A LOOK AT THAT, LOOKING AT PARAGRAPH
22 NUMBER THREE, DOES THAT INDICATE CURTIS WINDOM'S
23 EMOTIONAL STATE ON THE MORNING OF THE INCIDENT IN
24 QUESTION?

25 A YES. SHE TALKS ABOUT HIM NOT RESPONDING TO HER

1 CALLS, WHICH WAS UNUSUAL, AND HE LOOKED VERY CRAZY AND
2 GENERALLY OUT OF IT. SHE HAD NOT SEEN HIM LOOK LIKE THIS
3 BEFORE.

4 Q WHEN YOU CONSIDER THIS AFFIDAVIT, IN
5 CONJUNCTION WITH THE POLICE REPORTS THAT INDICATE
6 MS. HARP SAW CURTIS WINDOM PRIOR TO THE FIRST SHOOTING,
7 WOULD THIS BE RELEVANT TO THE OPINIONS THAT YOU RENDERED?

8 A YES, IT WOULD.

9 Q NOW, IF INDIVIDUALS WERE ABLE TO INDICATE THAT,
10 BESIDES MR. WINDOM, THAT HE BELIEVED THAT JOHNNIE LEE WAS
11 GOING TO KILL HIM, WOULD THAT HAVE INFLUENCED HIS
12 PARANOIA?

13 A YES.

14 Q AND WOULD IT BE A FAIR STATEMENT TO SAY THAT
15 MR. WINDOM'S STATE OF MIND AT THE TIME HE SHOT JOHNNIE
16 LEE WAS KILLED OR BE KILLED?

17 A YES.

18 Q AND HAVING CONSIDERED STATEMENTS OF PAMELA FISK
19 AND CONSIDERING THE STATEMENTS OF MR. WATKINS, DOES THAT
20 CHANGE YOUR OPINION THAT YOU GAVE EARLIER CONCERNING
21 MR. WINDOM'S MENTAL STATE AT THE TIME OF THESE OFFENSES?

22 A NO.

23 MR. STRAND: I DON'T HAVE ANY FURTHER
24 QUESTIONS, YOUR HONOR.

25 THE COURT: ANYTHING ELSE FROM MR. LERNER?

1 Q ARE YOU HIS OLDER OR YOUNGER SISTER?

2 A YOUNGER.

3 Q HOW -- HOW MANY YEARS?

4 A ABOUT A YEAR AND A HALF.

5 Q YEAR AND A HALF. DO YOU HAVE OTHER BROTHERS
6 AND SISTERS?

7 A YES, THERE'S NINE OF US.

8 Q NINE ALTOGETHER?

9 A YES.

10 Q AND WHERE -- WHERE DO YOU LIVE, MA'AM?

11 A WINTER GARDEN, FLORIDA.

12 Q YOU BORN THERE, GROW UP THERE?

13 A YEAH, BEEN THERE ALL ALONG.

14 Q THE REST OF YOUR BROTHERS AND SISTERS AND
15 CURTIS AS WELL, DID YOU ALL GROW UP IN THE SAME HOUSEHOLD
16 THERE IN WINTER GARDEN?

17 A YES, SIR.

18 Q OKAY. GLORIA, WHY DON'T YOU TELL US A LITTLE
19 BIT ABOUT CURTIS'S CHILDHOOD. TO START OFF WITH, FIRST
20 OF ALL, WAS THERE ANYTHING UNUSUAL ABOUT CURTIS AS A KID?

21 A YES. IN -- SOMETIMES, YES. IT'S -- HE WAS --
22 YOU KNOW, KIDS ALWAYS CALL HIM SLOW. HE'S A LOT OF TIME
23 GET IN TROUBLE BECAUSE HE PROBABLY, LIKE, 11, 13,
24 SOMETHING LIKE THAT WHERE HE STARTED WETTING THE BED.
25 AND HE WAS, YOU KNOW, STUTTERING. KIDS ALWAYS COME PICK

1 AT HIM, CALL HIM ALL KIND OF NAMES AND DIFFERENT THINGS.

2 Q SO HE'D STUTTER?

3 A YES.

4 Q AND HE'D ALSO WET HIS BED?

5 A WET THE BED.

6 Q AND HOW OLD WAS HE WHEN THAT --

7 A PROBABLY ABOUT LIKE 13. ABOUT 11, 13 WHEN HE
8 START WETTING THE BED.

9 Q AND WHEN CURTIS WOULD WET HIS BED OR WET HIS
10 PANTS, FOR INSTANCE, WHAT WOULD YOU DO? WOULD YOUR MOM
11 JUST PUT THE CLOTHES IN THE WASHER AND DRYER?

12 A WE DIDN'T HAVE NO WASHER, NO DRYER. SHE HAVE
13 TO WASH THEM ON HER HAND, AND SOMETIME HE JUST HAVE TO
14 STILL WEAR THE SAME CLOTHES.

15 Q HE WOULD HAVE TO WEAR THE SAME CLOTHES?

16 A YES.

17 Q HOW COME YOU DIDN'T HAVE A WASHER AND DRYER?

18 A WE WAS VERY, LIKE, POOR. WE DIDN'T REALLY HAVE
19 NOTHING. MY FATHER WORKED, MY MOM DIDN'T. IT WAS NINE
20 OF US. AND HE WOULDN'T MAKE BUT A LITTLE MONEY.

21 Q WHAT DID YOUR FATHER DO?

22 A HE WORKED WITH FRUITS AND STUFF, LIKE ORANGES
23 AND STUFF. AND HE REALLY WASN'T MAKING TOO MUCH. A LOT
24 OF TIMES THEN WHEN HE DID, A LOT OF TIMES HE WENT AND
25 GAMBLE AND HE LOST THE MONEY, AND THEN WE JUST HAD TO

1 STRUGGLE, AND WE DIDN'T HAVE MUCH.

2 Q SO DID YOU HAVE ~~2~~ YOU DIDN'T HAVE A WASHER AND
3 DRYER. DID YOU HAVE HEALTH INSURANCE?

4 A NO, WE DIDN'T HAVE NO KIND OF INSURANCE.

5 Q SO WHAT WOULD HAPPEN IF ONE OF THE KIDS GOT
6 SICK OR GOT IN AN ACCIDENT?

7 A WE COULDN'T DO NOTHING. MY MOM WOULD JUST TRY
8 TO DO THE BEST THAT SHE CAN DO. SHE DIDN'T -- SHE DIDN'T
9 HAVE NO CAR OR SHE HAVE DIDN'T HAVE NO WAY OF TAKING US
10 TO THE DOCTOR, OR NO MONEY OR NOTHING.

11 Q AND HOW ABOUT FOOD, DID YOU HAVE ENOUGH FOOD IN
12 THE HOUSE?

13 A NO, WE NEVER HAD ENOUGH FOOD. WE ALL -- YOU
14 KNOW, LIKE, THEY TRIED TO PICK BEANS AND PEAS, AND WE ALL
15 HAD TO TRY TO EAT AS MUCH AS -- WE DIDN'T HAVE -- WE
16 REALLY DIDN'T NEVER HAD TOO MUCH, HAD TOO MUCH OF
17 NOTHING.

18 Q GLORIA, CAN YOU TELL THE COURT ABOUT WHAT KIND
19 OF MAN YOUR FATHER WAS LIKE?

20 A HE WAS -- HE WAS -- IT'S HARD TO EXPLAIN
21 BECAUSE SOMETIMES HE'LL BE OKAY, BUT A LOT OF TIME HE --
22 MOST ALWAYS WHEN HE DID COME HOME FROM WORK, HE ALWAYS
23 WANT TO START WITH MY MAMA, JUMP ON MY MAMA FOR, YOU
24 KNOW, HE ASKED, YOU KNOW, HOW SHE COOKED. WELL,
25 SOMETIMES THERE WAS WASN'T NOTHING TO COOK. SHE HAVE TO,

1 YOU KNOW, TRY TO BORROW SOMETHING, AND THEN HE'LL JUMP ON
2 HER. SOMETIMES HE JUST COME AND BEAT US FOR NO REASON.
3 WHENEVER HE GOT OFF WORK, HE JUST COME AND WHOOP US. WE
4 DON'T KNOW WHY WE GOT A WHOOPING, BUT HAD TO TAKE
5 WHATEVER WE GOT.

6 Q WELL, WHAT WOULD HE HIT YOU WITH?

7 A HUH?

8 Q WHAT WOULD HE HIT YOU WITH WHEN HE HIT YOU?

9 A WITH A BELT.

10 Q AND HE HIT YOUR MOTHER AS WELL?

11 A YES. HE BEAT HER LIKE ONE TIME, WE WAS SMALL,
12 HE BUSTED HER IN THE HEAD WITH A TIRE IRON AND SHE ALMOST
13 DIED, AND BUSTED HER HEAD OPEN IN FRONT OF ALL OF US.

14 Q WAS CURTIS THERE, TOO, WHEN IT HAPPENED?

15 A YES.

16 Q NOW, DO YOU REMEMBER ANYTHING ABOUT -- OR
17 HEARING ANYTHING ABOUT WHEN CURTIS WAS BORN?

18 A I WASN'T, YOU KNOW, THERE. I ALWAYS HEAR WHEN
19 SHE TALK ABOUT THE WAY HE ACT BECAUSE WHEN HE FELL, WHEN
20 MY MAMA WAS DELIVERING, HE FELL AND HIT THE FLOOR, BUT I
21 REALLY DON'T KNOW TOO MUCH ABOUT IT.

22 Q RIGHT. BECAUSE YOU'RE YOUNGER, YOU WEREN'T
23 BORN?

24 A YEAH.

25 Q AND DO YOU RECALL A CAR ACCIDENT THAT HAPPENED

1 WHEN CURTIS WAS A TEENAGER, YOU WOULD HAVE BEEN MAYBE 14
2 OR 15?

3 A YES. YEAH, HIM AND MY OTHER BROTHER, ALBERT,
4 AND CANDANCE, THEY FLIP OVER IN THE VEHICLE. THEY FLIP
5 OVER, I THINK, ABOUT THREE OR FOUR TIMES. AND HE HAD A
6 CONCUSSION IN HIS HEAD. AND HE STAYED IN THE HOSPITAL,
7 YOU KNOW, I THINK A COUPLE DAYS, BUT I DON'T TOO MUCH
8 REMEMBER EXACTLY WHAT HAPPENED.

9 Q SURE. ALL RIGHT. I'M GONNA ASK YOU A FEW
10 QUESTIONS HOW CURTIS WAS LIKE AS A YOUNG MAN, YOU KNOW,
11 LATER ON IN HIGH SCHOOL, IN HIS EARLY 20'S. CAN YOU JUST
12 TELL THE JUDGE WHAT KIND OF -- WHAT KIND OF MAN WAS
13 CURTIS, HOW WAS HIS APPEARANCE, HOW DID HE ACT?

14 A WHEN, IN HIGH SCHOOL?

15 Q WELL, WHEN HE WAS A LITTLE BIT OLDER, LET'S SAY
16 WHEN CURTIS IS ABOUT 20, 21, HOW DID HE DRESS, FOR
17 EXAMPLE?

18 A WELL, WHEN HE GOT OUT, HE TRIED TO DRESS THE
19 BEST HE COULD BECAUSE WE AIN'T NEVER HAD NOTHING. WE
20 ALWAYS GO AROUND WEARING SAME CLOTHES. BUT HE STARTED
21 DRESSING. AND HE ALWAYS KEPT HIMSELF, TRIED TO KEEP
22 HIMSELF CLEAN AND HAIR NICE AND GEL AND DIFFERENT STUFF
23 WITH A NICE APPEARANCE AND EVERYTHING. SEEMED KIND OF
24 HAPPY.

25 Q YOU SAY HE WORE GEL IN HIS HAIR?

1 A YES, KEEP HIS HAIR UP AND KEEP HIMSELF FIXED
2 PRETTY WELL, CLEAN.

3 Q HE ALWAYS WORE CLEAN CLOTHES?

4 A YES. ABOUT A FEW WEEKS OR SO BEFORE CURT GOT
5 IN THIS TROUBLE, IT WAS LIKE A TOTALLY DIFFERENT PERSON.
6 HE HAD, LIKE, STOPPED TAKING CARE OF HIMSELF. IT'S LIKE,
7 YOU KNOW, HE ALL THE TIME SMELL GOOD, COLOGNE. HE HAD
8 GOT, HE HAD A LITTLE ODOR ON HIM. HIS HAIR WAS LIKE ALL
9 BUSHY ON HIS HEAD. AND SOMETIME HE WEARING THE SAME
10 CLOTHES TWO OR THREE DAYS DURING. BUT WE DIDN'T REALLY
11 KNOW WHAT WAS GOING ON.

12 Q DO YOU NEED A MINUTE?

13 THE COURT: CAN WE -- DEPUTY, CAN WE HAND
14 HER THESE TISSUES, SOMEBODY.

15 MR. MARIO: THANK YOU, JUDGE.

16 THE COURT: WHENEVER YOU'RE READY.

17 BY MR. MARIO:

18 Q OKAY. GLORIA, DID YOU EVER SEE CURTIS DRUNK?

19 A NO, I NEVER KNOW CURT TO DRANK.

20 Q NO?

21 A NO.

22 Q WELL, WHEN HE WOULD GO OUT TO CLUBS AND BARS
23 AND SO FORTH?

24 A HE USED TO LOVE TO GO OUT TO CLUBS AND BARS,
25 BUT IT WAS SO STRANGE OF HIM. HE ALWAYS GO TO A CLUB AND

1 BAR AND HE BUY EVERYBODY IN THE CLUB DRINKS AND DIFFERENT
2 STUFF, BUT HE NEVER DRINK. HE GO SPEND ALL THIS MONEY IN
3 DRINKS AND STUFF, BUT HE NEVER DRINK.

4 Q WHAT WOULD HE DRINK?

5 A HE ALWAYS DRINK A SODA MOSTLY, SPRITE.

6 Q DID YOU EVER NOTICE CURTIS TO GAMBLE?

7 A YES.

8 Q WHAT TYPES OF THINGS WOULD HE GAMBLE ON OR BET
9 ON?

10 A EVERYTHING. LIKE CAR RACES, GAMBLE WITH CARDS,
11 HE LIKED TO GAMBLE.

12 Q YOU SAID A MINUTE AGO THAT THERE WAS A CHANGE
13 IN CURTIS A FEW WEEKS BEFORE THE INCIDENT, AND YOU
14 STARTED TO TALK ABOUT HIS APPEARANCE. WAS THERE ANYTHING
15 ELSE ABOUT CURTIS THAT YOU NOTICED, APART FROM THE, YOU
16 KNOW, WEARING THE SAME CLOTHES OVER AND OVER?

17 DID YOU EVER, YOU KNOW, RUN INTO HIM IN
18 THE STREET, FOR EXAMPLE, AND TALK TO HIM?

19 A WELL, I DIDN'T TOO MUCH, YOU KNOW, LIKE RUN IN
20 THE STREET AND TALK TO HIM, BUT, YOU KNOW, HE JUST -- YOU
21 COULD SEE A BIG DIFFERENCE. AND YOU REALLY THINK ABOUT
22 AFTER WHAT HAPPENED.

23 Q DID YOU EVER SEE HIM DRIVING AROUND LATE AT
24 NIGHT?

25 A YES, THERE WAS A COUPLE TIMES, YES, I SEEN THEY

1 WERE OUT.

2 Q WAS THAT UNUSUAL FOR CURTIS AS WELL?

3 A NO.

4 Q AND HE -- WOULD YOU SEE HIM WALK AROUND THE
5 NEIGHBORHOOD WITHOUT A SHIRT ON OR SHOES?

6 A YES, THAT'S WHAT GOT ME, BECAUSE HE ALWAYS --
7 HE HAD START TRYING -- WHEN HE WAS ABLE TO START DRESSING
8 HIMSELF UP, HE ALWAYS TRY TO BE DRESSED NICE. BUT THEN
9 HE START WEARING PANTS AND STUFF, CLOTHES DIRTY, KEPT ON
10 GOING TWO, THREE DAYS SOMETIMES NO SHIRT. AND THEN HE'S
11 ASHAMED OF HIS STOMACH CAUSE THEY USED TO CALL HIM FAT.
12 HE GOT TO THE POINT WHERE HE WOULDN'T EVEN WEAR A SHIRT,
13 AND SOMETIMES HE WOULDN'T EVEN WEAR SHOES. THAT WASN'T
14 LIKE HIM. AND HAIR ALL OVER HIS HEAD. BUT BECAUSE THE
15 WAY WE GROWED UP, WE DIDN'T HAVE ANYTHING 'TIL WHEN HE
16 WAS ABLE TO GET SOMETHING, HE WANTED TO JUST STAY, KEEP
17 HIMSELF UP. BUT THEN HE JUST GOT TO THE POINT -- YOU
18 KNOW, HE ALWAYS USED TO HAVE NICE PERFUME AND STUFF. HE
19 HAD GOT TO THE POINT WHERE HE WAS SMELLING LIKE SOMETIME
20 DON'T TAKE SHOWERS. I DIDN'T WANT TO HURT HIM ABOUT THE
21 WAY HE SMELLED OR NOTHING.

22 Q NOW, DO YOU REMEMBER CURTIS'S TRIAL LAWYERS, ED
23 LEINSTER AND KURT BARCH BACK IN 1992?

24 A YES.

25 Q AND YOU MET WITH THEM OR MET THEM AT LEAST?

1 A YES.

2 Q DID CURTIS'S LAWYERS THEN AT THAT TIME, DID
3 THEY EVER ASK YOU ANY OF THESE QUESTIONS ABOUT HIS
4 BACKGROUND?

5 A NO.

6 Q NO. AND IF THEY HAD ASKED YOU THESE QUESTIONS,
7 WOULD YOU HAVE TOLD THEM WHAT YOU JUST TOLD THE COURT
8 HERE TODAY?

9 A YES.

10 Q AND IF THEY ASKED YOU IF YOU'RE WILLING TO COME
11 DOWN TO THE COURTHOUSE AND TESTIFY IN FRONT OF A JURY AND
12 A JUDGE IN CURTIS'S TRIAL TO ALL OF THIS, WOULD YOU HAVE
13 DONE SO?

14 A YES, I WOULD HAVE.

15 MR. MARIO: THANK YOU. I DON'T HAVE ANY
16 OTHER QUESTIONS AT THIS TIME.

17 THE COURT: CROSS.

18 **CROSS-EXAMINATION**

19 BY MR. LERNER:

20 Q YOU WERE THE MAIN CONTACT WITH MR. LEINSTER; IS
21 THAT CORRECT?

22 A WELL, YES, I WAS ONE. I USED TO TALK TO HIM
23 HERE NOW AND THEN.

24 Q HE SAID SEVERAL TIMES DURING VARIOUS PARTS OF
25 THE RECORD THAT HE HAD ASKED YOU TO PROVIDE HIM WITH

1 WITNESSES, MITIGATION WITNESSES. DIDN'T -- DID YOU TRY
2 TO GO OUT AND FIND MITIGATION WITNESSES FOR MR. BARCH AND
3 MR. LEINSTER?

4 A YES, I TRIED TO GO FIND PEOPLES AND BRING
5 PEOPLE THERE. HE DIDN'T NEVER WANT TO EVEN TALK TO THEM.
6 HE DIDN'T REALLY HAVE TIME TO TALK TO THEM. HE MIGHT
7 HAVE TALKED TO ME PROBABLY ABOUT, MAYBE, LIKE THREE
8 TIMES. WHEN HE CALLED HE ALWAYS JUST SAY, YOU KNOW,
9 BRING MONEY. WHEN WE BRING PEOPLES FOR TO TALK TO, OR
10 WHATEVER, SUPPOSED TO HAVE WITNESS, YOU KNOW, NOBODY
11 AIN'T NEVER WANT TO TALK. HE DIDN'T HAVE TIME TO TALK TO
12 THEM.

13 Q NOW, THE ISSUE OF -- YOUR MOM BROUGHT UP THE
14 ISSUE OF WHETHER THERE WAS SOMETHING WRONG WITH CURTIS,
15 RIGHT, IN THE -- IN THE TAPE. HAVE YOU SEEN THE TAPE AT
16 THE POLICE STATION?

17 A YEAH, I REMEMBER THEY SAID THAT.

18 Q AND MR. LEINSTER PUT THAT INTO EVIDENCE, DIDN'T
19 HE?

20 A PUT IT IN EVIDENCE?

21 Q YES.

22 A OKAY, I WAS OUTSIDE, SO, YEAH, I GUESS.

23 Q OKAY. WELL, IF IT'S IN EVIDENCE, HE DID PUT IT
24 IN. DID YOU TALK TO HIM ABOUT THE TAPE?

25 A I TALKED TO HIM -- WELL, WHEN HE FIRST SAID, HE

1 SAID, DOES CURTIS NEED HELP, CURT GOT A PROBLEM. HE
2 SAID, I GONNA TRY TO GET CURT SOME HELP. THAT'S WHEN IT
3 FIRST HAPPENED IN THE FEW DAYS, CURT NEEDS SOME HELP.

4 Q SO YOU DID DISCUSS THAT WITH MR. LEINSTER?

5 A HUH?

6 Q YOU DID DISCUSS THAT WITH MR. LEINSTER?

7 A DID I DISCUSS IT?

8 Q YEAH.

9 A YEAH, I TOLD HIM HE NEEDS SOME HELP, BUT HE
10 DIDN'T.

11 Q OKAY. WELL, DID YOU TALK TO MR. --
12 DR. KIRKLAND, OR DID YOU KNOW HE GOT A PSYCHIATRIST TO
13 EXAMINE --

14 A NO, I DIDN'T TALK.

15 Q -- CURTIS?

16 A I DIDN'T TALK TO HIM.

17 Q OKAY. BUT WERE YOU THE MAIN PERSON TO WORK
18 WITH MR. LEINSTER AND WITH MR. BARCH; IS THAT CORRECT?

19 A YES, I WAS.

20 Q DO YOU REMEMBER TALKING TO MR. BARCH --

21 A YEAH, I REMEMBER.

22 Q -- ABOUT THE CASE?

23 DO YOU REMEMBER THAT HE HELD A MITIGATION
24 HEARING WHERE VARIOUS PEOPLE TESTIFIED?

25 A A WHO?

1 Q A MITIGATION HEARING. IN OTHER WORDS, AFTER
2 THE PENALTY PHASE AND JURY CAME BACK, THEY HAD ANOTHER
3 HEARING FOR THE JUDGE TO TRY TO CONVINCE THE JUDGE NOT TO
4 IMPOSE THE DEATH PENALTY AND PRESENTED WITNESSES. DO YOU
5 REMEMBER THAT?

6 A OKAY, YEAH.

7 Q DO YOU REMEMBER WHO TESTIFIED?

8 A I THINK THERE WERE MS. WILLIE MAE -- OR
9 MS. MARY.

10 Q THOSE WERE PEOPLE YOU OBTAINED FOR
11 MR. LEINSTER?

12 A YES.

13 Q OKAY. NOW, DID YOU KEEP ANY RECORDS OF
14 CORRESPONDENCE OR NOTES OR TELEPHONE CALLS OR ANYTHING
15 BETWEEN YOU AND MR. LEINSTER?

16 A I DON'T HAVE IT, NO. I DON'T HAVE IT WITH ME
17 NOW.

18 Q SO YOU'RE JUST TESTIFYING STRICTLY FROM MEMORY
19 OF WHAT HAPPENED NINE YEARS AGO, OR TEN YEARS AGO,
20 HOWEVER LONG AGO IT WAS?

21 A YEAH.

22 Q DID YOU EVER FEEL IT WAS NECESSARY TO TELL THE
23 JUDGE THAT YOU WANTED -- THAT YOU DIDN'T WANT
24 MR. LEINSTER AS YOUR ATTORNEY?

25 A DID I FIND IT NECESSARY NOT TO TELL HIM?

1 Q NO. DID YOU EVER THINK IT WAS NECESSARY TO
2 WRITE A LETTER TO THE JUDGE COMPLAINING ABOUT
3 MR. LEINSTER OR ASKING THE JUDGE TO APPOINT ANOTHER
4 ATTORNEY?

5 MR. MARIO: OBJECTION.

6 THE COURT: GROUNDS?

7 MR. MARIO: IT'S NOT RELEVANT. I THINK

8 MR. --

9 THE COURT: THE PRIOR QUESTION I WOULD HAVE
10 SUSTAINED THE OBJECTION BECAUSE IT ASSUMED THAT
11 MR. LEINSTER WAS HER LAWYER, BUT I THINK THIS
12 QUESTION IS FINE THE WAY IT'S PHRASED. IT'S
13 GOING TO WHETHER OR NOT A COMPLAINT WAS MADE
14 ABOUT LEINSTER.

15 IF YOU RECALL THE QUESTION, YOU CAN ANSWER
16 THAT. I THINK THE QUESTION WAS -- YOU CORRECT ME
17 IF I'M WRONG -- DID YOU EVER FILE ANY COMPLAINTS
18 ABOUT MR. LEINSTER OR WRITE TO ANYBODY
19 COMPLAINING ABOUT HIM, IF YOU REMEMBER?

20 THE WITNESS: NO. NO, I DIDN'T WRITE.

21 BY MR. LERNER:

22 Q NOW, YOU WERE THE ONE -- THE REASON I SAID -- I
23 WAS KIND OF JUMPING AHEAD HERE. DO YOU REMEMBER THE
24 INSOLVENCY HEARING THAT YOUR BROTHER HAD BEFORE JUDGE
25 RUSSELL, IT WAS BEFORE THE TRIAL, IN MARCH 29 OF 1992, TO

1 DECIDE WHETHER OR NOT THE COURT SHOULD HELP --

2 A OKAY.

3 Q -- YOUR BROTHER OUT WITH PAYING FOR CERTAIN
4 THINGS?

5 A OKAY.

6 Q AND THEY ASKED A BUNCH OF QUESTIONS ABOUT
7 MONEY, RIGHT?

8 A UH-HUH.

9 Q DO YOU REMEMBER THEY ASKED MR. WINDOM IF HE
10 OWNED A CAR?

11 A OKAY. YEAH, I REMEMBER THAT.

12 Q AND HE BOUGHT THE CAR FOR CASH, \$8,500?

13 A WELL, I DON'T KNOW EXACTLY HOW MUCH HE BOUGHT
14 IT FOR.

15 Q WELL, YOUR BROTHER WAS PRETTY GOOD AT
16 ACCUMULATING MONEY, HOWEVER HE DID IT; IS THAT CORRECT?

17 A WHAT YOU MEAN ABOUT THAT, SIR?

18 Q IN OTHER WORDS, HE OWNED A CAR THAT HE HAD PAID
19 FOR IN CASH --

20 A OKAY.

21 Q -- CORRECT?

22 HE WAS ABLE TO PROVIDE FOR HIMSELF; IS
23 THAT TRUE?

24 A OKAY.

25 Q FINANCIALLY?

1 A UH-HUH.

2 Q HE WAS ABLE TO PROVIDE FOR HIS FAMILY, HIS
3 CHILDREN FINANCIALLY?

4 A WELL, I WASN'T WITH HIM WITH HIS CHILDREN.

5 Q AND WHEN HE WAS ARRESTED, SOMEONE CAME UP WITH
6 \$15,000 CASH TO GIVE MR. LEINSTER; IS THAT CORRECT?

7 A NO, THAT'S NOT CORRECT.

8 Q WELL, IF YOU TESTIFIED TO THAT IN THE -- DO YOU
9 REMEMBER YOU TESTIFIED AT THE INSOLVENCY HEARING?

10 A YEAH.

11 Q AND DO YOU REMEMBER THEY ASKED YOU WHERE YOU
12 GOT THAT AMOUNT OF MONEY?

13 A IT WASN'T NO 15,000.

14 MR. LERNER: IF I COULD HAVE A MOMENT, YOUR
15 HONOR.

16 THE COURT: YES. IF YOU JUST LET COUNSEL
17 KNOW WHERE YOU ARE.

18 MR. LERNER: COULD I APPROACH THE WITNESS?

19 THE COURT: YES.

20 BY MR. LERNER:

21 Q I AM AT PAGE 403 OF THE APPELLATE RECORD, THE
22 BIG STAMP. DO YOU HAVE ANY PROBLEMS WITH READING?

23 A SOME.

24 Q SOME. DO YOU WANT ME TO POINT IT OUT AND READ
25 IT TO YOU?

1 A YES.

2 Q OKAY. NOW, THIS IS -- THIS IS WHAT THEY CALL
3 THE RECORD ON APPEAL. LET ME SHOW YOU WHAT I'M SHOWING.
4 AND THIS WAS A MOTION REGARDING INSOLVENCY BEFORE JUDGE
5 RUSSELL. DO YOU REMEMBER THAT?

6 A OKAY.

7 Q OKAY. AND IT HAPPENED, LIKE I SAID, IN MARCH
8 ACCORDING TO THE TRANSCRIPT, MARCH OF 1992. AND I'M
9 GONNA JUMP AHEAD TO WHERE YOU TESTIFIED. GLORIA JEAN
10 WINDOM. THAT'S YOU?

11 A YES.

12 Q OKAY. IT SAYS WAS CALLED AS A WITNESS BY THE
13 STATE, AFTER HAVING BEEN FIRST DULY SWORN, WAS EXAMINED
14 AND TESTIFIED ON HER OATH AS FOLLOWS:

15 MR. ASHTON: PLEASE STATE YOUR NAME.

16 AND THIS IS GLORIA WINDOM, THAT'S YOU.

17 GLORIA JEAN WINDOM.

18 MR. ASHTON: HOW ARE YOU RELATED TO THE
19 DEFENDANT.

20 GLORIA WINDOM: I'M HIS SISTER.

21 MR. ASHTON: HE'S INDICATED A MOMENT AGO
22 THAT YOU MADE ARRANGEMENTS AND PAID HIS ATTORNEY IN THIS
23 CASE; IS THAT CORRECT?

24 GLORIA JEAN, GLORIA WINDOM: YES, I BEEN
25 HELPING HIM OUT.

1 MR. ASHTON: HOW MUCH MONEY DID YOU PAY
2 HIS LAWYER?

3 GLORIA WINDOM: SO FAR I THINK IT'S ABOUT
4 15,000 SO FAR.

5 SO UP TO THAT POINT, YOU ALL, FROM YOUR
6 FAMILY RESOURCES OR YOUR -- SOME RESOURCES, HAD BEEN ABLE
7 TO COME UP WITH \$15,000; IS THAT CORRECT?

8 A BUT YOU SAID 15,000 IN CASH RIGHT THEN. BUT IT
9 WASN'T, OH, YEAH, ALTOGETHER DURING THE TIME WITH THE
10 PAYMENT. YEAH, IT PROBABLY BE ABOUT THAT MUCH THEN. NO,
11 I THOUGHT YOU SAID WE CAME UP AND GAVE HIM 15,000 IN
12 CASH.

13 Q BY THE TIME THE INSOLVENCY?

14 A OKAY. YES. YES.

15 Q SO YOUR FAMILY DID HAVE AT LEAST BY THEN SOME
16 RESOURCES?

17 A OKAY.

18 Q DID YOUR FAMILY CIRCUMSTANCES CHANGE THAT
19 RADICALLY OVER THE YEARS?

20 A NO, IT WAS WITH HELP. AND THEN, WHICH THEY GOT
21 MY -- I HAD GOT A LAWSUIT ALSO. THEY GOT A PROOF WHERE I
22 HAD A LOTTERY, AND DIFFERENT PEOPLE HAD HELPED US AND
23 GAVE MONEY.

24 Q SO THERE WAS A LOT OF PEOPLE THAT THOUGHT VERY
25 HIGHLY OF MR. WINDOM, OF YOUR BROTHER?

1 A YES.

2 Q HE WAS A PART OF THE COMMUNITY THAT THEY FELT
3 COMFORTABLE COMING UP AND LENDING HIM THAT AMOUNT OF
4 MONEY AND HELPING HIM OUT?

5 A YES.

6 Q SO, REGARDLESS OF WHAT KIND OF A CHILDHOOD YOU
7 ALL HAD, BY THE TIME YOU WERE THAT AGE AND CURTIS WAS THE
8 AGE HE WAS, YOU WERE A PART OF THE WINTER GARDEN
9 COMMUNITY, WHEREAS PEOPLE RESPECTED YOU AND THOUGHT
10 ENOUGH OF YOU AND THOUGHT ENOUGH OF CURTIS THAT THEY
11 WOULD ACTUALLY COME UP WITH THAT AMOUNT OF MONEY?

12 A YES, THEY HELPED. AND WE APPRECIATE THEIR HELP
13 THAT WE GOT FROM THEM.

14 Q OKAY.

15 MR. LERNER: NO FURTHER QUESTIONS.

16 THE COURT: ANY REDIRECT?

17 MR. MARIO: BRIEFLY, YOUR HONOR.

18 **REDIRECT EXAMINATION**

19 BY MR. MARIO:

20 Q MR. LERNER WAS ASKING YOU SOME QUESTIONS ABOUT
21 IF YOU WERE THE MAIN -- THE MAIN CONTACT PERSON WITH
22 CURTIS'S TRIAL LAWYERS, WORKING WITH THEM, AND YOU WERE
23 THE MAIN ONE THAT WORKED WITH THEM GATHERING WITNESSES
24 AND SO FORTH, SO I WANTED TO ASK YOU, YOU'RE NOT AN
25 INVESTIGATOR, ARE YOU?

1 A NO, I'M NOT.

2 Q DO YOU HAVE ANY EXPERIENCE IN CAPITAL CASES?

3 A NO.

4 Q DO YOU KNOW HOW TO GATHER MITIGATING EVIDENCE?

5 A NO, I DON'T.

6 Q DO YOU KNOW WHAT TYPE OF EVIDENCE WOULD BE
7 MITIGATING?

8 A NO.

9 Q UNLESS SOMEONE TOLD YOU OR ASKED YOU QUESTIONS
10 ABOUT IT -- IN FACT, DID MR. LEINSTER HAVE AN
11 INVESTIGATOR IN THIS CASE?

12 A HE DIDN'T HAVE NO INVESTIGATOR.

13 Q BUT YOUR FAMILY WASN'T PAYING THE EXPENSE, YOU
14 WERE PAYING HIS LEGAL FEE?

15 A YES.

16 Q DO YOU KNOW IF THE -- IF JUDGE RUSSELL, THE
17 TRIAL JUDGE, HAD DETERMINED THAT CURTIS WINDOM WOULD HAVE
18 HIS COSTS, SUCH AS INVESTIGATOR'S EXPENSE, PAID FOR BY
19 THE COUNTY SO YOUR FAMILY WASN'T ACTUALLY PAYING THOSE
20 EXPENSES, WERE THEY?

21 A EXCUSE ME?

22 Q IN OTHER WORDS, THE MONEY THAT YOU WERE PAYING
23 TO -- TO MR. LEINSTER WAS TO GO TO HIS LEGAL FEE, NOT TO
24 COVER HIS COSTS; IS THAT CORRECT?

25 A YES, SIR.

1 Q BUT HE DIDN'T HIRE AN INVESTIGATOR?

2 A NO.

3 Q OKAY.

4 MR. MARIO: I HAVE NO FURTHER QUESTIONS.

5 THE COURT: ANYTHING ELSE?

6 MR. LERNER: NO. THANK YOU.

7 THE COURT: THANK YOU. YOU'RE FREE TO GO.

8 I DON'T KNOW IF WE HAVE ENOUGH TIME TO PUT ON ONE
9 OR MORE OR NOT.

10 MR. STRAND: NO, JUDGE, WE'VE RUN OVER.

11 THE COURT: I MEAN, IF WE CAN DO IT IN TEN
12 MINUTES, I'M HAPPY TO TRY. BUT THIS WAS ABOUT
13 25, SO...

14 MR. STRAND: JUDGE, IT WOULD TAKE LONGER
15 THAN TEN MINUTES.

16 THE COURT: THAT'S FINE. LET'S START AT
17 9:00 TOMORROW MORNING, AND SEE EVERYBODY BACK
18 THEN.

19 MR. STRAND: WE WILL BE HERE READY TO GO.

20 THE COURT: GOOD.

21 (THEREUPON THE TESTIMONY WAS CONCLUDED AT 5:00 P.M.)

22

23

24

25

1 **JUNE 5, 2001**

2 **THE COURT:** READY TO GET GOING. WHO'S YOUR
3 FIRST WITNESS GONNA BE? CONTINUATION OF CURTIS
4 WINDOM, WHATEVER THE CASE NUMBER IS.

5 **THE CLERK:** CR92-1305.

6 THEREUPON,

7 MAE LOIS TATUM

8 WAS CALLED AS A WITNESS, AND HAVING FIRST BEEN DULY
9 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

10 **DIRECT EXAMINATION**

11 **BY MR. MARIO:**

12 Q GOOD MORNING.

13 A GOOD MORNING.

14 Q WOULD YOU TELL THE JUDGE YOUR NAME, PLEASE, AND
15 SPELL IT FOR THE COURT REPORTER.

16 A OKAY. MY NAME IS MAE LOIS TATUM, M-A-E
17 L-O-I-S T-A-T-U-M.

18 Q DO YOU KNOW CURTIS WINDOM?

19 A YES, I DO.

20 Q HOW DO YOU KNOW CURTIS?

21 A THAT'S MY BROTHER.

22 Q AND HOW MUCH OLDER ARE YOU THAN CURTIS?

23 A I THINK IT'S EIGHT YEARS.

24 Q ARE YOU HIS OLDEST SISTER?

25 A YES, I AM.

1 Q WERE YOU LIVING AT HOME WHEN CURTIS WAS BORN?

2 A YES, I WAS.

3 Q DO YOU REMEMBER WHEN THAT HAPPENED?

4 A YES, I DO.

5 Q CAN YOU TELL THE JUDGE ABOUT THAT.

6 A OKAY. HE WAS BORN JANUARY THE 29TH, 1966. AND
7 WE ALL WAS SITTING AROUND IN THE LIVING ROOM WHILE MY
8 MOTHER WAS IN LABOR. AND SHE -- HER WATER HAD BUST AND
9 SHE WAS TRYING TO GET BACK TO THE BED BEFORE THE MIDWIFE
10 COME. AND BEFORE SHE COULD GET TO THE BED, SHE -- CURTIS
11 WAS BORN, AND HE FELL, LIKE, HEAD FIRST HITTING THE
12 CEMENT FLOOR. WE HAD CONCRETE FLOOR. AND HE HIT -- HIS
13 HEAD HIT THE FLOOR.

14 Q WHAT DID YOU DO AFTER -- AFTER HE HIT THE
15 FLOOR?

16 A I THINK IT WAS MY FATHER WAS THERE, EXCUSE ME,
17 MY FATHER WAS THERE. THEY GOT HIM AND PICKED HIM UP AND
18 HELPED GET MY MOTHER TO THE BED AND EVERYTHING. HE KEPT,
19 YOU KNOW, SECURING HIM ON THE BED UNTIL THE MIDWIFE CAME
20 AND CUT THE CORD.

21 Q AT SOME POINT DID THE MIDWIFE ARRIVE?

22 A YES, SHE DID.

23 Q AND WHAT HAPPENED THEN?

24 A THEY CHECKED ON HIM, AS FAR AS I REMEMBER THEY
25 CHECKED ON HIM, AND EVERYTHING, EXCUSE ME, THEY CHECKED

1 ON HIM AND TO SEE WAS HE ALL RIGHT AND EVERYTHING. I
2 DON'T REMEMBER THAT WE TOOK HIM TO THE HOSPITAL THEN OR
3 NOT. BUT I THINK AT THAT TIME, I THINK HE WAS ALL RIGHT,
4 YOU KNOW.

5 Q DID ANYBODY CALL A DOCTOR?

6 A WELL, LIKE AT THAT MOMENT, AT THAT MOMENT ALL I
7 REMEMBER, THAT HIM HITTING THE FLOOR. I DON'T REMEMBER
8 FOR SURE, BUT I THINK THEY DID WENT ON TO THE HOSPITAL TO
9 MAKE SURE THAT EVERYTHING WAS ALL RIGHT.

10 Q BUT YOU DON'T REMEMBER THAT?

11 A I CAN'T PICTURE IT. ALL WHILE I WAS GROWING UP
12 ALL I COULD REMEMBER HIM, HE WAS THE ONLY BABY I REMEMBER
13 MY MOTHER HAVING AT HOME, AND HE HIT THE FLOOR AND
14 JUST -- JUST STAYED IN MY MIND.

15 Q DO YOU RECALL ANY OTHER TIMES DURING CURTIS'S
16 CHILDHOOD WHEN HE HAD SOME SORT OF A HEAD INJURY?

17 A YES. I KNOW ONE TIME WHEN HE WAS SMALLER HE
18 WAS RIDING A BICYCLE AND HE TRIPPED OVER, THREWED HIM
19 OVERBOARD BECAUSE IT BUST HIS TEETH. AND THEN HE WAS IN
20 A CAR ACCIDENT.

21 Q WHAT ABOUT THE CAR ACCIDENT, CAN YOU TELL US
22 ABOUT THAT.

23 A YES. IN THE ACCIDENT WHEN I GOT THERE --

24 Q FIRST OF ALL, HOW OLD WAS CURTIS WHEN THIS
25 HAPPENED?

1 A I THINK AROUND 16, MIGHT HAVE BEEN A LITTLE
2 OLDER. I CAN'T REMEMBER, SAY, AGE.

3 Q THIS MIGHT HAVE BEEN AROUND 1982?

4 A PROBABLY.

5 Q IF HE WAS BORN IN '66.

6 A UH-HUH. WHEN I GOT THERE TO THE -- THEY HAD
7 TOLD ME THAT THE VAN HAD FLIPPED SEVERAL TIME WHEN I GOT
8 THERE. HE WAS UNCONSCIOUS, AND THEY TOOK HIM TO THE
9 HOSPITAL.

10 Q CURTIS WAS IN THE VAN, YOU MEAN?

11 A HE WAS IN THE VAN WITH MY BROTHER AND TWO OTHER
12 FRIENDS.

13 Q AND WHO, OTHER FRIENDS?

14 A FRIENDS, UH-HUH.

15 Q YOU GOT TO THE SCENE OF THE ACCIDENT?

16 A UH-HUH.

17 Q THAT WAS BEFORE THE AMBULANCE ARRIVED OR
18 AFTERWARDS?

19 A AMBULANCE, AS FAR AS -- I THINK AMBULANCE WAS
20 ALREADY -- NO. I THINK THE AMBULANCE -- I CAN'T REMEMBER
21 NOW.

22 Q IT'S ALL RIGHT.

23 A I CAN'T REMEMBER IF THE AMBULANCE WAS THERE
24 BEFORE I GOT THERE OR IF THEY CAME AFTER I CAME. OH,
25 JESUS.

1 Q WHY DON'T YOU TELL US WHAT YOU SAW WHEN YOU GOT
2 TO THE SCENE THEN.

3 A WHEN I GOT THERE THE VAN WAS, LIKE, SIDEWAYS.
4 AND THEY WAS AS -- PICTURE IT -- I THINK THE AMBULANCE
5 WAS THERE, BUT HE WAS UNCONSCIOUS. THE VAN WAS FLIPPED
6 OVER. IT FLIPPED OVER. THEY WAS GETTING THEM BECAUSE --
7 YOU COULDN'T REALLY GET TO IT BECAUSE THEY WERE, LIKE,
8 SIDEWAYS. THE ROAD, YOU KNOW WHEN YOU GOT A DOUBLE LANE,
9 THEY WAS SIDEWAYS, AND THE VAN WAS FLIPPED OVER.

10 THEY WAS GETTING, YOU KNOW, GETTING HIM
11 OUT OF THERE AND THEY WERE TAKING HIM ON TO THE HOSPITAL.
12 SO, YOU KNOW, I COULDN'T LIKE DRIVE COMPLETELY. I HAD TO
13 WALK UP CLOSE TO WHERE THE ACCIDENT WAS.

14 Q AND, I'M SORRY, DID YOU SAY THAT CURTIS WAS
15 CONSCIOUS OR UNCONSCIOUS?

16 A UNCONSCIOUS.

17 Q WHEN THE AMBULANCE LEFT WITH CURTIS TO GO TO
18 THE HOSPITAL, WAS HE STILL UNCONSCIOUS?

19 A YES.

20 Q NOW, DID YOU GO VISIT HIM WHEN HE WAS IN THE
21 HOSPITAL?

22 A YES, I DID.

23 Q DO YOU RECALL HOW LONG HE STAYED THERE?

24 A AS FAR AS I REMEMBER, IT WAS A COUPLE DAYS.

25 Q AND AFTER CURTIS WAS RELEASED FROM THE

1 HOSPITAL, DID YOU NOTICE ANY CHANGES IN -- IN HIS
2 BEHAVIOR OR PERSONALITY?

3 A HE HAD A LOT OF HEADACHES. AND THEN IN HIS
4 SPEECH, HIS WORD GET LIKE TONGUE TWISTED AND STUFF. LIKE
5 IT WAS HARD, HARD FOR HIM TO -- YOU KNOW, SOMETIME YOU
6 COULDN'T HARDLY UNDERSTAND BECAUSE HE GET, I GUESS,
7 REALLY EMOTIONAL, WHATEVER, HIS TALKING, AND THE WORDS
8 JUST COMES TOGETHER. SORRY ABOUT THAT.

9 Q TAKE YOUR TIME. WAS HE -- DID HE COMPLAIN OF
10 HEADACHES AND THINGS LIKE THAT BEFORE THE ACCIDENT, OR
11 NOT REALLY?

12 A NOT REALLY, YEAH. I THINK HE HAD MORE
13 HEADACHES AFTER THE ACCIDENT.

14 Q NOW, SKIPPING AHEAD NOW TO 1992 WHEN CURTIS WAS
15 ON TRIAL, DO YOU RECALL MEETING HIS ATTORNEYS, ED
16 LEINSTER AND KURT BARCH?

17 A YES, I MET THEM.

18 Q HOW MANY TIMES WOULD YOU SAY YOU MET WITH THEM?

19 A I MIGHT HAVE SEEN THEM ONE OR TWO TIME. I
20 MIGHT HAVE. I THINK IT WAS JUST LIKE SEEN THEM, NOT
21 REALLY THERE TALKING TO THEM, I JUST SEEN THEM.

22 Q OKAY. SO YOU SAW THEM WHEN THEY WERE TALKING
23 TO CURTIS OR TO OTHER PEOPLE, IS THAT WHAT YOU'RE -- WHAT
24 I'M ASKING, DID THEY ACTUALLY SIT DOWN WITH YOU AND HAVE
25 A CONVERSATION WITH YOU?

1 A NO, THEY DIDN'T.

2 Q THEY DIDN'T DO THAT?

3 A NO.

4 Q WELL, I SUPPOSE IT GOES WITHOUT SAYING THEY
5 DIDN'T ASK YOU ANY OF THESE QUESTIONS ASKED HERE TODAY
6 ABOUT CURTIS'S BACKGROUND AND HIS INJURIES AND SO FORTH?

7 A NO, THEY DIDN'T.

8 Q IF THEY HAD ASKED YOU THESE QUESTIONS, WOULD
9 YOU HAVE BEEN ABLE TO TELL THEM EVERYTHING THAT YOU'RE
10 TELLING THE JUDGE HERE TODAY?

11 A YES, I WOULD.

12 Q AND IF THEY ASKED YOU TO COME DOWN TO THE
13 COURTHOUSE AND TESTIFY IN FRONT OF A JURY AND JUDGE BACK
14 IN 1992, WOULD YOU HAVE DONE SO AS WELL?

15 A YES, I WOULD.

16 **MR. MARIO:** NO FURTHER QUESTIONS RIGHT NOW,
17 YOUR HONOR.

18 **THE COURT:** THANK YOU. CROSS.

19 **CROSS-EXAMINATION**

20 **BY MR. LERNER:**

21 Q GOOD MORNING. MRS. TATUM, IS IT?

22 A YES, IT IS.

23 Q HOW OLD WERE YOU, AGAIN. I SHOULD -- HE ASKED
24 YOU HOW MUCH OLDER YOU WERE THAN CURTIS, I KNOW THAT
25 WOULD BE THE AGE. HOW OLD AGAIN WERE YOU THE DAY CURTIS

1 WAS BORN?

2 A IT WAS IN '66. I THINK I WAS ABOUT EIGHT OR
3 NINE YEARS OLD.

4 Q EIGHT. AND WERE YOU ACTUALLY PRESENT IN THE
5 ROOM WHEN HE EMERGED FROM YOUR MOTHER'S BODY?

6 A I WASN'T IN THE ROOM WHEN HE EMERGED, BUT,
7 LIKE, THE WAY OUR HOUSE WAS MADE, YOU COULD LOOK THROUGH
8 THE DOORWAY BECAUSE THE DOOR WAS OPEN. AND I WAS SITTING
9 RIGHT AT THE DOOR TO MAKE SURE THE OTHER KIDS WOULDN'T GO
10 BACK THERE. I WAS SITTING RIGHT AT THE DOOR. AND YOU
11 CAN -- I GOT A GOOD VIEW AS SHE CAME OUT THE BATHROOM
12 COMING TO THE BEDROOM BECAUSE THE BEDROOM RIGHT THERE AND
13 DOOR WAS OPEN, AND YOU COULD SEE WHEN SHE WAS COMING.
14 AND THEN I SEEN HIM WHEN HE FELL.

15 Q YOU SAW HIM EMERGING?

16 A (NODS HEAD.)

17 Q WHERE EXACTLY WAS YOUR MOTHER WHEN THAT
18 HAPPENED?

19 A SHE WAS COMING -- GOING -- TRYING TO GET TO THE
20 BED. SHE WAS LIKE -- IF THIS LIKE THE DOOR, IN-BETWEEN
21 THERE, OKAY, YOU HAD THE WALL. YOU COMING THROUGH.
22 LIKE, IT WAS A STRAIGHT HOUSE. YOU COMING THROUGH. SHE
23 WAS COMING THROUGH, AND THE BED WAS OVER THE OTHER WAY AS
24 SHE COMING THROUGH. AS SHE GETTING READY TO GO FEW MORE
25 STEPS TO THE BED, THE BABY HEAD FELL.

1 Q SO CURTIS MORE OR LESS SLID OUT AS SHE WAS
2 WALKING?

3 A UH-HUH.

4 Q AND EXACTLY WHAT POSITION WAS SHE IN?

5 A SHE WAS -- THEY WAS WALKING HER BACK. WHEN
6 THEY WAS WALKING, SHE HAD LIKE NORMAL WALKING.

7 Q NORMAL WALKING?

8 A LIKE YOU WALKING IN. CAUSE MY FATHER WAS LIKE
9 HELPING HER TO GET TO THE BED, MAKE SURE SHE WON'T FALL.

10 Q WHO ELSE WAS HELPING HER, IF ANYBODY?

11 A WASN'T NOBODY THERE AT THAT TIME. I THINK IT
12 WAS ONE MORE PERSON, I'M NOT SURE. IT -- I THINK IT
13 MIGHT HAVE BEEN MY AUNTIE. I'M NOT TOO SURE WHO WAS THE
14 OTHER PERSON. BUT I KNOW MY FATHER AND KIDS, ALL US
15 KIDS.

16 Q THEY WERE POSITIONED ON EITHER SIDE OF HER?

17 A YEAH, IT WOULD BE LIKE ON BOTH SIDES. BUT I'M
18 NOT TOO SURE WHETHER MY AUNTIE THERE OR NOT.

19 Q SOMEONE WAS ON EACH SIDE OF HER MORE OR LESS
20 HOLDING HER UP?

21 A I THINK SO.

22 Q SO SHE WAS DROOPED AND CROUCHING?

23 A YEAH. SHE WAS HURTING, OH. SHE WAS GETTING
24 CLOSER TO THE BED, OH, YOU COULD HEAR. AND THEN, YOU
25 KNOW, I SEEN THE BABY. WHEN I SEEN CURTIS WHEN HE FELL

1 AND THEN AS HE HIT, YOU HEARD THE BABY CRY.

2 Q OKAY. AND DID YOU SEE CURTIS AFTER HE -- AFTER
3 THEY SECURED HIM AND PUT HIM ON THE BED?

4 A AFTER THEY CLEAN HIM UP WE GOT A CHANCE TO SEE
5 HIM.

6 Q DID YOU SEE ANY VISIBLE INJURIES?

7 A AT THAT TIME, NO, I DIDN'T.

8 Q I KNOW SOMETIMES JUST FROM THE BIRTH PROCESS
9 ITSELF IT KIND OF MAKES A CHILD LOOK LIKE A CONE HEAD, I
10 REMEMBER THAT HAPPENED TO MY BOY.

11 A YES.

12 Q DO YOU REMEMBER ANYTHING ABOUT HIS HEAD THAT
13 WAS NOTABLE OR UNUSUAL?

14 A NO.

15 Q OKAY. AND YOUR RECOLLECTION WAS THAT THEY DID
16 TAKE YOUR MAMA AND CURTIS TO THE HOSPITAL TO CHECK OUT,
17 MAKE SURE EVERYTHING WAS ALL RIGHT?

18 A AS I REMEMBER, YEAH.

19 Q THAT WOULD HAVE BEEN WINTER GARDEN HOSPITAL AT
20 THE TIME?

21 A IT WAS WEST ORANGE MEMORIAL.

22 Q OKAY.

23 A THEY TORE IT DOWN.

24 Q YEAH, THE ONE DOWN ON THE WAY TO THE LAKE?

25 A UH-HUH.

1 Q NOW, ON THIS -- ON THIS ACCIDENT THAT HAPPENED.
2 WITH THE VAN, WHAT WAS CURTIS DRIVING?

3 A CURTIS, CURTIS WASN'T DRIVING.

4 Q HE WAS HIT BY A VAN?

5 A HE WAS -- I THINK IT WAS A CAR THAT HIT THEM.
6 THEY WAS IN THE VAN.

7 Q HE WAS IN THE VAN?

8 A HIM AND SOME MORE PEOPLE, HIM AND MY OTHER
9 BROTHER, ALBERT, AND TWO MORE. THERE WAS TWO -- TWO MORE
10 GIRLS, I THINK, TWO OR THREE MORE IN THE VAN.

11 Q AND MY HEARING IS NOT THE BEST, BUT DID YOU SAY
12 HE WAS CONSCIOUS OR UNCONSCIOUS WHEN YOU FIRST SAW HIM?

13 A UNCONSCIOUS. HE WAS UNCONSCIOUS.

14 Q WAS THAT AT THE HOSPITAL?

15 A THEY WAS TAKING HIM FROM THE ACCIDENT TAKING
16 HIM. WHEN I GOT THERE THEY HADN'T TOOK NOBODY AWAY FROM
17 THE ACCIDENT.

18 Q SO YOU ACTUALLY SAW HIM THERE AT THE SCENE?

19 A AT THE SCENE WHEN I -- RIGHT THERE BEFORE THEY
20 TOOK ANYBODY FROM THERE, THE ACCIDENT.

21 Q WHERE?

22 A I MADE IT TO THE ACCIDENT BEFORE THEY TOOK
23 ANYBODY AWAY FROM THERE.

24 Q WHERE WAS HE LOCATED AT THE SCENE, WHAT WAS
25 GOING ON?

1 A THEY WAS PUT -- THEY HAD PUT HIM ON THE
2 STRETCHERS AND PUT HIM IN THE AMBULANCE GETTING READY TO
3 TAKE HIM AWAY.

4 Q AND COULD YOU SEE ANY VISIBLE INJURIES TO HIM
5 AT THAT POINT?

6 A THEY WOULDN'T LET US GET THAT CLOSE TO HIM AT
7 THAT TIME. HE MIGHT HAVE. HE HAD A CONCUSSION I KNOW
8 BECAUSE I REMEMBER SEEING A LITTLE BLOOD. I THINK IT WAS
9 A CONCUSSION.

10 Q HE HAD SOME BLOOD SOMEWHERE ON HIS HEAD?

11 A I CAN'T SAY IT WAS ON THE HEAD BECAUSE THE
12 WINDSHIELD HAD BROKE. SEE, I CAN'T COMPLETELY SAY IT WAS
13 ON HIS HEAD OR -- BUT BLOOD WAS ON, YOU KNOW, ON HIM.

14 Q AND WHEN YOU WERE THERE AT THE SCENE HE WAS
15 BEING ADMINISTERED TO ALREADY?

16 A YEAH, THEY WAS ALL AROUND HIM.

17 Q DID HE ALREADY HAVE LIKE AN I.V., INTRAVENOUS,
18 YOU KNOW, WITH THE BOTTLE OR SOMETHING?

19 A I'M THINKING, YEAH. I THINK, YEAH, THEY HAD,
20 YEAH.

21 Q DO YOU KNOW IF THEY HAD ADMINISTERED ANY
22 SEDATIVE TO HIM AT THAT POINT?

23 A I DON'T KNOW WHAT ALL THEY HAD GAVE HIM.

24 Q OKAY. BUT DID YOU EVER GET CLOSE ENOUGH TO
25 HIM, HAD HE BEEN CONSCIOUS, YOU COULD HAVE HAD A

1 CONVERSATION?

2 A WELL, WHERE I WAS STANDING YOU COULD ALMOST
3 GET, BUT, YOU KNOW, LIKE, THEY WOULDN'T GET TOO CLOSE
4 WHEN THEY UNCONSCIOUS. I PROBABLY COULD SAY SOMETHING TO
5 HIM.

6 Q WHEN DID YOU NEXT SEE HIM?

7 A WE WAS AT THE HOSPITAL. I THINK HE HAD COME
8 UNCONSCIOUS.

9 Q DID YOU ALL GO DIRECTLY TO THE HOSPITAL?

10 A YEAH, WE SAT IN THE WAITING ROOM WAITING ON
11 HIM.

12 Q HOW LONG DID THEY MAKE YOU WAIT IN THE WAITING
13 ROOM?

14 A WE SAT THERE FOR, IT WAS SOME HOURS.

15 Q OKAY. DO YOU REMEMBER ANY MEDICAL PERSONNEL
16 CALLING -- COMING OUT AND TELLING YOU WHAT WAS GOING ON
17 OR WHAT HIS CONDITION WAS?

18 A I DON'T REMEMBER THEM TALKING TO ME CAUSE IT
19 WAS MY OTHER SISTERS AND THEM WERE THERE, TOO. AT THE
20 TIME THEY CAME BY I MIGHT HAVE HAD STEPPED TO THE
21 RESTROOM. I DON'T REMEMBER THEM COME EXACTLY TO ME.

22 Q WHEN DID YOU SEE HIM NEXT? WHERE WAS HE?

23 A HE WAS IN HIS ROOM.

24 Q WHAT WAS GOING ON?

25 A HE WAS LAYING UP THERE. HE -- I THINK I KNOW

1 HE WAS IN THERE A COUPLE DAYS. I THINK HE HAD CAME, THEY
2 HAD GOT HIM OUT OF CONSCIOUS (SIC). HE WAS LAYING UP
3 THERE AND HE WAS ASKING US -- YOU KNOW, WE WERE CHECKING
4 ON HIM, SEE WAS HE ALL RIGHT AND EVERYTHING.

5 Q WAS HE CONSCIOUS AT THAT POINT?

6 A I THINK HE HAD CAME OUT WHEN I GOT A CHANCE TO
7 GET IN THERE. I THINK THEY HAD GOT HIM OUT OF THERE, OUT
8 OF HIS CONSCIOUSNESS AT THAT TIME.

9 Q OKAY.

10 A IT'S BEEN AWHILE.

11 Q OF COURSE, YEAH. A LONG TIME. AND THIS WOULD
12 HAVE BEEN WHAT YEAR?

13 A AS I REMEMBER, I THINK IT WAS AROUND, AROUND
14 ABOUT '82.

15 Q '82?

16 A I THINK. IT WAS AROUND WHEN HE WAS 16.

17 Q AND AFTER HE CAME HOME, YOU NOTICED HE HAD
18 HEADACHES, HIS SPEECH WAS BAD. NOW, HIS SPEECH WAS
19 ALWAYS -- HE ALWAYS HAD SPEECH PROBLEMS, DIDN'T HE?

20 A YES, HE DID. BUT HE GOT -- LIKE IT WAS GETTING
21 WORSER. AS HE GOT -- WAS GETTING -- AS HE GOT -- I
22 REMEMBER AFTER THE ACCIDENT BECAUSE YOU CAN GET TALKING
23 TO HIM AND HIS TONGUE GET ALL TWISTED ALL UP AND
24 SOMETIMES YOU HAVE TO LIKE ASK HIM AGAIN, WHAT YOU SAY.
25 HE GET --

1 Q OKAY. AND HE'D GET EMOTIONAL?

2 A UH-HUH.

3 Q DID THOSE CHANGES PERSIST, OR DID THOSE CLEAR
4 UP AFTER AWHILE?

5 A THEY -- THEY DIDN'T CLEAR UP THAT MUCH BECAUSE
6 HE STILL, YOU KNOW, HE STILL SOMETIME GET EMOTIONAL WHEN
7 HE GET TO TALKING.

8 Q OKAY. HOW MUCH LONGER AFTER THE ACCIDENT THAT
9 HE HAD DID HE STAY IN THE FAMILY HOME, OR WAS HE AT THE
10 FAMILY HOME AT THAT POINT?

11 A AT THAT TIME HE WAS, HE WAS IN THE FAMILY HOME,
12 BUT I DON'T THINK HE STAYED THERE THAT LONG. I FORGOT
13 EXACTLY WHAT AGE, BECAUSE I WASN'T -- THE TIME OF THE
14 ACCIDENT I WASN'T LIVING THERE.

15 Q OH, OKAY. BUT YOU THINK HE WAS?

16 A YEAH, I THINK HE WAS STILL THERE.

17 Q LET ME ASK YOU SOME MORE QUESTIONS ABOUT YOUR
18 FAMILY BACKGROUND. DID YOUR MOTHER AND FATHER LIVE
19 TOGETHER IN THE FAMILY HOME?

20 A YES, THEY DID.

21 Q AND DID THEY STAY TOGETHER? IS YOUR FATHER
22 STILL ALIVE?

23 A YES, HE IS.

24 Q DID THEY STAY TOGETHER AFTER THAT, ARE THEY
25 STILL TOGETHER?

1 A THEY'RE STILL TOGETHER.

2 Q OKAY. AND HOW MANY CHILDREN WERE LIVING IN THE
3 HOME?

4 A WHEN, THE TIME OF -- WHAT TIME?

5 Q OKAY. HOW MANY CHILDREN DID THEY HAVE?

6 A ALL TOGETHER THEY HAVE NINE.

7 Q NINE. OKAY. WHAT'S THE MOST THAT EVER LIVED
8 IN THE HOME AT THE SAME TIME?

9 A MOST ALL US UNTIL I REMEMBER I WAS THE FIRST
10 ONE TO LEAVE, AND ALL THE REST OF THEM WAS THERE. THEN
11 ONE -- LATER DOWN THE LINE THEN ONE OF MY SISTERS MOVED
12 IN WITH ME. THEN ALL START. YEARS WENT BY, WE START
13 GETTING OUT THE HOUSE.

14 Q RIGHT. DID YOU -- SO THERE WERE NINE LIVING --
15 NINE KIDS LIVING THERE AT ONE POINT?

16 A YES, IT WAS.

17 Q BEFORE YOU LEFT?

18 A YES.

19 Q ARE YOU THE OLDEST?

20 A I'M THE OLDEST.

21 Q OKAY. AND WHAT DO YOU DO FOR A LIVING NOW?

22 A I'M A CASHIER AT KASH N' KARRY.

23 Q OKAY. AND HAVE YOU BEEN CONTINUOUSLY EMPLOYED
24 SINCE THE TIME YOU LEFT THE HOME?

25 A OFF AND ON, YES.

1 Q AND HOW MANY KIDS DO YOU HAVE?

2 A I DON'T HAVE ANY.

3 Q OKAY. BUT YOU'RE MARRIED?

4 A YES, I AM.

5 Q HOW LONG HAVE YOU BEEN MARRIED?

6 A TWENTY-THREE YEARS.

7 Q SAME -- TO THE SAME PERSON?

8 A UH-HUH.

9 Q OKAY.

10 MR. LERNER: NO FURTHER QUESTIONS.

11 THE COURT: ANY REDIRECT?

12 MR. MARIO: NO, YOUR HONOR.

13 THE COURT: ALL RIGHT. THANK YOU FOR BEING
14 HERE. YOU MAY GO.

15 NEXT WITNESS.

16 MR. STRAND: JUDGE, I THINK WE HAD SCHEDULED
17 AT 9:30. IS THAT CORRECT, MR. LERNER, TO TALK TO
18 DR. KIRKLAND?

19 MR. LERNER: THAT'S WHAT YOU TOLD ME.

20 MR. STRAND: TELEPHONICALLY.

21 MR. LERNER: I THINK THERE IS AN ORDER OR
22 SOMETHING THAT SAYS THE TIME.

23 THE COURT: WHERE IS HE?

24 MR. STRAND: NORTH CAROLINA. HE'S SEMI
25 RETIRED.

1 **THE COURT:** THAT'S FINE. WE NEED TO GO
2 THROUGH DONNA TO GET HIM, AND THEN WE'VE GOT
3 LEINSTER AT 10:30.

4 **MR. STRAND:** DR. KIRKLAND, I'M NOT GONNA ASK
5 MANY QUESTIONS.

6 **THE COURT:** GREAT. LET'S CALL DONNA. IT
7 MIGHT TAKE JUST A MOMENT TO GET HIM ON THE LINE.
8 YOU KNOW WHAT, I'M GONNA GET A CUP OF COFFEE,
9 LET'S GO AHEAD AND SEE IF WE CAN GET IT QUICKLY.

10 **MR. STRAND:** I THINK HE'S EXPECTING US IN
11 ABOUT FOUR MINUTES.

12 **MR. LERNER:** JUDGE, HAVE YOU EVER DONE ONE
13 OF THESE TELEPHONE THINGS BEFORE?

14 **THE COURT:** SURE, I DONE ONE MYSELF.

15 **MR. LERNER:** THERE IS QUITE A BIT OF VARIETY
16 HOW WELL THE PHONE WORKS.

17 **THE COURT:** WE HAVE DONE IT ONCE OR TWICE.
18 I DON'T KNOW IF WE DID IT IN THE OTHER COURTROOM
19 OR HERE. WE NEVER HAD A PROBLEM, AS I RECALL.

20 **MR. LERNER:** SHOULD WE GATHER AROUND?

21 **THE COURT:** WE WILL KNOW IN A MINUTE. IF
22 SO, WE'LL ALL MOVE UP. WE WILL SEE HOW IT WORKS.

23 (THEREUPON A RECESS WAS TAKEN.)

24 **THE COURT:** IS THIS THE DOCTOR OR IS DONNA
25 CALLING?

1 **THE CLERK:** DONNA CALLING. SHE'S SENDING IT
2 DOWN. WE WILL PUT IT ON SPEAKER.

3 **MR. STRAND:** AS A HOUSEKEEPING MATTER JUST
4 FOR YOU, I'M GONNA BE REFERRING TO THE VOLUME
5 ONE, WHICH I THINK IS DEFENSE EXHIBIT 3A, TAB B,
6 WHICH IS DR. KIRKLAND'S REPORT, PRETRIAL REPORT.
7 AND ALSO, YOUR HONOR, ALSO, JUDGE, IF I COULD
8 APPROACH, I'LL BE REFERRING TO THESE TWO PAGES,
9 PAGE 207 AND PAGE 188 OUT OF THE RECORD ON
10 APPEAL.

11 **THE COURT:** YOU WANT ME TO HAVE THESE?

12 **MR. STRAND:** JUST SO YOU COULD LOOK AT THEM
13 AS WE'RE HAVING OUR TESTIMONY.

14 **THE CLERK:** CAN YOU HEAR US?

15 **THE WITNESS:** YES.

16 **THE COURT:** ALL RIGHT. THANK YOU. WHO'S ON
17 THE PHONE?

18 CAN YOU HEAR ME, SIR?

19 **THE WITNESS:** YES, SIR.

20 **THE COURT:** OKAY. WHO'S ON THE OTHER LINE,
21 WHO AM I SPEAKING TO?

22 **THE WITNESS:** I'M DR. ROBERT KIRKLAND.

23 **THE COURT:** OKAY. THANK YOU. YOU'RE
24 SPEAKING TO JUDGE STAN STRICKLAND. WE'RE HERE IN
25 THE COURTROOM IN ORLANDO. AND YOU CAN HEAR ME

1 OKAY?

2 **THE WITNESS:** YES, YOUR HONOR, THANK YOU, I
3 CAN.

4 **THE COURT:** OKAY. GREAT. I HOPE YOU'RE
5 DOING OKAY THIS MORNING.

6 **THE WITNESS:** I AM, THANK YOU.

7 **THE COURT:** GREAT. WE'RE GONNA DO SOMETHING
8 A LITTLE BIT UNUSUAL, WHICH IS SWEAR YOU IN LONG
9 DISTANCE.

10 **THE WITNESS:** UH-HUH.

11 **THE COURT:** IF I CAN GET YOU TO RAISE YOUR
12 RIGHT HAND, PLEASE.

13 **THE WITNESS:** YES.

14 **THE COURT:** I'M GONNA HAVE MY CLERK SWEAR
15 YOU IN.

16 THEREUPON,

17 ROBERT KIRKLAND, PH.D

18 WAS CALLED AS A WITNESS, AND HAVING FIRST BEEN DULY
19 SWORN TELEPHONICALLY, WAS EXAMINED AND TESTIFIED
20 AS FOLLOWS:

21 **DIRECT EXAMINATION**

22 **THE COURT:** ALL RIGHT. THANK YOU, SIR. I'M
23 HERE WITH ATTORNEYS STRAND AND LERNER, AND I
24 THINK THEY'RE GONNA ASK YOU A FEW QUESTIONS. AS
25 I UNDERSTAND IT, THIS WON'T BE TERRIBLY LONG.

1 BUT MR. STRAND IS HERE AT THE PODIUM, HE'S GONNA
2 BEGIN BY INQUIRING. AND IF YOU HAVE ANY
3 DIFFICULTY HEARING US, JUST SPEAK UP AND LET US
4 KNOW, OKAY?

5 THE WITNESS: ALL RIGHT.

6 THE COURT: THANK YOU.

7 BY MR. STRAND:

8 Q DR. KIRKLAND, CAN YOU HEAR ME?

9 A YES, SIR.

10 Q ALL RIGHT. DR. KIRKLAND, WHAT'S YOUR
11 PROFESSION?

12 A I'M A MEDICAL DOCTOR SPECIALIZING IN
13 PSYCHIATRY.

14 Q ALL RIGHT, SIR. IN 1992 DID YOU HAVE THE
15 OPPORTUNITY TO BECOME INVOLVED IN THE STATE VERSUS CURTIS
16 WINDOM?

17 A YES, I DID.

18 Q ALL RIGHT. AND WERE YOU APPOINTED TO EVALUATE
19 MR. WINDOM?

20 A YES.

21 Q AND DO YOU RECALL IF YOU WERE APPOINTED TO
22 EVALUATE HIM FOR COMPETENCY AND SANITY?

23 A YES, I WAS.

24 Q OKAY. AND DO YOU HAVE A RECOLLECTION AS TO
25 WHETHER OR NOT YOU WERE APPOINTED TO EVALUATE MR. WINDOM

1 FOR MITIGATION PURPOSES?

2 A FOR?

3 Q FOR A PENALTY PHASE?

4 A FOR PENALTY PHASE, NO, I DON'T RECALL THAT. I
5 BELIEVE IT WAS THE STANDARD REQUEST FOR A COMPETENT TO
6 STAND TRIAL, AND ALSO HIS MENTAL CONDITION AT THE TIME OF
7 THE OFFENSES.

8 Q OKAY. AND DID YOU IN FACT HAVE THE OPPORTUNITY
9 TO CONDUCT A CLINICAL INTERVIEW WITH MR. WINDOM?

10 A YES, I DID ON AUGUST 17TH, 1992.

11 Q OKAY. AND I DON'T KNOW IF YOU HAVE YOUR
12 RECORDS THERE OR NOT?

13 A I DO.

14 Q WHAT DATE WERE YOU APPOINTED?

15 A YOU MEAN THE DATE OF THE ORDER?

16 Q YES.

17 A HOLD ON ONE MOMENT. WELL, AS A MATTER OF FACT,
18 I DON'T FIND A COPY OF THE ORDER HERE.

19 Q OKAY. WOULD IT BE A FAIR STATEMENT TO SAY THAT
20 YOU WERE APPOINTED ON AUGUST 14TH, AND THEN JUST THREE
21 DAYS LATER YOU CONDUCTED YOUR EVALUATION?

22 A THAT WOULD BE REASONABLE, YES.

23 Q OKAY. AND THEN GOING FURTHER ALONG, ON
24 AUGUST 18TH YOU ISSUED A REPORT TO JUDGE DOROTHY RUSSELL?

25 A THAT'S CORRECT.

1 Q OKAY. THEN ON -- IS IT YOUR RECOLLECTION THAT
2 THE TRIAL STARTED ON THE 25TH OF AUGUST?

3 A YES, IT DID START VERY SOON THEREAFTER.

4 Q OKAY. AND DO YOU HAVE A COPY OF YOUR REPORT IN
5 FRONT OF YOU, SIR?

6 A YES, I DO.

7 Q AND DID YOU INDICATE ANYTHING IN THE REPORT
8 RELATING TO YOUR INABILITY TO DETERMINE WHETHER OR NOT
9 MR. WINDOM WAS SANE AT THE TIME OF THE OFFENSE?

10 A YES, IN THE LAST PARAGRAPH OF THAT REPORT I
11 NOTED THAT I DID NOT HAVE SUFFICIENT INFORMATION TO FORM
12 AN OPINION ABOUT MR. WINDOM'S SANITY AT THE TIME OF THE
13 OFFENSES, AND I ASKED FOR ADDITIONAL INFORMATION,
14 INCLUDING AN ARREST REPORT, WITNESS STATEMENTS, ET
15 CETERA.

16 Q AND WERE YOU EVER ABLE TO DETERMINE WHETHER OR
17 NOT MR. WINDOM WAS SANE AT THE TIME OF THE OFFENSE?

18 A WAS -- WAS SANE AT THE TIME OF THE OFFENSE?

19 Q YES.

20 A NO. I NEVER RECEIVED THAT INFORMATION AT THE
21 TIME, YOU KNOW, PRIOR TO THE TRIAL.

22 Q OKAY. YOU NEVER RECEIVED THE WITNESS REPORTS?

23 A INFORMATION THAT I REQUESTED.

24 Q OKAY. AND, NOW, DURING THE TRIAL WERE YOU
25 ASKED TO TESTIFY?

1 A YES. WELL, YES, I WAS.

2 Q AND DURING YOUR TESTIMONY WERE YOU ABLE TO
3 INFORM THE JURY AND THE COURT THAT YOU -- THAT YOU HAD
4 RENDERED A DIAGNOSIS WITH MR. WINDOM?

5 A HOLD ON A MOMENT. I'M NOT SURE THAT THIS ISSUE
6 CAME UP. I'VE -- I HAVE SEEN -- AS YOU MAY RECALL FROM
7 OUR EARLIER DISCUSSION, WHEN I TESTIFIED IN COURT IT WAS
8 LARGELY ABOUT GENERALITIES AND ABOUT SOME, YOU KNOW,
9 SPECIAL CONDITIONS FROM WHICH I DID NOT THINK THAT I --
10 THINK TO MR. WINDOM. AT THIS MOMENT, AGAIN, I DON'T
11 RECALL IF I MADE A DIAGNOSIS OF MR. WINDOM AT THE TIME.

12 Q OKAY. SO THE RECORD WOULD SPEAK FOR ITSELF AS
13 TO YOUR TESTIMONY?

14 A YES, IT WOULD.

15 Q NOW, NOW, YOU'VE TESTIFIED THAT YOU HADN'T
16 RECEIVED ANY BACKGROUND MATERIAL PRIOR TO YOUR EVALUATING
17 MR. WINDOM OR WRITING YOUR REPORT. DO YOU HAVE --

18 A THAT'S CORRECT.

19 Q DO YOU HAVE ANYTHING IN YOUR FILE THAT WOULD
20 INDICATE THAT YOU HAD BEEN INFORMED THAT MR. WINDOM HAD
21 BEEN IN AN AUTOMOBILE ROLL-OVER ACCIDENT AT THE AGE OF 16
22 WHERE HE HAD CLOSED HEAD INJURY AND WAS RENDERED
23 UNCONSCIOUS? DID YOU KNOW THAT PRIOR TO YOUR EVALUATION
24 OR ANY TIME DURING YOUR INVOLVEMENT IN THE CASE?

25 A HOLD ON A MOMENT, PLEASE. I'M REVIEWING MY

1 NOTES TO SEE IF THAT WAS DISCUSSED. I KNOW THAT THAT
2 CAME UP LATER, BUT I'M TRYING TO FIND OUT IF I RECALL
3 WHETHER OR NOT THAT CAME UP IN MY INTERVIEW WITH HIM. I
4 DO NOT SEE ANY NOTES CONCERNING A PREVIOUS HEAD INJURY.

5 Q AND IN YOUR REVIEW OF YOUR NOTES, DID -- DO YOU
6 SEE ANYTHING IN THERE THAT WOULD INDICATE THAT
7 MR. WINDOM, DURING THE BIRTHING PROCESS, THAT HIS MOTHER
8 WAS STANDING UP AND CURTIS WAS BORN AND CAME OUT ON A
9 CONCRETE OR TILE FLOOR?

10 A NO.

11 Q OKAY. AND DO YOU HAVE ANY INDEPENDENT
12 RECOLLECTION OF KNOWING ABOUT THESE TWO INCIDENTS PRIOR
13 TO YOUR EVALUATION? DID ANYONE TELL YOU ABOUT THEM?

14 A NO, I DID NOT KNOW ABOUT THAT.

15 Q OKAY. AND IF YOU HAD BEEN GIVEN INFORMATION,
16 THIS INFORMATION PRIOR TO YOUR EVALUATION, WOULD IT HAVE
17 AFFECTED YOUR CLINICAL INTERVIEW PROCESS?

18 A WELL, THE FACT IT MEANT I WOULD HAVE PURSUED
19 PROBABLY FURTHER EVALUATION AND FURTHER STUDIES.

20 Q AND WOULD YOU HAVE RECOMMENDED A
21 NEUROPSYCHOLOGICAL EVALUATION THAT YOU WOULD CONSIDER THE
22 RESULTS ALONG WITH OTHER THINGS?

23 A THAT MIGHT BE ONE OF THE AVENUES THAT I WOULD
24 HAVE SUGGESTED.

25 Q OKAY. JUST ONE MOMENT, SIR, I THINK I'M ABOUT

1 DONE.

2 NOW, IN THE YEAR 2000, DID I PROVIDE YOU
3 WITH BACKGROUND MATERIALS RELATIVE TO MR. WINDOM?

4 A YES.

5 Q AND DID YOU HAVE AN OPPORTUNITY TO REVIEW THE
6 THREE VOLUMES OF BACKGROUND MATERIAL?

7 A YES, I DID.

8 Q OKAY. IS THAT THE TYPE OF MATERIAL THAT WOULD
9 HAVE BEEN HELPFUL TO YOU AT THE TIME OF YOUR EVALUATION?

10 A YES.

11 Q AND DID YOU HAVE ANY MATERIAL LIKE THAT?

12 A NO.

13 Q NOW, UNDERSTANDING THAT YOU INDICATED TO JUDGE
14 RUSSELL IN YOUR REPORT THAT YOU FELT YOU DIDN'T HAVE
15 ENOUGH BACKGROUND MATERIAL OR ENOUGH TIME TO DO A PROPER
16 EVALUATION, IS IT YOUR PROFESSIONAL OPINION, BECAUSE OF
17 THE LACK OF BACKGROUND MATERIAL AND LACK OF TIME, THAT IT
18 WOULD BE PROFESSIONALLY IMPOSSIBLE TO RENDER A COMPLETE
19 EVALUATION?

20 A WELL, LET ME SAY IT WOULD BE DIFFICULT, I DON'T
21 KNOW THAT IT WOULD BE TOTALLY IMPOSSIBLE. THE MORE
22 INFORMATION YOU HAVE, THE BETTER, IF YOU WILL.

23 Q OKAY. NOW, IF YOU HAD BEEN ASKED TO EVALUATE
24 MR. WINDOM FOR PENALTY PHASE MITIGATION ISSUES, WOULD
25 THAT HAVE CHANGED THE QUESTIONS THAT YOU ASKED HIM DURING

1 YOUR EVALUATION?

2 A WELL, YES. BECAUSE MY UNDERSTANDING IS THAT IN
3 TERMS OF PENALTY PHASE, THERE ARE SPECIFIC QUESTIONS THAT
4 NEED TO BE ANSWERED IN TERMS OF A PERSON'S UNDERSTANDING
5 OF WHAT'S GONNA HAPPEN TO THEM, OF WHY IT'S GOING TO
6 HAPPEN, SO FORTH AND SO ON.

7 Q AND --

8 A BUT -- AND THOSE QUESTIONS AREN'T REALLY A PART
9 OF A PRETRIAL INVESTIGATION OR EVALUATION.

10 Q OKAY. DO YOUR NOTES REFLECT THAT YOU ASKED ANY
11 OF THOSE QUESTIONS?

12 A NO.

13 Q OKAY. AND THAT WOULD BE BASED ON JUDGE
14 RUSSELL'S ORDER INDICATING THAT IT WAS AN EVALUATION
15 UNDER THE --

16 A WELL, ONCE AGAIN, I DON'T THINK THE QUESTION
17 WAS EVER RAISED TO ME AS TO HIS COMPETENCY TO BE
18 EXECUTED.

19 MR. STRAND: ONE MOMENT.

20 Q AND, DR. KIRKLAND, YOU HAD INDICATED COMPETENCY
21 TO BE EXECUTED. AND I'M HAVING A LITTLE BIT OF TROUBLE
22 WITH LEGAL TERMS HERE. IN THE PENALTY PHASE, A JURY
23 PENALTY PHASE, THERE IS A POSSIBILITY THAT THE DEFENSE
24 COULD TRY TO PROVE STATUTORY MITIGATING CIRCUMSTANCES
25 THAT A PERSON IS UNDER AN EXTREME EMOTIONAL DISTURBANCE.

1 A YES.

2 Q OR THAT HE WAS SUBSTANTIALLY UNABLE TO CONFORM
3 HIS CONDUCT TO THE LAW.

4 A THAT'S MY UNDERSTANDING.

5 Q AND YOU DID NOT EVALUATE CURTIS WINDOM FOR
6 THOSE STATUTORY MITIGATING FACTORS; IS THAT CORRECT?

7 A NO, I DID NOT. THAT WOULD HAVE BEEN MATERIAL,
8 IF YOU WILL, THAT WOULD HAVE COME -- THE INFORMATION THAT
9 I DIDN'T HAVE AVAILABLE.

10 Q YOU'RE ALSO FAMILIAR WITH A NONSTATUTORY
11 MITIGATING FACTORS, BACKGROUND INFORMATION, FOR INSTANCE,
12 CHILD ABUSE, MALNUTRITION, THOSE TYPE OF THINGS. YOU DID
13 NOT EVALUATE MR. WINDOM TO DETERMINE IF THOSE ISSUES
14 EXISTED, DID YOU?

15 A NO, I NEVER EVALUATED HIM IN REGARD TO HIS
16 COMPETENCY IN THIS REGARD.

17 Q OKAY.

18 A ONLY IN REGARD COMPETENT TO STAND TRIAL. AND I
19 WAS ASKED ABOUT HIS SANITY AT THE TIME OF THE OFFENSE,
20 BUT, I AS MENTIONED IN MY REPORT, I COULDN'T ANSWER THAT
21 QUESTION.

22 Q OKAY.

23 **MR. STRAND:** THANK YOU VERY MUCH, SIR.

24 **THE COURT:** OKAY. MR. LERNER IS GOING TO
25 ASK YOU A FEW QUESTIONS NOW, DOCTOR. THANK YOU.

1 **JUNE 6, 2001**

2	TESTIMONY OF ROBERT NORGAARD	
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6	TESTIMONY OF JEFF ASHTON	
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8	RE-CROSS-EXAMINATION BY MR. STRAND	590
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10 **VOLUME IV (PAGES 593 THROUGH 785)**

11	TESTIMONY OF JANNA BRENNAN	
	DIRECT EXAMINATION BY MR. LERNER	597
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12	REDIRECT EXAMINATION BY MR. LERNER	604
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14 **JUNE 7, 2001**

15	TESTIMONY OF SIDNEY J. MERIN, PH.D.	
	DIRECT EXAMINATION BY MR. LERNER	611
16	CROSS-EXAMINATION BY MR. STRAND	710
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25

1 THE WITNESS: ALL RIGHT.

2 CROSS-EXAMINATION

3 BY MR. LERNER:

4 Q DOCTOR, GOOD MORNING. DR. KIRKLAND, CAN YOU
5 HEAR ME ALL RIGHT?

6 A GOOD MORNING.

7 Q DO YOU HAVE AN INDEPENDENT RECOLLECTION OF THE
8 CLINICAL INTERVIEW WITH MR. WINDOM?

9 A INDEPENDENT RECOLLECTION. BY THAT DO YOU MEAN
10 NO NOTES?

11 Q CORRECT.

12 A NOT -- NOT EVERY PART, NO, SIR.

13 Q FOR INSTANCE, DO YOU REMEMBER WHAT MR. WINDOM
14 LOOKED LIKE OR HAVE AN IMPRESSION OF WHAT HE LOOKED LIKE,
15 OR --

16 A YES. I REMEMBER HIM OBVIOUSLY BEING BLACK,
17 YOUNGISH BLACK MALE, VERY STOCKY, WELL BUILT, MUSCULAR,
18 OTHER THAN HIS DEALINGS WITH ME.

19 Q DO YOU HAVE NOTES FROM THE CLINICAL INTERVIEW
20 INDEPENDENT OF YOUR WRITTEN REPORT?

21 A YES, I DO.

22 Q OKAY. COULD YOU TELL US, YOU MENTION IN YOUR
23 REPORT THAT YOU RULED OUT ORGANIC BRAIN DAMAGE AT THAT
24 POINT. WHAT TESTS OR PROCEDURES DID YOU FOLLOW IN ORDER
25 TO DO THAT?

1 A WELL, THEY WERE JUST THE STANDARD PARTS OF THE
2 MENTAL STATUS EXAMINATION THAT INVOLVES IN LOOKING AT A
3 PERSON'S MEMORY, HIS PRESENTATION, HIS EMOTIONAL TONE,
4 HIS INTELLECTUAL CAPABILITIES, HIS ORIENTATION TO HIS
5 SURROUNDINGS, HIS JUDGMENT. NO SPECIFIC TESTS.

6 Q OKAY. AND DID YOU DO ANY TESTS THAT WOULD HAVE
7 BEEN DESIGNED TO TEST THE FUNCTION OF HIS NERVES, LIKE
8 HAVE HIM FOLLOW YOUR FINGER OR A WALK OR ANYTHING LIKE
9 THAT?

10 A NO, SIR.

11 Q OKAY. AS PART OF YOUR PROCEDURE TO RULE OUT
12 BRAIN DAMAGE, WAS IT PART OF YOUR PROCEDURE TO ASK
13 MR. WINDOM HIMSELF IF HE HAD ANY SIGNIFICANT ACCIDENT OR
14 HEAD INJURIES OR FALLS?

15 A YES, WE WOULD INQUIRE ABOUT PAST HISTORY OF
16 MEDICAL HISTORY, IN TERMS OF WHAT THINGS HE HAD SUFFERED.
17 AND HE DID, HE MENTIONED SOME THINGS THAT HAD HAPPENED TO
18 HIM.

19 Q WHAT DID HE MENTION THAT HAD HAPPENED TO HIM?

20 A WELL, HE MENTIONED THAT HE HAD BEEN -- SEE, I
21 FORGOT. LET ME LOOK. HE SAID HE HAD BEEN SHOT. I'M NOT
22 SURE WHETHER HE WAS SHOT AT OR ACTUALLY STRUCK.

23 Q OKAY.

24 A BUT THAT WAS -- HAD BEEN JUST A COUPLE OF YEARS
25 BEFORE THESE EVENTS. BUT, LARGELY, HE MINIMIZED. IN

1 OTHER WORDS, HE DIDN'T SAY THAT HE HAD ANY PARTICULAR
2 HEALTH PROBLEM OR ANY KIND OF PSYCHIATRIC HISTORY.

3 Q DID YOU SPECIFICALLY ASK HIM ABOUT ANY INJURIES
4 TO THE HEAD? I MEAN, WOULD THAT NORMALLY HAVE BEEN YOUR
5 PROCEDURE?

6 A NOT -- NOT AS A TERRIBLY IMPORTANT THING, NO.

7 Q WHAT EXACTLY WOULD YOU HAVE ASKED HIM?

8 A WELL, YOU KNOW, HAVE YOU EVER HAD ANY SERIOUS
9 HEAD INJURIES. OBVIOUSLY ALL OF US HAVE HAD HEAD
10 INJURIES FROM FALLING OUT OF TREES AND WHAT HAVE YOU.

11 Q SO YOU ASKED HIM -- SO YOU DID ASK HIM IF HE
12 HAD EVER HAD ANY SERIOUS HEAD INJURIES?

13 A WELL, I SUPPOSE SO, YES. I DON'T SEE A NOTE
14 ABOUT IT, BUT THAT WOULD BE PART OF THE STANDARD
15 EXAMINATION.

16 Q OKAY. THE REASON I'M ASKING YOU, IS THAT
17 SOMETHING THAT YOU WOULD NORMALLY DO TO RULE OUT THE
18 POSSIBILITY OF ORGANIC BRAIN DAMAGE?

19 A WELL, ONLY -- YOU SEE, WHAT I'M TRYING TO SAY
20 IS THIS, WE ARE MORE INTERESTED IN CLINICAL SIGNS OF
21 ORGANIC BRAIN DISORDER. IN OTHER WORDS, WHAT -- HOW THE
22 BRAIN DISORDER AFFECTS OUR LIFE AND OUR BEHAVIOR, ET
23 CETERA, AS OPPOSED TO JUST WHATEVER YOU MIGHT HAVE HAD IN
24 THE PAST.

25 Q OKAY.

1 **A** SO WE WOULD EVALUATE THOSE AREAS IN WHICH WE
2 KNOW THAT BRAIN DAMAGE DOES HAVE AN AFFECT ON A PERSON,
3 RATHER THAN OBTAIN A LISTING OF EVERY SINGLE TIME HE
4 BUMPED HIS HEAD OR WAS STRUCK IN THE HEAD, ET CETERA.

5 MANY TIMES OF COURSE HEAD INJURIES ARE
6 RATHER OBVIOUS, EITHER DUE TO MALFORMATIONS OR DUE TO
7 SOMETHING CLINICAL WITH THE PERSON, PARALYSIS OR
8 SOMETHING.

9 **Q** NOW, IF HE HAD TOLD YOU ABOUT THIS ACCIDENT,
10 CAR ACCIDENT, AND THAT HE WAS RENDERED UNCONSCIOUS
11 WHEN -- IN AN ACCIDENT WHEN HE WAS 16, IS THAT SOMETHING
12 YOU NORMALLY WOULD HAVE WRITTEN DOWN?

13 **A** YES, I WOULD HAVE WRITTEN THAT DOWN.

14 **Q** AND DO YOU HAVE ANY INDICATION THAT YOU DID
15 WRITE THAT DOWN?

16 **A** NO, I DON'T FIND ANYTHING WRITTEN DOWN ABOUT
17 IT.

18 **Q** NOW, WHEN YOU SAY YOU WERE LOOKING, YOU WOULD
19 BE LOOKING FOR CLINICAL INDICATION OF BRAIN DAMAGE, WHAT
20 DID YOU FIND FOR THAT AT THAT TIME?

21 **A** ONCE AGAIN, THIS IS A PART OF THE STANDARD
22 MENTAL STATUS EXAMINATION IN WHICH THE EXAMINER LET'S THE
23 EXAMINEE TALK SPONTANEOUSLY, AS MUCH AS POSSIBLE AND ASK
24 CERTAIN QUESTIONS, BUT NOT -- TRY TO AVOID QUESTIONS THAT
25 CAN BE ANSWERED YES OR NO AND ASK QUESTIONS THAT NEED

1 NARRATIVE ANSWERS, AND THIS ALLOWS THE EXAMINER TO JUDGE
2 THE PERSON'S INTELLECTUAL LEVEL, THEIR ABILITY TO --
3 THEIR RECALL, THEIR MEMORY, THEIR PRESENTATION. NOT ONLY
4 WHAT THEY SAY, BUT HOW THEY SAY IT. YOU KNOW, THEIR
5 VOCABULARY, ANY NUANCES OR PECULIARITIES OF SPEECH, ANY
6 KIND OF PECULIAR GESTURING OR NORMAL GESTURING THEY MAY
7 CARRY OUT THROUGHOUT. AND ALSO WANT TO EVALUATE MEMORY,
8 THE ABILITY TO THINK CLEARLY, HAVE IDEAS CONNECTED AND SO
9 FORTH. SO WITHOUT SITTING DOWN WITH PENCIL AND PAPER,
10 ONE GETS A VERY GOOD IDEA OF MENTAL FUNCTIONS OF THE
11 BRAIN FUNCTIONING, IF YOU WILL, SIMPLY BY A CONVERSATION.

12 Q DID -- WELL, WHAT WAS YOUR ASSESSMENT OF
13 MR. WINDOM IN THIS REGARD?

14 A WELL, AT THE TIME I DIDN'T THINK THAT
15 MR. WINDOM SHOWED ANY SIGNIFICANT SIGNS OF BRAIN DAMAGE.

16 Q WHAT ADDITIONAL QUESTIONS WOULD YOU HAVE ASKED
17 HIM AT THAT TIME IF YOU HAD BEEN PREPARING FOR THE
18 PENALTY PHASE?

19 A IN PREPARING FOR PENALTY PHASE?

20 Q YES. WHAT QUESTIONS WOULD YOU HAVE ASKED?

21 A IF I SEEN HIM AGAIN AFTER HE'D BEEN CONVICTED;
22 IS THAT CORRECT?

23 Q YES. WHAT WOULD YOU HAVE DONE DIFFERENTLY THAN
24 YOU DID DIFFERENTLY IN THE INITIAL INTERVIEW IS WHAT I'M
25 TRYING TO UNCOVER.

1 A WELL, AGAIN, I WOULD HAVE LIKED TO HAVE
2 RESOLVED IN MY OWN MIND THE ISSUE THAT, YOU KNOW, THE
3 ISSUE ABOUT THE OTHER INFORMATION THAT I HAD REQUESTED,
4 BECAUSE THAT INFORMATION, I DON'T BELIEVE, WAS SUPPLIED
5 TO ME EVER PRIOR THAN YEAR 2000. IT WAS SEVEN OR EIGHT
6 YEARS. I DON'T KNOW EXACTLY WHEN HE WAS SENTENCED. I'M
7 QUITE SURE IT WAS SOMETIME IN '92 OR '93.

8 MY POINT IS THAT I WAS ASKED TO EXAMINE
9 HIM FOR COMPETENCY TO STAND TRIAL. I RELAYED TO THAT,
10 YES, I THINK HE'S ABLE TO STAND TRIAL. I WAS ASKED TO
11 EXAMINE HIM IN TERMS OF AT THE TIME OF THE SHOOTING. I
12 RESPONDED, I'M AFRAID I CAN'T DO THAT, I NEED FURTHER
13 INFORMATION. BUT I NEVER GOT THAT, AND I WAS NEVER ASKED
14 TO -- I WAS NO LONGER INVOLVED IN IT.

15 NOW, HAD -- HAD I SEEN HIM AFTER HE WAS
16 CONVICTED AND THE JUDGE WANTED TO KNOW IS HE COMPETENT TO
17 BE EXECUTED, I DON'T KNOW WHAT I WOULD HAVE DONE ABOUT
18 THE FACT THAT I HADN'T RECEIVED THE INFORMATION THAT I
19 HAD REQUESTED. BUT I WOULD THEN PURSUED ISSUES, IN TERMS
20 OF HIS REALIZATION OF WHAT WAS GOING TO HAPPEN.

21 NOW, WHAT DOES THIS MEAN, THIS VERDICT,
22 WHAT DOES THIS SENTENCE MEAN TO HIM, DOES HE UNDERSTAND
23 THAT HE WILL BE PUT TO DEATH, DOES HE FEEL THAT THIS IS
24 EITHER JUSTIFIED BY THE CIRCUMSTANCES OR UNDERSTANDABLE,
25 IF YOU WILL, BY THE CIRCUMSTANCES, AND EVALUATE HIS --

1 HIS -- LET ME SEE -- AWARENESS AND APPRECIATION OF WHAT
2 WAS GONNA HAPPEN OR WHAT WAS SCHEDULED TO HAPPEN. THAT
3 WOULD NOT HAVE REQUIRED ANY BACKGROUND INFORMATION, IF
4 YOU WILL. THAT WOULD BE VERY MUCH ONLY AT THIS MOMENT
5 EVALUATION HOW DO YOU FEEL, WHAT'S YOUR SITUATION ON THIS
6 RIGHT NOW. BUT I WOULD STILL HAVE THE DIFFICULTY IN
7 THE -- ABOUT HAVING NEVER RENDERED AN OPINION ABOUT HIS
8 SANITY AT THE TIME OF THE OFFENSE BECAUSE I NEVER GOT ANY
9 INFORMATION.

10 Q WHAT INFORMATION WAS GIVEN TO YOU BY
11 MR. LEINSTER PRIOR TO YOUR TESTIFYING ABOUT THE FUGUE
12 STATE?

13 A PRACTICALLY NONE.

14 Q DO YOU HAVE AN INDEPENDENT RECOLLECTION OF
15 TALKING TO HIM BEFORE YOU TESTIFIED AND WHAT HE DISCUSSED
16 THAT HE WANTED TO BRING OUT, OR ANYTHING OF THAT SORT?

17 A YES. LET ME SEE, I HAD THE -- I HAD CERTAIN
18 INFORMATION THAT I TALKED TO MR. LEINSTER. AS YOU MAY
19 RECALL, MR. WINDOM OVER A, ROUGHLY A SHORT PERIOD OF
20 TIME, SHOT FOUR PEOPLE. AND AT THIS MOMENT, WITHOUT
21 REGARD TO MY NOTES, I MIGHT HAVE DIFFICULTY IN COMING UP
22 WITH THEIR NAMES, BUT THE FIRST ONE WAS A FORMER FRIEND.
23 I THINK HIS NAME WAS JIMMIE LEE OR JOHNNIE LEE OR
24 SOMETHING LIKE THAT.

25 Q WHERE DID YOU GET THIS BACKGROUND INFORMATION?

1 A THIS IS FROM CURTIS WINDOM.

2 Q FROM CURTIS WINDOM HIMSELF?

3 A RIGHT.

4 Q FROM WHAT HE TOLD YOU HAPPENED?

5 A AND, EXCUSE ME, I HAD INFORMATION THAT CURTIS
6 WINDOM HAD SHOT FOUR PEOPLE.

7 Q WHERE DID YOU GET THAT FROM?

8 A PROBABLY FROM MR. LEINSTER.

9 Q WOULD THAT HAVE BEEN FROM HIM GIVING THE POLICE
10 REPORTS TO REVIEW OR SOMETHING OF THAT SORT?

11 A WELL, IT MIGHT HAVE BEEN, LET ME SEE. WELL,
12 LET'S SEE, I GOT A CALL FROM JUDGE DOROTHY RUSSELL'S
13 OFFICE, SOMEBODY NAMED -- A SECRETARY ASKED ME -- ASKING
14 ME TO EXAMINE CURTIS WINDOM, THAT HE HAD THREE CHARGES OF
15 MURDER, THREE COUNTS, MURDER IN THE FIRST DEGREE AND ONE
16 COUNT OF ATTEMPT TO COMMIT MURDER, THE NAME OF THE
17 ATTORNEYS INVOLVED, ET CETERA. AND THAT IS ABOUT THE
18 LIMIT OF THE INFORMATION THAT I HAD WHEN I WENT TO SEE
19 HIM. I EXAMINED HIS JAIL FILE AND --

20 Q WHAT WOULD HAVE NORMALLY BEEN IN HIS JAIL FILE?

21 A WELL, HIS JAIL FILE WOULD JUST GIVE HIS GENERAL
22 PHYSICAL CONDITION. YOU KNOW, THEY WOULD HAVE CHECKED
23 HIM OUT PHYSICALLY IN REGARDS TO BLOOD PRESSURE, PULSE,
24 ALL THAT SORT OF THING, AND CONCERN ABOUT HIS PHYSICAL
25 HEALTH. AND I NOTICED THERE WAS A PSYCHIATRIC CONSULT

1 THAT HAD BEEN REQUESTED IN THE JAIL, BUT NONE -- I
2 COULDN'T FIND ANY RECORD ~~THAT~~ ONE HAD BEEN DONE.

3 THE NURSES' NOTES SUGGESTED THAT HE
4 REPORTED BEING DEPRESSED. THESE WERE THINGS THAT WERE IN
5 THE -- IN THE INFIRMARY FILE THAT I NOTED AND WOULD
6 AMOUNT TO PRETTY MUCH THE LIMIT OF THE INFORMATION THAT I
7 HAD. THERE WAS A NOTE IN THE CHART ALSO THAT HE HAD MADE
8 A SUICIDE THREAT OR STATEMENT AFTER HIS ARREST, BUT SOON
9 RECANTED THAT.

10 SO THEN I DISCUSSED WITH -- I WENT TO SEE
11 MR. WINDOM, AND HE TOLD ME OF THE CHARGES AND THE --
12 WELL, I USE THE WORD END STATE, BUT HE RECALLS THREE OF
13 THE SHOOTINGS, BUT DID NOT RECALL SHOOTING HIS
14 GIRLFRIEND, VALERIE DAVIS, AND HAD CLEAR RECALL OF
15 SHOOTING THE FIRST VICTIM, JOHNNIE LEE. AND IT WAS
16 APPARENTLY SOON AFTER THAT HE RETURNED HOME AND SHOT
17 VALERIE DAVIS, FROM WHAT THEY HAVE BEEN ABLE TO PIECE
18 TOGETHER. AND CURTIS WINDOM SAID HE DID NOT RECALL DOING
19 THAT.

20 HE SUBSEQUENTLY ENCOUNTERED, I BELIEVE,
21 VALERIE DAVIS'S MOTHER ON THE STREET AND HE SHOT HER. HE
22 FELT A DANGER TO HER. AND THEN THERE WAS ANOTHER MAN
23 THAT WAS SHOT, AND I'M NOT SURE THAT HE WAS FATALLY
24 WOUNDED. BUT SO ALL THE RECOUNTING OF THE ISSUE WAS THAT
25 HE HAD CLEAR RECALL OF THREE OF THE EVENTS, BUT ACCORDING

1 TO HIM NO RECALL OF SHOOTING VALERIE DAVIS, WHO CERTAINLY
2 WOULD HAVE BEEN WITHOUT --> CERTAINLY IMPORTANT TO HIM,
3 AND WAS THE MOTHER OF HIS CHILDREN OR CHILD AND SOMEBODY
4 HE LIVED WITH AND SOMEBODY HE HAD STRONG FEELINGS ABOUT.
5 BUT, AS I SAY, HE HAD NO RECALL OF THAT.

6 SO MR. LEINSTER AND I DISCUSSED MATTERS
7 PRIOR TO TRIAL. WE WERE TALKING OFF THE CUFF, IF YOU
8 WILL. NOT REALLY OFF THE CUFF. HE SAID HOW CAN YOU --
9 CAN YOU ACCOUNT FOR SOMEBODY HAVING THESE SITUATIONS IN
10 WHICH THEY'RE INVOLVED IN SHOOTING AND THEY REMEMBER SOME
11 AND NOT OTHERS. WE TALKED ABOUT THE VARIOUS KIND OF
12 STRESS SITUATIONS AND SCENARIOS THAT DEVELOP, AND
13 CERTAINLY CAN DEVELOP IN THE MIDST OF HIGH TENSION, HIGH
14 EXCITEMENT, HIGH ANXIETY SITUATIONS, AND I MENTIONED THE
15 WORD FUGUE STATE. AND SEEMED LIKE MR. LEINSTER KIND --
16 KIND OF LATCHED ON TO THAT PHRASE. WHEN I EVENTUALLY
17 WENT TO COURT, THAT WAS WHAT I TALKED ABOUT. BUT HE -- I
18 DIDN'T -- IT APPLIED TO MR. WINDOM, AND THAT SEEMED TO BE
19 THE THRUST OF WHAT I WAS TESTIFYING ABOUT.

20 Q DO YOU HAVE NOTES OF YOUR INTERVIEW WITH
21 MR. LEINSTER?

22 A NO.

23 Q SO YOU'RE TESTIFYING JUST FROM YOUR MEMORY
24 ABOUT THAT?

25 A ABOUT MY -- MY MEMORY ABOUT WHAT?

1 Q TALKING WITH HIM OFF THE CUFF AS YOU TERM IT.

2 A OH, WELL, YES. YES. PLUS -- YES. I KNOW I
3 DID THAT BECAUSE I ENDED UP JUST TALKING ABOUT THAT.

4 Q AND WHEN YOU WERE TALKING WITH MR. LEINSTER, DO
5 YOU REMEMBER IF HE PROVIDED YOU WITH ANY ARREST REPORTS
6 OR NOTES OR FAX OF THE INCIDENT, IN ADDITION TO TALKING
7 TO HIM?

8 A I'M NOT SURE THAT I EVER GOT ANY OF THAT
9 INFORMATION PRIOR TO THE TRIAL.

10 Q DO YOU KNOW ONE WAY OR THE OTHER FOR SURE?

11 A NO, I DON'T.

12 Q OKAY. ONE LAST QUESTION. JUMPING BACK TO THIS
13 FILE ON MR. WINDOM AT THE JAIL.

14 A YES.

15 Q WOULD THAT NORMALLY INCLUDE QUESTIONS THAT HAD
16 BEEN ASKED HIM ABOUT ANY PRIOR SIGNIFICANT INJURIES?

17 A OH, YES. THAT SHOULD BE IN THAT FILE. THEY --
18 THEY HAVE A FORM THAT THEY COMPLETE AT THE TIME OF THEIR
19 FIRST EVALUATION, AS THEY ARE INTERESTED IN A VARIETY OF
20 SITUATIONS. I WOULD SAY OBVIOUSLY THEY'RE INTERESTED IN
21 ANY KIND OF CONTAGIOUS DISEASE A PERSON MIGHT HAVE IF
22 THEY'RE IN THE JAIL POPULATION, BUT THERE'S ALSO
23 EXTENSIVE QUESTIONNAIRE HISTORY REGARDING HISTORY OF
24 INJURIES, PARTICULARLY HEAD INJURIES, THINGS OF THAT
25 SORT.

1 Q DO YOU REMEMBER HIM --

2 A NO, I DON'T.

3 Q -- INDICATING ANY SPECIFIC HEAD INJURY?

4 A I DON'T REMEMBER THAT BEING A BIG ISSUE AT THE
5 TIME THAT I LOOKED AT IT.

6 Q IS THAT SOMETHING YOU NORMALLY WOULD HAVE
7 NOTED?

8 A EXCUSE ME?

9 Q DID YOU NOTE IT?

10 A I DON'T RECALL NOTING IT.

11 Q OKAY. AND YOU HAVE YOUR NOTES WITH YOU?

12 A I HAVE MY NOTES, YES.

13 Q OKAY.

14 MR. LERNER: NO FURTHER QUESTIONS.

15 THE WITNESS: THANK YOU.

16 THE COURT: REDIRECT.

17 REDIRECT EXAMINATION

18 BY MR. STRAND:

19 Q JUST A FEW. DR. KIRKLAND, DO YOU HAVE AN
20 INDEPENDENT RECOLLECTION OF REVIEWING A FORM FROM
21 MR. WINDOM'S JAIL FILE WHICH WOULD INDICATE HIS PRIOR
22 MEDICAL HISTORY, OR IS THAT JUST SOMETHING THAT GENERALLY
23 YOU WOULD SEE?

24 A I DON'T HAVE A SPECIFIC -- I DON'T HAVE A COPY
25 OF THAT, BUT IT'S SOMETHING I WOULD, AS PART OF MY

1 PRACTICE, LOOK OVER AS A TIME-SAVING DEVICE, BUT I WOULD
2 CERTAINLY BE AWARE OF THAT AT THE TIME I WAS SEEING HIM.

3 Q BUT YOU DON'T HAVE AN INDEPENDENT RECOLLECTION
4 OF REVIEWING THAT FORM?

5 A NO, I DO NOT.

6 Q AND WOULD IT BE A FAIR STATEMENT TO SAY IN
7 THESE TYPE OF HOMICIDE CASES THAT IT'S REASONABLE FOR A
8 MENTAL HEALTH PROFESSIONAL TO RELY UPON THE ATTORNEY, THE
9 DEFENSE ATTORNEY IN THE CASE TO PROVIDE YOU WITH THE
10 BACKGROUND MATERIAL THAT YOU NEED TO PERFORM YOUR
11 EVALUATION? DO YOU NORMALLY EXPECT THAT?

12 A WELL, CERTAINLY IF IT WAS A CASE IN WHICH I WAS
13 RETAINED BY THE DEFENSE ATTORNEY, I WOULD THINK THAT
14 WOULD BE MOST APPROPRIATE. IN THIS SITUATION, WHICH I'VE
15 BEEN WORKING FOR YEARS AND YEARS, I DON'T HAVE A SIDE.
16 IN OTHER WORDS, I'M NOT RETAINED BY ONE SIDE OR ANOTHER.
17 AND QUITE OFTEN THE INFORMATION WILL -- WILL COME FROM
18 THE STATE ATTORNEY OR FROM THE DEFENSE ATTORNEY, BUT I
19 USUALLY GET IT WHEN I ASK FOR IT.

20 Q AND IN THIS CASE YOU TESTIFIED DURING THE GUILT
21 PHASE OF MR. WINDOM'S TRIAL, WAS THAT AT THE BEHEST OF
22 THE COURT OR DID YOU FEEL THAT YOU WERE A DEFENSE
23 WITNESS, OR A PROSECUTION?

24 A I'M SORRY, WHAT WAS THE FIRST PART OF THAT
25 QUESTION.

1 Q YOU TESTIFIED DURING THE GUILT PHASE OF
2 MR. WINDOM'S TRIAL.

3 A I DON'T KNOW WHICH SIDE IT WAS ON.

4 MR. STRAND: I DON'T HAVE ANY FURTHER
5 QUESTIONS.

6 THE COURT: ANY RECROSS?

7 MR. LERNER: NO, YOUR HONOR.

8 THE COURT: ALL RIGHT. DR. KIRKLAND, I HOPE
9 YOU HAVE A GOOD DAY. WE'RE GONNA HANG UP ON YOU
10 NOW THOUGH.

11 THE WITNESS: THANK YOU VERY MUCH.

12 THE COURT: YES, SIR, HAVE A GOOD DAY.

13 DO WE HAVE AN INTERIM WITNESS?

14 MR. MARIO: I THINK WE HAVE TIME TO DO ONE
15 MORE LAY WITNESS.

16 THE COURT: WE NEED TO FINISH IN 25 MINUTES.
17 I THINK WE NEED TO BE PROMPT.

18 MR. MARIO: ABOUT AS LONG AS OUR FIRST
19 WITNESS, MRS. TATUM.

20 THE COURT: WHO IS IT?

21 MR. MARIO: EDDIE LEE WINDOM.

22 THE COURT: CAN WE DO IT IN 25 MINUTES? I
23 THINK WE NEED TO BE PROMPT WITH THE CALL TO
24 LEINSTER.

25 MR. MARIO: I EXPECT TO.

1 **THE COURT:** IS HE HERE OUT IN THE HALL
2 SOMEWHERE?

3 WE CAN ALWAYS SORT OF BIFURCATE HIS
4 TESTIMONY, I SUPPOSE. LET'S GO AHEAD AND CALL
5 HIM.

6 THEREUPON,

7 EDDIE LEE WINDOM
8 WAS CALLED AS A WITNESS, AND HAVING FIRST BEEN DULY
9 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

10 **DIRECT EXAMINATION**

11 **THE COURT:** GO AHEAD, MR. STRAND. EXCUSE
12 ME, MARIO.

13 **MR. MARIO:** THANK YOU, YOUR HONOR.

14 **Q** HI, EDDIE. COULD YOU TELL THE JUDGE YOUR NAME.

15 **A** MY NAME IS EDDIE LEE WINDOM.

16 **Q** AND ARE YOU CURTIS WINDOM'S BROTHER?

17 **A** YES.

18 **Q** YOU ALSO HAVE ANOTHER BROTHER CALLED EDDIE
19 JAMES?

20 **A** YES.

21 **Q** ARE YOU OLDER OR YOUNGER?

22 **A** I'M THE YOUNGEST.

23 **Q** YOU'RE THE YOUNGEST. IS EDDIE JAMES THE OLDER
24 BROTHER?

25 **A** YES.

1 Q NOW, WHERE DID YOU -- DO YOU LIVE NOW, EDDIE?

2 A I LIVE WITH MY MOTHER RIGHT NOW.

3 Q IS THAT WINTER GARDEN?

4 A YES.

5 Q AND IS THIS THE SAME HOUSE THAT CURTIS WAS BORN
6 IN?

7 A YES.

8 Q DID YOU ALL --

9 A NO, IT'S NOT THE SAME HOUSE HE WAS BORN IN.

10 Q OKAY.

11 A BUT IT'S THE SAME HOUSE WE WERE RAISED.

12 Q YOU WERE RAISED IN?

13 A YEAH. WE BEEN IN THIS HOUSE FOR AT LEAST 30
14 YEARS, SOMETHING LIKE THAT. CLOSE TO IT.

15 Q HOW OLD ARE YOU NOW?

16 A I'M 31, I'LL BE 32 NEXT MONTH.

17 Q ALL RIGHT. WELL, YOU ALL GREW UP IN THIS HOUSE
18 TOGETHER?

19 A YES.

20 Q AND WHEN YOU ALL WERE GROWING UP AND WHEN
21 CURTIS WAS A CHILD, WERE THERE ANY PROBLEMS THAT CURTIS
22 HAD AS A YOUNG CHILD?

23 A HE HAD A SPEECH PROBLEM WHERE HE USED TO, YOU
24 KNOW, HE WOULD TALK AND YOU COULDN'T REALLY UNDERSTAND
25 HIM. AND THEN HE HAD LIKE SOMETHING LIKE A BLADDER

1 CONTROL PROBLEM, OR SOMETHING, WHERE HE WOULD -- HE
2 COULDN'T CONTROL, YOU KNOW, LIKE HE MIGHT PEE THE BED.
3 BUT HE WAS LIKE IN HIS EARLY TEENS OR SOMETHING, YOU
4 KNOW. AND, YOU KNOW, HE WAS OLDER THAN ME, YOU KNOW WHAT
5 I'M SAYING? I HAD STOPPED, BUT, YOU KNOW, HE COULDN'T
6 CONTROL HIS, YOU KNOW.

7 Q DID THAT CAUSE HIM PROBLEMS AT SCHOOL?

8 A WELL, AT SCHOOL AND IN THE NEIGHBORHOOD, YOU
9 KNOW. YOU KNOW, LIKE WE WERE REAL POOR. AND THE FACT
10 THAT OUR CLOTHES HAD TO BE HAND WASHED, OR WHATEVER, AND
11 THE SMELL WOULD STILL BE ON THEM. AND THEN LIKE THEY
12 WOULD CALL HIM PISSY AND STUFF BECAUSE HIS PANTS WOULD BE
13 WET OR SOMETHING, YOU KNOW, AND THEY WOULD BE PICKING AT
14 HIM, CALL HIM PISSY AND STUFF LIKE THAT.

15 Q AND GETTING BACK TO HIS PROBLEM WITH HIS
16 SPEECH, WAS THAT SOMETHING THAT WENT BACK AS FAR AS YOU
17 CAN RECALL?

18 A YEAH. HE ALWAYS HAD A PROBLEM LIKE SPEAKING,
19 YOU KNOW. WE CAN UNDERSTAND HIM BECAUSE, YOU KNOW,
20 THAT'S OUR BROTHER AND, YOU KNOW, THAT'S EVERY DAY, YOU
21 KIND OF GET ADAPTED TO THAT, YOU KNOW?

22 Q NOW, GROWING UP IN THE HOUSE, YOU SAID THAT THE
23 FAMILY WAS SORT OF POOR. SO DID YOU HAVE HEALTH
24 INSURANCE?

25 A NO. SEE, MY FATHER, HE WAS THE ONLY ONE THAT

1 WORKED, AND HE DIDN'T BRING HOME MUCH MONEY THEN, YOU
2 KNOW. IT WAS LIKE ME AND ~~1~~ OF US IN ALL. AND THEN MY
3 MOTHER DIDN'T WORK. AND THEN MY DAD SOMETIMES USED TO
4 GAMBLE AND STUFF, YOU KNOW. IF HE GAMBLED AND HE ALSO
5 LOST, THEN NOBODY ELSE HAD NO INCOME. HE MIGHT COME IN,
6 HE TAKE STUFF OUT ON US OR SOMETHING. HE JUMP ON MY
7 MOTHER, ONE OF US MIGHT, YOU KNOW, GET A WHIPPING FOR
8 REALLY NOTHING, YOU KNOW.

9 Q AND WERE THOSE PRETTY, PRETTY SEVERE OR NOT SO
10 BAD?

11 A AT TIMES THEY WERE MORE SEVERE. IT MATTERED
12 THE MOOD HE WAS IN OR WHATEVER.

13 Q DID HE ALSO BEAT YOUR MOTHER?

14 A YES.

15 Q WOULD THAT HAPPEN IN FRONT OF YOU ALL, IN FRONT
16 OF THE CHILDREN SOMETIMES?

17 A YES.

18 Q AND IF YOUR FATHER WASN'T BRINGING HOME ENOUGH
19 MONEY, OR HE LOST MONEY GAMBLING, WHAT WOULD YOU DO FOR
20 FOOD OR JUST THE BASIC NECESSITY?

21 A WE HAD TO REALLY WORK WITH WHAT WE HAD, YOU
22 KNOW. WE NEVER HAD -- WE COULD NEVER GET FOOD. WE
23 COULDN'T TRY TO TAKE FROM THE OTHER CAUSE IT WAS JUST
24 ENOUGH TO GET BY, YOU KNOW. IF WE TRIED, YOU KNOW --
25 MAN, YOU JUST HAVE TO BE THERE, YOU KNOW, IT'S HARD TO

1 EXPLAIN, YOU KNOW.

2 Q UH-HUH.

3 A JUST ENOUGH TO GET BY.

4 Q WELL, WHEN CURTIS GOT A LITTLE BIT OLDER WAS HE
5 EFFECTED BY HIS CHILDHOOD, BEING POOR, NOT HAVING
6 CLOTHES, NOT HAVING FOOD AND SO FORTH?

7 A I THINK SO. HE GOT PICKED ON MORE THAN US, YOU
8 KNOW. HE HAD THAT PROBLEM. THEY WERE PICKING ON HIM,
9 CALLING HIM PISSY. SO HIS APPEARANCE WAS, YOU KNOW, LIKE
10 EVERYTHING. HE WOULD TRY TO BE NEAT, HIS CLOTHES WOULD
11 ALWAYS BE CLEAN, CREASED. AND HIS HAIR, HE KEPT IT CURLS
12 LIKE FROM THE PERMS FROM THE BEAUTICIAN SHOP. HE WOULD
13 ALWAYS KEEP HIS GEL, YOU NEED GEL OR GREASE TO KEEP IT
14 LOOKING NICE. WHEN HE COME OUT, HE ALWAYS BE CLEAN, YOU
15 KNOW, SHOES SHINING OR WHATEVER. AND, YOU KNOW, HIS
16 APPEARANCE, I THINK -- I THINK IT WAS CAUSE, YOU KNOW, HE
17 WANTED TO BE CLOSE TO PERFECT BECAUSE HOW HE GOT PICKED
18 ON, YOU KNOW, WHEN HE WAS YOUNG, YOU KNOW.

19 Q AND YOU KNOW SOMETIMES PEOPLE DRINK WHEN THEY
20 COME FROM ROUGH BACKGROUNDS. DID CURTIS EVER DRINK, WAS
21 HE A BIG DRINKER?

22 A CURTIS, HE NEVER DRUNK. HE NEVER DRUNK OR DID
23 ANYTHING, ANY KIND OF DRUGS OR NONE OF THAT, YOU KNOW.

24 Q SO IF CURTIS STARTED DRINKING ALL OF A SUDDEN,
25 WOULD THAT BE UNUSUAL?

1 A YEAH, IT WOULD BECAUSE IT WAS LIKE HIS
2 APPEARANCE AND HEALTH OR ~~WHATEVER~~, HE WANTED TO BE CLOSE
3 TO PERFECT HE COULD GET, YOU KNOW. MAYBE THAT, YOU KNOW,
4 HE WOULD FEEL THAT WOULD BE ANOTHER REASON TO BE PICKED
5 ON OR SOMETHING, YOU KNOW, I DON'T KNOW.

6 Q OKAY. WELL, I WANT TO ASK YOU SOME QUESTIONS
7 ABOUT THE PERIOD OF TIME IN THE FEW WEEKS OR A MONTH
8 BEFORE THIS INCIDENT OCCURRED IN THIS CASE. DID YOU
9 NOTICE ANY CHANGES IN CURTIS'S BEHAVIOR OR HIS APPEARANCE
10 AT THAT TIME?

11 A SOMETIMES HE WOULD RIDE UP AND HE WOULD HAVE --
12 HE WOULD BE BAREFOOTED, NO SHOES ON, HE WOULDN'T HAVE A
13 SHIRT ON. AND HE WAS LIKE FAT AND HIS STOMACH WOULD BE
14 HANG OFF, HANGING DOWN. AND HIS APPEARANCE WITH HIM
15 THEN, HIS HAIR, IT WOULD BE DRY AND ALL. IF IT AIN'T
16 GELLED OUT, IT WOULD BE ALL WILD AND STUFF. AND CLOTHES,
17 HE HAD -- HE WOULD HAVE ON, SOMETIMES HE WOULD HAVE SAME
18 CLOTHES ON FOR LIKE THREE DAYS OR SOMETHING, AND THEY
19 WOULD BE DIRTY. AND, YOU KNOW, EVER SINCE HE WAS LIKE UP
20 IN AGE, EVERYTHING WAS ALL CREASED AND CLEANED, YOU KNOW.

21 Q WELL, HOW DO YOU KNOW THAT? I MEAN, SOMETIMES
22 I WEAR THE SAME CLOTHES A COUPLE DAYS IN A ROW. HOW DO
23 YOU KNOW THAT CURTIS -- HOW DID YOU KNOW HE DIDN'T HAVE
24 ANY OTHER CLOTHES?

25 A AFTER THE INCIDENT, YOU KNOW, HAPPENED, AND ME

1 AND MY SISTER, WE WENT TO CLEAN OUT THE APARTMENT, YOU
2 KNOW. IT WAS LIKE BRAND NEW CLOTHES HANG UP, YOU KNOW,
3 IN THE CLOSET AND STUFF. AND, YOU KNOW, HE COULD HAVE
4 EASILY PUT THAT ON OR SOMETHING, YOU KNOW. AND HE WAS IN
5 THE APARTMENT. IT SEEMED LIKE HE WASN'T EVEN, YOU KNOW,
6 BATHING OR WHATEVER, YOU KNOW, WHATEVER. YOU GET CLOSE
7 TO HIM, YOU WOULD KIND OF SMELL.

8 Q DID YOU SEE CURTIS MUCH OR DID YOU SEE HIM AT
9 ALL IN THE FEW WEEKS LEADING UP TO THIS INCIDENT?

10 A LIKE SOMETIMES I WOULD COME IN FROM THE CLUB
11 LIKE THREE OR 4:00, AND HE BE RIDING THROUGH, YOU KNOW.

12 Q THREE OR 4:00 AT WHAT TIME OF DAY?

13 A THAT WOULD BE AFTER CLUB, AT NIGHT.

14 Q LIKE THREE OR 4:00 A.M.?

15 A YEAH. YEAH. AND I MIGHT SEE HIM RIDING BY,
16 YOU KNOW, OR WHATEVER. AND IT SEEMED STRANGE TO ME
17 BECAUSE HE USUALLY WOULD BE HOME, YOU KNOW. HE NEVER
18 REALLY RODE AROUND LIKE THAT. AND THAT -- YOU KNOW, IT'S
19 LIKE IT WASN'T -- IT WASN'T A LITTLE CHANGE, BUT IT
20 DIDN'T SEEM OUT OF THE ORDINARY, YOU KNOW. BUT IT WAS
21 DIFFERENT FROM HOW HE WAS, HE USUALLY WOULD BE BECAUSE
22 HIS APPEARANCE. HE USUALLY WOULDN'T RIDE AROUND ALL
23 NIGHT OR SOMETHING. I SAY IT WAS STRANGE. BUT, SEE,
24 CURTIS, HE NEVER CONFIDED IN US. HE WANTED TO BE SO
25 PERFECT THAT I THINK IF HE HAD A PROBLEM, I THINK HE

1 WOULD JUST HOLD IT IN.

2 Q WELL, DID YOU EVER GET A CHANCE TO TALK TO HIM,
3 YOU KNOW, DURING THIS PERIOD OF TIME WHEN YOU WOULD SEE
4 HIM OUT IN THE STREET AND HE'S NOT WEARING SHOES OR
5 SHIRT, DID YOU EVER STOP AND TALK TO HIM?

6 A HE -- HE TALK -- IT'S LIKE -- IT'S LIKE ONE
7 TIME HE GOT -- HE GOT SHOT, AND WE WOULD TRY TO ASK HIM
8 WHERE HE WAS SHOT. HE WAS TALKING SO FAST YOU COULDN'T
9 UNDERSTAND. THAT'S HOW HE -- WHEN HE TALKED, HE TALK
10 REAL FAST. OR WHAT HE BE SAYING, IT WOULDN'T HAVE
11 NOTHING TO DO WHAT WE'RE TALKING ABOUT, YOU KNOW, AND IT
12 WASN'T REALLY MAKING SENSE OR WHATEVER.

13 Q IN YOUR EXPERIENCE GROWING UP WITH CURTIS, WERE
14 THERE TIMES IN THE PAST WHEN HE WOULD DO THIS?

15 A THE ONLY TIME I KNOW THAT HE DID THAT IS LIKE
16 WHEN HE GOT SHOT. WHAT YOU MEAN, YOU MEAN --

17 Q WHAT I'M ASKING YOU, WHAT IS HE -- NORMALLY HE
18 WOULDN'T TALK SO FAST, YOU COULD UNDERSTAND HIM, BUT NOW
19 HE WAS --

20 A I COULD UNDERSTAND HIM, YOU KNOW. ON A NORMAL
21 BASIS I COULD UNDERSTAND HIM.

22 Q BECAUSE YOU'RE USED TO IT?

23 A YEAH, I'M USED TO IT.

24 Q OKAY. DO YOU RECALL 1992 WHEN YOUR BROTHER WAS
25 ON TRIAL HE HAD HIS ATTORNEYS, ED LEINSTER AND KURT

1 BARCH? DID YOU MEET THEM?

2 A YOU SAID 1982.

3 Q 1992, EXCUSE ME.

4 A DID I DO WHAT?

5 Q DID YOU MEET CURTIS'S LAWYERS, HIS TRIAL
6 LAWYERS THEN, ED LEINSTER AND KURT BARCH?

7 A NO, I NEVER -- I NEVER MET KURT BARCH. I THINK
8 I SEEN ED LEINSTER ONE TIME. I THINK MY SISTER SET ME
9 OVER THERE TO TAKE THE MONEY TO HIM.

10 Q SENT. WHICH SISTER WAS THAT?

11 A GLORIA.

12 Q WHEN YOU WENT -- WELL, DID YOU ACTUALLY GO OVER
13 TO HIS OFFICE THEN?

14 A I WENT -- I WENT TO DROP THE MONEY OFF.

15 Q AND DID YOU SPEAK WITH HIM WHEN YOU DROPPED THE
16 MONEY OFF?

17 A I JUST TOLD HIM I HAD BROUGHT THE MONEY. I
18 THINK I BROUGHT WHAT WAS -- ME AND ANDRE WALKER, WE HAD
19 CAME OVER THERE CAUSE I WANTED HIM TO TALK TO HIM, BUT HE
20 JUST GOT THE MONEY, HE SAID HE WAS BUSY.

21 Q NOW, WHO'S ANDRE WALKER?

22 A ANDRE, HE'S THE GUY WE CALL ROOTMAN. HE WAS --
23 THAT WAS HIS HOUSE THAT CURTIS WAS IN, YOU KNOW, WHEN
24 THE -- WHEN WE CAME AND GOT HIM FROM THE POLICE.

25 Q SO THE POLICE ARRESTED CURTIS AT ANDRE WALKER'S

1 HOUSE?

2 A YES, HE WAS WITH HIM IN THAT LAST INCIDENT, THE
3 LAST SHOOTING.

4 Q WOULD THAT BE MARY LUBIN?

5 A YEAH, HIM AND MY BROTHER, EDDIE JAMES, WAS
6 RIGHT THERE WITH HIM.

7 Q WAS A WITNESS TO THE SHOOTING, IS WHAT YOU'RE
8 SAYING?

9 A YEAH.

10 Q AND WHEN YOU WENT TO MR. LEINSTER'S OFFICE WITH
11 ANDRE WALKER, DID MR. LEINSTER SPEAK TO YOU OR ANDRE
12 WALKER, DID HE INTERVIEW HIM OR ASK HIM QUESTIONS?

13 A NO, HE JUST ASKED US FOR THE MONEY, AND HE SAY
14 HE WAS BUSY AND HE DIDN'T TALK TO US, YOU KNOW.

15 Q SO HE DIDN'T ASK YOU ANY QUESTIONS THEN EITHER
16 ABOUT THE BACKGROUND OR ANYTHING?

17 A ONLY THING HE ASKED ABOUT WAS THE MONEY. AND I
18 TRIED TO INTRODUCE HIM TO, YOU KNOW, THAT WAS THE GUY,
19 BUT, YOU KNOW, HE SAY HE WAS BUSY OR WHATEVER.

20 Q SO IF -- IF MR. LEINSTER HAD ASKED YOU ALL
21 THESE QUESTIONS THAT WE'VE ASKED YOU TODAY AND HAD WANTED
22 TO SIT DOWN AND HAVE AN INTERVIEW WITH YOU, WOULD YOU
23 HAVE DONE THAT?

24 A YES.

25 Q IF HE ASKED YOU TO COME DOWN TO THE COURT AND

1 TESTIFY IN CURTIS'S TRIAL ABOUT THIS, WOULD YOU HAVE DONE
2 THAT AS WELL?

3 A YES.

4 MR. MARIO: ONE MOMENT, YOUR HONOR.

5 THE COURT: YES.

6 MR. MARIO: LET ME JUST CLARIFY SOMETHING.

7 Q EDDIE LEE, YOU WERE TELLING US THAT CURTIS WAS
8 ALWAYS VERY CAREFUL ABOUT HIS APPEARANCE AND VERY NEATLY
9 DRESSED AND SO FORTH AND THEN THERE WAS A CHANGE. ABOUT
10 HOW LONG BEFORE THIS -- THIS INCIDENT WITH JOHNNIE LEE
11 WAS SHOT AND SO FORTH DID YOU OBSERVE THAT CHANGE?

12 A IT WAS SOMETHING LIKE PROBABLY TWO OR THREE
13 WEEKS BEFORE.

14 Q OKAY.

15 MR. MARIO: NO FURTHER QUESTIONS, JUDGE.

16 THE COURT: CROSS.

17 CROSS-EXAMINATION

18 BY MR. LERNER:

19 Q LET ME ASK YOU -- I'M CHRIS LERNER, THE
20 PROSECUTOR. LET ME ASK YOU SOME QUESTIONS ABOUT YOUR
21 FAMILY LIFE, IT'S KIND OF HOW WE STARTED OUT. YOU'RE
22 STILL LIVING AT THE FAMILY HOME?

23 A LIKE FOR THE LAST YEAR I MOVED BACK. I WAS
24 LIVING WITH MY BABY MOTHER, YOU KNOW, UNTIL LIKE THE LAST
25 YEAR WE HAD A LITTLE PROBLEM, SO I WENT BACK IN. BUT I'M

1 NOT CONSTANTLY THERE DAY TO DAY, YOU KNOW. I'M WITH
2 OTHER GIRLFRIENDS, OR WHATEVER. BUT THAT'S LIKE WHERE I
3 GO, YOU KNOW, WHEN I'M NOT WITH THEM OR WHATEVER.

4 Q DO YOU HAVE SEVERAL GIRLFRIENDS THEN?

5 A NOT RIGHT NOW I DON'T HAVE STEADY GIRLFRIEND.

6 Q UH-HUH. IS IT UNUSUAL FOR YOU TO MAYBE VISIT
7 TWO OR MORE OF THEM ON THE SAME DAY?

8 A WHAT YOU MEAN?

9 Q GIRLFRIENDS?

10 A I'M SAYING WHAT YOU MEAN BY --

11 MR. MARIO: I'M GONNA OBJECT, THIS IS
12 IRRELEVANT.

13 THE COURT: SUSTAINED.

14 BY MR. LERNER:

15 Q OKAY. BUT YOU HAVE SEVERAL GIRLFRIENDS?

16 A WHAT YOU MEAN BY THAT?

17 MR. MARIO: OBJECTION.

18 THE COURT: SUSTAINED.

19 BY MR. LERNER:

20 Q AND YOU'VE GONE BACK HOME TO LIVE WITH YOUR
21 FAMILY. DID THEY WELCOME YOU BACK INTO THE FAMILY HOME?

22 A YES.

23 Q YOUR MOM AND DAD ARE STILL TOGETHER?

24 A YEAH, THEY'RE TOGETHER, BUT THEY STILL HAVE
25 LITTLE ARGUMENT, YOU KNOW.

1 Q SURE. NOW, HOW OLD WERE YOU WHEN YOU LEFT THE
2 FAMILY HOME?

3 A LET ME SEE. ABOUT 17. PROBABLY ABOUT,
4 PROBABLY ABOUT 18, 18, 19. I WORKING AT THE BUENA VISTA
5 PALACE WHEN I WAS ABOUT LIKE 17. YEAH, I GOT PROBABLY
6 ABOUT 18.

7 Q AND LET ME ASK YOU ABOUT YOUR ARREST HISTORY.
8 YOU'VE ONLY BEEN ARRESTED ONCE, AND THAT CASE WAS
9 DROPPED; IS THAT CORRECT?

10 A I NEVER BEEN CONVICTED OF ANYTHING.

11 Q RIGHT. AND YOU'VE ONLY BEEN ARRESTED ONCE?

12 MR. MARIO: THIS IS IMPROPER IMPEACHMENT.

13 THE COURT: SUSTAINED. SUSTAINED.

14 THE WITNESS: SO WHAT'S THE QUESTION?

15 THE COURT: THERE IS NO QUESTION.

16 MR. LERNER: THE QUESTION IS --

17 THE COURT: THERE IS NO QUESTION. WHAT'S
18 YOUR NEXT QUESTION.

19 BY MR. LERNER:

20 Q YOU DON'T HAVE ANY KIND OF SIGNIFICANT ARREST
21 HISTORY; IS THAT CORRECT?

22 MR. MARIO: OBJECTION.

23 A I SAID --

24 THE COURT: SUSTAINED. SUSTAINED. NEXT
25 QUESTION.

1 BY MR. LERNER:

2 Q NOW, GOING BACK TO THE TIME THAT CURTIS WINDOM,
3 YOUR BROTHER, WAS INVOLVED IN THE SHOOTINGS, WHAT WAS
4 YOUR REACTION WHEN YOU HEARD THAT HE HAD BEEN -- THAT HE
5 HAD DONE THAT?

6 A REACTION? LIKE WHAT?

7 Q WHAT DID YOU THINK ABOUT IT?

8 A I WAS SURPRISED.

9 Q CAUSE YOU DIDN'T THINK THAT WAS SOMETHING THAT
10 HE WOULD NORMALLY DO?

11 A SO YOU'RE SAYING THAT YOU THINK HE WOULD SHOOT
12 PEOPLE EVERY WEEK OR SOMETHING?

13 THE COURT: LET ME GET SOME GROUND RULES.
14 HE'S ASKING YOU THE QUESTIONS, YOU JUST NEED TO
15 ANSWER THEM. IF THE ATTORNEYS DON'T LIKE WHAT'S
16 BEING ASKED, THEY WILL OBJECT AND I'LL RULE ON
17 IT.

18 SO WHAT'S YOUR QUESTION?

19 BY MR. LERNER:

20 Q THE QUESTION IS, DID YOU THINK IT WAS LIKE HIM
21 TO DO SOMETHING LIKE THAT, BASED ON YOUR HISTORY OF
22 KNOWING HIM ALL THE YEARS THAT YOU KNEW HIM?

23 THE COURT: YES OR NO.

24 THE WITNESS: NO.

25 BY MR. LERNER:

1 Q OKAY. AND DID YOU IN YOUR OWN MIND MAKE ANY
2 KIND OF CONNECTION BETWEEN THE WAY YOU HAD SEEN HIM THE
3 LAST COUPLE OF WEEKS AND WHAT HE DID?

4 A AT THAT INSTANT?

5 Q YEAH.

6 A NO.

7 Q OKAY. YOU WERE STILL SURPRISED?

8 A YEAH.

9 Q NOW, LEADING UP TO THE TIME OF THE SHOOTINGS,
10 DO YOU KNOW WHETHER OR NOT CURTIS WAS INVOLVED IN ANY
11 KIND OF LEGAL DIFFICULTIES?

12 A WHAT YOU MEAN BY THAT?

13 Q HAD HE BEEN ARRESTED JUST SHORTLY BEFORE THESE
14 SHOOTINGS, TO YOUR KNOWLEDGE?

15 A SHORTLY AS IN -- IN LIKE WHAT?

16 Q COUPLE MONTHS BEFORE THAT, COUPLE DAYS BEFORE
17 THAT, COUPLE WEEKS BEFORE THAT, IF YOU REMEMBER.

18 A YEAH, I THINK A COUPLE MONTHS BEFORE THAT, LIKE
19 FEW MONTHS. IT WOULD BE LIKE -- LET ME SEE. I CAN'T
20 RECALL. I THINK IT WAS LIKE FIVE OR SIX MONTHS,
21 SOMETHING LIKE THAT I THINK.

22 Q OKAY. AND HAD THAT ARREST BEEN LIKE ON
23 TELEVISION, HE WAS IN HANDCUFFS AND THAT SORT OF THING?

24 A I DON'T RECALL ABOUT THAT ONE. I KNOW THE
25 INCIDENT, YOU KNOW, I KNOW ALL THAT WAS ON TELEVISION. I

1 DON'T RECALL.

2 Q BEFORE THE INCIDENT?

3 A I DON'T RECALL IF THAT WAS OR NOT.

4 Q OKAY. AND WERE YOU STILL HOME AT THAT TIME?

5 A NO.

6 Q SO WERE YOU OUT LIVING ON YOUR OWN?

7 A YEAH.

8 MR. LERNER: I DON'T HAVE ANY FURTHER
9 QUESTIONS, YOUR HONOR.

10 THE COURT: THANK YOU. ANY REDIRECT?

11 MR. MARIO: NO, YOUR HONOR.

12 THE COURT: THANK YOU, SIR. YOU'RE FREE TO
13 GO. WE'RE GONNA TAKE A FIVE MINUTE BREAK BEFORE
14 WE GET MR. LEINSTER. THAT'S SET FOR 10:30,
15 CORRECT?

16 MR. MARIO: CORRECT.

17 THE COURT: FIVE MINUTE BREAK, AND WE WILL
18 CALL HIM AT 10:30.

19 (THEREUPON A RECESS WAS TAKEN.)

20 THE COURT: WE'RE TRYING TO REACH
21 MR. LEINSTER AND SEE IF WE CAN GET A CONNECTION.

22 MR. STRAND, DID YOU WANT THESE ORDERS BACK,
23 ARE THESE JUST FOR ME TO LOOK AT?

24 MR. STRAND: NO, JUDGE, I DON'T NEED THEM
25 BACK, I JUST --

1 **THE COURT:** THEY'RE IN THE RECORD SOMEWHERE.
2 I DON'T NEED TO KEEP THEM IN MY FILE, DO I?

3 **MR. STRAND:** NO, YOU CAN THROW THEM AWAY IF
4 YOU SO DESIRE.

5 **THE COURT:** ALL RIGHT. THEY WILL BE RIGHT
6 HERE IF YOU NEED THEM.

7 WHO'S ON LINE THIS AFTERNOON, ASSUMING WE
8 GET THROUGH?

9 **MR. STRAND:** IT WOULD BE KURT BARCH.

10 **THE COURT:** HE'LL BE RIGHT --

11 **MR. STRAND:** HE WORKS IN THE PD'S OFFICE UP
12 IN SANFORD IN THE JUVENILE. I THINK HE RUNS IT.

13 JUDGE, I APOLOGIZE, OUR WITNESSES, I ASKED
14 THEM TO BE HERE AT 11. WE DO HAVE ONE
15 HOUSEKEEPING MATTER THAT WE'D LIKE TO TAKE CARE
16 OF JUST ON THE RECORD. IT'S INTRODUCING THE
17 PHOTOS FROM THE ANATOMY.

18 **MR. MARIO:** DR. PINCUS, WE HAD THESE MARKED
19 FOR IDENTIFICATION YESTERDAY.

20 **THE CLERK:** NO, WE DID NOT.

21 **MR. MARIO:** UNTIL WE COULD GET COLOR PHOTO
22 COPIES.

23 **THE COURT:** DO YOU HAVE THEM NOW?

24 **MR. MARIO:** YES.

25 **THE COURT:** DID MR. BERNER SEE THEM?

1 FOR THE RECORD, DR. PINCUS WAS HOLDING UP AN
2 ANATOMY BOOK WITH COLOR PHOTOGRAPHS IN IT OF THE
3 BRAIN AND POINTING TO IT, AND THERE WERE -- WAS
4 SOME DISCUSSION OF HAVING THE PHOTOS COPIED AND
5 THEN ADMITTED INTO EVIDENCE SINCE THE DOCTOR HAD
6 A HARDBOUND BOOK.

7 MR. MARIO: SO WILL THESE BE THEN DEFENSE
8 EXHIBIT -- WHAT WOULD THEY BE?

9 THE CLERK: THEY WOULD BE SIX AND SEVEN.

10 THE COURT: MR. LERNER, ANY OBJECTION?

11 MR. LERNER: NO, YOUR HONOR.

12 THE COURT: ALL RIGHT. THEY WERE
13 PHOTOGRAPHS REFERRED TO BY DR. PINCUS. THEY'RE
14 ADMITTED AS DEFENSE EXHIBIT. THERE WAS SOME
15 DISCUSSION ABOUT THE VIDEOTAPE MADE YESTERDAY.
16 AND, MR. LERNER, YOU WERE GOING TO COMPARE THE
17 COPY THE DEFENSE GAVE YOU. HAVE YOU HAD AN
18 OPPORTUNITY TO DO THAT?

19 MR. LERNER: WELL, I HAD AN OPPORTUNITY, BUT
20 IT SLIPPED MY MIND. I STILL HAVE THEM.

21 THE COURT: I'M SORRY, YOU HAVE NOT VIEWED
22 THE ONE THEY SHOWED YOU?

23 MR. LERNER: NO.

24 THE COURT: OKAY.

25 MR. LERNER: THEY GAVE ME A COPY. I JUST

1 WANTED TO MAKE SURE IT WAS THE SAME AS THE ONE
2 THAT WAS IN EVIDENCE.

3 THE COURT: MY POINT BEING, WE NEVER
4 FORMALLY ADMITTED IT, WE SIMPLY MARKED FOR
5 IDENTIFICATION PENDING YOUR REVIEW TO MAKE SURE
6 IT WAS THE SAME TAPE. SO MAYBE AFTER HOURS, IF
7 YOU CAN TAKE A LOOK JUST TO BE SURE. IT STILL
8 HAS NOT BEEN FORMALLY ADMITTED, AND WE NEED TO
9 ADDRESS THAT.

10 MR. LERNER: PUT IT IN MY POCKET SEE IF I
11 CAN REMEMBER.

12 MR. STRAND: JUDGE, SOMETHING ELSE OCCURRED
13 TO ME, IF I COULD, THE INDIVIDUALS, MR. ANDRE
14 WALKER AND ALBERT WINDOM, WHO ARE INMATES IN THE
15 DEPARTMENT OF CORRECTIONS, I GUESS YOU HAD SOME
16 INDICATION THAT THEY WOULD BE ARRIVING ON
17 MONDAY -- I MEAN ON FRIDAY?

18 THE COURT: YEAH. MR. LERNER SAYS PERHAPS
19 THURSDAY. I DON'T HAVE ANY CONFIRMATION OF WHEN
20 THEY'LL BE HERE. BUT WE'LL TAKE CARE OF THEM
21 WHENEVER THEY GET HERE. THEY'RE LAY WITNESSES,
22 RIGHT, I GUESS ABOUT HIS CONDITION PRIOR TO THIS
23 EVENT?

24 MR. STRAND: THAT'S CORRECT. MR. WALKER WAS
25 WITH HIM DURING THE SHOOTING OF MARY LUBIN, ALSO

1 STAYED WITH HIM. THEY GOT THE POLICE TO HIS
2 HOUSE TO ARREST HIM. AND ALSO ALBERT WINDOM IS
3 CURTIS WINDOM'S OLDER BROTHER.

4 I WOULD NOTE JUST FOR THE RECORD THAT WE HAD
5 UTILIZED THE FLORIDA RULES FORM, PETITION FOR
6 WRIT OF TESTIFICANDUM I'VE USED ALL OVER THE
7 STATE, GENERALLY HAD LUCK. I'VE HAD SOME
8 SITUATIONS LIKE THIS IN THE PAST.

9 MR. LERNER: WAS THAT THURSDAY AFTERNOON FOR
10 DR. MERIN?

11 MR. STRAND: WE'RE GONNA BE FINISHED EXCEPT
12 FOR THESE TWO.

13 THE COURT: OH, I SEE.

14 MR. LERNER: I HAVE THREE OTHER WITNESSES.
15 IF I CALL THEM IN THE MORNING --

16 THE COURT: AT YOUR LEISURE. HE'S YOUR
17 WITNESS, CORRECT?

18 MR. LERNER: YES.

19 THE COURT: JUST WHENEVER YOU AND HE CAN
20 AGREE ON A TIME, THAT'S PROBABLY THE BEST BET.
21 IS HE OUT OF TOWN OR NO?

22 MR. LERNER: HE'S -- PROBLEM IS HE'S AT A
23 TRIAL IN PHILADELPHIA. HE WAS IN TOWN YESTERDAY
24 AND I TALKED TO HIM BY PHONE.

25 THE COURT: IF HE COULD BE AVAILABLE

1 THURSDAY AFTERNOON, WORST CASE SCENARIO FRIDAY
2 MORNING.

3 MR. STRAND: JUDGE, I WOULD NOTE THAT WE
4 WILL BE FINISHED WITH OUR EVIDENCE, EXCEPT FOR
5 THOSE TWO SHORT LAY WITNESSES, WEDNESDAY MORNING.
6 AND I'M WONDERING IF THAT MEANS WE'RE GONNA STOP
7 AT WHATEVER, 11:30, AND CHRIS IS GOING TO START
8 THE NEXT DAY OR WILL --

9 THE COURT: OH, NO, WE'LL ROLL RIGHT IN IT.
10 CAN YOU GIVE ME A -- WE STILL DON'T HAVE ANYBODY
11 ON THE PHONE. THEY'RE TRYING AGAIN. ANYBODY
12 THERE ON THE PHONE?

13 THE CLERK: NO.

14 THE COURT: HOW LONG DO YOU ANTICIPATE THIS
15 WITNESS WILL BE, A WHILE?

16 MR. STRAND: A WHILE, JUDGE, I THINK.

17 THE COURT: THAT'S FINE. WE JUST MAY HAVE
18 TO CALL THEM BACK AFTER OUR LUNCH BREAK. I DON'T
19 ANTICIPATE A PROBLEM, IT'S NOT LIKE A PLANE
20 RESERVATION LIKE YESTERDAY. WE PROBABLY WILL
21 HAVE TO DO THAT.

22 THIS ISN'T ANYTHING WE CAN DO IN AN HOUR, IS
23 IT? PROBABLY NOT.

24 THE CLERK: CAN YOU HEAR ME?

25 THE WITNESS: YEAH.

1 **THE COURT:** ALL RIGHT. THANK YOU. YOU CAN
2 HEAR ME OKAY?

3 **THE WITNESS:** I CAN HEAR YOU.

4 **THE COURT:** IS THIS MR. LEINSTER?

5 **THE WITNESS:** YES.

6 **THE COURT:** ALL RIGHT. THANK YOU. THIS IS
7 JUDGE STRICKLAND. I'M HERE IN THE COURTROOM WITH
8 MR. STRAND AND MR. LERNER. AND WE'RE GONNA GO
9 AHEAD AND SWEAR YOU IN AND HAVE THEM ASK YOU A
10 FEW QUESTIONS.

11 UNFORTUNATELY I DON'T KNOW IF THIS ALSO WILL
12 GET FINISHED BEFORE THE NOON HOUR OR NOT. IF IT
13 DOESN'T, WE'RE GONNA NEED TO CALL YOU BACK ABOUT
14 1:30.

15 **THE WITNESS:** THAT'S OKAY, I'LL BE HERE.

16 **THE COURT:** OKAY. THANK YOU. MR. LEINSTER,
17 LET'S SEE, WE'RE GONNA GO AHEAD AND SWEAR YOU IN
18 LONG DISTANCE, WHICH IS A LITTLE BIT UNUSUAL.
19 CAN I GET YOU TO RAISE YOUR RIGHT HAND FOR ME?

20 **THE WITNESS:** YEAH.

21 **THE COURT:** THANK YOU, SIR. IS IT RAISED?

22 **THE WITNESS:** YEAH.

23 **THE COURT:** ALL RIGHT. THANK YOU. MY
24 CLERK'S GONNA SWEAR YOU IN.

25 THEREUPON,

1 ROY EDWARD LEINSTER
2 WAS CALLED AS A WITNESS, AND HAVING FIRST BEEN DULY
3 SWORN TELEPHONICALLY, WAS EXAMINED AND TESTIFIED
4 AS FOLLOWS:

5 DIRECT EXAMINATION

6 THE COURT: ALL RIGHT. THANK YOU. I'M
7 GONNA TURN IT OVER TO MR. STRAND NOW.

8 THE WITNESS: IS THERE SOME WAY YOU CAN MOVE
9 THE MACHINERY A LITTLE CLOSER TO THE PHONE OR --

10 THE COURT: YES. WHEN YOU SAY, MOVE THE
11 MACHINE CLOSER TO THE PHONE --

12 THE WITNESS: WHATEVER IT TAKES TO MAKE IT A
13 LITTLE BIT MORE AUDIBLE. YOU'RE A LITTLE BIT FAR
14 AWAY.

15 THE COURT: OKAY. TELL YOU WHAT, THIS IS
16 JUST GONNA BE A TRIAL AND ERROR TYPE THING. IF
17 YOU HAVE TROUBLE HEARING, LET US KNOW, WE WILL DO
18 OUR LEVEL BEST. IN FACT, YOU MAY EVEN NEED TO
19 ADJUST THE SOUND A LITTLE --

20 THE WITNESS: WE HAVE ALREADY ADJUSTED OUR
21 SOUND ON THIS. YOU'RE FINE NOW.

22 THE COURT: OKAY. GREAT. THANK YOU. ONCE
23 AGAIN, SPEAK UP IF YOU HAVE TROUBLE HEARING, AND
24 I'M GONNA TURN IT OVER TO MR. STRAND NOW.

25 THE WITNESS: OKAY. ~ ,

1 BY MR. STRAND:

2 Q MR. LEINSTER, CAN YOU PLEASE STATE YOUR FULL
3 NAME FOR THE --

4 A ROY EDWARD LEINSTER.

5 Q ARE YOU ABLE TO HEAR ME?

6 A YES.

7 Q MR. LEINSTER --

8 A LEINSTER.

9 Q LEINSTER, EXCUSE ME, SIR, DID YOU REPRESENT
10 MR. CURTIS WINDOM IN HIS 1992 HOMICIDE TRIAL?

11 A YES.

12 Q AND WERE YOU RETAINED?

13 A YES.

14 Q NOW, DO YOU RECALL, WAS THIS YOUR FIRST
15 EXPERIENCE OF TRYING A CAPITAL MURDER CASE THAT INVOLVED
16 A PENALTY PHASE?

17 A I DON'T RECALL, BUT YOU'VE MENTIONED THAT TO
18 ME, AND IT MAYBE.

19 Q MAYBE. SO YOU'RE NOT SURE WHETHER OR NOT YOU
20 TRIED A DEATH PENALTY TRIAL PRIOR TO TRYING MR. WINDOM?

21 A RIGHT. I DID HAVE OTHER FIRST DEGREE MURDERS.
22 HIS MAY HAVE BEEN THE FIRST INVOLVING THE PENALTY PHASE.

23 Q WHERE YOU ACTUALLY WENT TO PENALTY PHASE?

24 A CORRECT.

25 Q PRIOR TO 1992, AND REPRESENTING MR. WINDOM, HAD

1 YOU HAD AN OPPORTUNITY TO ATTEND ANY CONTINUING LEGAL
2 EDUCATION COURSES RELATING TO THE PREPARATION AND
3 LITIGATION OF A CAPITAL PENALTY PHASE?

4 A I DO NOT RECALL ANY OF THOSE, NO.

5 Q OKAY. AND HAVE YOU ATTENDED ANY CLE COURSES
6 RELATING TO THE PRESENTATION OF A MEN -- OF MENTAL HEALTH
7 DEFENSES, WHETHER IN THE GUILT OR IN THE PENALTY PHASES
8 OF CRIMINAL MATTERS?

9 A I DON'T THINK SO.

10 Q OKAY. NOW, IN LAW SCHOOL DID YOU STUDY ANY --
11 TAKE ANY COURSES RELATING TO MENTAL HEALTH AND THE LAW?

12 A RELATING TO WHAT?

13 Q MENTAL HEALTH AND THE LAW.

14 A NO.

15 Q NOW, IN MR. WINDOM'S TRIAL WERE YOU THE LEAD
16 ATTORNEY?

17 A YES.

18 Q OKAY. AND AT SOME POINT DID YOU ASK SOMEONE TO
19 ASSIST YOU IN REPRESENTING MR. WINDOM?

20 A YES, KURT BARCH.

21 Q OKAY. NOW, WE'VE HAD AN OPPORTUNITY TO SPEAK
22 BEFORE; ISN'T THAT CORRECT?

23 A YES, WE HAVE.

24 Q AND ACTUALLY THERE WAS A DEPOSITION TAKEN; IS
25 THAT CORRECT?

1 A YES.

2 Q AND YOU SIGNED AN AFFIDAVIT RELATING TO YOUR
3 REPRESENTATION OF MR. WINDOM; IS THAT CORRECT?

4 A YES.

5 Q NOW, DURING ONE OF OUR EARLIER CONVERSATIONS
6 AND AT THE DEPOSITION, DID YOU HAVE THE OPPORTUNITY TO
7 REVIEW A NEUROLOGICAL REPORT ON MR. WINDOM BY DR. PINCUS?

8 A YES.

9 Q OKAY. AND DID YOU ALSO HAVE THE OPPORTUNITY TO
10 REVIEW A NEUROPSYCHOLOGICAL REPORT ON MR. WINDOM
11 PERFORMED BY A DR. CRAIG BEAVER?

12 A YES.

13 Q OKAY. NOW, AFTER REVIEWING THOSE REPORTS --
14 STRIKE THAT.

15 NOW, YOU RECALL THE INFORMATION FROM THOSE
16 REPORTS?

17 A WELL, I DIDN'T -- I DIDN'T DO AN IN-DEPTH
18 REVIEW OF THOSE REPORTS. I REMEMBER THE CRUX OF THEM.

19 Q AND WHAT WAS THE CRUX, THE CONCLUSION?

20 A THAT HE HAD ORGANIC BRAIN DAMAGE.

21 Q OKAY. NOW, IF -- IF AT TRIAL YOU WOULD HAVE
22 HAD EVIDENCE AVAILABLE TO YOU FROM A NEUROLOGIST AND/OR A
23 NEUROPSYCHOLOGIST THAT MR. WINDOM SUFFERED FROM ORGANIC
24 BRAIN DAMAGE AT THE TIME OF THE OFFENSE, WOULD YOU HAVE
25 UTILIZED THAT DURING YOUR GUILTY PHASE IF THE EXPERTS

1 COULD TESTIFY THAT MR. WINDOM WAS INSANE AT THE TIME OF
2 THE OFFENSE?

3 A YES.

4 Q AND WOULD YOU HAVE DONE THAT EVEN IF IT WOULD
5 HAVE OPENED THE DOOR TO THE STATE, EITHER THROUGH
6 CROSS-EXAMINATION OR THROUGH PRESENTING ADDITIONAL
7 EVIDENCE, THE STATE WOULD HAVE BEEN ABLE TO LET THE JURY
8 KNOW THAT MR. WINDOM HAD A HISTORY OF SELLING COCAINE?

9 A IS THAT THE END OF THE QUESTION?

10 Q YES.

11 A YES, IF I HAD ANY QUALIFIED EXPERT THAT SAID HE
12 WAS LEGALLY INSANE, I WOULD HAVE INTRODUCED THAT
13 TESTIMONY WITHOUT REGARD TO WHETHER OR NOT IT WOULD HAVE
14 OPENED THE DOOR TO HIS BEING A DRUG DEALER.

15 Q NOW, IF -- NOW, AGAIN, REFERRING BACK TO THOSE
16 REPORTS, IF YOU HAD A QUALIFIED NEUROLOGIST AND QUALIFIED
17 NEUROPSYCHOLOGIST, OR ANY OTHER QUALIFIED MENTAL HEALTH
18 PROFESSIONAL THAT WOULD BE WILLING TO TESTIFY THAT
19 MR. WINDOM, AT THE TIME OF THE OFFENSE, SUFFERED FROM AN
20 EXTREME EMOTIONAL DISTURBANCE, EXCUSE ME, AN EXTREME
21 MENTAL OR EMOTIONAL DISTURBANCE WHEN THE OFFENSE WAS
22 COMMITTED, WOULD YOU HAVE INTRODUCED THAT EVIDENCE IN THE
23 PENALTY PHASE?

24 A YES, I WOULD THINK SO.

25 Q UH-HUH. AND WOULD YOU HAVE INTRODUCED THAT

1 EVIDENCE EVEN IF IT WOULD HAVE AGAIN OPENED THE DOOR TO
2 THE STATE INTRODUCING EVIDENCE THAT MR. WINDOM WAS A DRUG
3 DEALER?

4 A WELL, MAYBE. I DIDN'T REALLY UNDERSTAND THE
5 FIRST QUESTION, THAT HE SUFFERED FROM ANY STRAIN,
6 EMOTIONAL DISTRESS.

7 Q MAYBE I CAN CLARIFY IT, SIR.

8 A PLEASE DO.

9 Q IF THE DOCTORS ARE WILLING TO TESTIFY THAT
10 MR. WINDOM'S ORGANIC BRAIN DAMAGE CONSTITUTED AN EXTREME
11 MENTAL OR EMOTIONAL DISTURBANCE, WHICH IS THE STATUTORY
12 MITIGATOR --

13 A YES.

14 Q -- WOULD YOU HAVE INTRODUCED THAT IN THE
15 PENALTY PHASE, EVEN IF IT WOULD HAVE OPENED THE DOOR TO
16 MR. WINDOM'S DRUG DEALING?

17 A YES, I THINK SO.

18 Q OKAY. YOU THINK SO. WOULD YOU HAVE DONE IT,
19 SIR?

20 A YES.

21 Q YES?

22 A YES.

23 Q NOW, IF -- AGAIN, IF YOU HAD THAT SAME EVIDENCE
24 THAT MR. WINDOM'S ORGANIC BRAIN DAMAGE RENDERED HIM
25 SUBSTANTIALLY UNABLE TO CONFORM HIS CONDUCT TO THE LAW AT

1 THE TIME OF THE OFFENSE, WOULD YOU HAVE INTRODUCED THAT,
2 NOTWITHSTANDING THE STATE BEING ABLE TO INTRODUCE
3 EVIDENCE THAT MR. WINDOM SOLD COCAINE?

4 A YES.

5 Q OKAY. NOW -- NOW, IF YOU HAD, HYPOTHETICALLY,
6 IF YOU AT THE TIME OF TRIAL, IF YOU WOULD HAVE HAD A
7 MENTAL HEALTH EXPERT WHO WOULD HAVE BEEN WILLING TO
8 TESTIFY THAT MR. WINDOM SUFFERED FROM ORGANIC BRAIN
9 DAMAGE, ALONG WITH ON TOP OF THAT A MAJOR MENTAL ILLNESS,
10 SUCH AS MANIC DEPRESSIVE DISORDER OR PSYCHOTIC DEPRESSION
11 OR PARANOID SCHIZOPHRENIA, WOULD YOU HAVE INTRODUCED THAT
12 TYPE OF TESTIMONY RELATING TO THE MENTAL ILLNESS DURING
13 THE GUILT PHASE, IF IT COULD HAVE BEEN USED TO JUSTIFY AN
14 INSANITY DEFENSE?

15 A YES.

16 Q AND, AGAIN, THE SAME QUESTION AS TO THE PENALTY
17 PHASE, WOULD YOU HAVE INTRODUCED THAT TYPE OF EVIDENCE?

18 A YES. :

19 Q ALL RIGHT. NOW, ONE MOMENT, SIR.

20 NOW, RETURNING TO THE PENALTY PHASE, IF
21 YOU WOULD HAVE HAD MENTAL HEALTH EXPERTS WHO WERE WILLING
22 TO TESTIFY THAT DUE TO BRAIN DAMAGE AND MENTAL ILLNESS
23 CURTIS WINDOM WAS UNABLE TO -- UNABLE TO FORM THE MENTAL
24 STATE OF BEING COLD AND CALCULATED, THE HEIGHTENED
25 PREMEDITATION AGGRAVATOR, WOULD YOU HAVE YOUR WITNESSES

1 TESTIFY THAT HIS MENTAL STATE PRECLUDED HIM FROM
2 COMMITTING THESE HOMICIDES IN A COLD AND CALCULATED
3 MANNER?

4 A YES.

5 Q OKAY. NOW, THERE IS A SECOND PART OF THAT
6 AGGRAVATING CIRCUMSTANCE. IF THE MENTAL HEALTH EXPERT
7 COULD HAVE PRESENTED EVIDENCE THAT WOULD HAVE INDICATED
8 THAT CURTIS WINDOM WAS UNABLE TO FORM THE SPECIFIC MENTAL
9 STATE OF BEING COLD AND CALCULATED, THE SECOND PART HERE
10 IS, WITHOUT -- WITHOUT A PRETENSE OF MORAL OR LEGAL
11 JUSTIFICATION, THAT IF HIS MENTAL STATE PRECLUDED THAT,
12 WOULD YOU HAVE PRESENTED THAT AT TRIAL, IN THE PENALTY
13 PHASE?

14 A YES.

15 Q THAT -- JUST WANT TO MAKE SURE. THAT'S THE
16 AGGRAVATING CIRCUMSTANCE, THE HEIGHTENED PREMEDITATION?

17 A RIGHT.

18 Q NOW -- NOW, IT'S MY UNDERSTANDING THAT --
19 STRIKE THAT.

20 DR. KIRKLAND TESTIFIED IN THE GUILT PHASE,
21 CORRECT?

22 A I DON'T RECALL.

23 Q OKAY. BUT DO YOU RECALL DR. KIRKLAND
24 TESTIFYING AT THE TRIAL?

25 A I DON'T EVEN RECALL THAT. I RECALL ONLY IN THE

1 SENSE YOU REMIND ME OF THAT.

2 Q OKAY. WELL, THE RECORD WOULD SPEAK FOR ITSELF,
3 CORRECT?

4 A CORRECT.

5 Q NOW, DO YOU RECALL HAVING ANY DEALINGS --
6 STRIKE THAT. I'M SORRY.

7 DO YOU HAVE AN INDEPENDENT RECOLLECTION OF
8 SPEAKING TO DR. KIRKLAND PRIOR TO THE TRIAL OF
9 MR. WINDOM?

10 A I DO NOT HAVE WITH DR. KIRKLAND IN MY MIND IN
11 SITTING DOWN AND TALKING TO HIM. I TALKED TO
12 DR. KIRKLAND ON NUMEROUS OCCASIONS OVER THE PAST 20
13 YEARS. BUT TO ISOLATE THAT...

14 Q AND DO YOU HAVE ANY INDEPENDENT RECOLLECTION AS
15 TO WHETHER YOU SENT DR. KIRKLAND ANY MATERIALS RELATING
16 TO MR. WINDOM'S CASE?

17 A I DO NOT. I DON'T HAVE ANY INDEPENDENT
18 RECOLLECTION OF THAT, NO.

19 Q NOW -- NOW, TURNING TO THE, I GUESS, TO THE --
20 TO THE GUILT PHASE, AND SPECIFICALLY DO YOU RECALL THAT
21 THE FIRST INDIVIDUAL WHO WAS SHOT IN THIS CASE WAS A MAN
22 NAMED JOHNNIE LEE?

23 A YES.

24 Q AND DO YOU RECALL WHETHER OR NOT YOU HAD A
25 STRATEGY FOR WHAT YOU WANTED TO DO DURING THE GUILT PHASE

1 RELATING TO MR. WINDOM'S SHOOTING OF JOHNNIE LEE?

2 A WELL, I DON'T KNOW WHAT YOU MEAN BY A STRATEGY.
3 I ASSUMED GOING IN THAT WE HAD NEXT TO NO CHANCE OF
4 PREVAILING IN JOHNNIE LEE'S CASE, THAT WE WOULD END UP
5 WITH A FIRST DEGREE MURDER CONVICTION PRETTY MUCH
6 WHATEVER WE DID.

7 Q AND BASED ON THAT CONCLUSION THAT YOU MADE
8 PRIOR TO TRIAL, WERE YOU CONCERNED ABOUT YOUR CREDIBILITY
9 WITH THE JURY IF YOU WERE TO CHALLENGE THAT CONVICTION?

10 A YES.

11 Q AND BECAUSE OF YOUR CONCERN ABOUT YOUR
12 CREDIBILITY, DID THAT MOTIVATE YOUR ACTIONS DURING THE
13 LITIGATION OF THE GUILT PHASE RELATING TO JOHNNIE LEE
14 ONLY?

15 A SURE.

16 Q UH-HUH. OKAY. DID YOU -- BUT WOULD IT BE A
17 FAIR STATEMENT TO SAY THAT YOU DID HAVE A DESIRE TO
18 CHALLENGE THE FIRST DEGREE MURDER CONVICTIONS RELATING TO
19 VALERIE DAVIS AND MARY LUBIN?

20 A YES.

21 Q UH-HUH. AND DID YOU IN FACT ATTEMPT TO
22 CHALLENGE THOSE?

23 A AS I RECALL. AGAIN, THE RECORD SPEAKS FOR
24 ITSELF. WE'VE GONE OVER SOME OF IT.

25 Q OKAY. AND IF THE RECORD WERE TO INDICATE THAT

1 YOU HAD, DURING YOUR OPENING STATEMENT AND YOUR CLOSING
2 STATEMENT, HAD CONCEDED TO THE JURY THAT THE STATE HAD
3 MET ITS BURDEN AS TO PREMEDITATED MURDER RELATING TO
4 JOHNNIE LEE, WOULD YOU HAVE ANY, QUOTE, PROBLEM WITH
5 THAT?

6 A WOULD I HAVE ANY PROBLEM WITH THE RECORD?

7 Q RIGHT?

8 A NO.

9 Q OKAY. NOW, RELATING TO THIS ISSUE, DID YOU AT
10 ANY TIME SPEAK WITH MR. WINDOM AND GAIN HIS INTELLIGENT
11 AND KNOWING CONSENT, IN YOUR OPINION, AS TO YOUR
12 CONCESSIONS RELATING TO THE JOHNNIE LEE HOMICIDE?

13 A I DOUBT THAT I HAD ANY CONVERSATIONS WITH
14 MR. WINDOM REGARDING WHAT YOU WOULD CALL STRATEGY.

15 Q AND DID -- THE SPECIFIC QUESTION IS, DID -- DID
16 YOU -- DID MR. WINDOM, WAS HE ADVISED OF YOUR STRATEGY
17 RELATING TO JOHNNIE LEE PRIOR TO TRIAL?

18 A NO, I'M SURE HE WAS NOT.

19 Q AND, CONSEQUENTLY, DID MR. WINDOM CONSENT TO
20 THIS, DID HE AGREE TO IT PRETRIAL?

21 A NOT TO MY RECOLLECTION.

22 Q OKAY. NOW, ARE YOU FAMILIAR WITH THE STATUTORY
23 MITIGATING CIRCUMSTANCE THAT THE DEFENDANT HAS NO
24 SIGNIFICANT CRIMINAL HISTORY?

25 A OKAY.

1 Q OKAY. THAT'S THE FIRST ONE OF THE MITIGATORS?

2 A UH-HUH.

3 Q UH-HUH. NOW, AT THE TIME OF MR. WINDOM'S
4 TRIAL, DID YOU HAVE ANY KNOWLEDGE WHETHER OR NOT
5 MR. WINDOM HAD PREVIOUSLY BEEN INVOLVED IN CRIMINAL
6 ACTIVITIES?

7 A I'M SURE THAT I DID. I DON'T RECALL NOW.

8 Q UH-HUH. OKAY. AND IF I COULD REFRESH, ISN'T
9 IT TRUE MR. WINDOM HAD BEEN ARRESTED FOR SELLING DRUGS?

10 A WELL, YOU'RE PROBABLY NOT GONNA REFRESH MY
11 MEMORY. I'M NOT GONNA DISPUTE WHATEVER THE FACTS ARE. I
12 MEAN, IF YOU TELL ME IT'S A FACT, I'M ASSUMING YOU'RE
13 TELLING ME THE TRUTH.

14 Q OKAY. NOW, IF THE RECORD WOULD REFLECT THAT
15 YOU DID NOT MAKE A MOTION TO WAIVE THAT MITIGATING
16 FACTOR, WOULD YOU HAVE HAD A STRATEGIC REASON FOR NOT
17 WAIVING THAT MITIGATING FACTOR?

18 A WOULD YOU REPEAT THE QUESTION?

19 Q I'M SORRY, I WALKED AWAY FROM THE PHONE, SIR.
20 IF THE RECORD WOULD RE -- THE RECORD, I'LL TELL YOU, THE
21 RECORD DOES REFLECT --

22 A ALL RIGHT.

23 Q -- THAT YOU DID NOT MAKE A MOTION TO WAIVE THAT
24 MITIGATING FACTOR. DO YOU HAVE RECALL IF YOU HAD A
25 STRATEGIC REASON FOR NOT WAIVING THAT MITIGATING FACTOR?

1 A FOR NOT WAIVING?

2 Q YEAH, NOT ATTEMPTING TO WAIVE IT.

3 A I'M LOST HERE. IS THE MITIGATING FACTOR THAT
4 HE HAD NO PRIOR CRIMINAL RECORD, IS THAT WHAT YOU'RE
5 SAYING?

6 Q YEAH. YES.

7 A AND YOU'RE SAYING THAT I DID NOT FILE A MOTION
8 TO WAIVE THAT?

9 Q YES.

10 **MR. STRAND:** JUDGE, I APOLOGIZE TO
11 MR. LEINSTER, I'D LIKE TO MOVE TO ANOTHER AREA.
12 I APOLOGIZE, SIR.

13 **THE COURT:** THAT'S FINE. NO QUESTION
14 PENDING.

15 **BY MR. STRAND:**

16 Q NOW, DO YOU RECALL DURING THE PENALTY PHASE
17 THERE WAS A COLLOQUY BETWEEN JUDGE RUSSELL, YOURSELF, AND
18 MR. WINDOM RELATING TO THE PRESENTATION OF MITIGATING
19 EVIDENCE?

20 A AGAIN, I REMEMBER TO THE EXTENT THAT YOU AND I
21 HAVE DISCUSSED THIS.

22 Q OKAY. WELL, BASED ON WHAT YOU KNOW, DID
23 WHAT -- ISN'T IT A FACT THAT MR. WINDOM WAIVED CERTAIN
24 MITIGATING EVIDENCE DURING THE PENALTY PHASE?

25 A I BELIEVE SO.

1 Q AND THAT WAS BASED ON YOUR ADVICE?

2 A I BELIEVE THAT'S RIGHT.

3 Q AND WOULD IT BE A FAIR STATEMENT TO SAY THAT
4 THE MITIGATING EVIDENCE WAS THAT MR. WINDOM HAD BEEN KIND
5 TO PEOPLE IN THE COMMUNITY, WAS CHARITABLE, AND HAD BEEN
6 A GOOD FATHER?

7 A RIGHT, BASICALLY HE WAS A GOOD GUY.

8 Q AND WHAT WAS YOUR REASON FOR RECOMMENDING TO
9 MR. WINDOM TO WAIVE THOSE SPECIFIC NONSTATUTORY
10 MITIGATORS?

11 A THAT IT WOULD OPEN THE DOOR TO THE FACT THAT HE
12 WAS A DRUG DEALER. I DIDN'T THINK THAT IT WAS
13 STRATEGICALLY SOUND.

14 Q AND, NOW -- NOW, THE RECORD REFLECTS THAT YOU
15 DID NOT FILE A MOTION IN LIMINE PRIOR TO THIS COLLOQUY IN
16 ORDER TO GET THE COURT TO RULE WHETHER OR NOT THAT WOULD
17 HAVE OPENED THE DOOR. DO YOU RECALL IF YOU HAD A
18 STRATEGIC REASON FOR NOT FILING A MOTION IN LIMINE?

19 A NO. IN THEORY YOU COULD FILE A MOTION IN
20 LIMINE EVERY TIME YOU ASK THE QUESTION OR INTERPOSE AN
21 OBJECTION. NO, I DON'T HAVE ANY STRATEGIC REASON FOR NOT
22 HAVING FILED A MOTION IN LIMINE.

23 Q NOW -- NOW, DO YOU RECALL FILING A MOTION FOR
24 PARTIAL INDIGENCY FOR THE PURPOSE OF COSTS?

25 A I DON'T RECALL THAT. WE HAVE DISCUSSED THAT.

1 BUT IT WOULD NOT HAVE BEEN UNCOMMON.

2 Q AND IF I WERE TO INDICATE TO YOU THAT THE
3 RECORD ON APPEAL AT PAGE 169 IS THAT MOTION THAT YOU DID
4 FILE --

5 A OKAY.

6 Q -- AND THAT JUDGE RUSSELL ENTERED AN ORDER
7 GRANTING YOUR MOTION AS TO COSTS FOR DEPOSITIONS, COURT
8 REPORTER, TRANSCRIPTS, SUBPOENAS, INVESTIGATION, WHICH
9 APPEARS AT PAGE 309 OF THE RECORD ON APPEAL, DOES THAT
10 HELP YOU RECALL THIS?

11 A SURE.

12 Q OKAY. AND DO YOU RECALL WHETHER OR NOT -- DO
13 YOU HAVE -- STRIKE THAT.

14 DO YOU HAVE AN INDEPENDENT RECOLLECTION OF
15 RETAINING AN EXPERT TO ASSIST YOU IN INVESTIGATING THE
16 GUILT PHASE ISSUES AND PENALTY PHASE ISSUES IN
17 MR. WINDOM'S TRIAL?

18 A NO, WE DIDN'T HAVE AN EXPERT OR, EXCUSE ME, AN
19 INVESTIGATOR.

20 Q OKAY. NOW -- NOW, YOU EARLIER TESTIFIED THAT
21 YOU HAD KURT BARCH ASSIST YOU WITH THIS TRIAL, CORRECT?

22 A YES.

23 Q AND DID YOU, YOURSELF, PERSONALLY GO TO WINTER
24 GARDEN OR HAVE PEOPLE COME TO YOUR OFFICE AND INTERVIEW
25 THEM TO GAIN INFORMATION RELATING TO MR. WINDOM'S

1 BACKGROUND FOR PENALTY PHASE PURPOSES?

2 A YOU KNOW, I SPOKE TO THE FAMILY ON ANY NUMBER
3 OF OCCASIONS, WHETHER AT MY OFFICE OR OUT IN WINTER
4 GARDEN, I DON'T RECALL. CERTAINLY WE HAD -- WE HAD
5 CONTACT WITH THE FAMILY. I HAD CONTACT WITH THE FAMILY,
6 NOT JUST MR. BARCH. IN TERMS OF WHAT -- WHAT THE PURPOSE
7 OF THE CONVERSATION WAS FOR, I DON'T RECALL AT THIS TIME,
8 YOU KNOW, WHETHER IT WAS INTENDED TO MOUND A PENALTY
9 PHASE OR GUILT PHASE ARGUMENT JUST IN GENERAL, FINDING
10 OUT SOMETHING ABOUT THE LAY OF THE LAND.

11 Q IF I WERE TO INDICATE TO YOU THAT MR. BARCH
12 BELIEVED THAT THAT AREA WAS HIS RESPONSIBILITY, AND THAT
13 YOU TOOK NO ACTIONS IN THAT AREA, WOULD YOU HAVE ANY
14 REASON TO DOUBT THAT?

15 A YES.

16 Q YOU WOULD HAVE REASON?

17 A YES, I WOULD. I TALKED TO THE FAMILY MYSELF,
18 NOT JUST MR. BARCH.

19 Q OKAY.

20 A MR. BARCH, AS I RECALL, WAS TO GATHER
21 INFORMATION FOR THE PENALTY PHASE OF THE CASE. BUT THAT
22 DOESN'T MEAN THAT MR. BARCH IS THE ONLY PERSON THAT EVER
23 TALKED TO THE FAMILY.

24 Q OKAY. NOW, ARE YOU FAMILIAR WITH THE CONCEPT
25 OF ASKING THE COURT TO ALLOW YOU TO HAVE A CONFIDENTIAL

1 MENTAL HEALTH EXPERT TO ASSIST YOU IN PREPARATION OF A
2 DEFENSE IN A CAPITAL CASE?

3 A YES.

4 Q AND THE RECORD INDICATES THAT -- THAT, IN FACT,
5 YOU NEVER MADE THAT APPLICATION. DO YOU AT THIS TIME
6 RECALL IF YOU HAD A STRATEGIC REASON FOR NOT ASKING FOR
7 THE APPOINTMENT OF A CONFIDENTIAL EXPERT TO ASSIST?

8 A WELL, I'M SURE IT WASN'T STRATEGY. HE BEEN
9 REFERRED TO DR. KIRKLAND, AND RIGHT OR WRONG,
10 DR. KIRKLAND INDICATED THAT WE HAD NOWHERE TO GO WITH IT.
11 SO, PERHAPS WE SHOULD HAVE GOTTEN SOMEBODY ELSE'S OPINION
12 AT THAT POINT. I RELIED ON DR. KIRKLAND, PERHAPS WRONGLY
13 SO.

14 Q SO, IF -- WOULD -- WOULD IT BE A FAIR STATEMENT
15 TO SAY, YOU WERE RELYING UPON DR. KIRKLAND TO INFORM YOU
16 ABOUT POSSIBLY MENTAL HEALTH DEFENSES?

17 A YES.

18 Q YES?

19 A YES.

20 MR. STRAND: IF I COULD HAVE ONE MOMENT,
21 YOUR HONOR?

22 THE COURT: YES.

23 BY MR. STRAND:

24 Q AND, OH, SIR, DO YOU KNOW -- DO YOU HAVE ANY
25 IDEA WHERE YOUR FILE IS, THE TRIAL FILE RELATING TO THE

1 CURTIS WINDOM CASE IS?

2 A NO.

3 Q OKAY. AND IN FACT YOU HAVE TALKED WITH
4 MR. LERNER AND MYSELF AND TRIED TO HELP US FIND IT; ISN'T
5 THAT CORRECT?

6 A NOT JUST HIS FILE, THE WHOLE FILING SYSTEM WAS
7 LOST IN THE SHUFFLE SOMEWHERE WHEN MY HOUSE WAS SOLD.

8 Q OKAY.

9 A I WASN'T AROUND TO -- TO TAKE CARE OF THAT SORT
10 OF THING.

11 Q OKAY. NOW, MR. LEINSTER --

12 A LEINSTER.

13 Q LEINSTER, I'M SORRY. WHERE DO YOU CURRENTLY
14 RESIDE, SIR? I APOLOGIZE.

15 A ARE YOU SERIOUS?

16 Q YES.

17 A LAKE CORRECTIONAL INSTITUTE.

18 Q AND THAT IS A PART OF THE DEPARTMENT OF
19 CORRECTIONS?

20 A YES.

21 Q AND, MR. LEINSTER, ARE YOU CURRENTLY A MEMBER
22 OF THE FLORIDA BAR?

23 A NO.

24 MR. STRAND: OKAY. I APOLOGIZE FOR THOSE
25 QUESTIONS, SIR. THANK YOU VERY MUCH.

1 THE COURT: MR. LERNER.

2 CROSS-EXAMINATION

3 BY MR. LERNER:

4 Q MR. LEINSTER, WERE YOU A MEMBER OF THE FLORIDA
5 BAR AT THE TIME OF THE TRIAL?

6 A YES.

7 Q AND WERE YOU A MEMBER OF THE FLORIDA BAR FOR
8 SOME YEARS AFTER THAT?

9 A YES.

10 Q IS -- SO, HOW LONG PAST, HOW MUCH TIME PASSED
11 AFTER OF THE CONCLUSION OF THE TRIAL BEFORE THE
12 DIFFICULTIES AROSE THAT LED TO YOU RESIDING WHERE YOU DO
13 NOW AND TO NO LONGER BEING A MEMBER OF THE FLORIDA BAR?

14 A WELL, I WAS -- THE ACCIDENT WAS AUGUST THE 1ST,
15 1998.

16 Q SO THAT WAS SEVERAL YEARS AFTER THIS PARTICULAR
17 TRIAL?

18 A YES. :

19 Q OKAY. NOW --

20 A MY QUARREL WITH THE FLORIDA BAR HAD NOTHING TO
21 DO WITH THIS CASE.

22 Q NOW, I WANT TO READ YOU A LITTLE BIT FROM
23 YOUR -- FROM YOUR CLOSING ARGUMENT OR YOUR OPENING
24 ARGUMENT. CAN YOU HEAR ME ALL RIGHT?

25 A I CAN HEAR YOU.

1 **MR. MARIO:** CHRIS, WHAT PAGE ARE YOU ON?

2 **MR. LERNER:** STARTING ON PAGE 279.

3 **Q** AND THIS WOULD BE YOUR ARGUMENT, YOUR OPENING,
4 WELL, STATEMENT TO THE JURY. NOW, I DON'T EXPECT YOU TO
5 FORGIVE THESE ACTS, AND I DON'T EXPECT YOU TO NECESSARILY
6 MAKE SENSE OF THEM, BUT WHAT I ASK YOU TO DO IS TRY TO
7 BRING TO THIS TRIAL SOME UNDERSTANDING OF THE FACT THAT
8 WE HAVEN'T PAID A LOT OF ATTENTION TO THE HUMAN BRAIN.
9 WE CAN REACH THE MOON. AS A -- AS A MATTER OF FACT, WE
10 CAN LISTEN TO THE FAR GALAXIES TO PICK UP
11 EXTRATERRESTRIAL SIGNALS, BUT WE DON'T HAVE A CLUE AS TO
12 WHY THESE THINGS HAPPEN. AT THE END OF ALL THIS YOU WILL
13 BE DECIDING, NOT IN MY OPINION, WHETHER MR. WINDOM IS
14 GUILTY OR NOT GUILTY OF ANYTHING, YOU'RE GOING TO FIND
15 HIM GUILTY OF SOMETHING, THERE'S NO QUESTION OF THAT, THE
16 QUESTION IS DO YOU FIND HIM GUILTY OF FIRST DEGREE MURDER
17 AND HAVING THAT PRESENCE OF MIND TO SAY, I WANT YOU DEAD.
18 THEN THERE WAS AN OBJECTION.

19 OR WHETHER YOU WILL CONSIDER HIS ABILITY
20 TO BE A RASH, IMPULSIVE, STUPID ACT. AND I WANT YOU TO
21 CONSIDER THAT AS TO EACH OF THESE INDIVIDUALS, BECAUSE
22 EACH IS A SEPARATE CHARGE, EACH IS TO BE CONSIDERED
23 INDEPENDENTLY. SO YOUR VERDICT AS TO ONE DOES NOT
24 NECESSARILY CARRY OVER TO THE OTHER. THANK YOU.

25 SO DOES THAT REFRESH YOUR RECOLLECTION OF

1 ADOPTING A STRATEGY DURING THE TRIAL TO DO AWAY WITH OR
2 QUESTION THE ISSUE OF INTENT TO COMMIT FIRST DEGREE
3 MURDER ON ALL OF THE VICTIMS?

4 A DOES IT REFRESH MY RECOLLECTION?

5 Q RIGHT. I MEAN, THAT WAS WHAT YOU ARGUED TO THE
6 JURY, THAT THERE WAS -- THAT THEY SHOULD QUESTION AS TO
7 EACH OF THE VICTIMS WHETHER OR NOT --

8 A I DON'T DISPUTE AT ALL THAT THAT'S -- THAT
9 THAT'S WHAT I SAID. IT SOUNDS LIKE A GOOD ARGUMENT TO
10 ME.

11 Q OKAY. NOW, DO YOU -- LET ME ALSO REFRESH YOUR
12 RECOLLECTION WITH ANOTHER SECTION. UNFORTUNATELY, I NEED
13 TO FLIP BACK FOR A MOMENT TO GET THE WITNESS.

14 MR. LERNER: IF I CAN HAVE A MOMENT, YOUR
15 HONOR.

16 Q I BELIEVE WE'RE TALKING ABOUT THE TESTIMONY OF
17 JEAN WILLIS, WHO WAS ONE OF THE FOLKS THAT WAS THERE AT
18 THE JOHNNIE LEE --

19 A UH-HUH.

20 Q -- SHOOTING. OKAY?

21 A OKAY.

22 Q AND IN YOUR CROSS-EXAMINE --

23 THE COURT: PAGE AND LINE, PLEASE.

24 MR. LERNER: YES, I WILL GIVE THAT TO YOUR
25 HONOR. IN THE -- THAT STARTS ON PAGE 286 IN THE

1 CROSS-EXAMINATION OF MR. WILLIS, OR MS. WILLIS.

2 Q I THINK IT WAS -- LET ME SEE IF THIS REFRESHES
3 YOUR RECOLLECTION, ON PAGE 308, STARTING AT LINE ONE.
4 WHERE WERE YOU AT THIS POINT. WERE YOU JUST STANDING.
5 ANSWER. RIGHT BESIDES JOHNNIE. YOU HADN'T STARTED TO
6 RUN. ANSWER, NO I WAS SCARED. QUESTION, AND CURTIS,
7 WHEN HE LEFT THE AREA, HE JUST LEFT HIS CAR SITTING
8 THERE, RIGHT. ANSWER, TRUE. QUESTION, WAS HE -- HIS
9 DOOR OPEN. ANSWER, YES. AND YOU DESCRIBED HOW YOU DID
10 SEE AN IMPRESSION ON HIS FACE. YOU SAID HE DIDN'T SAY
11 ANYTHING. HOW DID HE LOOK. ANSWER, HE LOOKED WILD.
12 QUESTION, CRAZY, WILD. ANSWER, WILD, EYES WAS BIG.
13 QUESTION, AND YOU HAD NEVER SEEN CURTIS LIKE THAT BEFORE,
14 HAD YOU. ANSWER, NO. QUESTION, AS A MATTER OF FACT,
15 THIS SHOCKED YOU THAT HE WOULD DO SOMETHING LIKE THIS,
16 DIDN'T IT. ANSWER, YES. QUESTION, BECAUSE YOU HAD KNOWN
17 CURTIS ALL YOUR LIFE. ANSWER, YES. AND IN A MILLION
18 YEARS YOU WOULDN'T HAVE THOUGHT HE WAS CAPABLE OF DOING
19 THIS, WOULD YOU. ANSWER, NO.

20 AND THAT LAST COUPLE LINES WAS ON PAGE
21 309. BUT DOES THIS REFRESH YOUR RECOLLECTION THAT YOU
22 ADOPTED A STRATEGY, INCLUDING WITH JOHNNIE LEE, OF TRYING
23 TO IMPLANT IN THE JURY'S MIND THE FACT THAT CURTIS WINDOM
24 WAS IN A STATE OF MIND WHERE HE WAS INCAPABLE OF
25 COMMITTING FIRST DEGREE MURDER?

1 **A** WELL, I THINK THE RECORD SPEAKS FOR ITSELF.
2 THERE'S NOT MUCH I CAN DO TO AMPLIFY THAT. THE CONFUSION
3 COMES FROM THE FACT THAT, YOU KNOW, I WOULDN'T HAVE BET
4 MONEY THAT I COULD HAVE AVOIDED A FIRST DEGREE CONVICTION
5 ON JOHNNIE LEE.

6 **Q** RIGHT. BUT DID YOU HAVE --

7 **MR. STRAND:** JUDGE.

8 **THE COURT:** EXCUSE ME.

9 **THE WITNESS:** THE IDEA THAT I CONSENTED --

10 **THE COURT:** HANG ON, MR. LEINSTER, WE HAVE
11 AN OBJECTION. LET ME SEE WHAT IT IS. EXCUSE ME.

12 **MR. STRAND:** I'M SORRY. MR. LERNER WAS
13 INTERRUPTING MR. LEINSTER, AND I AMPLIFIED THE
14 PROBLEM.

15 **THE COURT:** OKAY.

16 **BY MR. LERNER:**

17 **Q** GO ON, MR. LEINSTER.

18 **THE COURT:** PLEASE CONTINUE, MR. LEINSTER.

19 **A** I -- WHATEVER CONCESSIONS I MADE, I MADE IN MY
20 MIND. AND WHATEVER CONCESSIONS I MADE IN COURT WOULD BE
21 REFLECTED BY THE COURT, THERE'S NOT MUCH I CAN SAY TO
22 THAT.

23 **Q** BUT IF THE RECORD REFLECTS THAT YOU MADE A
24 VIGOROUS CROSS-EXAMINATION OF ALL THE WITNESSES,
25 INCLUDING THE ONES RELATING TO THE JOHNNIE LEE SHOOTING,

1 THEN THAT WOULD INDICATE THAT YOU, AS FAR AS THE EVIDENCE
2 YOU BROUGHT OUT, ADOPTED A STRATEGY, A STRATEGY OF
3 QUESTIONING FIRST DEGREE MURDER ON ALL OF THE WITNESS --
4 OR ALL OF THE VICTIMS, INCLUDING JOHNNIE LEE, CORRECT?

5 A WELL, I WAS -- IN ANY CASE, NO MATTER HOW BLEAK
6 YOUR CHANCES, YOU SIT BACK AND YOU TAKE WHATEVER SHOT YOU
7 CAN, AND, YOU KNOW, YOU HOPE THAT THE -- THE ULTIMATE
8 SHOT DOESN'T FIRE AGAINST YOU. SO I DIDN'T CONCEDE
9 JOHNNIE LEE IN THE SENSE THAT I SAID, OKAY, HE'S GUILTY
10 OF FIRST DEGREE MURDER AGAINST JOHNNIE LEE. I DON'T
11 THINK THE RECORD REFLECTS THAT.

12 Q WELL, I DON'T BELIEVE SO EITHER, BUT I WANTED
13 TO MAKE THAT -- I WANTED TO MAKE THAT CLEAR.

14 YOU DID DO WHAT YOU COULD TO CONTEST A
15 FIRST DEGREE MURDER FINDING ON ALL OF THE VICTIMS; IS
16 THAT CORRECT?

17 A WELL, I THINK THAT'S WHAT THE RECORD WOULD
18 REFLECT --

19 Q OKAY.

20 A -- ON EXAMINATION OF ALL THE WITNESSES, OF ALL
21 THE WITNESSES.

22 Q NOW, WHEN WE TALKED TO YOU, YOU MADE A
23 DISTINCTION ABOUT YOUR STRATEGY, WHAT YOUR STRATEGY WOULD
24 HAVE BEEN AS FAR AS BRAIN DAMAGE. AND YOU USED THE
25 PHRASE, DIP STICK?

1 A I'M SORRY, WHAT WAS THE LAST ONE? OH, YEAH,
2 DIP STICK, OKAY.

3 Q DO YOU RECALL THAT?

4 A YEAH, I RECALL OUR DISCUSSION.

5 Q OKAY. WHAT WOULD HAVE BEEN YOUR MOST LIKELY
6 STRATEGY AS FAR AS PRESENTING BRAIN DAMAGE TESTIMONY WITH
7 RESPECT TO BACKGROUND INFORMATION AND THAT SORT OF THING?

8 A WELL, SEE, I DON'T KNOW EXACTLY HOW ALL OF THAT
9 WOULD SHAKE OUT. THE ULTIMATE CONCLUSION THAT HE HAD
10 ORGANIC BRAIN DAMAGE, THAT IT WAS SOMETHING QUITE APART
11 FROM -- FROM SOCIOECONOMIC, YOU KNOW, HE HAD A TOUGH
12 CHILDHOOD, HIS DAD WAS A BAD GUY, SOMETHING I REFER TO AS
13 DIP STICK TEST. YOU KNOW, YOU PUT IN THE -- IN THE DIP
14 STICK, YOU'RE A QUART LOW, THAT'S A VERY OBJECTIVE
15 FINDING. IF I HAD -- IF I HAD HAD A FINDING LIKE THAT
16 THAT SAID HE HAD ORGANIC BRAIN DAMAGE, THOSE RESULTS,
17 THOSE CONCLUSIONS ABSOLUTELY WOULD HAVE BEEN USED,
18 REGARDLESS OF WHAT THEY MIGHT HAVE INSPIRED BY WAY OF
19 OPENING THE DOOR TO DOPE DEALING. AS FAR AS -- AS FAR AS
20 SUBJECTIVE FINDINGS, BASED ON THE FACT THAT HE HAD A BAD
21 CHILDHOOD, THAT'S -- LIKE I'M SAYING, I WOULD HAVE BEEN
22 CAUTIOUS ABOUT THOSE KIND OF THINGS.

23 Q WHY?

24 A BECAUSE, AGAIN, SOME OF THOSE THINGS MIGHT HAVE
25 OPENED UP SOME DOORS I DIDN'T WANT OPENED.

1 Q GIVE ME SOME EXAMPLES OF WHAT, BASED ON YOUR
2 EXPERIENCE, YOU WOULD HAVE BEEN FEARFUL OF OPENING BY
3 INTRODUCING THAT SORT OF TESTIMONY?

4 A WELL, THE WHOLE -- THE WHOLE PROBLEM WITH
5 CURTIS WINDOM WAS THAT HE WAS REPUTED TO BE A LARGE SCALE
6 COCAINE DEALER IN THE WINTER GARDEN AREA, AND THAT
7 PREVAILED THE WHOLE FABRIC OF THAT CASE.

8 Q AND DID YOU -- WAS THAT SOMETHING YOU FELT YOU
9 HAD TO BE EXTREMELY CAREFUL ABOUT AS YOU PRESENTED THE
10 EVIDENCE?

11 A YES.

12 Q NOW, WAS IT IMPORTANT TO YOU TO TRY TO GET SOME
13 SUPPORTING EVIDENCE IN ON CURTIS WINDOM'S ACTIONS THAT
14 DAY THAT SUPPORTED YOUR THEORY THAT -- THAT HE DIDN'T
15 REALLY HAVE THE FIRST DEGREE INTENT, THE FIRST DEGREE
16 MURDER INTENT?

17 A WOULD IT HAVE BEEN IMPORTANT?

18 Q WAS IT IMPORTANT TO YOU TO TRY TO DO THAT?

19 A SURE. SURE.

20 Q NOW, THAT COULD HAVE BEEN DONE BY CALLING
21 CURTIS WINDOM HIMSELF; IS THAT CORRECT?

22 A CALLING CURTIS WINDOM TO ANSWER WHY HE DID IT?

23 Q CORRECT.

24 A YEAH, I SUPPOSE.

25 Q BUT WHAT DANGERS WOULD HAVE BEEN POSED BY THAT?

1 A I DON'T EVEN KNOW HOW TO ANSWER THAT. THE
2 GROUND'S TOO FERTILE TO PLOW. I'M NOT SURE CURTIS COULD
3 HAVE TOLD YOU IN THE FIRST PLACE.

4 Q PARDON?

5 A I'M NOT SURE CURTIS COULD HAVE TOLD YOU IN THE
6 FIRST PLACE.

7 Q BECAUSE HE CLAIMED TO HAVE A GAP OR SOMETHING,
8 A GAP OF MEMORY ON AT LEAST SOME OF THE SHOOTINGS; IS
9 THAT CORRECT?

10 A I CAN'T SAY THAT. I DON'T RECALL THAT THAT'S
11 WHAT CURTIS WAS SAYING. I NEVER REALLY GOT A COGENT
12 EXPLANATION AS WHY ANY OF THAT HAPPENED. EVERYTHING I
13 GOT WAS REALLY BY WAY OF GOSSIP.

14 Q WHAT WAS THE STORY THAT YOU WERE GETTING BY WAY
15 OF GOSSIP?

16 A THAT -- THAT JOHNNIE LEE WAS HAVING SOME SORT
17 OF A -- OF A TRYST WITH CURTIS'S GIRLFRIEND, THAT THERE
18 WAS A FALLING OUT WITH JOHNNIE LEE ABOUT DRUG MONEY, AND
19 THAT THAT'S -- THAT WAS THE -- THE GENERAL ESSENCE OF THE
20 PROBLEM WITH JOHNNIE LEE.

21 Q NOW, YOU WERE FAMILIAR WITH -- FOR WONT OF A
22 BETTER TERM, THE MILIEU, THE SOCIETY, SOCIAL -- SOCIETAL
23 MILIEU AND CONDITIONS IN THE WINTER GARDEN BLACK
24 COMMUNITY AT THE TIME, WEREN'T YOU?

25 A YES.

1 Q COULD YOU -- WAS THAT BECAUSE YOU HAD
2 REPRESENTED SEVERAL OF THE YOUNG MEN WHO LIVED IN THAT
3 COMMUNITY?

4 A YES.

5 Q COULD YOU TELL THE COURT ABOUT THAT.

6 A WELL, ONE OF THE INDIVIDUALS, KENNY THAMES, WAS
7 MURDERED OUT THERE. HE WAS TORTURED AND MURDERED. AND,
8 AS I RECALL, HIS BACKYARD WAS DUG UP LOOKING FOR HIS --
9 HIS DRUG MONEY.

10 I WENT TO THE FUNERAL OUT THERE FOR KENNY
11 THAMES. THE POLICE EVERYWHERE. IT WAS RUMORED IT WAS
12 GOING TO BE GUN PLAY AT THE FUNERAL. THERE WERE, YOU
13 KNOW, ANY NUMBER OF YOUNG MEN OUT THERE WITH -- SPORTING
14 A LOT OF JEWELRY. IT WAS -- IT WAS A VERY HIGH PROFILE
15 DRUG AREA AT THE TIME. AND THERE WERE A -- IT WAS A
16 SUBJECT OF THE INVESTIGATION INTO IT.

17 Q WAS -- WAS THIS A BACKGROUND, OR THIS KNOWLEDGE
18 YOU HAD OF THE BACKGROUND OF, SOCIETAL BACKGROUND OF
19 CURTIS WINDOM'S NEIGHBORHOOD AND HIS ASSOCIATES AND
20 PEOPLE HE KNEW, WAS THIS SOMETHING YOU WERE FEARFUL MIGHT
21 COME OUT DURING THE COURSE OF THE TRIAL?

22 A THE DRUG ACCESS?

23 Q YES.

24 A SURE.

25 MR. LERNER: IF I COULD HAVE A MOMENT, YOUR

1 HONOR.

2 THE COURT: YES.

3 I DIDN'T GET THE LAST NAME OF THE PERSON
4 WHOSE FUNERAL WE WERE TALKING ABOUT.

5 BY MR. LERNER:

6 Q COULD YOU SPELL THE LAST NAME OF THE PERSON'S
7 FUNERAL WE'RE TALKING ABOUT.

8 A THAMES, T-H-A-M-E-S.

9 Q AND THAT WAS A YOUNG MAN ABOUT THE SAME AGE AS
10 CURTIS?

11 A YES.

12 Q NOW, DID THAT TAKE PLACE AT OR ABOUT THE SAME
13 TIME AS THE TRIAL OR LEADING UP TO THE TRIAL?

14 A I DON'T RECALL IF IT WAS JUST BEFORE OR JUST
15 AFTER. IT WAS IN THE SAME GENERAL TIME AREA.

16 Q BUT DURING THAT PERIOD OF TIME LEADING UP TO
17 THE TRIAL YOU WERE QUITE FAMILIAR WITH -- WITH THE
18 SOCIETAL GOING-ONS OF THAT AREA THROUGH YOUR
19 REPRESENTATION OF OTHER INDIVIDUALS; IS THAT CORRECT?

20 A YES.

21 Q OKAY.

22 MR. LERNER: IF I COULD HAVE A MOMENT, YOUR
23 HONOR.

24 Q NOW, MR. LEINSTER, I WANTED TO READ YOU A
25 LITTLE PORTION OF THE COMMENTS YOU MADE DURING THE

1 PENALTY TRIAL, STARTED, I BELIEVE, SEPTEMBER 23RD, 1992.

2 MR. STRAND: PAGE, PLEASE.

3 MR. LERNER: AND PAGE 39.

4 Q AT THAT POINT I BELIEVE THE RECORD REFLECTS
5 THAT YOU WERE EXPLAINING TO THE -- TO THE COURT OR
6 EXPLORING WITH THE COURT YOUR DECISION AS TO WHETHER OR
7 NOT TO PUT ON INDIVIDUALS IN THE PENALTY PHASE. AND I
8 WANT TO SEE IF THIS WOULD REFRESH YOUR RECOLLECTION.
9 STARTING AT LINE 3.

10 MR. LEINSTER: THE STATE HAVING CHOSEN TO
11 PUT ON WHAT THEY PUT ON, WE COULD PUT ON A VARIETY OF
12 INDIVIDUALS WHOSE TESTIMONY WOULD ESSENTIALLY BE
13 ESSENTIALLY THAT IN THEIR PERSONAL OBSERVATION OF THE
14 DEFENDANT THEY HAD NEVER SEEN ANYTHING QUITE LIKE THIS OR
15 THIS KIND OF PRESENTATION, THAT HE SEEMED TO BE OUT OF
16 HIS MIND AT THE TIME WAS PART OF THE TRIAL TESTIMONY
17 WHICH THE JURY CAN CONSIDER FOR PURPOSES OF THE PENALTY
18 PHASE. WHAT THAT DOES OPEN, HOWEVER, AND I CAN'T CONTROL
19 HOW THESE PEOPLE DELIVER THEIR PRESENTATION, I CAN ASK
20 THE QUESTIONS, BUT I CAN'T CONTROL WHAT THEY SAY, IS THAT
21 THE POSSIBILITY FOR THE STATE TO THEN CROSS-EXAMINE THEM
22 ABOUT SUCH THINGS, YOU DIDN'T SEE HIM DO THIS, SO FORTH,
23 BUT WERE YOU AWARE OF, BLAH, THE FOLLOWING. AND THIS HAS
24 BEEN FROM START TO FINISH A COCAINE CASE WITH A MURDER
25 OVERLAY, THE JURY HASN'T HEARD THAT.

1 THE COURT: ABOUT THE COCAINE?

2 MR. LEINSTER: ABOUT THE COCAINE. AND I
3 HAVE HAD TO TREAD A VERY THIN LINE FROM THE BEGINNING TO
4 THE END. AND I'M DOING THIS FOR THE RECORD, NOT TO AMUSE
5 YOU OR ANYTHING.

6 THE COURT: I KNOW AND I'M LETTING YOU NOT
7 TO AMUSE YOU.

8 MR. LEINSTER: THERE ARE WAYS OF
9 APPROACHING THESE KIND OF CASES, AND I WOULD PROBABLY
10 HAVE TRIED THIS CASE IN A DIFFERENT FASHION IF IT WERE
11 NOT A FIRST DEGREE MURDER CASE, IF IT DIDN'T HAVE A DEATH
12 SENTENCE ATTACHED TO IT. I MAY HAVE BEEN PERFECTLY HAPPY
13 TO LET THE JURY HEAR THERE WAS COCAINE INVOLVED AND OTHER
14 PEOPLE THAT WERE INVOLVED, THAT THERE WERE NOTATIONS OF
15 HIS GIRLFRIEND SLEEPING WITH ANOTHER PERSON AND THAT SHE
16 MIGHT HAVE BEEN AN INFORMANT AND ON AND ON, EXCEPT THE
17 FACT THAT, IN MY OPINION, THAT WOULD HAVE MADE AN ALREADY
18 ALMOST INEXTRICABLE LEGAL SITUATION WORSE, FINISHING
19 THERE.

20 DOES THIS REFRESH YOUR RECOLLECTION THAT
21 THESE WERE -- THAT THERE WERE ISSUES THAT WOULD SUPPLY A
22 MOTIVE FOR THESE KILLINGS THAT YOU DID NOT WANT TO COME
23 OUT IN EVIDENCE?

24 A YES.

25 Q AND IT WAS -- WAS YOUR RECOLLECTION, AS YOU

1 SAID IN THAT PASSAGE, THAT THIS WAS SOMETHING YOU
2 CONSIDERED IN THE GUILT PHASE AND IN THE PENALTY PHASE
3 FROM BEGINNING TO END?

4 A YES.

5 Q AND DID YOU HAVE INFORMATION ON THOSE ISSUES
6 THAT WERE JUST MENTIONED IN THAT PASSAGE THAT MADE YOU
7 APPREHENSIVE THAT EVIDENCE MIGHT COME OUT DURING THE
8 TRIAL THAT WOULD SUPPORT THOSE AS A MOTIVE FOR MR. WINDOM
9 HAVING SHOT THE PEOPLE THAT HE SHOT?

10 MR. STRAND: OBJECTION, ASKED AND ANSWERED.
11 HE SAID THAT HE ONLY HAD RUMORS.

12 THE COURT: OVERRULED. YOU CAN ANSWER THAT
13 QUESTION, IF YOU'RE ABLE. FIRST OF ALL, DO YOU
14 RECALL THE QUESTION?

15 THE WITNESS: I THINK I RECALL THE QUESTION.
16 NO, I DON'T THINK I WOULD BE FEARFUL THAT
17 EVIDENCE WOULD HAVE BEEN PRODUCED. I ASSUME THAT
18 I HAD BEEN GIVEN FULL DISCOVERY. I DON'T THINK I
19 WAS AWARE OF ANY EVIDENCE THAT THE WITNESSES --
20 IT WAS ALL INNUENDO. IT WAS -- IT WAS WHAT I HAD
21 BEEN TOLD THROUGH THE GRAPEVINE.

22 BY MR. LERNER:

23 Q WELL, DID THE GRAPEVINE INCLUDE THESE SAME
24 PEOPLE THAT YOU MIGHT HAVE CALLED IN MITIGATION FOR
25 CURTIS WINDOM?

1 A YES.

2 Q AND WERE YOU AFRAID THAT THEY MIGHT SAY
3 SOMETHING THAT WOULD SUPPORT SOME OF THESE -- SOME OF
4 THIS INNUENDO?

5 A I'M -- OH, I'M SURE THAT WAS A POSSIBILITY. I
6 MAY HAVE BEEN MORE AFRAID OF THE QUESTION THAN THE
7 ANSWERS.

8 Q NOW, THE RECORD REFLECTS -- I DON'T KNOW IF YOU
9 REMEMBER THIS OR NOT -- BUT THE RECORD REFLECTS THAT
10 ALTHOUGH YOU CHOSE NOT TO PRODUCE, I BELIEVE, ANYTHING AT
11 THE ACTUAL PENALTY PHASE WITH THE JURY, THAT YOU DID THEN
12 CALL SOME WITNESSES IN A LATER MITIGATION HEARING, DO YOU
13 REMEMBER THAT?

14 A WELL, MY -- MY RECOLLECTION, IF YOU WANT TO
15 CALL IT THAT, HAS BEEN REFRESHED ON THAT ISSUE.

16 Q AND WOULD THAT HAVE BEEN SPECIFICALLY FOR THE
17 PURPOSE OF TRYING TO GET THE ADVANTAGE OF THESE WITNESSES
18 WITHOUT TAKING THIS RISK IN FRONT OF THE JURY? :

19 A YES.

20 Q AND TO PUT THEM IN A FORUM WHERE THE JUDGE
21 MIGHT OVERLOOK SOME OF THE PREJUDICIAL EVIDENCE THAT
22 MIGHT COME OUT OR MIGHT NOT WEIGH IT AS HEAVILY AS A JURY
23 WOULD?

24 A YES.

25 Q OKAY. AND IF THE EVIDENCE INDICATES THAT IN

1 THIS MITIGATION HEARING, I BELIEVE IT WAS WITNESS
2 JACKSON, I'M TRYING TO REMEMBER HER FIRST NAME, BUT THAT
3 THE FACT, THE ISSUE OF VALERIE DAVIS BEING AN INFORMANT
4 AND CURTIS WINDOM HAVING HEARD THAT SHE WAS A POSSIBLE
5 INFORMANT, THAT CAME OUT IN THE EVIDENCE, DID THAT
6 CONFIRM YOUR FEARS THAT YOU WERE TAKING A RISK BY CALLING
7 THESE SORT OF BACKGROUND WITNESSES?

8 A YOU'VE LOST ME COMPLETELY.

9 Q OKAY.

10 A THERE IS A WITNESS THAT SAID WHAT?

11 Q I COVERED THIS YESTERDAY AND I CAN READ IT TO
12 REFRESH YOUR RECOLLECTION, BUT SINCE COUNSEL AND COURT
13 HAVE ALREADY HEARD IT, I'LL JUST PARAPHRASE IT.

14 MY QUESTION, IF THE EVIDENCE INDICATES
15 THAT DURING THIS MITIGATION HEARING ONE OF THE WITNESSES
16 BASICALLY TESTIFIED THAT SHE AND CURTIS HAD TALKED BEFORE
17 THE SHOOTING ABOUT A RUMOR THAT VALERIE DAVIS WAS AN --
18 ABOUT TO BECOME AN INFORMANT AGAINST CURTIS WINDOM, IS
19 THAT -- WOULD THAT CONFIRMED YOUR FEARS THAT YOU WERE
20 TAKING A RISK BY CALLING THESE KIND OF WITNESSES?

21 A WELL, ASSUME THAT WAS ALL SAID, YES, OF COURSE
22 THAT WOULDN'T BE HELPFUL.

23 Q OKAY.

24 A I DON'T REMEMBER ANY OF THAT.

25 Q THAT'S A GOOD QUESTION. HOW MUCH INDEPENDENTLY

1 DO YOU REMEMBER OF THIS TRIAL?

2 A VERY LITTLE. IT'S BEEN TEN YEARS. I MEAN, I
3 REMEMBER -- I REMEMBER THE TRIAL, I REMEMBER THE CAST OF
4 CHARACTERS, BUT TO REMEMBER ABOUT A GIVEN TIME THAT I MET
5 WITH THAT PERSON AND THAT PERSON AND WHAT WE SPECIFICALLY
6 DISCUSSED AND WHAT MY MOTIVES AT THE TIME WERE, I CAN ASK
7 IN VERY GENERAL WAYS, BUT I CAN'T GIVE YOU GOOD
8 SPECIFICS.

9 Q DO YOU GENERALLY REMEMBER TALKING TO FRIENDS
10 AND FAMILY OF MR. WINDOM ABOUT THE FACTS OF THE CASE?

11 A I DO RECALL THE --

12 Q GENERALLY TALKING WITH THEM?

13 A IN GENERAL, YES.

14 Q YOU REMEMBER THE SORTS OF THINGS THAT YOU
15 DISCUSSED?

16 A NO.

17 MR. LERNER: OKAY. CAN I HAVE A MOMENT,
18 YOUR HONOR? :

19 THE COURT: YES.

20 BY MR. LERNER:

21 Q NOW, AS TO THE ISSUE OF NO SIGNIFICANT PRIOR
22 RECORD, DO YOU REMEMBER INDEPENDENTLY WHETHER OR NOT YOU
23 ADDRESSED THAT DURING THE GUILT PHASE OF THE TRIAL?

24 A I DO NOT.

25 Q BUT THAT'S SOMETHING YOU WOULD HAVE WANTED TO

1 POINT OUT FOR THE JURY, IF YOU COULD?

2 A OF NO SIGNIFICANT PRIOR RECORD?

3 Q YEAH.

4 A YES.

5 Q AND DO YOU REMEMBER THAT YOU CALLED CURTIS
6 WINDOM'S MOTHER DURING THE COURSE OF THE TRIAL?

7 A NO.

8 Q OKAY. BUT IF THE RECORD REFLECTS THAT YOU DID,
9 THEN YOU DID?

10 A YES.

11 Q OKAY. LET ME REFER TO THE TRANSCRIPT OF THE
12 GUILT PHASE TRIAL, PAGE 633, AND READ SOME OF THAT, SEE
13 IF IT REFRESHES YOUR RECOLLECTION.

14 THE COURT: SORRY.

15 MR. LERNER: LINE 1, PAGE 633.

16 Q QUESTION, AND HE WOULDN'T LET -- HE WOULDN'T
17 TELL YOU WHY HE DID THOSE THINGS, WOULD HE. ANSWER, I
18 DIDN'T ASK HIM WHY HE DID IT BECAUSE ANYTHING THAT HE DID
19 HE HAD FORCED TO DO. THAT CHILD AIN'T NEVER BEEN IN NO
20 PROBLEM AND NEVER UNTIL THIS. I KNOW MY CHILD.
21 QUESTION, DO YOU MEAN TO TELL US THAT YOUR SON HAS NEVER
22 BEEN IN TROUBLE WITH THE LAW BEFORE. ANSWER, I DON'T SAY
23 THAT, DID YOU ASK ME THAT QUESTION? I THOUGHT YOU SAID
24 THAT, I THOUGHT THAT'S WHAT YOU SAID. ANSWER, I SAID HE
25 NEVER BEEN IN TROUBLE. ONLY TROUBLE IS THE TROUBLE YOU

1 ALL GOT HIM IN NOW. BEFORE THAT HE HAD NEVER BEEN IN
2 TROUBLE WITH THE LAW, WHATEVER. THEY CAUGHT HIM ONE
3 TIME, THEY PUT HIM IN JAIL, BUT THEY DIDN'T CATCH HIM
4 WITH NOTHING OR SOMETHING LIKE THAT. HE WAS SET UP.

5 SO THAT -- I GUESS THAT WAS ACTUALLY
6 BROUGHT OUT BY MR. ASHTON, BUT THAT WAS BROUGHT OUT
7 DURING THE GUILT PHASE, WAS IT NOT?

8 A APPARENTLY SO.

9 Q SO THAT HAVING HAPPENED, THAT WOULD NOT HAVE
10 BEEN A FURTHER CONSIDERATION OF YOURS, THAT ALREADY BEING
11 ON THE RECORD, WOULD IT?

12 A I DON'T KNOW. I CAN'T -- I CAN'T SAY THAT.

13 Q MR. LEINSTER, WHAT'S YOUR BEST RECOLLECTION AS
14 TO WHAT YOUR STRATEGY WAS IN THE CASE, OTHER THAN WITH
15 THIS --

16 A WELL, WE HAD DR. KIRKLAND'S SOMEWHAT LIMITED,
17 FEW POSSIBILITIES TO WORK WITH.

18 Q YES. :

19 A AND PROBABLY TO HOPE THAT EVERYTHING WOULD
20 BECOME SO OBFUSCATED DURING THE COURSE OF THE TRIAL THAT
21 THE COMPLETE LACK OF SENSE OF THE WHOLE THING MIGHT PLAY
22 INTO A FUGUE ANALYSIS, AND THAT MAYBE WE MIGHT COVER
23 JOHNNIE LEE'S ACTIVITIES WITH THE SAME SORT OF SMOKE
24 SCREEN.

25 Q AND IS IT YOUR RECOLLECTION THAT THROUGHOUT THE

1 TRIAL YOU DID EVERYTHING THAT YOU COULD TO ADD TO THAT
2 OBFUSCATION INsofar AS MR. WINDOM'S STATE OF MIND?

3 A I THINK SO. AGAIN, THE RECORD IS GONNA SPEAK
4 FOR ITSELF.

5 Q OKAY. I MEAN, IF THE RECORD SAYS THAT YOU SAID
6 TO THE JURY, FORGET IT, THIS MAN'S GUILTY AS HELL, AND
7 THAT'S WHAT THE RECORD SAYS, THEN -- THE RECORD SAYS
8 COMPLETELY OTHERWISE, APPARENTLY IT DOES -- THEN THAT'S
9 WHAT THE RECORD SAYS.

10 BUT GIVEN THE YEARS THAT HAVE PASSED AND
11 THINGS THAT HAVE HAPPENED TO YOU AND SO FORTH, THE RECORD
12 WOULD BE THE BEST INDICATION; IS THAT CORRECT?

13 A YES.

14 Q BUT DID IT -- IS IT YOUR RECOLLECTION THAT YOU
15 DID HAVE A STRATEGY THAT YOU FOLLOWED THROUGH TO ATTEMPT
16 TO, AS YOU SAY, OBFUSCATE OR ELIMINATE THE ISSUE OF
17 INTENT TO COMMIT FIRST DEGREE MURDER IN THE JURY'S MIND?

18 A I'M SURE THAT'S WHAT I WAS ARGUING, THAT WE --
19 WE JUST HAD TO SET THEM UP AND HOPE WE CAN KNOCK THEM
20 DOWN AND ARGUE THE BEST WE COULD.

21 MR. LERNER: I HAVE NO FURTHER QUESTIONS OF
22 THIS WITNESS AT THIS TIME.

23 THE COURT: OKAY. THANK YOU. LET'S TRY TO
24 FINISH UP. GO AHEAD, MR. STRAND.

25 MR. STRAND: JUDGE, IT WILL BE VERY BRIEF.

1 ALL. I DIDN'T -- I DIDN'T UNDERSTAND IT ANY BETTER
2 HAVING PREPARED FOR THE CASE AND THE CASE THAN I DID
3 BEFORE I HAD ANYTHING THAT MADE ANY SENSE OUT OF IT.
4 WOULD HAVE BEEN DELIGHTED TO HAVE IT. IF CURTIS WINDOM
5 HAS ORGANIC BRAIN DAMAGE AND AS A RESULT OF MY DROPPING
6 THE BALL, OR DR. KIRKLAND DROPPING THE BALL, I DON'T
7 REALLY CARE WHO TAKES THE HEAT FOR THAT, THE JURY SHOULD
8 HAVE KNOWN THAT CURTIS WINDOM HAD ORGANIC BRAIN DAMAGE.
9 THAT'S SOMETHING WAY BEYOND HIS CONTROL. THAT'S A WHOLE
10 LOT DIFFERENT THAN A MAN WHO SIMPLY HAD A TOUGH
11 CHILDHOOD. WE'VE ALL HAD THOSE. AND I WOULD HAVE BEEN
12 THRILLED TO HAVE THAT INFORMATION. I DIDN'T HAVE THAT
13 INFORMATION.

14 I DID RELY ON DR. KIRKLAND. WHETHER I
15 SHOULD HAVE GONE FURTHER THAN DR. KIRKLAND IS
16 ARGUMENTATIVE. BUT THAT'S THE WAY I FEEL ABOUT IT. IF
17 HE'S GOT ORGANIC BRAIN DAMAGE, JURY SHOULD HAVE KNOWN.
18 YES, I WOULD HAVE USED THAT REGARDLESS OF WHAT DOORS IT
19 WOULD HAVE OPENED.

20 MR. STRAND: I DON'T HAVE ANY FURTHER
21 QUESTIONS.

22 THE COURT: MR. LERNER, ANY FOLLOW UP?

23 MR. LERNER: YEAH, ONE LAST QUESTION.

24 RECROSS-EXAMINATION

25 BY MR. LERNER:

1 Q IN THE TIME YOU REPRESENTED MR. WINDOM YOU
2 TALKED TO HIM SEVERAL TIMES; IS THAT CORRECT?

3 A YES.

4 Q ABOUT THE FACTS OF THE CASE, ABOUT WHETHER OR
5 NOT TO PRESENT WITNESSES, AND THINGS LIKE THAT?

6 A ABOUT WHETHER TO PRESENT WITNESSES?

7 Q YES, I BELIEVE THE -- AT LEAST AT SOME POINT IN
8 THE RECORD YOU PUT ON THE RECORD THAT YOU HAD CONSULTED
9 WITH HIM ABOUT THAT FACT.

10 A OKAY. AGAIN, I DON'T RECALL THAT, BUT I
11 IMAGINE I DID.

12 Q THE QUESTION I HAVE IS, DID YOU EVER SEE ANY
13 INDICATION THAT WOULD INDICATE TO YOU THAT HE WAS
14 SUFFERING FROM SOME SORT OF -- AT THE POINT YOU WERE
15 INTERACTING WITH HIM -- SOME SORT OF MENTAL ILLNESS OR
16 BRAIN DAMAGE?

17 MR. STRAND: OBJECTION, BEYOND THE SCOPE OF
18 REDIRECT.

19 THE COURT: I AGREE. SUSTAINED.

20 THE WITNESS: HELLO.

21 THE COURT: OKAY. NO OTHER QUESTIONS.

22 THAT'S GOING TO BE IT, MR. LEINSTER, EXCUSE ME,
23 THANKS VERY MUCH FOR BEING WITH US. WE'RE GONNA
24 GO AHEAD AND TERMINATE THE DISCUSSION NOW.

25 AND ANYTHING ELSE FROM THE LAWYERS BEFORE

1 WE -- HOLD ON ONE SECOND, MADAM CLERK, WE'RE NOT
2 FINISHED.

3 MR. LERNER: CAN I CALL HIM AS MY WITNESS,
4 HE'S ON MY WITNESS LIST, AND ASK HIM THAT SAME
5 QUESTION?

6 THE COURT: I SUPPOSE SO.

7 MR. STRAND: JUDGE, I HAVE NO OBJECTION TO
8 HIM TAKING MR. LEINSTER OUT OF ORDER.

9 THE COURT: THAT'S FINE. THEN WE HAVE I
10 BELIEVE THAT QUESTION. MY REASON FOR SUSTAINING
11 WAS I THOUGHT IT HAD BEEN ASKED AND ANSWERED,
12 FRANKLY, BUT THAT'S FINE.

13 WHY DON'T YOU REPHRASE THE QUESTION SO THAT
14 WE CAN LET MR. LEINSTER GO, AND HE CAN BE DONE
15 WITH IT. GO AHEAD. WHAT'S THE QUESTION YOU WANT
16 TO ASK HIM?

17 DIRECT EXAMINATION

18 BY MR. LERNER:

19 Q MR. LEINSTER, DID YOU EVER SEE ANY INDICATION
20 IN YOUR INTERACTIONS WITH MR. WINDOM THAT INDICATED TO
21 YOU THAT HE WAS SUFFERING FROM ANY KIND OF BRAIN DAMAGE
22 OR MENTAL ILLNESS?

23 A THE ONLY THING THAT WOULD HAVE ALERTED ME TO
24 THAT WOULD HAVE BEEN THE NATURE OF THE ACTS THEMSELVES.
25 MY PERSONAL DEALINGS WITH MR. WINDOM WOULD NOT HAVE

1 TIPPED ME OFF. BUT, THEN AGAIN, YOU KNOW, I WAS A LAWYER
2 NOT A PSYCHIATRIST.

3 Q SURE. BUT YOU HAVE REPRESENTED OTHER PEOPLE
4 WHERE YOU POSED DEFENSES LIKE THAT?

5 A WELL, I THINK I'VE MET PEOPLE I'VE CONSIDERED
6 NUTS, BUT I DON'T RECALL THINKING THAT ABOUT CURTIS
7 WINDOM. HE WAS -- HE WAS SUBDUED. HE WAS NOT HIGHLY
8 EMOTIVE. HE DIDN'T GIVE ME VERY GOOD EXPLANATION FOR
9 THINGS, BUT I DIDN'T REGARD ANY OF THAT AS BEING A SIGNAL
10 THAT HE WAS DERANGED IN ANY WAY OR IMPAIRED IN ANY WAY.

11 MR. LERNER: OKAY. THANK YOU.

12 MR. STRAND: ONE QUESTION.

13 CROSS-EXAMINATION

14 BY MR. STRAND:

15 Q HAVE YOU EVER PRESENTED A DEFENSE WHERE ORGANIC
16 BRAIN DAMAGE OR BIPOLAR DISORDER OR PSYCHOTIC DEPRESSION
17 WAS PART OF THE DEFENSE IN ANY CASE?

18 A I DO NOT RECALL THAT I EVER DID, NO.

19 MR. STRAND: I HAVE NO FURTHER QUESTIONS.

20 THE COURT: THANK YOU. MR. LEINSTER, GOOD
21 LUCK. WE'RE GONNA GO AHEAD AND TERMINATE THIS
22 AND WISH YOU WELL.

23 THE WITNESS: THANK YOU.

24 THE COURT: OKAY. THAT'S IT UNTIL WE CAN
25 HAVE FOLKS READY TO GO AT 1:30, LAY WITNESS OR

1 EXPERTS.

2 MR. STRAND: THEY WILL BE LAY WITNESSES
3 REMAINDER. ACTUALLY IT'S MR. BARCH, HE'LL BE
4 FIRST, AND THEN WE WILL DO THE LAY WITNESSES.

5 THE COURT: HE WILL BE HERE AT 1:30? ALL
6 I'M SAYING, LET'S MAKE A CALL TO MAKE SURE WE GET
7 HIM HERE AT 1:30. THANK YOU. SEE YOU THEN.

8 (THEREUPON A LUNCH RECESS WAS TAKEN.)

9 THE COURT: WE READY?

10 MR. STRAND: YES, SIR.

11 THE COURT: NEXT WITNESS.

12 MR. STRAND: ON BEHALF OF MR. WINDOM, WE
13 WOULD CALL KURT BARCH, B-A-R-C-H.

14 THEREUPON,

15 KURT BARCH

16 WAS CALLED AS A WITNESS, AND HAVING FIRST BEEN DULY
17 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION

19 THE COURT: GO AHEAD, COUNSEL.

20 BY MR. STRAND:

21 Q COULD YOU STATE YOUR NAME FOR THE RECORD?

22 A KURT, K-U-R-T, LAST NAME, B-A-R-C-H.

23 Q WHAT'S YOUR PROFESSION, SIR?

24 A I'M AN ATTORNEY.

25 Q AND IN 1992, WHAT WAS YOUR PROFESSION?

1 A AN ATTORNEY. I'VE BEEN LICENSED AND PRACTICED
2 SINCE 1979.

3 Q AND IN 1992, DID YOU HAVE AN OFFICE SHARING
4 ARRANGEMENTS WITH ANOTHER ATTORNEY?

5 A YES, WITH ED LEINSTER.

6 Q AND DID YOU BECOME INVOLVED IN THE CASE OF
7 STATE VERSUS CURTIS WINDOM IN 1992?

8 A YES, I DID.

9 Q NOW, JUST TO HELP YOU WITH SOME DATES. IF I
10 WERE TO TELL YOU THAT THE SHOOTINGS OCCURRED IN FEBRUARY
11 OF '92, AND THE TRIAL OCCURRED IN AUGUST OF '92, WOULD
12 YOU QUIBBLE WITH THAT?

13 A NO, I CAME TO WORK FOR MR. LEINSTER, WITH
14 MR. LEINSTER IN MARCH, LATE MARCH, MIDDLE TO LATE MARCH
15 OF '92.

16 Q NOW, WERE YOU THE LEAD ATTORNEY ON MR. WINDOM'S
17 CASE?

18 A NO. NO. I WAS -- I ASSISTED ED IN JUST ABOUT
19 ANYTHING HE ASKED ME TO DO IN REGARD TO THIS,
20 MR. WINDOM'S CASE, OR ANY CASE. I HAD MY OWN CLIENTS AND
21 MY OWN WORK. AND IF HE NEEDED ME TO GO TO COURT OR TO
22 GET A CONTINUANCE OR DO A PLEA, I DID IT. AND THEN HE
23 WOULD PAY ME BASED ON THE AMOUNT OF STUFF I DID FOR HIM.

24 Q NOW, IN REGARD TO MR. WINDOM'S CASE, DID YOU
25 HAVE ANY SPECIFIC RESPONSIBILITIES IN THAT CASE?

1 A YES. I HAD -- HE ASKED ME, MR. LEINSTER ASKED
2 ME TO DEVELOP SOME INFORMATION CONCERNING THE PENALTY
3 PHASE, CURTIS'S BACKGROUND, EMPLOYMENT, HEALTH, MENTAL
4 HEALTH, ANYTHING HE MAY HAVE DONE IN A POSITIVE NATURE,
5 ANY TYPE OF BACKGROUND INFORMATION.

6 Q OKAY.

7 A AND I MAY HAVE INTERVIEWED A COUPLE OF PEOPLE
8 IN THAT REGARD WHILE THE PENALTY PHASE WAS GOING ON, TOO,
9 OR, EXCUSE ME, WHILE THE GUILT PHASE WAS GOING ON, TOO.
10 I'M SURE I DID.

11 Q OKAY. AND, NOW, WAS THERE AN INVESTIGATOR
12 ASSIGNED TO THIS CASE?

13 A NO, WE DIDN'T HAVE AN INVESTIGATOR.

14 Q AND DID YOU EVER HAVE ANY CONVERSATIONS WITH
15 MR. LEINSTER ABOUT AN INVESTIGATOR?

16 A YES, AT LEAST ONCE, MAYBE TWICE. IN FACT,
17 TWICE FOR SURE, MAYBE MORE. I HAD INTERVIEWED, AND I
18 CAN'T REMEMBER ALL OF THE NAMES, BUT I REMEMBER WHAT THEY
19 DID, IT WAS A LADY WHO RAN A CAFE IN CURTIS'S COMMUNITY.

20 Q WOULD THAT BE MARY JACKSON?

21 A I BELIEVE SO. A LADY, ANOTHER YOUNG WOMAN THAT
22 WORKED FOR THE CITY IN SOME CAPACITY. I DON'T -- I SAY
23 YOUNG, SHE WAS IN HER MID 20'S. I SPOKE WITH A LADY THAT
24 WORKED FOR THE DEPARTMENT OF CHILDREN AND FAMILY
25 SERVICES, OR MAYBE IN THOSE DAYS CALLED HRS. I SPOKE

1 WITH HIS -- CURTIS'S MOTHER AND A SISTER.

2 AND I SPOKE WITH THEM AND I LEARNED THAT
3 THERE WAS INFORMATION THAT WE SHOULD HIRE AN INVESTIGATOR
4 TO GO OUT INTO THE COMMUNITY. I WAS BASICALLY TOLD THAT
5 IF I WENT TO TALK TO PEOPLE, THEY PROBABLY WOULD BE
6 SUSPICIOUS OF ME, AND THAT I SHOULD GET AN INVESTIGATOR
7 AND SOMEONE WHO WAS, QUITE FRANKLY, WAS A BLACK PERSON,
8 THAT THEY WOULD BE MORE LIKELY TO ASSIST THAT INDIVIDUAL.

9 THERE WAS INFORMATION I RECEIVED FROM -- I
10 WISH I COULD REMEMBER THE NAMES, BUT SHE WORKED FOR THE
11 CITY AND CURTIS HAD HELPED HER FINANCIALLY. I DON'T
12 THINK THERE WAS ANY OBLIGATION ON HIS PART. LIKE, I
13 THINK SHE HAD TROUBLE RAISING HER CHILD, OR WAS GONNA
14 HAVE ONE, OR SOMETHING, BUT HE WASN'T THE FATHER, AS I
15 REMEMBER, HE JUST WAS HELPING, THEY WERE FRIENDS. SHE
16 PUT ME ON TO A FELLOW THAT HAD BEEN IN BACK OF THE CAR
17 THAT -- I FORGET THE LADY'S NAME THAT WAS KILLED, THAT'S
18 TERRIBLE.

19 Q THE WOMAN IN THE CAR?

20 A THE WOMAN IN THE CAR.

21 Q MARY LUBIN?

22 A MARY LUBIN. THERE WAS A GENTLEMAN IN BACK OF
23 HER, HE WAS ON PAROLE OR PROBATION, HE WASN'T SUPPOSED TO
24 BE DRIVING A CAR AT THAT TIME, AND HE WOULD NOT ASSIST
25 US, HE WOULDN'T VOLUNTARILY COME FORWARD. AND, OF

1 COURSE, I COULD HAVE SUBPOENAED HIM, BUT THEN WHO KNOWS
2 WHAT HE WOULD HAVE SAID.

3 HE CAME TO THE OFFICE, I INTERVIEWED HIM.
4 AND FROM HIM AND FROM THE LADY IN THE CITY, I LEARNED
5 THAT THERE WERE PROBABLY PEOPLE THAT WERE SITTING ON
6 THEIR PORCHES AND IN THEIR YARDS THAT MAY HAVE SEEN THIS
7 HAPPEN IN REGARD TO MARY LUBIN, AND THAT WE NEEDED TO GO
8 TALK TO THEM. AND THAT'S -- THAT'S WHEN I TOLD ED AFTER
9 THAT INTERVIEW, I SAID, LOOK, YOU NEED TO GET AN
10 INVESTIGATOR, SEND HIM OUT IN THE COMMUNITY TO FIND OUT,
11 NOT ONLY INFORMATION ABOUT PENALTY PHASE BUT GUILT PHASE,
12 TOO.

13 AND THEN LATER AS I WORKED ON THE PENALTY
14 PHASE AND HAVE TALKED TO THE SISTER AND THE MOTHER, I
15 FOUND OUT, I THINK CURTIS HAD SAVED HIS SISTER'S LIFE AT
16 ONE TIME, THAT HE HAD BEEN IN AN AUTOMOBILE ACCIDENT OR
17 SOMETHING, AND THAT THERE WERE PEOPLE IN THE COMMUNITY
18 THAT KNEW A LOT ABOUT HIM AND THEY SHOULD BE CONTACTED BY
19 AN INVESTIGATOR, AND I TOLD ED AGAIN THAT.

20 Q NOW, YOU MENTIONED AN AUTOMOBILE ACCIDENT. WHO
21 TOLD YOU ABOUT THAT?

22 A HIS -- HIS MOTHER AND SISTER, I HAD AN
23 INTERVIEW I'M STILL TRYING TO FIND. I ACTUALLY TAPE
24 RECORDED THAT INTERVIEW. AND I DON'T -- IT MAY BE IN
25 WITH THE REST OF THE FILE, WHEREVER IT IS, WHEREVER ED

1 STORED THAT STUFF. BUT I THOUGHT I KEPT IT, BUT
2 APPARENTLY I DID NOT. I LOOKED EVERYWHERE, IN MY OLD
3 OFFICE FILES AND EVERYTHING.

4 Q AND WHO WAS IN THIS AUTOMOBILE ACCIDENT?

5 A WELL, I THINK CURTIS WAS IN IT. I DON'T KNOW
6 WHO ELSE. AND THEY GAVE ME THE NAME OF A DOCTOR THAT HAD
7 TALKED WITH HIM OR HAD TREATED HIM, AND I SPOKE WITH THE
8 DOCTOR VERY BRIEFLY ON THE PHONE. AND HE DIDN'T SEEM TO
9 INDICATE THAT THERE HAD BEEN ANY LONG-TERM INJURIES OR
10 CONSEQUENCE.

11 Q WOULD THIS BE A DOCTOR WHO IS AN INDIAN OR
12 PAKISTANI DOCTOR?

13 A YES.

14 Q DR. KOUZUM?

15 A VERY WELL COULD HAVE BEEN, YES. I DON'T
16 REMEMBER THE NAME. I THOUGHT HE WAS CHINESE, BUT, YOU
17 KNOW, THAT MAYBE MY MEMORY. BUT I KNOW I DID TALK TO THE
18 DOCTOR. I GOT THE INFORMATION AND NAME FROM HIS SISTER
19 AND MOTHER.

20 Q UH-HUH. AND DO YOU HAVE -- NOW, DID ED EVER
21 GET AN INVESTIGATOR, THAT YOU KNOW?

22 A NO, NOT THAT I KNOW OF.

23 Q YOU INDICATED THAT YOU HAD ASKED HIM TWO OR
24 THREE TIMES?

25 A YES. TWICE THAT I KNOW OF BECAUSE ED WOULD

1 HAVE A TENDENCY TO FORGET CONVERSATIONS THAT YOU'D HAVE
2 WITH HIM. AND OF COURSE AT THE TIME HE WAS RUNNING THE
3 CASE. AND I COULD HAVE BUGGED HIM EVERY DAY ABOUT IT,
4 BUT -- AND I THOUGHT HE WAS -- YOU KNOW, I FIGURED HE
5 WOULD DO IT.

6 Q DID YOU, IN PREPARING THIS CASE, DID YOU HAVE
7 ANY CONVERSATIONS WITH DR. KIRKLAND?

8 A NO, NOT THAT I REMEMBER.

9 Q DID YOU SEND HIM ANY CORRESPONDENCE OR
10 ANYTHING, THAT YOU RECALL?

11 A DID NOT.

12 Q WAS THAT PART OF YOUR RESPONSIBILITY TO DEAL
13 WITH THE MENTAL HEALTH PROFESSIONALS?

14 A I DIDN'T THINK SO AT THE TIME BECAUSE THAT WAS
15 WHAT ED WAS TAKING CARE OF, AT LEAST I THOUGHT THAT HE
16 WAS. AND I HAD NEVER EVEN KNEW THERE WAS SOMETHING THAT
17 CAME UP AT TRIAL ABOUT A FUGUE STATE OR SOMETHING.
18 BEFORE THAT DAY IN THE COURTROOM, I'D NEVER HEARD OF THAT
19 IN REGARD TO CURTIS'S CASE.

20 Q NOW, TALKING ABOUT THE GUILT PHASE OF THE
21 TRIAL, WERE YOU SITTING AT COUNSEL TABLE DURING THE GUILT
22 PHASE OF THE TRIAL?

23 A VERY LITTLE, IF AT ALL. NOW, I WAS IN THE
24 COURTROOM FOR PART OF IT. AND I REMEMBER BEING IN THE
25 COURTROOM FOR PART OF THE VOIR DIRE. BUT I MAINLY WAS

1 THERE TO HELP ED IF HE NEEDED, YOU KNOW, A DOCUMENT OR
2 NEEDED SOMETHING LOOKED UP OR CHECKED, OR NEEDED TO
3 CONTACT A WITNESS, THAT WAS MAINLY WHAT I DID.

4 I'D COME IN AND CHECK ON THAT CAUSE WHILE
5 HE WAS DOING THIS TRIAL, HE HAD OTHER CASES THAT NEEDED
6 TO BE EITHER CONTINUED OR PLED OUT OR WHATEVER. AND I
7 MANAGED, I GUESS YOU COULD SAY I MANAGED HIS DOCKET, IF
8 THAT'S A FAIR WAY TO SAY IT.

9 Q OKAY. AND SO DURING MR. WINDOM'S TRIAL, IS IT
10 YOUR UNDERSTANDING THAT YOU DID -- YOU -- DID YOU HAVE
11 ANY RESPONSIBILITY FOR MAKING TACTICAL OR STRATEGIC
12 DECISIONS AS TO WHAT WERE TO HAPPEN IN THE TRIAL?

13 A NO. THE ONLY THING THAT I HAD EVER
14 PARTICIPATED IN THAT REGARD WAS THE DAY THAT WE -- WE
15 STARTED THE PENALTY PHASE AND THE STATE PUT ON MAYBE ONE
16 WITNESS, MAYBE TWO, AND WE EXPECTED THEM TO PUT ON A LOT
17 MORE, AND I CAN REMEMBER ED AND I LOOKING AT EACH OTHER,
18 NOW WHAT DO WE DO NOW. AND WE WENT BACK TO THE OFFICE
19 AND DISCUSSED WHAT WE WERE GOING TO DO.

20 Q BUT DID YOU MAKE THE DECISION OR DID ED MAKE
21 THE DECISION?

22 A NO, ED DID. I TALKED TO HIM ABOUT IT. AND HIS
23 DECISION WAS WE WOULDN'T PUT ANYBODY ON THEN.

24 Q OKAY.

25 A WE HAD A REASON FOR THAT, IF YOU WANT TO KNOW.

1 Q AND WHAT WAS THE REASON?

2 A WELL -- AND I'M -- I DON'T WANT TO SAY ANYTHING
3 AGAINST ANYBODY, BUT CURTIS DIDN'T HAVE A GOOD EMPLOYMENT
4 BACKGROUND THAT WE COULD REFER TO. HE -- HE, FROM WHAT
5 WE COULD GATHER, HIS LIVELIHOOD WAS DERIVED FROM GAMBLING
6 AND PERHAPS INVOLVEMENT IN DRUG SALES. AND I DON'T KNOW
7 IF THAT'S TRUE OR NOT, BUT THAT'S THE INFORMATION WE HAD.

8 AND WE WERE FEARFUL THAT THE STATE HAD --
9 HAD INTENTIONALLY MADE THEIR -- THEIR PRESENTATION SHORT
10 SO THAT WE'D DO THEIR WORK FOR THEM, PUT ON THESE FOLKS
11 THAT WOULD COME IN AND SAY, YOU KNOW, HE GIVES PEOPLE
12 THINGS IN THE COMMUNITY AND HELPS THEM OUT, AND THEY
13 WOULD THEN ON CROSS ASK, WELL, YEAH, BUT WHAT IS HE DOING
14 FOR A LIVING, AND EVENTUALLY IT WOULD COME OUT THAT HE
15 WAS UNDER INVESTIGATION FOR DRUG SALES AT THAT TIME. AND
16 WE WERE ABLE TO KEEP THAT OUT, THERE WAS SOME KIND OF BIG
17 INVESTIGATION GOING ON. AND THAT WAS THE MAIN REASON WE
18 DIDN'T.

19 Q NOW, WERE YOU IN THE COURTROOM WHEN THERE WAS A
20 CONVERSATION BETWEEN JUDGE RUSSELL AND MR. LEINSTER AND
21 CURTIS WINDOM CONCERNING NOT PUTTING THE MITIGATION ON?

22 A I BELIEVE I WAS THERE, YEAH.

23 Q OKAY. AND YOU -- DO YOU HAVE A RECOLLECTION OF
24 IT?

25 A TO SOME DEGREE.

1 Q UH-HUH. NOW, IF I WERE TO TELL YOU THAT THE
2 RECORD INDICATES THAT -- THAT JUDGE RUSSELL HAD
3 MR. LEINSTER GO THROUGH THE CONTENT OF THE MITIGATING
4 EVIDENCE WITH MR. WINDOM ON THE RECORD, AND ASKED IF
5 MR. WINDOM AGREED WITH MR. LEINSTER'S DECISION, DO YOU
6 HAVE A RECOLLECTION OF THAT?

7 A NOT, NOT TOO MUCH. I DO KNOW THAT WE DIDN'T
8 TALK TO CURTIS. YOU KNOW, THE STATE PUT ON THEIR CASE
9 FOR THE PENALTY PHASE, TOOK A HALF HOUR OR HOUR IN THE
10 MORNING, AND AT LUNCHTIME WE WENT BACK TO ED'S OFFICE AND
11 SAT AND TALKED WHAT WE MIGHT WANT TO DO. BUT WE NEVER
12 CONSULTED WITH CURTIS ABOUT THAT, IF THAT'S WHAT YOU'RE
13 ASKING. WE DIDN'T GO DOWN TO THE HOLDING CELL AND FIND
14 HIM AND SEE WHAT HE WANTED US TO DO.

15 Q NOW -- NOW, YOU SAID YOU SHARED OFFICE SPACE
16 FOR ED LEINSTER STARTING IN MARCH OF 1992. DID YOU
17 NOTICE ANYTHING UNUSUAL ABOUT THE WAY IN WHICH HE WAS
18 HANDLING THIS CASE IN -- SPECIFICALLY DURING THE TIME
19 THAT YOU SHARED OFFICE WITH HIM, OFFICE SPACE WITH HIM?

20 A YEAH. I DON'T -- I GUESS UNUSUAL WOULD BE IN
21 MY ESTIMATION OF WHAT WAS UNUSUAL. HE DIDN'T SEEM TO BE
22 AS INTENT OR AS -- NOT -- NOT -- EITHER BE CONSUMED WITH
23 A CASE LIKE THIS. ALMOST YOUR EVERY PROFESSIONAL MINUTE
24 THAT YOU'RE AWAKE YOU SHOULD BE WORKING AND DOING, AND
25 THAT DIDN'T SEEM TO BE. THAT WASN'T UNUSUAL FOR ED. HE

1 DID ALL HIS CASES, HE DIDN'T PAY MUCH ATTENTION TO THEM,
2 QUITE FRANKLY. AND HE WAS NOT IN THE OFFICE A LOT. I
3 DIDN'T SEE ED FOR THE FIRST COUPLE OF WEEKS I WORKED OR
4 HAD AN OFFICE IN THERE. HE WAS AT HOME MOST OF THE TIME.

5 Q WERE THERE TIMES DURING THIS PERIOD IN-BETWEEN
6 MARCH OF 1992 AND AUGUST OF 1992 WHEN YOU HAD TO COVER
7 FOR MR. LEINSTER IN COURT?

8 A YES, A LOT.

9 Q UH-HUH.

10 A I MEAN, THAT'S MAINLY WHAT I DID FOR HIM, YOU
11 KNOW. AND WHEN I SAY THAT, I WOULD GET CONTINUANCES, OR
12 SOMETIMES ED WOULD NEGOTIATE A PLEA WITH THE STATE AND I
13 WOULD BE GIVEN THE DETAILS. I WOULD GO TO THE COURT,
14 EITHER EXPLAIN THE PLEA TO THE CLIENT, IF HE HADN'T
15 ALREADY HAD IT EXPLAINED, AND DO THE PLEA FORM AND GO
16 OVER THE PLEA FORM AND THEN DO THE PLEA. DO SOME
17 PRELIMINARY MOTIONS, THINGS LIKE THAT. I RARELY EVER,
18 FROM MY OWN CHOICE, NEGOTIATED PLEAS BECAUSE I CONSIDERED
19 THEM ED'S CLIENTS REALLY, NOR DID I EVER DO A TRIAL.

20 I THINK I STARTED A COUPLE, I DID A COUPLE
21 OF JURY SELECTIONS FOR ED. AND I WOULD DO THAT, BUT I
22 WAS BASICALLY GIVEN A -- KIND OF REMINDED THAT I
23 SHOULDN'T DO THAT IN A FRIENDLY WAY BY ONE OF THE
24 SECRETARIES THERE AT THE OFFICE, I DIDN'T WANT TO GET TOO
25 DEEPLY MIRED IN HIS CASES. AND THE REASON FOR THAT

1 BECAME EVIDENT AS I WORKED WITH ED.

2 Q AND WHAT REASON BECAME EVIDENT TO YOU?

3 A AND I'M NOT SAYING ANYTHING AGAINST ED, YOU
4 KNOW, HE ALWAYS TREATED ME WELL, BUT HE DID -- HE WAS --
5 HE DRANK A LOT, HE WAS FORGETFUL, HE WAS NOT ATTENTIVE TO
6 HIS CASES, AND, QUITE FRANKLY, HIS MAIN IMPORTANCE WAS
7 NOT TO PROVIDE A LEGAL SERVICE BUT TO COLLECT MONEY FROM
8 CLIENTS. AND THAT'S TRUE OF A LOT OF ATTORNEYS, SO
9 THAT'S NOT SAYING ANYTHING AGAINST ED. HE JUST DIDN'T DO
10 THINGS THE WAY I WOULD HAVE. AND HE HAD A BRILLIANT
11 LEGAL MIND AND KNEW A LOT OF LAW, BUT OFTENTIMES DIDN'T
12 USE WHAT HE KNEW.

13 Q DID -- WERE THERE TIMES THAT YOU HAD TO GO TO
14 COURT FOR ED WHEN HE WAS UNAVAILABLE AND EXPLAIN AS TO
15 HIS WHEREABOUTS?

16 A WE -- WE -- IN FACT, THE TRIAL JUDGE IN THIS
17 CASE, JUDGE RUSSELL -- AND I DON'T KNOW WHETHER SHE DID
18 IT TO GET AT ME BECAUSE SHE KNEW WHERE ED WAS AND WAS
19 JUST PULLING, PULLING MY LEG, OR SHE GENUINELY DIDN'T
20 KNOW -- EVER TIME I APPEARED SHE WOULD SAY, WHERE IS
21 MR. LEINSTER. AND OF COURSE I WOULD USUALLY SAY HE'S IN
22 ANOTHER COURTROOM OR SOMETIMES -- HE ACTUALLY HAD HAIR
23 TRANSPLANTS GOING ON -- HE'S GETTING A HAIR TRANSPLANT.
24 BUT IN REALITY HE WAS EITHER, WAS AT HOME EITHER ILL FROM
25 THE EFFECTS OF A THREE-OR-FOUR DAY BINGE OF SOME TYPE, OR

1 HE WAS IN FACT DRUNK AS I SPOKE THERE IN FRONT OF THE
2 COURT. AND THERE WERE PROBABLY HALF THE TIME THAT I WENT
3 TO COURT I'D SAY THE OFFICE DIDN'T KNOW WHERE ED WAS. WE
4 JUST DIDN'T KNOW WHERE HE WAS.

5 Q OKAY. HOW OFTEN WOULD YOU GO TO COURT FOR ED
6 IN A WEEK, PARTICULARLY IN THIS PERIOD FROM MARCH OF '92
7 TO AUGUST OF '92?

8 A I WOULD SAY ALMOST EVERY DAY. AND SOME DAYS I
9 WOULD BE IN -- IN FRONT OF -- THERE'D BE CASES IN FRONT
10 OF TWO OR THREE JUDGES. I WOULD GO FROM JUDGE CONRAD TO
11 JUDGE RUSSELL OR FROM RUSSELL TO SOMEBODY ELSE, INCLUDING
12 SOME CIVIL MATTERS, YOU KNOW, DOMESTIC RELATIONSHIPS.

13 THE COURT: CAN I ASK A QUESTION? I'VE BEEN
14 LISTENING TO YOUR TESTIMONY. YOU LIED TO JUDGE
15 RUSSELL?

16 THE WITNESS: NO, SIR. I WOULDN'T SAY THAT
17 I LIED TO HER, I JUST DIDN'T --

18 THE COURT: YOU'RE NOT TESTIFYING THAT YOU
19 LIED TO HER TO COVER FOR ED LEINSTER?

20 THE WITNESS: NO, I DID NOT. SHE'D ASK ME
21 WHERE HE WAS, SOMETIMES I DIDN'T KNOW.
22 OCCASIONALLY I WOULD SAY THAT.

23 THE COURT: OKAY. ALL RIGHT. FORGIVE THE
24 INTERRUPTION. GO AHEAD.

25 MR. STRAND: THANK YOU, YOUR HONOR.

1 Q YOU SAID THAT YOU INTERVIEWED THE MOTHER OF
2 CURTIS WINDOM AND HIS SISTER. AND WAS YOUR INTERVIEW OF
3 THEM RELATED TO WHAT YOU HAD SAID ABOUT THAT HE WAS A
4 GOOD PERSON IN THE COMMUNITY?

5 A YES, PREDOMINANTLY.

6 Q AND THAT -- DO YOU RECALL IF YOU ASKED ANY
7 QUESTIONS ABOUT CURTIS WINDOM'S BIRTH, DO YOU HAVE AN
8 INDEPENDENT RECOLLECTION OF THIS?

9 A NOT -- NOT REALLY. I DON'T THINK -- I DON'T
10 THINK WE WENT INTO, LIKE, FROM THE DAY HE WAS BORN TO --
11 I ASKED ABOUT HIS CHILDHOOD. I CAN REMEMBER ASKING ABOUT
12 WHETHER OR NOT HE HAD BEEN INJURED AS A CHILD, WHETHER HE
13 HAD ANY INJURIES THAT MIGHT HAVE CAUSED BRAIN DAMAGE.
14 KIDS WILL FALL OUT OF TREES, YOU KNOW, ALL KINDS OF
15 STUFF, FALL OFF A BICYCLE, HIGH FEVERS AND ILLNESSES
16 WHERE HIGH FEVER AS AN INFANT CAN CAUSE BRAIN DAMAGE, OR
17 AT LEAST THAT'S WHAT I'M LEAD TO BELIEVE BY DOCTORS, I'M
18 NOT A DOCTOR SO I CAN'T TESTIFY TO THAT, BUT THOSE WERE
19 THE REASONS FOR THE QUESTIONS.

20 Q AND THE INFORMATION THAT YOU RECEIVED FROM
21 MRS. WINDOM AND THE SISTER -- WHO YOU DON'T RECALL HER
22 NAME, DO YOU?

23 A NO.

24 Q AND DID YOU RELATE THAT INFORMATION TO ED
25 LEINSTER?

1 A YES.

2 Q OKAY.

3 A I TOOK NOTES. THERE MIGHT BE SOME IF YOU EVER
4 FOUND THE OLD FILES.

5 MR. STRAND: IF I COULD HAVE A MOMENT?

6 THE COURT: YES, SIR.

7 MR. STRAND: I DON'T HAVE ANY FURTHER
8 QUESTIONS, YOUR HONOR.

9 THE COURT: OKAY. THANK YOU VERY MUCH.
10 STATE.

11 **CROSS-EXAMINATION**

12 BY MR. LERNER:

13 Q GOOD AFTERNOON, MR. BARCH.

14 A HI.

15 Q NOW, DURING -- YOU WERE WORKING WITH
16 MR. LEINSTER FROM MARCH UP TO THE TIME OF THE TRIAL?

17 A CORRECT.

18 Q IS THAT CORRECT?

19 A AND EVEN AFTER.

20 Q AND YOU WERE WITH HIM DAILY, EVEN IN THE GUILT
21 PHASE, IN THE SENSE THAT YOU WERE IN AND OUT OF THE
22 COURTROOM WHILE YOU WERE MANAGING HIS DOCKET?

23 A YEAH, I THINK THAT'S SAFE TO SAY I WOULD GO IN
24 AND OUT, YEAH, EVERY DAY.

25 Q AND CONSULT WITH HIM?

1 A VARIOUS THINGS. AND SOMETIMES JUST TO POP IN
2 AND SEE IF HE NEEDED ANYTHING.

3 Q OKAY. DURING THAT TIME THE TRIAL WAS GOING ON,
4 DO YOU RECALL SEEING ANY INDICATION THAT HE MIGHT BE
5 UNDER THE INFLUENCE OF ANYTHING?

6 A THAT'S HARD TO SAY. AND REASON I SAY THAT IS
7 BECAUSE ED WAS SUCCESSFUL IN BEING ABLE TO COVER THAT UP.

8 Q YES.

9 A AND -- AND I'M ONLY SAYING THAT IT'S MY
10 UNDERSTANDING HE HAD A LONG-TERM ALCOHOL PROBLEM.

11 Q YES.

12 A AND PEOPLE, FROM MY EXPERIENCE, PEOPLE THAT
13 HAVE THOSE PROBLEMS, AFTER A GREAT NUMBER OF YEARS ARE
14 ABLE TO MASK THE³ OUTWARD SIGNS. WHERE YOU AND I MIGHT
15 HAVE TWO OR THREE DRINKS AT LUNCH, WE COME BACK IN HERE
16 FALLING DOWN STAGGERING, ED COULD GO OUT AND HAVE, YOU
17 KNOW, TWO OR THREE OR FOUR, FIVE, OR SIX AND COME BACK
18 AND YOU WOULDN'T KNOW THAT HE HAD ANYTHING TO DRINK --

19 Q THE QUESTION WAS --

20 A -- AT LEAST BY HIS OUTWARD APPEARANCE. AND I
21 DON'T THINK I EVER NOTICED THAT HE WAS UNDER ANY
22 INFLUENCE. I KNOW HE WAS VERY ILL WHEN WE STARTED THAT
23 TRIAL WITH THE FLU CAUSE I GOT IT SHORTLY AFTER HE HAD
24 IT.

25 Q SO HE HAD SOME SORT OF COLD OR SOMETHING OF

1 THAT SORT?

2 A OH, IT WAS MISERABLE. IN FACT, I REMEMBER
3 THINKING THAT BECAUSE I THINK THE JUDGE, JUDGE RUSSELL, I
4 THINK OFFERED TO CONTINUE THE TRIAL BECAUSE HE WAS
5 HACKING AND COUGHING SO BAD, TO LET HIM GET OVER THAT,
6 AND HE DECLINED THAT OFFER. I BELIEVE I REMEMBER THAT
7 BECAUSE I GOT SICK, VERY REAL SEVERE CASE OF THE FLU JUST
8 LIKE TEN TO 12 DAYS AFTER THE TRIAL WAS OVER.

9 Q BY THAT TIME YOU HAD BEEN WORKING WITH HIM A
10 NUMBER OF MONTHS; IS THAT CORRECT?

11 A THAT'S RIGHT, YEAH.

12 Q WOULD YOU HAVE HAD AN OPPORTUNITY TO SEE HIM
13 UNDER THE INFLUENCE OF ALCOHOL OR SOMETHING ELSE?

14 A OH, YES.

15 Q DID YOU EVER SEE ANY INDICATION DURING THE
16 TRIAL THAT HE WAS UNDER THE INFLUENCE OF ALCOHOL?

17 A YOU KNOW, I CAN'T SAY THAT HE WASN'T -- THAT IT
18 WASN'T -- THAT HE WAS UNDER THE INFLUENCE RIGHT THAT
19 MINUTE, LIKE HE JUST BEEN OUT AT A BAR DRINKING AND
20 WALKED IN. HOWEVER, BECAUSE OF LONG-TERM -- AND I'M NOT
21 A DOCTOR, SO, YOU KNOW, YOU'LL HAVE TO INTERPRET THIS --
22 LONG-TERM ALCOHOL USE, IT'S MY UNDERSTANDING, CAN IMPAIR
23 YOUR -- YOUR FUNCTIONS, YOUR BRAIN. HE SHOOK. IT'S MY
24 UNDERSTANDING THAT'S FROM DAMAGE TO THE LIVER WILL CAUSE
25 YOU TO SHAKE LIKE THAT.

1 Q BUT HE SHOOK ALL THE TIME?

2 A YES. OH, YES, HE SHOOK ALL THE TIME. SO ACUTE
3 ALCOHOL, WHAT YOU WOULD SAY USE ON A GIVEN DAY, I
4 COULDN'T -- I COULDN'T SAY THAT HE HAD. BUT LONG-TERM
5 THE EFFECTS WERE THERE. BECAUSE HE DIDN'T CARRY HIS OWN
6 KEYS. HE NEVER CARRIED KEYS TO THE OFFICE OR TO HIS CAR,
7 HE LEFT THEM IN THE IGNITION. HE NEVER LOCKED HIS OWN
8 HOUSE BECAUSE HE WOULD LEAVE THE KEYS, HE'D LEAVE THEM
9 LAYING SOMEPLACE.

10 Q BUT MY QUESTION WAS, YOU HAD EXPERIENCE WITH
11 THIS GENTLEMAN?

12 A OH, YEAH.

13 Q AND YOU WERE IN CONTACT WITH HIM THROUGHOUT THE
14 DAY DURING THE GUILT PHASE BECAUSE YOU WERE HANDLING HIS
15 CALENDAR, OR ACTUALLY HELPING HIM IN THE TRIAL, CORRECT?

16 A THAT'S CORRECT, YES.

17 Q YOU WERE CLOSE ENOUGH TO HIM THAT YOU CAUGHT
18 HIS COLD? :

19 A YEAH.

20 Q DID YOU EVER SEE ANY INDICATION THAT HE WAS
21 UNDER THE INFLUENCE OF ALCOHOL OR PSYCHOTROPIC DRUGS?

22 A WELL, THE DRUGS I WOULDN'T KNOW ABOUT.

23 Q OKAY.

24 A BUT, ALCOHOL, NO. IF YOU MEAN DID I SMELL IT
25 ON HIM, I DID NOT.

1 Q RIGHT. DID HE SEEM TO BE DISORIENTED OR NOT
2 AWARE OF WHAT WAS GOING ON IN THE TRIAL?

3 A NO.

4 Q DID HE SEEM TO BE FOCUSED AND ABLE TO
5 CROSS-EXAMINE THE WITNESSES?

6 A WELL, NOW, THE TIMES I WAS IN THERE I WOULD SAY
7 YES. BUT I DON'T REMEMBER EVEN BEING IN THERE DURING
8 MUCH OF THE TESTIMONY. AND IF I WAS, I MAY NOT HAVE BEEN
9 PAYING MUCH ATTENTION. I WAS THERE MAINLY DID HE NEED
10 ANYTHING. AND IF HE DIDN'T NEED ANYTHING, I WAS GOING ON
11 ABOUT MY BUSINESS, YOU KNOW.

12 Q I SEE. NOW, IT'S YOUR RECOLLECTION THAT YOU
13 ASKED MR. WINDOM'S MOTHER AND SISTER ABOUT ANY POSSIBLE
14 INJURIES THAT MIGHT HAVE CAUSED BRAIN DAMAGE; IS THAT
15 CORRECT?

16 A YES, I DID.

17 Q DID YOU -- DO YOU HAVE ANY RECOLLECTION OF THEM
18 TELLING YOU ABOUT AN ABNORMAL BIRTH? :

19 A NO, I DO NOT HAVE ANY RECOLLECTION OF THAT.
20 ONLY AN AUTOMOBILE ACCIDENT --

21 Q RIGHT.

22 A -- OF SOME TYPE THAT HE WAS IN WHEN HE WAS -- I
23 DON'T KNOW, I DON'T EVEN REMEMBER HOW OLD HE WAS WHEN IT
24 HAPPENED.

25 Q AND YOU FOLLOWED UP ON THAT; IS THAT CORRECT?

1 A I DID.

2 Q YOU LOOKED TO SEE IF THERE WERE ANY MEDICAL
3 RECORDS?

4 A I CALLED THE DOCTOR. I DID NOT GO TO THE
5 DOCTOR'S OFFICE. I DIDN'T GET A COPY OF THE MEDICAL
6 RECORDS. I MAY. AT LEAST I DON'T RECALL DOING THAT.

7 Q DO YOU RECALL LOOKING FOR SOME?

8 A I DON'T KNOW IF I DID THEN. I JUST DON'T
9 RECALL IT. BUT I DO RECALL CALLING THE DOCTOR AND
10 TALKING TO HIM ON THE PHONE.

11 Q WHAT DO YOU REMEMBER HIM TELLING YOU?

12 A HIS BASIC -- BASICALLY THAT, AS FAR AS HE KNEW,
13 THERE WAS NO DAMAGE, LONG-TERM DAMAGE OR IMPAIRMENT FROM
14 THAT ACCIDENT. THAT'S THE BEST OF MY RECOLLECTION.

15 Q IS THAT WHAT YOU REPORTED BACK TO MR. LEINSTER,
16 YOU FOLLOWED UP AND THAT'S WHAT YOU HAD BEEN TOLD?

17 A YES, I WOULD HAVE TOLD HIM THAT.

18 Q NOW, IF YOU HAD BEEN GIVEN INFORMATION ABOUT AN
19 ABNORMAL BIRTH, WOULD YOU HAVE FOLLOWED UP ON THAT AS
20 WELL?

21 A I WOULD HAVE. PARTICULARLY IF IT INVOLVED, YOU
22 KNOW, AN INJURY AS A CHILD OR HIGH FEVER OR SOMETHING, I
23 WOULD PROBABLY HAVE SOUGHT OUT MEDICAL RECORDS. AND IF
24 THE DOCTOR HAD TOLD ME ON THE PHONE, YEAH, THERE MIGHT BE
25 SOME INJURIES HERE, I PROBABLY WOULD, I KNOW I WOULD HAVE

1 REQUESTED HIS -- THE MEDICAL RECORDS.

2 Q NOW, WHEN MR. LEINSTER WAS AT HIS HOME INSTEAD
3 OF AT THE OFFICE, DO YOU KNOW WHETHER OR NOT HE DID ANY
4 WORK THERE OR KEPT RECORDS THERE?

5 A HE DID KEEP RECORDS THERE AND HE DID WORK
6 THERE. AND I CAN'T SAY SPECIFICALLY WHAT HE -- WHAT HE
7 WAS DOING, IF ANYTHING, IN REGARD TO CURTIS'S, BUT HE DID
8 KEEP FILES THERE AND DID WORK THERE SOMETIMES.

9 Q OKAY. NOW, THESE PEOPLE THAT YOU TALKED TO
10 THAT HAD BEEN FOLLOWING MARY LUBIN, THE LADY THAT WAS
11 SHOT IN HER CAR, YOU ACTUALLY TALKED TO THE MAN?

12 A YES, I DID. I DON'T REMEMBER HIS NAME, IT
13 PROBABLY IS IN MY NOTES. I DID NOT RECORD THAT
14 CONVERSATION. AND THE LADY -- SOMEBODY FROM CURTIS'S
15 FAMILY OR FRIENDS MUST KNOW WHO I'M TALKING ABOUT. THE
16 LADY THAT GAVE ME THAT INFORMATION WAS A YOUNG WOMAN THAT
17 WORKED FOR THE CITY. I THINK SHE HAD A SMALL CHILD
18 CURTIS HAD HELPED HER WITH. :

19 Q CORRECT.

20 A AND SHE WOULD KNOW THAT MAN'S NAME. AND I
21 ACTUALLY DID BRING HIM INTO THE OFFICE AND HE TALKED TO
22 ME. AND HE WAS UNWILLING TO COME FORWARD. I UNDERSTAND
23 I COULD HAVE SUBPOENAED HIM. FROM MY EXPERIENCE, YOU
24 SUBPOENA A WITNESS, THERE'S NO TELLING WHAT -- AND THEY
25 DON'T WANT TO THERE BE --

1 Q WHAT DID HE TELL YOU?

2 A HE WAS IN BACK OF -- OF THE LADY WHEN -- WHEN
3 CURTIS CAME UP THERE. AND HE SAID THAT HE REMEMBERED
4 SEEING MARY LUBIN FUMBLING AROUND, YOU KNOW, BELOW HIS
5 LINE OF SIGHT AND RAISE UP LIKE THIS. AND HE SAID, HE
6 TOLD ME THAT SHE HAD A GUN IN HER HAND. THAT'S EXACTLY
7 WHAT HE SAID.

8 Q OKAY. WHAT ABOUT THE YOUNG LADY AT THE CITY,
9 WHAT DID SHE TELL YOU?

10 A WELL, BASICALLY HER INFORMATION WAS FROM -- SHE
11 WASN'T THERE AT THE TIME. HER INFORMATION WAS CONCERNING
12 CURTIS'S BACKGROUND AND HOW HE HAD HELPED HER AND OTHER
13 PEOPLE IN THE COMMUNITY. I THINK HE BOUGHT -- AND I'M
14 GOING FROM MEMORY -- I THINK HE BOUGHT BASEBALL OR
15 FOOTBALL UNIFORMS FOR THE CHILDREN AND SPONSORED SOME OF
16 THE ATHLETIC TEAMS FOR THE KIDS. HELPED OUT PEOPLE. HE
17 FOUND OUT THEY NEEDED SOME HELP WITH MONEY, HE'D GIVE
18 THEM SOME MONEY. AND BASICALLY THAT'S THE INFORMATION I
19 GOT FROM HER, ALONG WITH SHE'S THE ONE, IN FACT, I THINK
20 MAY HAVE HAD A RELATIVE THAT LIVED ON THAT STREET.

21 Q YES.

22 A AND SAID THAT THERE WERE PEOPLE OUT ON THEIR
23 PORCHES OR IN THEIR YARDS ALL THE TIME, ALL DAY LONG,
24 CERTAINLY THERE HAD TO BE SOMEONE ELSE THAT SAW THIS
25 INCIDENT WITH MARY LUBIN AND CURTIS.

1 Q OKAY.

2 A AND ED WAS -- I TOLD HIM HE NEEDED TO GET
3 SOMEBODY TO GO OUT INTO THE COMMUNITY AND INTERVIEW
4 PEOPLE, LOOK FOR WITNESSES, THEY WEREN'T GONNA OPEN UP TO
5 ME FOR OBVIOUS REASONS, THEY WOULD HAVE SUSPECTED MY
6 MOTIVATIONS.

7 Q DID THE MAN TELL YOU THAT CURTIS -- WHAT CURTIS
8 DID WITH REFERENCE TO MARY LUBIN? I'M TALKING ABOUT THE
9 MAN THAT WAS BEHIND.

10 A YEAH. HE WOULD HAVE TOLD ME THAT HE ACTUALLY
11 SAW CURTIS SHOOT THE WOMAN. YEAH, HE SAW THE WHOLE
12 THING. AND HE DIDN'T -- HE LEFT. HE WAS NOT SUPPOSED TO
13 BE THERE, AND HE WAS AFRAID OF GETTING INTO TROUBLE FOR
14 VIOLATION OF PROBATION. I DON'T REMEMBER IF HE TOLD ME
15 WHERE HE WAS SUPPOSED TO BE, WHETHER IT WAS AT WORK OR AT
16 HOME, SOME KIND OF HOME DETENTION OR HOME -- YOU KNOW, I
17 DON'T KNOW, BUT HE WASN'T SUPPOSED TO BE THERE. AND HE
18 MADE IT CLEAR TO ME THAT IF I SUBPOENAED HIM, HE WOULD
19 DENY THAT HE KNEW ANYTHING. PERHAPS NOW HE WOULD -- HE
20 WOULD SPEAK DIFFERENTLY. I FELT THAT THAT WAS RELEVANT
21 TO A POSSIBLE SELF-DEFENSE CLAIM.

22 Q AND WHAT WAS HIS NAME, DO YOU REMEMBER?

23 A NO, I DO NOT. I CANNOT REMEMBER HIS NAME.

24 Q DO YOU KNOW WHETHER OR NOT MR. LEINSTER MADE
25 ANY ATTEMPTS TO PRODUCE HIM?

1 A I DON'T THINK HE DID.

2 Q GET HIM TO COME?

3 A I DON'T THINK HE DID. I CAN'T SAY FOR SURE,
4 BUT I KNOW I RELAYED THAT INFORMATION TO HIM. I KNOW
5 THAT I WOULD HAVE HAD NOTES ON THAT WHICH WOULD HAVE
6 CONTAINED THE MAN'S NAME.

7 Q OKAY.

8 A I'M TERRIBLE AT REMEMBERING NAMES. I CAN
9 REMEMBER FACES, I CAN REMEMBER FACTUAL SCENARIOS FAIRLY
10 WELL FROM CASES THAT I'VE DONE FROM YEARS PAST.

11 Q AND AS FAR AS CHILDHOOD AND BACKGROUND, WHAT
12 QUESTIONS DID YOU ASK THE MOM AND MR. -- CURTIS'S MOTHER
13 AND THE SISTER?

14 A WOULD HAVE BEEN QUESTIONS CONCERNING HIS
15 SCHOOLING, HOW HE DID IN SCHOOL. I KNOW I WENT AND
16 CHECKED HIS SCHOOL RECORDS. I DIDN'T FIND ANYTHING
17 REMARKABLE THERE. WHAT I WAS LOOKING FOR IN THE SCHOOL
18 RECORDS WAS ANYTHING TO INDICATE THAT HE HAD A MENTAL
19 PROBLEM OF SOME KIND, WHETHER IT WAS RETARDATION, AND
20 THERE WASN'T ANY.

21 IN FACT, AS I REMEMBER, HE DIDN'T DO VERY
22 WELL IN SCHOOL. AND I THINK HE HAD A SPEECH PROBLEM.
23 AND THOSE RECORDS, I THINK, ARE STILL THERE TO OBTAIN,
24 BECAUSE I ASKED THEM. AND, IN FACT, I THINK I HAD
25 SOMEONE PULL OUT THE FILE, NOT TO PUT THOSE ON MICROFILM

1 AND TO LEAVE THEM BE BECAUSE I KNEW THAT SOMEONE WOULD --
2 WOULD BE COMING AND LOOKING AT THEM EVENTUALLY AGAIN.

3 Q SO YOU DID FOLLOW-UP WITH THOSE AND DIDN'T FIND
4 ANYTHING MITIGATING?

5 A I WENT THERE, AND NOTHING THERE. I ASKED ABOUT
6 HIS EMPLOYMENT. FROM MY UNDERSTANDING FROM HIS SISTER
7 AND MOTHER, HE HAD HAD ONE JOB WITH A HOTEL, OR DOING
8 SOMETHING FOR A SHORT PERIOD OF TIME. IT DIDN'T SEEM TO
9 ME IT WOULD BE ANYTHING THAT WOULD -- THAT WOULD HELP
10 HIM, THE FACT THAT HE'D BEEN THERE AND QUIT I THINK.

11 HOPEFULLY YOU CAN FIND AN EMPLOYMENT
12 BACKGROUND ON SOMEONE, YOU CAN FIND WITNESSES AT THE
13 EMPLOYMENT THAT SAYS HE'S AN EXCELLENT EMPLOYEE, CAME TO
14 WORK ALL THE TIME, HELPED OTHER PEOPLE, GOOD INFORMATION
15 ABOUT YOUR CLIENT. BUT IF YOU HAVE NO EMPLOYMENT HISTORY
16 AT ALL, THAT'S KIND OF A DEAD END.

17 Q OKAY. NOW, LET ME JUMP FORWARD TO THIS, DURING
18 THE PENALTY PHASE WHEN YOU HAD THIS LUNCH WITH
19 MR. LEINSTER AND DISCUSSED WHAT TO DO ABOUT THE
20 UNEXPECTED PRESENTATION BY THE STATE. WHEN YOU CAME
21 BACK, WERE YOU PRESENT IN THE COURTROOM WHEN MR. LEINSTER
22 DISCUSSED THAT?

23 A YEAH, I BELIEVE I WAS. I REMEMBER I CAME BACK
24 WITH ED. AND THAT'S PROBABLY, DURING THAT PENALTY PHASE,
25 WAS THE MAIN TIME AND PERHAPS THE ONLY TIME I EVER SAT AT

1 COUNSEL TABLE DURING THAT TRIAL. MOST OF THE TIME, LIKE
2 I SAID, HE DIDN'T REALLY WANT -- HE DIDN'T SEEM TO WANT
3 MY HELP IN REGARD TO THAT.

4 Q AND IF HE SAID ON THE RECORD THAT HE DISCUSSED
5 THIS WITH MR. WINDOM --

6 A WELL, YOU KNOW, I'D HAVE TO -- I DON'T THINK HE
7 DID, AND I KNOW I DIDN'T. WE DID NOT DISCUSS IT WITH
8 MR. WINDOM.

9 Q YOU DON'T REMEMBER. BUT IF HE HAD SAID THAT
10 AND IT HAD NOT BEEN TRUE, AS AN OFFICER OF THE COURT YOU
11 WOULD HAVE INFORMED THE COURT, RIGHT?

12 A I COULD HAVE. I MIGHT HAVE. THEN AGAIN, I
13 MIGHT NOT HAVE PAID ANY ATTENTION TO IT AT THE TIME. I
14 PROBABLY WOULD NOW. BUT MY RECOLLECTION WAS THAT HE --
15 WE DID NOT DISCUSS IT WITH MR. WINDOM.

16 Q IS IT POSSIBLE --

17 A IF HE TOLD THE COURT THAT HE DID, THAT'S
18 BETWEEN HIM AND THE COURT, THE WAY I LOOK AT IT.

19 Q RIGHT. IT'S POSSIBLE HE DISCUSSED IT WITH
20 MR. WINDOM AFTER HE WAS BROUGHT IN THE COURTROOM BEFORE
21 THE COURT STARTED?

22 MR. STRAND: JUDGE, I HAVE TO INTERPOSE AN
23 OBJECTION. I THINK THE RECORD WILL CLEARLY
24 REFLECT THAT JUDGE RUSSELL QUESTIONED
25 MR. LEINSTER ABOUT WHETHER OR NOT HE HAD

1 DISCUSSED THIS DECISION WITH MR. WINDOM PRIOR TO
2 TRYING TO IMPLEMENT IT IN COURT. THE RECORD WILL
3 REFLECT THAT MR. LEINSTER SAID TO JUDGE RUSSELL,
4 NO, I HAVE NOT DISCUSSED THIS WITH MR. WINDOM AT
5 ALL, I HAVEN'T DISCUSSED ANYTHING WITH HIM. AT
6 THAT POINT JUDGE RUSSELL HAD A COLLOQUY WITH
7 MR. WINDOM, TOO, AND HAD MR. LEINSTER GO THROUGH
8 THE CONTENT OF THE MITIGATING EVIDENCE WITH
9 MR. WINDOM TO SEE IF HE WOULD KNOWINGLY AND
10 INTELLIGENTLY WAIVE THAT CONTENT.

11 SO THE QUESTION HE'S INTERPOSING TO HIM IS
12 NOT BASED ON THE FACTS OF THE RECORD, AND I WOULD
13 OBJECT.

14 **THE COURT:** I'M NOT EXACTLY SURE WHAT IT'S
15 BASED ON AFTER THAT LONG-SPEAKING OBJECTION, BUT
16 I THINK THE RECORD WILL SPEAK FOR ITSELF.

17 MY MEMORY IS YOUR QUESTION WAS SOMETHING
18 ABOUT THE POSSIBILITY OF LEINSTER DISCUSSING
19 SOMETHING. WHY DON'T YOU REPEAT THE QUESTION FOR
20 ME AND I'LL DO MY BEST TO RULE ON THE OBJECTION
21 WHILE YOU'RE LOOKING THROUGH THE RECORD.

22 **MR. LERNER:** WELL, I MAY BE -- I MAY BE
23 CONFUSING TWO DIFFERENT PARTS OF THAT SAME
24 RECORD.

25 **THE COURT:** THAT'S FINE. WHY DON'T YOU TAKE

1 A LOOK, AND, PERHAPS, YOU CAN BASE A NEW QUESTION
2 ON WHAT YOU'RE LOOKING AT THERE. I'M ACTUALLY A
3 LITTLE UNCLEAR ON WHAT YOU'RE ASKING.

4 ARE YOU GETTING BACK WHETHER MITIGATION
5 EVIDENCE WAS EVER DISCUSSED BETWEEN ED LEINSTER
6 AND THE DEFENDANT?

7 MR. LERNER: THEY BROUGHT THAT UP. AND I
8 THOUGHT THE RECORD INDICATED THAT THEY HAD.

9 Q BUT ANYWAY, MR. BARCH, LET ME TRY TO REFRESH
10 YOUR RECOLLECTION. AND I'M REFERRING TO THE PENALTY
11 PHASE PROCEEDING OF THE TRANSCRIPT BEFORE JUDGE RUSSELL
12 THAT TOOK PLACE ON SEPTEMBER 23RD, 1992.

13 A OKAY.

14 Q ON PAGE 41 WHERE MR. LEINSTER WAS, YOU REMEMBER
15 MR. LEINSTER EXPLAINING TO THE COURT THAT YOU COULD PUT
16 ON A SLEW OF PEOPLE TO SAY THESE THINGS, AND HE SAID, BUT
17 WE'RE NOT GOING TO?

18 A RIGHT, I BELIEVE WE HAD EVERYBODY AVAILABLE.

19 Q AND DO YOU REMEMBER ON PAGE 41, STARTING AT
20 LINE 2, THAT MR. LEINSTER SAYING, IN MY OPINION WHAT WE
21 END UP WITH IS CURTIS WINDOM TRIED FOR DRUGS AND NOT WHAT
22 HAPPENED. SO I, AS HIS LAWYER, MADE A STRATEGIC
23 DECISION, WISE OR UNWISE, NOT TO CALL THESE FOLKS, AND TO
24 ARGUE WHAT WE HAVE GOT HERE. AND IF I'M WRONG, OF
25 COURSE, SOMEDAY I'M GOING TO HEAR ABOUT IT.

1 THE COURT: WELL, HAVE YOU DISCUSSED THIS
2 WITH YOUR CLIENT AND HE'S IN AGREEMENT -- AND IS HE IN
3 AGREEMENT WITH THIS?

4 I DISCUSSED THIS WITH MY CLIENT BEFORE
5 LUNCH, I DON'T KNOW IF HE'S IN AGREEMENT WITH IT OR NOT.
6 CURTIS, ARE YOU IN AGREEMENT WITH IT?

7 THE DEFENDANT: YES.

8 THE COURT: YOU ARE?

9 DEFENDANT: YES.

10 THE COURT: DO YOU UNDERSTAND WHY HE'S
11 DOING IT THIS WAY?

12 DEFENDANT: YES.

13 THE COURT: WHY DO YOU UNDERSTAND IT TO
14 BE? :

15 THE DEFENDANT: BECAUSE HE DON'T WANT THE
16 DRUG THING TO COME IN.

17 SO IF THAT WAS SAID IN COURT AT THE TIME,
18 IS IT POSSIBLE THAT MR. LEINSTER DID INDEED DISCUSS THIS
19 WITH MR. WINDOM JUST AS HE TOLD THE COURT?

20 A I HAVE TO SAY I DON'T THINK IT WAS. AND I'M
21 NOT TRYING TO GET MR. LEINSTER INTO TROUBLE, BUT WE WERE
22 THERE, THE STATE CLOSED THEIR CASE ON THE PENALTY, WE
23 LOOKED AT EACH OTHER, AND MY RECOLLECTION IS WE LEFT THE
24 COURTROOM. WE WERE SURPRISED THAT THERE WASN'T A WHOLE
25 BUNCH OF INFORMATION AT LEAST ATTEMPTED TO GET INTO

1 EVIDENCE ABOUT THE -- I THINK THERE WAS A POLICE
2 OPERATION GOING ON WHERE CURTIS WAS ONE OF THE TARGETS,
3 AND THEY WERE ABOUT -- I THINK THEY WERE THINKING ABOUT
4 INDICTING HIM AT THE TIME, OR ASKING FOR AN INDICTMENT.
5 THAT'S WHAT WE WERE EXPECTING FROM THE STATE TO TRY TO
6 PUT ALL THAT IN. AND WHEN HE STOPPED, BOTH HE AND I
7 APPARENTLY THOUGHT THE SAME WAY. BECAUSE I REMEMBER
8 LEAVING THE COURTROOM AND WALKING TO THE PARKING GARAGE,
9 AND I BELIEVE I WAS DRIVING THAT DAY, AND GOING -- GOING
10 TO HIS OFFICE AND TALKING ABOUT IT. AND WE FIGURED THEY
11 WERE -- AND WE MAY HAVE OUTSMARTED OURSELVES, BUT OUR
12 THOUGHT WAS THE STATE IS GONNA TRY TO GET US TO PUT ON --
13 TO OPEN THE DOOR TO LET THEM PUT IN WHAT THEY COULDN'T
14 PUT IN DIRECTLY THEMSELVES.

15 Q OKAY.

16 A THAT'S WHY WE DIDN'T DO THAT. AND I DON'T SEE
17 HOW HE COULD HAVE TALKED TO CURTIS. I THINK -- I THINK
18 THAT -- THE DAY THAT THIS HAPPENED IS THE DAY THAT ED AND
19 I GOT LOST IN THE OLD JAIL IN THE OLD COURTHOUSE, YOU
20 KNOW. BY THE TIME WE LEFT -- WE LEFT AND WE'RE COMING
21 BACK TO THE COURTHOUSE. THERE IS AN ELEVATOR THAT
22 USED -- YOU COULD TAKE AND YOU COULD GET OFF. AND IF YOU
23 GOT OFF ON ONE DOOR, YOU WENT INTO WHERE YOU COULD -- THE
24 HOLDING CELLS WERE PRESENTLY. AND IF YOU GOT OFF THE
25 BACK DOOR, YOU WENT IN THE OLD JAIL THAT WAS ABANDONED.

1 AND WE WALKED OFF THE DOOR AND STEPPED OUT INTO THIS
2 ABANDONED, EMPTY JAIL, AND THE DOOR CLOSED, AND WE HAD --
3 WE HAD TO BANG ON THAT DOOR FOREVER. I THINK WE EVEN
4 YELLED OUT. THERE WERE BARRED WINDOWS, THE WINDOW WAS
5 OPEN. SOMEONE FINALLY CAME AND LET US OUT. I BELIEVE
6 THAT'S THE DAY THAT THAT HAPPENED. SO I DON'T SEE HOW HE
7 COULD HAVE. AND I DON'T DISPUTE THAT HE TOLD THE COURT
8 THAT HE DID, BUT I JUST DON'T SEE HOW HE COULD HAVE.

9 Q BUT HE WAS RIGHT THERE WITH MR. WINDOM BEFORE
10 YOU BROKE FOR LUNCH?

11 A THAT'S TRUE, WE WERE. AND I DON'T SEE HOW HE
12 COULD HAVE KNOWN TO DISCUSS THAT WITH HIM PRIOR TO THE
13 STATE PUTTING ON ITS CASE, BECAUSE WE EXPECTED A LOT MORE
14 TO BE PUT ON BY THE STATE, AND WE EXPECTED TO HAVE TO PUT
15 ON ALL THESE PEOPLE TO TRY TO SALVAGE SOMETHING OUT OF
16 IT. WE WOULDN'T HAVE KNOWN THAT WE WERE GONNA DO THAT
17 PRIOR TO THE BEGINNING OF THE HEARING. AND I KNOW FOR A
18 FACT THAT I DID NOT DISCUSS IT WITH CURTIS. :

19 I DON'T THINK I EVER EVEN INTERVIEWED
20 CURTIS IN THE JAIL. I MAY HAVE ONCE OR TWICE, BUT
21 PROBABLY ABOUT BACKGROUND INFORMATION RATHER THAN
22 SPECIFIC THINGS ON THE CASE.

23 Q BUT IT IS TO BE THAT HE DID TALK TO HIM ABOUT
24 THAT, ISN'T IT?

25 A I GUESS HE COULD HAVE, BUT I DON'T -- VERY

1 UNLIKELY THAT HE DID.

2 Q OKAY. DO YOU REMEMBER ANY OTHER INFORMATION
3 THAT YOU UNCOVERED IN YOUR INVESTIGATION WITH THE MOM AND
4 THE SISTER?

5 A NOT FROM THEM. I THINK THERE WAS A SISTER -- I
6 THINK THE ONES THAT TOLD ME ABOUT THE SISTER WAS DROWNING
7 AND CURTIS SAVED HER --

8 Q UH-HUH.

9 A -- I THOUGHT THAT WAS SIGNIFICANT. APPARENTLY
10 THE COURT DIDN'T THINK SO.

11 Q SO -- AND, NOW, EVENTUALLY YOU ALL TRIED TO,
12 MORE OR LESS, HAVE YOUR CAKE AND EAT IT, TOO, AFTER THE
13 PENALTY PHASE WAS CLOSED, RIGHT?

14 A RIGHT.

15 Q TELL THE JUDGE WHAT YOUR STRATEGY WAS THERE.

16 A WELL --

17 MR. STRAND: YOUR HONOR, I WOULD OBJECT. HE
18 HAS PREVIOUSLY TESTIFIED THAT MR. LEINSTER MADE
19 ALL STRATEGIC DECISIONS REPRESENTING MR. WINDOM.

20 THE COURT: WELL, HE PLURALED, HIM AND
21 MR. LEINSTER COMBINED. SO YOU CAN GO AHEAD AND
22 ANSWER THE QUESTION.

23 THE WITNESS: WE -- AND I DON'T KNOW WHO
24 CAME UP WITH THE IDEA -- OR SOMEHOW ED AND I WERE
25 BOTH UNDER THE IMPRESSION THAT BEFORE SENTENCING,

1 EVEN AFTER THE PENALTY PHASE HAD BEEN DONE,
2 BEFORE THE JUDGE ACTUALLY MADE THEIR DECISION,
3 YOU COULD JUST ABOUT PRESENT ANY TYPE OF
4 INFORMATION YOU WANTED TO IN MITIGATION. AND SO
5 WE DID. AND JUDGE RUSSELL LET US.

6 AND THEN WE PRESENTED -- BECAUSE, AFTER ALL,
7 THE JUDGE STILL HAD TO MAKE THE DECISION ON THE
8 SENTENCE. AND WE PRESENTED OUR EVIDENCE THAT WE
9 FOUND ABOUT WHERE HE HELPED PEOPLE IN THE
10 COMMUNITY, HE SUPPORTED HIS CHILDREN, TOOK CARE
11 OF THEM, HELPED OTHER PEOPLE WITH -- WITH MONEY
12 AND GROCERIES AND SO ON THAT HE WASN'T EVEN
13 RELATED TO, AND BOUGHT THINGS FOR THE ATHLETIC
14 TEAMS AND THAT TYPE OF THING. AND WE WERE ABLE
15 TO PUT THAT INTO EVIDENCE BEFORE JUDGE RUSSELL,
16 AND THAT'S WHEN WE PUT IT IN. AND THAT WAS --
17 THE IDEA WAS TO, HOPEFULLY TO PRESENT TO THE
18 DECIDING PERSON, YOU KNOW, THE COURT SOMETHING
19 THAT MIGHT KEEP THEM FROM IMPOSING THE DEATH
20 PENALTY.

21 **BY MR. LERNER:**

22 Q DID YOU FEEL YOU WERE ON SAFER GROUND TO DO
23 THAT THAN THE JURY SINCE YOU WERE DEALING WITH A MORE
24 NEUTRAL PARTY IN THE JUDGE?

25 A YES, I WOULD SAY WE DID, YEAH. BECAUSE I THINK

1 THAT THE STATE -- I THINK THE STATE'S IDEA WAS TO LET US
2 OPEN THE DOOR FOR THE DRUG INFORMATION AND GAMBLING
3 INFORMATION AND GENERAL LACK OF A VISIBLE MEANS OF
4 SUPPORT, ALL THE WHILE WITH US TELLING THE COURT AND THE
5 JURY, GEE, HERE'S A MAN THAT HAS MONEY AND HE HELPS
6 EVERYBODY WITH IT, AND THEN THE QUESTION IS, WELL, GEE,
7 IF HE DOES IT, WHERE DOES HE GET IT. OBVIOUSLY IF HE
8 DOESN'T HAVE A JOB, IT'S FROM SOME TYPE OF NEFARIOUS
9 ACTIVITY OF SOME TYPE. I FELT THAT, AND ED, TOO, IF THAT
10 WOULD WORK, WE MIGHT -- WE MIGHT JUST SALVAGE IT.

11 Q NOW, WAS IT YOUR RECOLLECTION, IN FACT, ONE OF
12 THOSE WITNESSES, AN ISSUE DID COME OUT ABOUT CURTIS
13 KNOWING THAT VALERIE DAVIS WAS PLANNING TO INFORM ON HIM?

14 A I DON'T REMEMBER. I REMEMBER THAT INFORMATION,
15 BUT I DON'T KNOW WHO IT CAME OUT FROM, OR WHETHER THAT
16 CAME OUT DURING THE PENALTY PHASE OR THE GUILT PHASE.

17 Q WELL, IT DIDN'T COME OUT OF YOUR WITNESS AT THE
18 PENALTY PHASE BECAUSE YOU DIDN'T CALL ANY, CORRECT?

19 A YEAH. I DON'T THINK I DID, BUT, YOU KNOW.

20 MR. LERNER: I DON'T HAVE ANY FURTHER
21 QUESTIONS, YOUR HONOR.

22 THE COURT: REDIRECT.

23 MR. STRAND: THANK YOU, YOUR HONOR.

24 REDIRECT EXAMINATION

25 BY MR. STRAND:

1 Q JUST WANT TO CLEAR ONE THING UP. I'M GONNA ASK
2 A QUESTION BASED ON PAGE 43, LINE 2 OF THE PENALTY PHASE
3 PROCEEDING, AND IF AT THAT PAGE IN THE PENALTY PHASE
4 PROCEEDING IF IT INDICATES THAT JUDGE RUSSELL HERSELF
5 WENT THROUGH THE MITIGATING EVIDENCE. LET'S GO OVER THE
6 THINGS -- THIS IS JUDGE RUSSELL. LET'S GO OVER THE
7 THINGS THAT YOU DID DISCUSS. I THINK YOU TALKED ABOUT HE
8 WAS A GOOD SON, HE WAS A GOOD FATHER, HE WAS AMENABLE TO
9 REHABILITATION, HE SAVED HIS SISTER'S LIFE, AND HE WAS
10 CHARITABLE. HAVE YOU EVER GONE OVER ALL THOSE THINGS
11 WITH HIM AND DECIDED WHAT EACH ONE WOULD NOT APPLY, OR
12 WOULD AT LEAST CAUSE PROBLEMS IF YOU TRIED TO BRING IT
13 IN.

14 MR. LEINSTER: EXCUSE ME, JUDGE, I HAVE
15 NOT GONE OVER -- MAYBE THIS WILL SAVE HIS LIFE SOMEDAY IF
16 I CAN'T NOW -- I HAVE NOT GONE THROUGH ANY OF MY
17 CEREBRATIONS WITH CURTIS WINDOM, OTHER THAN TO TELL HIM
18 THAT BY PUTTING PEOPLE ON THE STAND WHO MIGHT SAY KIND
19 THINGS ABOUT HIM IN VERY SPECIFIC WAYS, THEY MAY -- THEY
20 HAVE NOT SEEN HIM DO THIS, THEY HAVE NEVER SEEN HIM DO
21 THAT, THAT, IN MY OPINION, I RUN THE RISK THAT THE STATE
22 CROSS-EXAMINES. AND THEN IT GOES ON AND HE INDICATES, HE
23 RUNS THE RISK OF THE DRUG DEALING TO COME OUT. DO YOU
24 HAVE ANY QUIBBLE WITH THAT?

25 A NO.

1 Q OKAY. AND WAS IT YOUR STRATEGIC DECISION TO --
2 WITHDRAWN.

3 DID MR. LEINSTER MAKE THE DECISION TO PUT
4 THE WITNESSES ON ABOUT MR. WINDOM'S GOOD CHARACTER IN
5 FRONT OF JUDGE RUSSELL OTHER THAN -- OPPOSED TO THE JURY,
6 WAS THAT HIS DECISION?

7 A YEAH, THAT WAS HIS DECISION. HE MADE THE
8 DECISION, HE DID. I WASN'T -- I WASN'T...

9 MR. STRAND: I HAVE NO FURTHER QUESTIONS.

10 THE COURT: ANY RECROSS?

11 MR. LERNER: JUST ONE.

12 **RECROSS-EXAMINATION**

13 BY MR. LERNER:

14 Q DID YOU CONCUR THAT WAS -- THAT WAS A WISE
15 DECISION?

16 A YEAH, I THOUGHT IT WAS.

17 Q AND THE TWO OF YOU DISCUSSED IT?

18 A I STILL DO, YEAH. ED AND I DISCUSSED IT,
19 THAT'S RIGHT.

20 THE COURT: IF THERE IS ANY FOLLOW-UP.

21 **FURTHER REDIRECT EXAMINATION**

22 BY MR. STRAND:

23 Q AND YOU'RE ANSWERING THAT QUESTION WITHOUT
24 CONSIDERING THE POSSIBILITY OF A MENTAL HEALTH DEFENSE IN
25 THE GUILT PHASE AND PENALTY PHASE?

1 **A** RIGHT, I KNEW NOTHING ABOUT ANY MENTAL HEALTH
2 PROBLEMS.

3 **MR. STRAND:** OKAY. I HAVE NO FURTHER
4 QUESTIONS.

5 **THE COURT:** OKAY. THANK YOU FOR BEING HERE,
6 MR. BARCH.

7 **THE WITNESS:** JUDGE, AND I WOULD NEVER LIE
8 TO JUDGE RUSSELL. HER QUESTION WAS MOST THE TIME
9 TONGUE IN CHEEK TO WATCH ME SQUIRM, TO WATCH ME
10 COME UP WITH AN ANSWER, BECAUSE SHE PROBABLY KNEW
11 WHERE ED WAS.

12 **THE COURT:** OKAY. SEE YOU LATER.

13 I'M AS AFRAID OF HER AS YOU ARE, BY THE WAY.

14 ALL RIGHT. WE READY WITH ANOTHER WITNESS?

15 DO WE NEED A BREAK? WHO'S WAITING?

16 **MR. MARIO:** WE CAN CALL OUR NEXT WITNESS.

17 **THE COURT:** ALL RIGHT. GREAT.

18 **MR. MARIO:** WILLIE MAE RICH.

19 (END OF VOLUME II.)

20

21

22

23

24

25

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 P

Dr. Kirland's Psychological Evaluation, Filed August 19, 1992,
Appendix D to Postconviction Motion – SPCR.1232-1233

Appendix D – Robert G. Kirkland, M.D., Psychiatric Evaluation, filed August 19, 1992.

Robert G. Kirkland, M.D., P.A.
DIPLOMATE, AMERICAN BOARD OF PSYCHIATRY AND NEUROLOGY
CENTER FOR PSYCHIATRY - FLORIDA HOSPITAL
601 EAST ROLLINS - ORLANDO, FLORIDA 32803

August 18, 1992

STATE OF FLORIDA

VS

CURTIS WINDOM

W

CIRCUIT COURT
NINTH JUDICIAL CIRCUIT

DIVISION 11
CASE NO. CR92-1305

PSYCHIATRIC EVALUATION

FRANK CARLTON
CLERK OF CIRCUIT COURT
ORANGE COUNTY, FL

92 AUG 19 PM 1:00
FILED IN OFFICE
CRIMINAL DIVISION

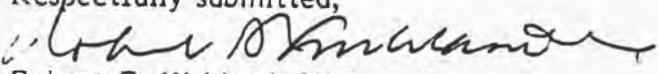
This is to certify that Curtis Windom, a 26 year old negro male, was seen for psychiatric evaluation at the Orange County Jail on 8-17-92. The evaluation consisted of [REDACTED] I also reviewed his infirmary file. At the outset, I told Mr. Windom that I could not guarantee confidentiality. I believe he understood.

The defendant was pleasant and cooperative during the interview. He said he is charged with "3 counts of murder," and described the acts in question. He stated that he understands that he shot at least 3 people in a short time span on a day in February, 1992. Victim #1 was Johnny Lee - Mr. Windom said he had learned that Johnny planned to kill him; "but we were friends, I felt I ought to talk to him about it, but when I approached him, he looked like he was pulling a weapon, so I shot him." He does not remember shooting Victim #2, his girlfriend Valerie Davis. Then, soon thereafter, he was approached by Valerie's mother, Mary Logan. Mrs. Logan had a gun, and threatened to kill Mr. Windom because "you killed my daughter!" Mr. Windom shot and killed Mary Logan. Mr. Windom says that he was hearing a "voice" during part of this experience, but I do not believe that has much significance.

Mental status exam shows no evidence of [REDACTED] There is no psychiatric diagnosis.

Mr. Windom appreciates the charges against him, and the range and nature of possible penalties. He understands the adversary nature of the legal process. He is able to disclose most pertinent information to his attorney, although he says he does not remember shooting Valerie Davis, and can't imagine why he would have done that (the other two killings were "sort of like self-defense.") He is able to manifest appropriate Courtroom behavior, and testify relevantly. In summary, it is my opinion that he is competent to proceed.

I do not have sufficient information to form an opinion about his sanity at the time of the offenses. To reach such an opinion, I need arrest reports, witness statements, etc. Such review will take me at least 2-3 weeks.

Respectfully submitted,

Robert G. Kirkland, M.D., P.A.

RGK/ta

Robert G. Kirkland, M.D., P.A.
DIPLOMATE, AMERICAN BOARD OF PSYCHIATRY AND NEUROLOGY
CENTER FOR PSYCHIATRY · FLORIDA HOSPITAL
601 EAST ROLLINS · ORLANDO, FLORIDA 32803

August 18, 1992

STATE OF FLORIDA

VS

CURTIS WINDOM

W6

CIRCUIT COURT
NINTH JUDICIAL CIRCUIT

DIVISION 11
CASE NO. CR92-1305

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FILED IN OFFICE
CRIMINAL DIVISION
92 AUG 19 PM 1:00
FRANK CARLTON
CLERK OF CIRCUIT COURT
ORANGE COUNTY, FL

This is to certify that Curtis Windom, a 26 year old negro male, was seen for psychiatric evaluation at the Orange County Jail on 8-17-92. The evaluation consisted of history-taking, observation, and mental status exam. I also reviewed his infirmary file. At the outset, I told Mr. Windom that I could not guarantee confidentiality. I believe he understood.

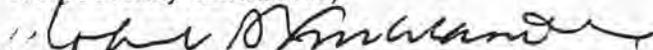
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Mental status exam shows no evidence of thought disorder, no depression, and no signs of organic brain impairment. There is no psychiatric diagnosis.

Mr. Windom appreciates the charges against him, and the range and nature of possible penalties. He understands the adversary nature of the legal process. He is able to disclose most pertinent information to his attorney, although he says he does not remember shooting Valerie Davis, and can't imagine why he would have done that (the other two killings were "sort of like self-defense.") He is able to manifest appropriate Courtroom behavior, and testify relevantly. In summary, it is my opinion that he is competent to proceed.

I do not have sufficient information to form an opinion about his sanity at the time of the offenses. To reach such an opinion, I need arrest reports, witness statements, etc. Such review will take me at least 2-3 weeks.

Respectfully submitted,


Robert G. Kirkland, M.D., P.A.

RGK/ta

CAPITAL CASE

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CURTIS WINDOM,

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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 Q

Letters from Victims' Families, Appendices A, B, and C to Petition for Writ of
Habeas Corpus, Filed August 8, 2025.

No.

EXECUTION SCHEDULED FOR AUGUST 28, 2025 at 6:00 PM

**IN THE
SUPREME COURT OF FLORIDA**

CURTIS WINDOM,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

**ON APPEAL FROM THE CIRCUIT COURT OF THE NINTH
JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA
Lower Tribunal No.: 481992CF001305000AOX**

INDEX TO APPENDIX TO STATE HABEAS

Ann Marie Mirialakis

Florida Bar Number 658308

Email: Mirialakis@ccmr.state.fl.us

Melody Jacquay-Acosta

Florida Bar Number 1010248

Email: Jacquay@ccmr.state.fl.us

Law Office of The Capital Collateral

Regional Counsel - Middle Region

12973 North Telecom Parkway

Temple Terrace, Florida 33637

Telephone: (813) 558-1600

Fax: (813) 558-1601

Second Email: support@ccmr.state.fl.us

Counsel for Appellant

APPENDIX TO APPELLANT'S STATE HABEAS

Appendix A Various

Appendix B *Mitigation Video*

Appendix C Mitigation Letters Received

Mitigation Video sent through dropbox

August 3, 2025

The Honorable Ron Desantis
State of Florida
The Capitol
400 South Monroe Street
Tallahassee, FL 32399

Re: Request for Stay of Execution for Curtis Windom

Dear Governor Desantis

We, the family members of the late Mary Lubin and Valerie Davis, write to you today with heavy but prayerful hearts to respectfully request that you grant a stay of execution for Mr. Curtis Windom.

Our family are devout followers of the Lord and His Son, Jesus Christ. Through prayer, reflection, and obedience to God's Word, we have chosen to forgive Mr. Windom for the grievous acts he committed against our loved ones. As Scripture instructs us in Matthew 6:14–15, forgiveness is not optional for followers of Christ; it is a command. We strive to live by the teachings of our faith, even when they are most difficult to follow.

We also hold firm to God's commandment: "Thou shalt not murder" (Exodus 20:13). We believe it is immoral to violate one of God's commandments in the pursuit of justice for the violation of that same commandment. While we do not excuse Mr. Windom's actions, we believe that taking his life through execution does not honor the memory of our loved ones, Mary Lubin and Valerie Davis, nor does it align with the mercy and forgiveness that our faith requires.

We humbly and prayerfully request that you exercise your authority to grant a stay of execution in this case. We understand the seriousness of this request, but we are compelled by our conscience, our faith, and our understanding of God's Word to speak out.

Thank you for your time, your consideration, and your service to the people of Florida. We continue to pray for you, that you may be guided by wisdom, compassion, and justice.

In Christ,

Rosemary Baker
Family of Mary Lubin and Valerie Davis

Fwd: Letter To Help Assist With Case

From Curtisia Windom <curtisiawindom@gmail.com>

Date Wed 8/6/2025 3:10 AM

To Jacquay, Melody <jacquay@ccmr.state.fl.us>

----- Forwarded message -----

From: **Curtisia Windom** <curtisiawindom@gmail.com>

Date: Tue, Aug 5, 2025 at 7:13 PM

Subject: Fwd: Letter To Help Assist With Case

To: shawntavious37@gmail.com <shawntavious37@gmail.com>

----- Forwarded message -----

From: **Angel Willingham** <janayawillingham2003@gmail.com>

Date: Tue, Aug 5, 2025 at 4:21 PM

Subject: Letter To Help Assist With Case

To: <Curtisiawindom@gmail.com>

Janaya Willingham

10121 Shephard St

Fort Myers, FL, 33967

janayawillingham2003@gmail.com

561.572.6101

August 5, 2025

To Whom It May Concern:

I am writing this letter in full support of Curtisia Willingham, a woman who is currently facing an unimaginable situation involving her biological father. I understand that this letter will be reviewed as part of an appeal effort regarding a potential execution sentence, and I want to provide insight into why such a sentence would be unjust—not only from a legal standpoint but also from a human and familial one.

While it is true that Curtisia's father committed a grievous and tragic act over 33 years ago, the context of time, growth, and rehabilitation must be seriously considered. At the time of the crime, Curtisia was just nine months old. She had no control over what happened, no say in the events that shaped her life, and yet—despite the unimaginable pain—she chose to build a relationship with her father as she grew into adulthood.

Over the past three decades, Curtisia has taken an incredibly mature and emotionally courageous path by allowing healing and forgiveness into her life. She has forged a connection with her father that has grown beyond the trauma of the past. This relationship has also extended to her children, who know him and have developed bonds with him as a grandfather figure. The execution of her father would not only strip Curtisia of a man she has reconciled with, but it would also traumatize an entirely new generation of innocent children who have known him only as a loving and present family member.

It is also important to emphasize that Curtisia is not alone. There are multiple individuals, including myself, who are willing to speak on her behalf, to affirm her right to be heard, and to urge that clemency or an alternative sentence be considered in light of how this outcome would devastate her family—emotionally, psychologically, and spiritually.

I am not asking that the justice system ignore the seriousness of the crime that occurred decades ago. Rather, I am asking that it fully consider the complex humanity of this case—the rehabilitation of the individual, the forgiveness extended by the surviving family, and the irreversible harm that state-sanctioned execution would now cause.

Curtisia Willingham and her family deserve the opportunity to continue building their lives without the renewed trauma of losing someone they have grown to love and forgive. Her voice matters. Her healing matters. And the voices of her children—who will live with the emotional consequences of this—must also be taken into account.

Thank you for your time, attention, and consideration of this deeply sensitive and personal appeal.

With sincere respect,

Janaya Willingham

Letters for Curtis Windom

From Curtisia Windom <curtisiawindom@gmail.com>

Date Wed 8/6/2025 3:08 AM

To Jacquay, Melody <jacquay@ccmr.state.fl.us>

9:48

5G+

Facebook



Chelse Brown

Active 1h ago



Chelse Brown

View profile

AUG 2 AT 4:29 PM

Hey Curtisia, I know you don't know me. I heard about your dad. My dad (Kenneth Williams) was the 4th guy your dad shot. By the grace of God, he survived. I just wanted to let you know my dad has forgiven your father and has been over the situation for years now. Him and I definitely said a prayer for you and your family and I hope you find the strength through Jesus through this difficult time. Sending love and light



Dear Honorable Judge,

I never imagined I'd be writing a letter like this not as an expert, or someone who is involved in legal matters, but simply as a mother with a plea straight from the heart.

I'm writing on behalf of my 12-year old son Cur'Marion Windom. His grandfather, Curtis Windom has been incarcerated for over 30 years his entire life. My son has never had a chance to meet him, or even look him in his eyes. And now, with only weeks left Curtis is scheduled to be executed, I'm begging for one thing mercy. Not just for the man himself, but for the grandson who longs for a connection he's never been able to have.

This letter isn't about denying what happened in the past. It's a plea for something human and deeply personal. We aren't asking for justice to be undone only asking for a moment one human moment to meet the man who gave his father life.

My son has a good heart. He's thoughtful, kind, and full of questions about where he come from. He doesn't know all the details, but he knows his grandfather exists, and that he may never get a chance to meet him. That breaks something in me as a mother. No child should carry that kind of silence.

Please Judge, I'm asking with all the love a mother has not for myself but for my child. Give him the chance to meet his grandfather. Please allow Curtis Windom to live long enough for a connection to be made even just once. We are praying for mercy, understanding, and time. From one human to another, I ask that you please allow my son to have this moment.

With all my love and hope,

Alicia Gordon and Cur'Marion Windom

To Whom it may Concern:

My name is Glenda Sigler the niece of Curtis Windom. I find it very cruel to kill him when he has served his time for the crime. My uncle was willing to give the shirt off his back to anyone. I've heard plenty of stories where he let just about anyone borrow money, he would give the kids money for the ice cream truck, and even money to go to the fair to have a great time. When visiting him it was nothing but love and laughter. He didn't care about eating he just wanted to see everyone happy. The punishment was already done taking him away from the people he loved helping. He was a helper not some kind of monster.

----- Forwarded message -----

From: **Shoney smith** <shoney_smith@yahoo.com>

Date: Wed, Aug 6, 2025 at 3:50 AM

Subject: Letter to help assist with case

To: Curtisiawindom@gmail.com <Curtisiawindom@gmail.com>

Shawntavious L. Smith

[1713 London Crest Drive](#)

[Unit: 207](#)

[Orlando, Florida 32818](#)

shawntaviouss37@gmail.com

407.758.6162

August 5, 2025

To Whom It May Concern.

I am writing this letter in support of my friend/sister Curtisia Windom-Willingham in light of the most recent order of execution of her FATHER Mr Curtis Windom. I would simply like to ask that the decision be reversed simply because over the past 20+ years I have known Curtisia she has FORMED a bond with her FATHER that has become unbreakable in spite of his incarceration. Not only has Mr. Curtis FORMED a bond with his DAUGHTER & SON IN LAW he has FORMED a bond with his GRANDCHILDREN whether, it was teaching them how to play cards on a visit or just being a GRANDFATHER. Not only will the execution of Mr. Curtis open up old wounds and create new wounds it would also take an emotional toll on Curtisia. It would break the hearts of his GRANDCHILDREN knowing they will never again get to go visit with their GRANDFATHER, get that phone call asking how is school going or get a phone call on their birthdays would have a psychological affect on them. Over the years I have seen Mr. Curtis try to be the best FATHER, FATHER IN LAW and GRANDFATHER he could be in spite of the unfortunate circumstance....to his DAUGHTER, SON IN LAW and GRANDCHILDREN. Whether it was sending books, birthday & Christmas cards, or just a call to say he loves them....Mr.Curtis knows he has missed creating those precious memories (walking his DAUGHTER down the aisle, the birth of his GRANDCHILDREN, walking his GRANDCHILDREN to class on the first day of school, etc). Executing Mr.Curtis would not only hurt Curtisia and her FAMILY it would hurt the ones closest to them as well. I would like to ask that you please reconsider the decision of execution for the emotional and psychological sake of my bestfriend/sister and my nephews.

Respectfully submitted,

Shawntavious L. Smith

10/11/13

Hi my name is Curtis Windom JR and I'm writing this to say I truly feel deep from my heart that my dad has did more than enough time to sit back and think about wat happend I mean yea I'm not saying my dad is an angel but it was alot alot that wasn't done right and my dad's case but it's just the things that was said and the case but if wat I am asking for is good enough for me to save my father's life then please do it...

I'm 25 now and just had another child that I really wish and feel that my dad would be a positive role model as a life changer for me and my kids I'm two be honest for alot more kids that would love 2 hear something positive instead of something negative I really understand that was others ~~life's~~ that was taken but I really truly think he should atleast have ^{another chance} ~~another chance~~ at life again.

Curtis Lee Windom JR

WQ, FL 34787

1095 Lincoln terrace

To Whom This May Concern:

I'm sending this letter in regards to Curtis L Windom. I am the eldest child of the late Valerie Davis and the eldest grandchild of Mary Reeves. It has been over 20 years since the murders of my mother and grandmother and I do not feel that an execution for Curtis is necessary. He has been on death row ever since and I feel like that is a death sentence in itself. My sister was only 9 months old when the incidents happened and I would not want her to lose father because she has developed a great relationship with him. I have forgiven Curtis along with my siblings and we feel that everyone deserves a second chance.

Sincerely,

Channing D Ellison

A handwritten signature in black ink, appearing to read 'Channing D Ellison', written in a cursive style.

To whom it may concern,

I, Mae Tatum, is the oldest Sister of Curtis Windom #368527, who is on Death Row now and is up for this Parole Hearing. I do think that Curtis Windom, should have had a lesser sentence. I feel that if Curtis hadn't click, he wouldn't had killed the people that he did. And if the people that was telling him different things, that was messing with his mind, that what made him click in the first place. I believed that if Curtis had to live that moment again, he would have handy it a different way. Curtis Windom, always being a loving, caring kind of person. If you need something and Curtis had it, he would give it to you. Curtis would give you the shirt off his back if he had, too. Curtis has helped the homeless, the sick people and the kids around town or whoever needed help. Curtis was a person that if he had it to give he would give it to you with a smile on his face and no questions, asked.

Curtis has brought sick people medicine for them and helped people pay their bills if he could. Curtis was a very likeable person, in our town of Winter Garden and some surrounding area, also. I just hope that Curtis Windom could get a lesser sentence or he might be able to come home soon, if the Lord will. Because there was some things in the trial that was mistrialed in his case. I hoped that I, Mae Tatum, have helped Curtis Windom out as much as I could. I do Love him very much.

Thank you
Mae Tatum

May God Bless you all

To whom it may concern,
Curtis Windom is my brother

21 years ago a tragic event took place in Winter Garden that impact a lot of lives and is still impacting. I, Eddie Lee Windom, know for a fact that Curtis Windom is remorseful and regret every day what he did. And if Curtis could take what he did back, I know he would. No one knows what was going on in his head at that time, but in hindsight he regret it every day. Especially when he look in his own daughter's face, whom lost her mother and grandmother and is now fighting to save her father's life, which whom is the grandfather of her child. Also, I know for a fact that Curtis and Johnny was closer than most brothers. And Johnny's son has forgiven Curtis because none of us truly understand how or why this tragic event took place.

Thank you
Eddie Lee Windom

Charles Q. Mubley
201 Railroad Ave
Winter Garden, FL 34787
(351) 634-2712

7/16/13

TO Whom It May Concern:

I am writing in reference to Curtis Windom. I believe he shouldn't get the death sentence. I have known him all my life and know that was an incident that shouldn't have happen. There are 2 sides to every story and the complete truth wasn't ~~heard~~ heard. He been been a friend of mine forever. He was never a violent person. Always caring and supported. He's even helped me so much because I have a son in the Florida Prison.

I think his life should be spared. His kids have already been affected by what has happen to him and the unjust sentenced. He's needed for his family.

My name is Charles Q. Mubley. I also am listed on his visitation and have been since 1992.

If any additional info is needed I can be reached at (351) 634-2712



I Julie Harp am the mother of two of Curtis Windom's kids. My opinion is that Curtis should be taken off of death row and given a second chance at life. I feel as though everybody makes mistakes and deserves another chance. Curtis was a supportive spouse and took great care of me and my two boys but when he went to jail it all stop. Curtis missed out on our sons birthdays, first day of school, holidays, and more. He can't get back those twenty one years he lost with our boys but if he gets a second chance just maybe they can form some type of father son relationship. It was hard raising two boys without their father. Yes we did visit and write Curt but it still wasn't the same as having him physically in our lives like living as a family. The visits only use to last for a couple of hours and when it's over it's like your back to reality. My boys miss their dad and use to ask about him a lot growing up. It was depressing leaving the prison knowing Curt couldn't come with his family. Curtis is a really good person and he has a heart of gold and would do any and everything to keep me and the boys happy. My opinion is that Curt should be taken off of death row because he has been in prison for twenty one years and has had time to sit and think about life situations. If Curt was to be released he would still be that loving, caring, kind, sweet, independent, reliable, helpful and funny person he was before he went to jail. However, if you decide to choose otherwise give him a life sentence this way my boys will still have a father and will be able to visit and write him. Life is all about choices and second chances and we all make mistakes because no one in this world is perfect but we can't judge others by their actions just give them a second chance to prove them self. To The Office of Executive Clemency I really just want Curtis to have a second chance so he can reunite with his children, grandchildren, and siblings.

Julie Harp

7/15/13

407-312-0451

1140 Lincoln Terrace
Winter Garden Fl. 34787

To The Office of Executive Clemency I, Julian Harp would like to ask you to give my dad Curtis Windom a second chance at life. I haven't been able to have a father son relationship with my dad for the last twenty one years. The only way I was able to communicate with him was by visits and letters and that wasn't enough. I wasn't able to see my dad every day, tell him I love him and experience those father son moments. I wasn't given the opportunity to know my dad. I can only go by what family members and others tell me. My opinion is that he should be taken off of death row and given a second chance meaning freedom so he can reunite with me and my siblings as well as his grandchildren and if you figure different at least give him life instead of death. If he gets life I will still have my dad and be able to see and write him from time to time. Everyone makes mistakes and my dad did just that but I would like to have him physically in my life. Growing up without a dad has been hard these last twenty one years. I have no male to go to for advice. Not being able to talk to him about the problems and the trials of life has been hard. Yes I do have my mother but by being a man I want a man's perspective on a lot of things in life. I feel like my dad did enough time and I just want him free honestly. He has had twenty one years to think about a lot of things and how he can change his self. I believe if he was to get out he would be a changed man. My dad hasn't been able to see me grow up and live life. He hasn't been able to see how I have overcome life obstacles. By my dad being in prison he has missed important life events such as my first steps, first words, birthdays, and etc. My dad has been locked up my entire life he hasn't had the chance to show me how to be a man. Now that I am grown I would like to be able to have a father son relationship with my dad if you would only give him a second chance. I'm not asking just for him but for me and my siblings give my dad Curtis Windom a second chance at life.

Julian Harp 7/15/13

Hello, My name is Astrin Luke and I am the girlfriend of Julian Harp one of Curtis Windom sons and I'm writing this letter on behalf of Curtis Windom Sr. Just last year I started writing Mr. Windom and we have been communicating by letter for a while now. I have heard stories about Curtis from family members, friends, and from his son Julian. For the most part everything I have heard about Curtis has been good except for the event that has put him in prison. Curtis and I have formed a relationship by writing letters. I feel like I have known him my whole life. I feel as though Curtis deserves a second chance at life because people make mistakes. There are no perfect people in this world. I personally don't believe in the death penalty I rather have the person do life to think about their actions. On behalf of Julian and his brothers and sister I know they would like to have their father in their life. I know they wish they could be living life with him on the outside of those prison walls. I know they want him to be set free. If he could be set free it would be an overwhelming feeling for them I know for Julian because Curtis has been incarcerated his entire life. Julian tells me how he wish he could have spent time with his dad and developed that father son relationship and it hurts to know that if Curtis gets the death penalty that will never happen. If Curtis was to be set free they could have that physical father son relationship and even if Curtis is sentenced to life it's possible that they could create a father son relationship. I know it has been hard on Curtis children as well as his siblings. If possible I would also like Curtis to be set free I would like to get to know him personally. I believe people can learn from their mistakes and by conversing with Curtis he has. I know the actions that put him in prison can never be forgotten but they can be forgiven. I just ask on behalf of Julian and his siblings that Curtis is granted a second chance of freedom.

Astrin Luke 10/8/13

Hello,

My name is Vickie Lee-Crum, I live at 1194 Maxey Drive, Winter Garden, FL 34787
My brother was killed by Curtis in 1992

They gave Curtis the death sentence, and I don't believe in the death penalty.

If the death penalty will bring my brother back then yes, but it won't, I don't feel God put man on earth to judge people in whether they die or live. If Curtis has not changed his life, he will go to a place he doesn't want to. I hope he changes his life and repent. But Curtis must know he will meet his maker and he has the last word.

Thank You
Vickie Lee-Crum

To whom it may concern:

My name is Peggy Hardwick, and I am writing this letter in reference to the character of Curtis Windom. I have known Curtis since he was a little boy. His parents and my parents were friends, and growing up in a small community, we were one big family and we looked out for each other. Curtis was always a respectable young man, to the young and more so to the older generation. Whenever you saw him he always had a big smile on his face and you knew he was glad to see you. Curtis went above and beyond to help everyone he could. Curtis was a family man, and family meant everything to him. His mother was the

apple of his eye, and his father was his hero. They were a large family, and anyone who saw them could see the love they shared for each other, and when Curtis became a father the love escalated to a higher level, his children were and I am sure they still are his world.

The point I'm trying to make is Curtis is a good person, he's not perfect, but neither am I, and I am asking you to please spare his life. He is very remorseful for the choice he made, he lives with it everyday. Once again I beg of you, please spare his life.

Thank you in advance,
Peggy Hardwick

Peggy Hardwick

379 Railroad Ave

Winter Garden

Fla 34787

407-641-6367

July - 16 - 2013

Re: Wendon Carter

Case # 992-1245

Dear Janice Gert:

Carter Wendon is a longtime friend:

- ① humble
- ② friendly
- ③ respectful
- ④ kind

Mr Wendon is all the love that my mother Mary Louise Adair, Mr. Carter Wendon, her son sent her during his life.

Yours

Peter Daniel Johnson + Notary

Daniel W. Johnson
1015 Mary Dr
Winter Garden, FL 34787
407-705-7433



DANIEL D. JOHNSON
MY COMMISSION # EE 001367
EXPIRES: February 22, 2017
Second Time Budget Merry Go Round

CHURCH OF EMMANUEL
P. SAVE OUR YOUTH + SE
PASTOR DANIEL D. JOHNSON
216 W. CROWN POINT DR
WINTER GARDEN, FL 34787

Hello I'm Eddie James Windom
Curtis Windom oldest brother.

I'm asking for Curtis Windom
to be taking off Death Row
which it should have never
got to that point. If the
witness and lawyer did
there job, Curtis have
always been a good and
kind man. Curtis would
never hurt no one. We
ask for someone to check
and see was he drug up
there had to be something
wrong Curtis look different
and if they would have
check him out like we
all ask them to do the
day it happen and my mother
ask Winter Garden Police
Because Curtis did not
remeber anything my
mother was talking to
him at the Police Station
Over and over want happen

But me and Andre Walker had to fustles and get the gun. Also Marybois had her gun pull on Curtis and we jump out the way. We told the lawyer and the Police knew to but no one put me or Andre Walker for a witness. The lawyer said we where going to be Curtis witness but he never call us to go up to testify doing the trail. He also left court his self the other lawyer had to finish the court but the never finish his case because there were so many witness talking. But when it time for court the lawyer never call no one up who witness some of the shooting. And the rest did not tell everything that happen. who took ~~something~~ here

and Marylois Guns. I'm asking to please save my brother life and take him off Death Row. He did not have a fair trail.

Eddie James Windsor
1203 Edgeway Dr.
Winter Garden Fl.
34787.

407-401-6560

The Florida Parole Commission
Gloria Windom
694 Bethune Ave
Winter Garden Fl.

34787
407-731-4552 or
407-461-5515

I'm Curtis Windom's sister

Re: Windom Curtis
EC: D200325
Case: 1992-1305

Jessica Ghent
Parole Examiner

①

Florida Parole Commission

I'm Gloria Windom and my comments or opinions are I think Curtis Windom should not been sentenced on Death Row. Really the Lawyer Did not Due his Job at all. If the Lawyer would have took the time an Investigate the case and the witness the verdict would have been different. Some of the cases should have been Self defence I know the trail over. But really it just began. If Jack Luckette, Jamie Luckette, Terry Jackson, Teddy Haggins, would trying to take Johnny Lee Gunn, Money Drugs and ^{Gold} Jewlery off him flippy Johnny Back and forth

Maybe he could have live
to tell the ture story.

Also Mary had a gun. But
Pearly mae took from her
and gave it to Mary
boyfriend mailman. Steve ^{or James}

her boyfriend hide Mary Gun
and her pocketbook. Pearly mae
Took Mary Gun at her hand,

I not really sure with
Valarie Davis. But my Heart
have always goes out to
them all. But the ture

is ture all it was told to
the Lawyer Ed Leister. But
it was like talker to the
wall. Because he was not
look at witness go ask
question and investigate.

Him ore investor never
came out to investor gate
no one. The witness not
going to just show up
and talk He should went out.

(3)

We brought people to Lawyer office. Some know Jack and Jammie Lockette had Johnny Lee Gunn. But he never use the as a witness. Plus Jack Lockette had every thing to lose. That's why he did what officer, J.J. John Johnson teach in to say. Jack lied on stand to save his live to keep from going to jail. Then he laugh and talk about it. Yes - he lied But the Lawyer let it go. I the sister of Curtis Windom and I love him and Always will. But He should have not been sentence on The Death Row. It should have been a lesser charge and a lesser sentence. And self Defence as well.

I'm ask for the Florida Parole Commission To save my brother life from Executive I know he kill someone But He was and still is a Good man. She He made a big mistake I also some of the state witness made Big mistake by Lied on Stand I know they Lost love ones I loved them to. But we can not bring they life back. But we can save Curtis Windom so they Do not kill him. Curtis Windom. Did a lot for the community. Custis helped a lot of people thruw is life young and old Black and white. He would go cut yard for people free go get the food Medicine, give ride to DR. office and Pay for DR Bill

(5)

He use to help with home work, Pick Orange to help by food, clothes, and Christmas. ~~HE~~ Always helping others, not just his family gamble, races car. and all. Just to make sure the family and friends and the community was not left out. I miss he so much. My mother already ~~Dead~~ so Curtis is what my Sickly Dad keep is head up on his son Curtis. I use to love to see Curtis and visit him and play checkers with him any time my mother and Dad have a word Curtis would always ask Dad to play a game of checkers, and the day be so peaceful with Curtis smile

(b)

Please don't take that away from us. Please Don't take his life away Curtis Windom should Live and not Die save my brother. Due to a lot witness Lied they did not tell the true and his lawyer Did not try to help him, he just wanted the money and that want he got paid for nothing he left the court doing the trail smell like Alcohol, Hot sweat pouring now his face. Can't get no eye contact with him looking like he were on some drugs. He did not look like a lawyer. He look a mess. But what got me when he left the trail why it was still going on

The Lawyer Ed. walked out of court in the middle of the trial why be brother Curtis Windom life online He did not tell us anytime just walked out. If the Lawyer show no remorse how would the Jury show He got paid He gave us his word that he will get Curtis Windom a fair trial and He would win the case. I know it up to the jury. But he did not do his homework He did not investigate and He did not try to win the case because he never put the witness names down to be call. He left out a lot and He let us down and threw my brother life away

So I ask for the Florida Parole Commission to take this matter in your hand and Decide if Curtis Windom had a new Trail will the vertick by different. With the true witness that was never call never put on the witness list you know the State was not going to put no one who can help Curtis Windom on there witness List. Ed got paid to Do a job what was never finish Curtis have a lot of reason to live and not die but Ed never took time to put in open court Curtis did a new trail. Curtis did a Appeal to prove his case please safe My Brother life it not wright, It not fear. New Appeal for Curtis

I W.C. Reeves Duty Swear "I ~~Don't~~
Mind Curtis Weldow Getting off Death
Row"

Sgt W.C. Reeves
1068 Carl Anderson Blvd
Winter Garden, Fla.

407-877-0856

34287

10/15/13

I Am The Brother of Mary Rubin and
Uncle To Valerie Davis

Sgt W.C. Reeves

10/15/13

A note about William Reeves.

It was gleaned on October 15, 2013, that William "Billy" Reeves is the brother to victim Mary Lubin, and uncle to victim Valerie. He was said to have killed a man when he was younger which may lend to his forgiveness of Curtis. Gloria heard that Reeves told "the twins" (Gloria and Curtis' sisters Erline and Jerline Windom) that he is not for the killing of Curtis Windom. I was able to find Reeves in the Winter Garden area via house and vehicle descriptions.

On October 15, 2013, at 1745 hours a shirtless now-66-yr-old Reeves emerged from his home. It was determined that Reeves is hard-of-hearing and needed to read my lips to understand our conversation. He related that he had killed a man when he was 17 years old and regrets the decision he made then. In his words, he "wakes up with it, and goes to bed with it". Reeves also made mention that Windom's death sentence being carried out would not bring his sister and niece back. The conversation was asked to be put on to paper to which Reeves obliged, but upon writing, his thoughts were not as articulated. He simply wrote that he did not mind that Curtis's sentence be reduced from the death penalty. I requested that he add detail to which I was able to get him to write his relation to the case, but at that point he had had enough.

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

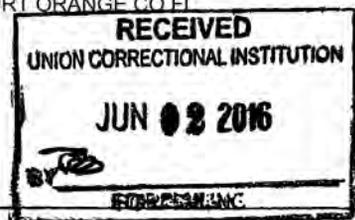
DEATH WARRANT SIGNED
Execution Scheduled: August 28, 2025, at 6:00 p.m.

APPENDIX 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

EXHIBIT NUMBER

59



Hon. Judge Renee A. Roche:

6/1/2016

Courtroom 7-A

Orange County Courthouse

Orlando, Florida, 32801

Dear, Hon. Judge Renee A. Roche;

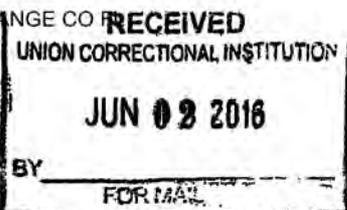
My name is Curtis Windom #368527... and I was convicted of three counts of first degree murder, and one count of attempted first degree murder and sentence to three death, plus twenty-two years in the Ninth Judicial Circuit in Orange County on November 10, 1992.

Hon. Judge Renee A. Roche, This Court is well aware that I am an indigent inmate of low intelligence, and is considered as being functionally illiterate. See Sentencing Proceedings at 126-127... See also C16, 1134, C18, 1130, C18, 1231.

I have been incarcerated for over 24 years. I have spent over 23 years on Deathrow. During my 24 years of incarceration -- not once have I ever denied being the shooter in this case. TT 299-301, 662, Lines 24-25. In fact, I have always maintained that both Johnnie Lee and Mary Lubin possessed guns and were both shot in a self-defense manner... both of these crime-scene were tampered with and the guns were moved before the police arrived to the crime scene. See enclosed Defendant Statement... and the Summary of true facts.

Although, I have told each and everyone of my attorney's and my investigator's -- my version of what happened, yet, not one of my attorney's or investigator's have ever attempted to investigate the guilt-phase of my case. Not one of them in over 24 years.

Hon. Judge Renee A. Roche: I am a person of very low intelligence (PT128, C16, 807, C18, 1130, C18, 1139-40, PC-R 643-45), completely illiterate in the science of pathology and forensic... but it don't take a rocket science to see that the [2;gun shot wounds] to the right-side of victim [Johnnie Lee's] body did not come from victim [Lee's] back being toward [Windom], or from [Windom] standing over [Lee] as [Lee] lay on his back on the ground. See Exhibit 11--TT 294.



2 The evidence show that this above shot is accurate to the [second shot] that "Dr. William Robert Anderson" had demonstrated to at TT 527.

The evidence also show that [Johnnie Lee] right-arm had to be next to his body and slightly turned as he-- [Lee] is reaching for his gun in order for the bullet to come in that way... it came in through the back upper right-arm, then exited the right-arm to re-enter the right-side of [Lee's] body, See Exhibit 11, TT 527, 546 Lines 10-25, 547 Lines 1-2].

The evidence also show that victim [Johnnie Lee] received a second gun shot wound to the right-side of his body while in a upper sitting position TT 619-620... in which is also accurate to what [Windom] said took place (TT 547-549, 676-677).

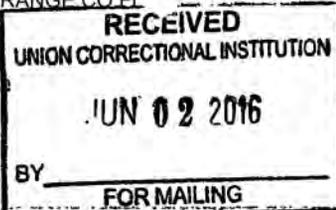
Hon. Judge Renee A. Roche, the FDLE request for examination of physical evidence revealed that victim [Johnnie Lee] was shot a total of [FOUR TIMES], four bullets fragment taken from [Lee's] body... and Deputy Chief Medical Examiner "William R. Anderson" medical report revealed that victim [Johnnie Lee] died of multiple gun shot wounds to the chest and abdomen, See Exhibit 11.

Windom asserts that "State Witness Terry Jackson" original 02/07/92 police report would have proved that [Windom] only fired [his gun] once from the inside of his [Windom's] car, See Exhibit 15...

Although, "Terry Jackson" gave a complete accurate picture concerning the firing of the gun... the clothes would have proved that victim [Lee] were never shot in the back, and that Windom never stood over victim [Lee] and shot down into [Lee's] body (TT 545-547).

Windom asserts that State Witness Jean Willis original 02/07/92 police report is almost verbatim from what [Windom] said happened... the only discrepancy is the two bullet to the back. "State Witness - Jean Willis" stated that victim [Lee] was shot a total of five times (TT 293, 307)... she said [Lee] were shot three times while [Lee] were on the ground (TT 293, 307); (See also Exhibit 13).

Windom asserts that "State Witness Pamela Fikes" stated that victim [Johnnie Lee] was shot a total of five times (TT 314, 318)... she stated that [Lee] were shot three times while he [Lee] was on the ground (TT 314, 318); (See Exhibit 14).



3 Windom asserts that although [Jack Lockett] denied the rumor that that him and his brother [Jamie Lockett] search Lee's body or car, or removed a weapon, jewelry, or anything else, before the police came (A7,326). And that he didn't see anyone move Lee's body or take anything off of it. He denied telling Sergeant Fusco that somebody took something off of Lee (A9,617); that Lee had drugs on him that someone on the street took; and also denied a rumor that he had taken them. He denied taking anything, including a gun, from Lee (A9,618).

Windom asserts that the fact of "The Rumor Existed" should have prompted his attorney [Leinster] to follow up on that lead PC-R 321-323, 327, 335, 338... and had his attorney hired an investigator to investigate the crime scene involving victim Johnnie Lee... it was quite possible that the investigator could/or would have found witnesses who were willing to testify to seeing [Jack Lockett and his brother Jamie Lockett] tampering with Lee's body, and removed a weapon, jewelry, and other personal belongings of Lee's (A9,618).

JUN 02 2016

BY _____

4 Windom asserts that had [Leinster] followed up on that lead and found such witness's PC-R 327, and then supplied Dr. Kirkland with the information that Johnnie Lee were the one making threats to kill Windom (TT 299-301); Johnnie Lee had a gun (See Exhibit 47); And that Johnnie Lee received his first gun shot wound to his upper right arm--as the arm is next to his body and slightly turned as he--[Lee] is reaching for his gun; and that [Lee] received three other gun shot wounds from a distance (TT 488)-- which explain why there is no soot or stippling associated with wounds 1, 2, 3, and 4... See Exhibit 11... TT 545-547. Rather than having the impression of a totally unprovoked shooting, the jury would have been aware, at least that some reason existed for the incident and accordingly, might have found Windom guilty of a lesser charge TT 695-702... or the jury could have found Windom not guilty by saying that Windom committed this crime while in a "fugue state" TT 561, 695-702. See Horton v. Zant, 941 F.2d 1449 (11th Cir. 1991); (See also Strickland v. Washington, 466 U.S. 668, 80 L.Ed. 2d 674, 104 S.Ct. 2052 (1984).