

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 601-702

VOLUME 7 of 7

EXHIBIT _____

ELECTRONIC DISK _____

Case #2003-DP-00457-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Adams

TRIAL JUDGE : Forrest A. Johnson Jr.

.....
Jeffrey Keith Havard v. State of Mississippi

.....
Betty W. Sephton, Clerk

.....
TRIAL COURT # : 02-KR-0141-J

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IN THE CIRCUIT COURT OF ADAMS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VERSUS

CAUSE NO. 02-KR-141

JEFFREY HAVARD

DEFENDANT

VOLUME FIVE

TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN A TRIAL IN
THE ABOVE STYLED AND NUMBERED CAUSE BEFORE THE HONORABLE
FORREST A. JOHNSON, JUNIOR, JUDGE OF THE COURT AFORESAID,
AND A JURY OF TWELVE MEN AND WOMEN, ON THE 16TH, 17TH,
18TH, AND 19TH DAYS OF DECEMBER, 2002, IN THE CIRCUIT
COURTROOM OF THE ADAMS COUNTY, MISSISSIPPI COURTHOUSE.

APPEARANCES:

Present and Representing the State:

HONORABLE RONNIE HARPER
District Attorney
Sixth Judicial Circuit District
Natchez, MS 39120

HONORABLE TOM ROSENBLATT
Assistant District Attorney
Sixth Circuit Judicial District
Natchez, MS 39120

Present and Representing the Defendant:

HONORABLE GUS SERMOS
Attorney at Law
P. O. Box 621
Summit, MS 39666

HONORABLE ROBERT CLARK
Attorney at Law
Vidalia, LA

1 BY THE COURT: -- Dar that testified, and also
2 Dr. Hayne that what this is commonly caused from is
3 some type of force applied from the outside. I
4 believe the first two doctors other than Dr. Hayne
5 were much more clear about this. That it's almost
6 not a direct on trauma but a kind of a glancing
7 trauma that typically causes this with a child of
8 hitting something from the outside. Now, that said,
9 what we're left with and what this Court finds and
10 what this Court sees and has heard evidence-wise is
11 that that may be a possibility. That there could
12 have been some type of sexual battery against this
13 child as to her mouth. Now, first of all, that is
14 possibility, but there's really no evidence that goes
15 to show that that's what happened. The evidence that
16 presented quite frankly in the Court's finding and
17 ruling on this is that from the testimony of these
18 witnesses, it's much more likely that it was
19 something else, some other type of force. That being
20 the situation, clearly, there is not enough evidence
21 in this record to support any type of finding by the
22 jury that there was a sexual battery involving this
23 child's mouth. That being the situation, it would be
24 improper for the prosecution to argue this unless you
25 want the record to reflect that this is something
26 that the jury considered. I think the evidence is
27 clear, and I think you need to be cautious in that
28 regard because there is no evidentiary basis to
29 support that.

1 BY MR. ROSENBLATT: I am sorry. I misstated my
2 concern was that defense would somehow ask for a jury
3 poll on a specific factual finding.

4 BY THE COURT: No. That will not be --

5 BY MR. SERMOS: No, sir. No, sir.

6 BY MR. HARPER: In other words, what you're
7 saying we will be prohibited from arguing that there
8 was a sexual battery to the mouth?

9 BY THE COURT: I think that's --

10 BY MR. HARPER: Which I have no problem --

11 BY THE COURT: Which the defense is moving for?

12 BY MR. CLARK: Yeah.

13 BY MR. HARPER: We don't intend to do that.

14 BY THE COURT: And the Court is going to grant
15 that, and the Court is going to grant it for the
16 reason I just stated because there's not -- although
17 there's evidence that it is a possibility, clearly
18 it's not a sufficient showing in the law from which a
19 reasonable jury could conclude that --

20 BY MR. HARPER: Yes, sir.

21 BY THE COURT: -- particularly given the nature
22 of the charge. So I am going to grant that request
23 or motion by the defense, and the State will be
24 prohibited from arguing that in any type of way to
25 the jury. The instructions are proper that have been
26 given, but that point is very well taken. So your
27 argument will be limited to the evidence and the
28 reasonable inferences from the evidence which as far
29 as the State's underlying charge of sexual battery,

1 clearly go to penetration of the child's anus or
2 rectum in whole or in part by a penis or some other
3 object.

4 BY MR. HARPER: Yes, sir. The object is
5 whatever, but -- because I think --

6 BY THE COURT: That's correct. The law is such
7 that element that must be proven is some type of
8 penetration, and there's an instruction to this, ever
9 how slight --

10 BY MR. HARPER: Yes, sir.

11 BY THE COURT: But there must be some type of
12 penetration.

13 BY MR. SERMOS: And use the word object also in
14 your own instruction.

15 BY THE COURT: That's well taken, Mr. Sermos.

16 BY MR. SERMOS: Thank you, Your Honor.

17 BY MR. ROSENBLATT: Your Honor, there's another
18 practical matter.

19 BY THE COURT: All right.

20 BY MR. ROSENBLATT: We have a number of
21 witnesses on both sides of this case that want to
22 come in for closing argument. We intend to call one
23 witness probably during the sentencing phase which
24 will be Lillian Watson. It's my understanding that
25 the defendant will only call one or two witnesses.

26 BY MR. SERMOS: Two.

27 BY MR. ROSENBLATT: I would just appreciate some
28 guidance from the Court on whether these witnesses --

29 BY THE COURT: What I am going to direct is

1 that the witnesses that you perceive as potentially
2 calling, they remain under the rule unless -- I
3 think -- unless there's some agreement otherwise. I
4 think they're under the rule.

5 BY MR. SERMOS: I do, too.

6 BY MR. HARPER: I guess what we need to clear
7 up. As I understand it, they were subpoenaed by
8 same -- both sides and I --

9 BY THE COURT: Just a second. The only witness
10 as far as the possibility of potential of the
11 sentencing phase of this trial that the State desires
12 to keep under the rule would be Lillian Watson.

13 BY MR. HARPER: That's correct, sir.

14 BY THE COURT: She will not be allowed in the
15 courtroom --

16 BY MR. HARPER: Yes, sir.

17 BY THE COURT: Because the Rule has been invoked
18 and the Court finds that that does apply throughout
19 this trial. Now, what witnesses does the defendant
20 desire to keep under the rule for the possibility of
21 you calling them as witnesses?

22 BY THE COURT: Yes, sir, Your Honor. That would
23 be Cheryl Harrell and Ruby Havard, and they're the
24 only two that I --

25 BY MR. CLARK: The mother and --

26 BY MR. SERMOS: The grandmother of Jeffrey.

27 BY THE COURT: Then let's make sure that these
28 three witnesses know that they must remain outside
29 the courtroom. The other witnesses, it will be

1 permissible that they come in the courtroom.

2 BY MR. HARPER: Y'all had mentioned earlier you
3 may decide on some others. Obviously, you know, if
4 they're released and --

5 BY MR. SERMOS: Right.

6 BY MR. CLARK: That's all we --

7 BY THE COURT: Y'all just make sure that these
8 witnesses know that they're not to come in the
9 courtroom.

10 BY MR. SERMOS: Your Honor --

11 BY THE COURT: I don't know any of --

12 BY MR. SERMOS: With your permission, then I'll
13 walk -- when we go back in there, I'll just go
14 outside the door and tell those two that they can't
15 come in but all the others can.

16 BY THE COURT: Sure. Absolutely. We'll take a
17 few minutes. Y'all can do that now while I'm
18 numbering the instructions.

19 (After a short recess, the following was made in the
20 chambers of the Judge, OUTSIDE THE PRESENCE OF THE
21 JURY, to-wit:)

22 BY THE COURT: Just for the record, normally all
23 the exhibits are sent back into the jury room with
24 the jury. The Court does have some concern about
25 some of the items that should not probably be touched
26 or handled by jurors, and I doubt if they want to
27 touch or handle. What I intend to do is the exhibits
28 dealing with the blood, the kits, the sexual assault
29 -- the two sexual assault kits and the two sheets

1 will not be sent back into the jury room unless the
2 jury requests to see them. Does either side have any
3 objections?

4 BY MR. HARPER: No, sir. I think there are
5 three exhibits of blood evidence. There's one -- two
6 kits and then one is just -- I think it's the
7 mother's blood.

8 BY THE COURT: The mother's vial.

9 BY MR. HARPER: Yes, sir.

10 BY THE COURT: And then there's the two --

11 BY MR. HARPER: Two --

12 BY THE COURT: -- sheets.

13 BY MR. HARPER: -- sheets. Yes, sir.

14 BY THE COURT: Does the defense have any
15 objection to that?

16 BY MR. SERMOS: No, Your Honor.

17 BY THE COURT: What I will do, is I will just
18 not automatically send them back there, but if the
19 jury requested to see them, they will certainly be
20 furnished right away.

21 BY MR. HARPER: And, Your Honor, the videotape.
22 Obviously, we've submitted the transcript of that
23 also. Are you going to --

24 BY THE COURT: Not unless they ask to do it,
25 and really there's not enough room to roll that TV in
26 here, but if they want to see it, I'll make
27 arrangements for them to see it.

28 BY MR. SERMOS: Yes, sir. I think that's good
29 because they -- they may or may not.

1 BY THE COURT: Okay.

2 (All parties returned to the courtroom, and the following
3 was made IN THE PRESENCE OF THE JURY, to-wit:)

4 BY THE COURT: Ladies and gentlemen, as you
5 have heard, both sides have rested their respective
6 cases, and what remains to be done is for the Court,
7 myself, to instruct you on what the law is that
8 you're to use and apply in making your decision in
9 this case, and then following that, the attorneys
10 will be allowed to make their final or closing
11 arguments to you. Once that is done, you will retire
12 to the jury room to deliberate and to decide whether
13 the defendant is guilty or not guilty of the charge
14 against him of capital murder. Now, first of all,
15 the Court instructs you on the law by way of reading
16 to you what we refer to as jury instructions. These
17 are somewhat lengthy, but keep in mind that once you
18 go back into the jury room to deliberate and decide
19 this case, you will be allowed to take these with you
20 back into the jury room. So at this time, the Court
21 is going to instruct you on the law.

22 (After the Court having read the instructions, the
23 following was made of record, to-wit:)

24 BY THE COURT: Ladies and gentlemen, those are
25 the instructions from the Court on the law that
26 you're to use and apply in making your decision in
27 this case. As I said, you will be allowed to take
28 these written instructions with you back to the jury
29 room. At this time, the Court allows the closing

1 arguments by counsel for each side. Keep in mind
2 that what the attorneys tell you is not evidence in
3 this case. You heard the evidence by way of the
4 sworn testimony of the witnesses from the witness
5 stand and also any exhibits that have been admitted
6 into evidence which the Court will allow you to go
7 back with you into the jury room. If the attorneys
8 in making their closing or final arguments, if they
9 recall the testimony of the witnesses different from
10 what you recall the witness saying, you're to use
11 your own recollection of what you heard the witness
12 say from the witness stand. So at this time, the
13 Court is going to allow the final or closing
14 arguments, first by the State. Mr. Rosenblatt.

15 BY MR. ROSENBLATT: Thank you, Your Honor. Ladies
16 and gentlemen, in Wilkinson County last year a man was
17 convicted for robbing the main street liquor store, and he
18 took five bottles of Crown Royal, and when the judge asked
19 him why he did it, he looked up at her kind of puzzled and
20 said, "Because I ran out of something to drink". As a
21 prosecutor I certainly don't approve of that activity,
22 but as a human being I can understand this. It makes some
23 sense to me. This case is not like that. This case I
24 cannot understand. Please don't try to understand this
25 case. We cannot understand what makes a man do what
26 Jeffrey Havard did. We cannot understand the testimony
27 that we've heard from the witness stand. Try not to put
28 yourself in his shoes. Clean-cut looking young man and
29 try to figure out why could he have done something like

1 that. Believe Jeffrey Havard's statement when he tells
2 you, "I can't explain it." When the deputies ask him,
3 "How do you explain the damage that was done to her rear
4 end" what did he say? "I can't explain it." "I don't
5 know how -- I don't know of no way to explain it."
6 Believe that because there is no way to explain it. We
7 cannot understand what happened. Again when he says, "I
8 am going to ask you one more time, did you molest the
9 baby?" "No, I did not." "How do you explain her being
10 molested?" "I can't explain it." We don't expect an
11 explanation for this kind of behavior, for this kind of
12 activity. Rather than try to understand why, let's focus
13 on what happened because that's our job today. Your job
14 as a juror as we told you when this case began is to
15 determine the facts to determine what happened and then
16 apply those facts to the law that the Judge has given you.
17 What do we know that happened. The only person, the only
18 person in the house with the baby. That's correct. Me
19 and the baby. The only person in the house, me and the
20 baby. And what did Jeffrey do? Do you remember after
21 Becky went to the grocery store and got groceries. She
22 came back from the grocery store and what does Jeffrey say
23 in his statement? Shh. Don't bother her. Don't go in
24 there. Don't go in where the baby is. Now, ladies and
25 gentlemen, I don't know exactly what happened when. I am
26 not able to tell you when the dastardly deed took place.
27 I know it was some time while Becky was gone. I don't
28 know which trip she was gone that he actually did what he
29 did or maybe both times. I don't know, but I do know when

1 she came back from the grocery store, the testimony from
2 the witness stand and by the statement you have here, he
3 told her shh. Don't go in there. Leave the baby alone.
4 But she went in there, made a brief check in the dim
5 light, heard a funny noise, thought that everything was
6 okay. She was terribly wrong. When she came back the
7 second time from the Blockbuster, and isn't that
8 interesting. She comes back from the grocery store,
9 groceries in her hand and immediately he hands her \$20.00
10 and says, "Now, go to Blockbuster." Clear across town.
11 This is not a normal family situation. This is not
12 something typically you would expect for the man to say,
13 "You go. Leave me here with the baby." And remember this
14 was a man she had moved with in three weeks before along
15 with her baby. Look at what we do know. When she comes
16 back from the Blockbuster, where is Jeffrey? In the
17 bathroom, the door closed. Where else could he be? Could
18 he be standing there when she comes in and finds her
19 child. When she comes in and finds her baby lifeless in
20 the crib, could he be standing there? No. That would be
21 impossible. There's no way he could do that. He's in the
22 bathroom. When she screams and he comes out. Ladies and
23 gentlemen, this is a -- this is a hard case. This case
24 has been filled with emotion, and the Judge has read you
25 an instruction that your decision is not to be based on
26 passion. Your decision is to be based on the facts that
27 came from this witness stand. Ladies and gentlemen, there
28 has still been a lot of emotion in this case, and I don't
29 think you can disregard the emotion you heard from the

1 witness stand. You heard seasoned deputies. You heard
2 medical personnel. I just think of Ms. Murphy, been a
3 nurse for thirty years. Nurse Godbold, been an emergency
4 room nurse for ten years, and what did they say? I have
5 seen nothing like it. It affected them. It upset them,
6 what they saw, and every one of them when they saw that
7 baby said this baby has been sexually assaulted. This
8 baby has been sexually penetrated. They were shocked.
9 The first thing they did in the middle of their treatment
10 was call the law. This baby has been assaulted. I think
11 especially the remark that Coroner Lee -- and this is our
12 coroner. I mean, just imagine what he sees, and what did
13 Coroner Lee see when he came in there and took one look at
14 that baby and he said something is terribly wrong.
15 Remember the testimony that you heard. You heard from
16 Nurse Godbold, Nurse Murphy. Immediately told you this
17 baby has been penetrated. You heard from Dr. Patterson.
18 Told you the same thing. Every one of them agreeing. And
19 then you heard Dr. Dar who along with Dr. Patterson looked
20 into the baby's eyes and said, "I see retinal hemorrhage.
21 This baby is a shaken baby. She's got brain damage. She's
22 in bad trouble." They didn't know the baby had been hurt
23 from Jeffrey. Jeffrey comes to the hospital and says
24 nothing about how the baby could have been hurt. Nothing
25 to aid in the treatment of this child. Only later does he
26 give the statement explaining what might have happened to
27 the baby, and nothing at the time when it could have
28 helped. Remember the testimony of Dr. Hayne who told you
29 that this baby died of head trauma of being shaken

1 heard what he said. He didn't mean to do that. And what
2 did he do. He denied it at first. The way anybody would
3 do in that situation that had panicked. When you panic,
4 you don't think rationally. You don't think reasonably.
5 You don't think like a normal person would think, and
6 that's the way he was. But after a couple of days in
7 jail, he came to -- he realized that he needed to tell the
8 truth. And he told the truth. And you saw it on that
9 tape. He told officers there, Officer Manley and another
10 sheriff deputy that were there what happened. He
11 cooperated. He gave the blood, the hair, the skin,
12 underneath the fingernails samples. He called them. They
13 didn't call him. He called them. Through the jailer
14 to -- could you please let me talk to Major Manley. He
15 had to tell the truth, and he wanted to tell the truth
16 about what happened on that terrible night. And you saw
17 that truth on that videotape. He cooperated not only by
18 giving the statement. He cooperated by going out to
19 the -- he told them everything about what was going on at
20 the house. He told them about the sheets that they have
21 here. They had those sheets here in evidence. They
22 wouldn't have known all that stuff if it hadn't been for
23 him. If he hadn't told them about it. Ladies and
24 gentlemen, all of that supports what we're saying and what
25 he said to you from the tape that this was a terrible
26 accident. That he didn't mean to do it. He didn't intend
27 to kill this child. He was trying to sooth the child and
28 something tragic happened. There were other witnesses who
29 testified here also through the course of this trial, and,

1 violently. A violent shaking would be the equivalent of
2 being in a car wreck, of being dropped from a high height
3 is the injury that this baby suffered to her head. Again
4 shaken violently. And after having been sexually
5 penetrated. Ladies and gentlemen, this has been a hard
6 case in many ways. It's been a hard case emotionally, but
7 it's not a hard case factually. Everyone has agreed on
8 what happened. Every one of our witnesses said
9 immediately when they saw that child, they knew exactly
10 what had happened. This baby was shaken to death having
11 been sexually assaulted, and ladies and gentlemen, don't
12 try to understand it. Don't try to figure out how it
13 could have happened. Just know what did happen and render
14 your verdict of guilty of capital murder because that's
15 what this man is over there for doing that to this child.

16 BY THE COURT: Mr. Clark.

17 BY MR. CLARK: Thank you, Your Honor. Ladies and
18 gentlemen, we have heard several days of testimony here.

19 BY THE JURORS: Can you speak louder, please.

20 BY MR. CLARK: We've heard several days of testimony
21 here. We've heard various law enforcement officers talk.
22 We've heard various and sundry doctors, nurses,
23 specialists, people like that in the medical profession,
24 and we've heard a taped statement that was given by
25 Jeffrey Havard in this case too about what happened that
26 night. I'm sure you remember what he said yesterday.
27 That what -- he was like anybody else that had a terrible
28 accident to happen. He panicked. He didn't mean to drop
29 that child. You saw the tape. You saw his reaction. You

1 yet, if you recall, during each one of the law enforcement
2 officer's testimony, did they say that Jeffrey Havard did
3 not cooperate with them? No. They all said that he did
4 cooperate. Anything that they wanted him to do, he helped
5 them do, and now the State is asking you to find him
6 guilty of capital murder. He told you what happened. He
7 told you that it was a tragic accident. He told that he
8 didn't mean for it to happen. Ladies and gentlemen, we
9 believe that's the truth.

10 BY THE COURT: Mr. Sermos.

11 BY MR. SERMOS: Thank you, Your Honor. I am going to
12 cover some things -- some of the things Mr. Clark already
13 covered, but I want to review them. That's why we both
14 wanted to be up here so we could give our separate takes
15 on this. One of the things the State has done is just
16 when somebody drives by a lumber yard and sees a huge
17 stack of wood out there. The State has looked at that
18 stack of wood, and they've built a case of capital murder
19 against Jeffrey Havard which they say is supported by the
20 allegations that Jeffrey Havard committed sexual battery
21 upon that baby. We all know it's a tragedy. The baby's
22 death is a tragedy. We're not here to talk about was that
23 a tragedy or not. We know that. The State sees a case of
24 capital murder supported by an alleged sexual battery.
25 However, that's not how we see it. We see something
26 entirely different, and that's what I want to tell you
27 about so you'll have something else to consider. First as
28 you recall, the prosecutor Ronnie Harper prepared you by
29 saying, oh, don't -- don't expect us to show a confession

1 or if we don't show a confession, you know you don't
2 really need it. Well, they didn't have a confession.
3 They had a statement by Jeffrey Havard two days after this
4 happened. Not yesterday and not last week. Two days
5 after this happened last February. Jeffrey Havard didn't
6 have time to concoct a fancy story. He talked to Major
7 Manley and told him what went on voluntarily two days
8 after this. There were also no eyewitnesses. Yes, there
9 were a lot of witnesses as to what went on at the hospital
10 and people that did tests. Mr. Harper prepared you for
11 that by saying don't expect any eyewitnesses. Well, they
12 didn't have any eyewitnesses. Jeffrey Havard made the
13 statement as to what happened there. Further, and one
14 thing for you to consider is that after everything was
15 done and all these experts talked, we know we've heard
16 about Chloe Madison Britt, but then now we're dealing with
17 Jeffrey Havard, and if you recall within two days after
18 that, Jeffrey Havard was taken -- blood was drawn, hair
19 was drawn from his head and pubic area, and it was sent
20 off for testing. You've heard an expert talk about DNA
21 matching. You've heard an expert state from what Dr.
22 Hayne withdrew from the child at her autopsy from vulvar
23 and vaginal and rectal and oral swabs there was no
24 indication on this -- and they call it a sex assault kit
25 or standard rape kit, something like that. There was no
26 indication and no semen found in her. Also from the
27 examination done on Jeffrey Havard, remember once he was
28 in custody, the State owned his body and they've had it
29 ever since then, and they found not one thing on him that

1 you heard about here in this courtroom. Nothing under his
2 fingernails, none of her skin, nothing from any of her
3 interior passages or her rectum or her anus and one of the
4 doctors -- several of them even talked about all the feces
5 and the diarrhea type feces that was coming out of her in
6 the hospital. They saw this on her, and I want you to
7 remember this. They didn't see this baby four weeks after
8 this allegedly happened. They saw this right after
9 Rebecca Britt came home. They went to the hospital and
10 that's what those doctors saw just literally a few minutes
11 later. Also remember Jeffrey Havard left that house
12 voluntarily. He didn't put the old clothes to wash while
13 he was gone to try to wash away any evidence like the
14 State wanted to get that sly comment onto you awhile ago.
15 He didn't do that. He went to the hospital and once he
16 was there, from there and you recall from the testimony of
17 fine officers, he went on into custody. He didn't even
18 get time to go take a shower. There was testimony of,
19 well, he wanted to go take a shower. Well, I don't care
20 what he wanted to do, he didn't get to go do it. Adams
21 County Sheriff's Department has had custody of his body
22 since that time, and he never got to take a shower and
23 they never -- just think of it like this too when we want
24 to talk about evidence, not about opinion. About
25 evidence, though. They had Jeffrey Havard in the custody
26 from the hospital. It's not my fault. They didn't call
27 me and ask me what they should do. They didn't find
28 anything on him. They didn't look at his penis and say,
29 "Ah hah. There's some fecal matter from that young lady,

1 that girl, that baby that was killed." They didn't find
2 any part of her body or any of her hair or anything from
3 her on him and nothing from him on her or in her. Now,
4 one of the reasons when Dr. Hayne testified, we asked him
5 because one of the experts had talked about the child's
6 anus was torn. Well, Dr. Hayne said -- I asked him. I
7 said what does contusion mean. He said, well, it's
8 bruising and it's got blood underneath. Well, then when
9 the prosecutor went back to help Dr. Hayne testify, Dr.
10 Hayne said, "Well, there might have been some tears, but I
11 didn't notice them." Well, he's the number one expert of
12 the experts and he didn't notice it. The reason that we
13 want to emphasize that is you saw Jeff Havard's video. He
14 was bathing the infant. She was obviously wet and
15 slippery. He dropped her. She fell. He stated on the
16 video probably three feet, maybe a little higher. I don't
17 know if he was standing up or not because I wasn't there,
18 but that's what he stated happened, and she fell onto the
19 toilet or the toilet bowl or the tank, every which he
20 said. I don't know how she hit. He said how she hit in
21 the video. Then, yes. He shook her, and he showed you
22 how he shook her on the video, and he said he didn't mean
23 to hurt her. He panicked. That's certainly reasonable to
24 think he would panic. He dropped the child and panicked.
25 He rubbed the lotion on her. There's a picture of it in
26 one of the photographs. There was none of that lotion --
27 also let me add right here. In fact, one of the
28 deputies, I believe, made a big deal. I know in the video
29 one of them was talking about, oh, you rubbed her down

1 with something or maybe it was on the stand here. Well,
2 the first thing, was, oh. That lotion. If he had rubbed
3 her down with something and then he inserted some object
4 into her rectum or her anus, it would have some oil or
5 lotion on it. There was no statement by any doctor or the
6 nurses up here and none by Dr. Hayne who looked at her
7 body when she -- after she passed away and went for an
8 autopsy. No one stated anything about any lotion or any
9 residue of lotion being found in any one of her body
10 orifices anywhere. We're talking about especially her
11 rectum or her anal area. Jeffrey Havard said I can't
12 explain it. He told Major Manley that at the interview
13 back almost -- well, ten months ago. The doctors really
14 couldn't explain what happened. They guessed what
15 happened, but here's the other thing and here's the high
16 standard of proof we ask you to hold the State to.
17 They've got -- there are no confessions, no eye witnesses.
18 They've got no tangible physical evidence. Call the lab
19 experts and they talked about stuff that was on the
20 sheets. The lady said with the DNA, don't know how long
21 it's been there. Don't know -- was that from when the
22 baby was on the mattress or that sheet three weeks
23 earlier, thirty days earlier, when Rebecca Britt was on
24 the mattress, when Jeff Havard was in there. In other
25 words, they do have some facts they put together from this
26 lumber yard they drove by of facts and put it together to
27 try to convince you that Jeff Havard intentionally put
28 some object in that child's rectum and then essentially
29 shook the baby to death. Another point I want to address

1 because you need to just think about it. The deputies
2 after Jeffrey was at the hospital and taken into custody
3 and then he voluntarily signed a consent search warrant to
4 go back to that trailer that he had left and one of the
5 deputies said it was unlocked. The deputies go there.
6 There could have been three of them there. I believe
7 there was three from what they said. Fine. There could
8 have been 103. I don't even know, but they sent about
9 three of them. They eventually -- essentially felt that
10 the crime scene was at the hospital and where the child
11 was, and, of course, once she died, her body became part
12 of the crime scene. That's how the coroner talked about
13 it. Well, they charged her -- one of the first charged
14 against her was sexual battery, and now they talked
15 about -- and you heard Major Manley say when I was trying
16 to get around talking about an object, well, a penis
17 wouldn't do something or it would be -- well, there's one
18 way and notice this. They never brought it up. No one
19 ever checked his penis. I covered that a minute ago, but
20 no one ever checked. If they thought it was that, hey.
21 They've got all these DNA people at their disposal. They
22 have microscopes and they've got magnifying glasses.
23 They've got stuff I can't even think about that can find
24 chemicals and particles and hairs, debris, you name it.
25 But they didn't find anything and didn't go looking for
26 it. Here they have this whole mobile home wide open and
27 no one there. Jeffrey Havard is up -- locked up by now
28 probably. They go back in the morning, two or three in
29 the morning and they're going in there, looking and

1 standing around in the kitchen, looking at all these
2 groceries and videotapes laying out and things. They --
3 maybe there wasn't anything there. I say there wasn't
4 anything there anyway, but if they thought there was an
5 object that was put in that baby's rectum, then they
6 should have been looking for an object. Something they
7 could have sent up to the State Crime Lab for all these
8 experts to look over closely and say, ah. Here's
9 something. Because if they would have found one object
10 with some of that child's fecal matter or DNA on it, then
11 they would have had something to come in front of you with
12 and say she's six months old, and we know she didn't
13 go walking around and stick this in herself. We know
14 someone did this to her and that someone was Jeffrey
15 Havard because he was the only one there, but they don't
16 have anything like that. They didn't even -- you heard
17 them say they weren't even looking for anything. They
18 thought they had it made, nor did they go back if -- in
19 one of the theories you'd have to think about since
20 they're saying that Jeffrey Havard put some object or
21 penis or some other object with what the instructions the
22 Judge gave you will say. They didn't go back and look for
23 a used condom. Not -- nobody said they did, and they had
24 the trailer there, the mobile home to go looking for. They
25 could have looked around the yard for one, under the
26 trailer, on the roof of the trailer, because there had to
27 be something based on the police and State theory that was
28 the object. In other words, they told you an object.
29 They haven't really shown any hypothesis what the object

1 was. Strictly guessing. What happened was a horrible,
2 tragic accident, and Jeffrey Havard was really stupid for
3 not immediately calling someone or thinking he knew enough
4 when to decide when a baby was hurt or a baby wasn't hurt
5 and he put the baby back in the bed. But Jeffrey Havard
6 does not deserve to be found guilty of capital murder via
7 the route of sexual battery because he's stupid and
8 because he had absolutely no idea what he was dealing with
9 in trying to take care of a child of a girlfriend that had
10 been living with him for three weeks. When you go back to
11 consider all these things, please consider the points that
12 we have shown you also about what isn't there because the
13 State has tried to construct a horrible charge, capital
14 murder, it doesn't get any more serious than that, out of
15 a tragedy certainly for the child and obviously for her
16 family. And one more tragedy on top of that of being
17 found guilty on the part of Jeffrey Havard for capital
18 murder isn't going to do anything to make anybody feel
19 better. The facts simply aren't there to support your
20 finding him guilty of sexual battery and through that for
21 capital murder. And Jeffrey Havard asks you to find him
22 not guilty of the charge of capital murder.

23 BY THE COURT: Mr. Harper.

24 BY MR. HARPER: May it please the Court, Your
25 Honor.

26 BY THE COURT: Yes, sir.

27 BY MR. HARPER: Ladies and gentlemen, I don't know
28 what courtroom Mr. Sermos has been in for the last three
29 days, but he obviously has not been in the same one I've

1 been in. The evidence in this case is more overwhelming
2 that any I've ever been involved in. We were here Monday
3 morning, talked about the burden of proof in this case,
4 and I asked each and every one of you if you would be
5 reasonable in trying to decide whether you had any doubt
6 as to the defendant's guilt in this case, and every one of
7 you told me that you would. And I submit to you, ladies
8 and gentlemen, that you're reasonable in this case and you
9 know what the verdict is. I told you that we can't define
10 reasonable doubt for you. Why do you think that is? Why.
11 do you think they didn't let us define that for you? It's
12 very simple, folks. When this system was created which in
13 my opinion is the greatest judicial system that's ever
14 been created by mankind. When it was created, the
15 founding fathers of this country knew that twelve
16 individual people selected as jurors from all different
17 walks of life, from all different backgrounds, from all
18 different educational levels and experiences and ages had
19 enough good, God-given common sense to listen what came
20 out of that witness stand, to watch the witnesses, look at
21 the evidence, apply it to that law, and make a decision.
22 It's not intended to be that hard. And I submit to you,
23 ladies and gentlemen, that if you're reasonable and if you
24 use your common sense in this case, it is obvious what the
25 verdict is. Overwhelming. You heard those doctors and
26 nurses. I have -- I've never seen them testify with that
27 conviction. They saw it. They want to act like we didn't
28 even prove a sexual battery. They say we don't have an
29 eyewitness. Well, ladies and gentlemen, we had one but

1 she ain't never going to be here to tell you what
2 happened. Y'all said that you wouldn't require us to have
3 eyewitness or confessions, but they want to beat us over
4 -- well, they can't show -- they're talking about lumber
5 yards. I don't what that's got to do with anything, but I
6 tell you this. If you use your good, God-given common
7 sense and listen to what's going on, it is an insult to
8 your intelligence for him to expect you to believe what he
9 just told you while ago. He must think y'all fell off
10 some turnip truck out here on the street before you got up
11 here. It's ludicrous for you to believe what he told
12 you. I mean, the deputies, the coroner, everybody told
13 you what was wrong with that child's rectum, her anus.
14 And they told you what caused it. It's overwhelming.
15 You're talking about fingernails and skin. There weren't
16 any scratches on that baby. Why would there be skin under
17 his fingernails. And I am going to tell you something,
18 folks. The most overwhelming thing in this case is the
19 statements that man gave to the law enforcement and to the
20 people at the hospital. First of all, what does he tell
21 the people at the hospital? He don't know -- he can't
22 tell you. He ain't got any idea what's wrong. What does
23 he tell the law enforcement the night they take him down
24 there and take a statement from him. Told Buddy Frank and
25 John Manley. I don't know what happened. I just gave her
26 a bath and put her to bed. I can't tell you what
27 happened. So for one thing we know already, we know that
28 he will lie to protect himself. We know that. He
29 admitted that on his statement in the last statement, the

1 video statement. That he lied when he talked to them the
2 first time. So we know he'd like to protect himself. Mr.
3 Sermos says he didn't have time to concoct a story. What
4 was he doing up there sitting in that jail cell. What do
5 you think he was doing, knowing what was wrong with that
6 baby and what they were finding down there at that
7 hospital. What do you think he was doing? He was trying
8 to figure out a lie to tell -- to protect, to cover what
9 he knew they were going to find, and I submit to you that
10 when he gave that video statement in the written statement
11 that you're going to have a copy of two days later, that
12 that's what he was trying to do. Continue to lie to
13 protect himself. Tell just enough to make the physical
14 facts fit what he's trying to say, but, folks, he couldn't
15 explain the sexual battery. They asked him over and over
16 and over again in that tape, and he kept saying, "I can't
17 explain it. I don't know. I just can't explain how that
18 happened." There ain't no other way to explain it than to
19 admit that he committed sexual battery, ladies and
20 gentlemen. No other way. I tell you I've been
21 prosecuting up here for fifteen years, and I've seen
22 confessions and statements. I have never seen a more
23 incriminating statement from a person trying to deny that
24 they committed a crime in my life. Never. What does he
25 admit in this statement. First of all, he openly admits
26 the shaking. Of course, he wants you to think it was some
27 accident. He just shook her like this. You heard what
28 Dr. Hayne said would have to happen for this shaking to
29 cause the injuries that baby had, but he admits that

1 because he's got to. What else is he going to say. But
2 it was an accident. He was panicking. But he admits to
3 the shaking. He admits -- it's on page eighteen, and
4 y'all got a copy of the transcript. He admits the
5 opportunity. That he's the only one that had the
6 opportunity to commit the battery and the killing. He
7 says, "I know I was the only one home. It was just me and
8 the infant there. Me and Chloe." He's the only one that
9 had the opportunity by his own admission. What else does
10 he admit in the statement. He admits in the statement,
11 and he don't want to, but he's trying to cover himself,
12 trying to keep that lie where he can cover himself. He
13 admits the penetration. Says, "I just wiped her down
14 between the legs like normal, inside of her buttocks."
15 And the police officer said, "You said earlier that your
16 finger may have slipped or you may have wiped her a
17 little bit too hard." He says, "It's possible. Maybe I
18 was too rough with her. Maybe I went too far in on her."
19 He admits it, ladies and gentlemen, but they want you to
20 believe this house of cards they're building over here.
21 And this to me the most incriminating thing he says in
22 this statement, folks. They ask him did he do it, and I
23 couldn't believe this when I heard it. Says how do you
24 explain the damage that was done to her rear end. He
25 said, "I can't explain it. I don't know." Do you think
26 you've done it. And he said and I quote, "I don't think I
27 did it. I don't recollect doing it. I don't remember
28 doing it." Folks, if you hadn't done that, you'd be
29 saying, hell, no. I didn't do it. You wouldn't be not

1 recollecting doing it or not remembering doing it or not
2 thinking you did it. That ain't reasonable. That ain't
3 common sense. Ladies and gentlemen, I submit to you what
4 happened out there that night was very simple. Now, I'm
5 not making any accusations. I don't know if anything had
6 ever happened with that child before, but that night he
7 got carried away or something, and he hurt that child more
8 than he intended to in this sexual battery. He hurt her.
9 You heard him talking about how she was injured in her
10 rectal area, and what does a child do -- what's the only
11 defense an infant baby has got when something like that
12 happens to them? They scream. They don't just cry,
13 folks. They scream in pain. When they're in pain, they
14 scream. And what's he going to do then? She's screaming.
15 He's injured her. Stop her. I got to stop her from
16 screaming. Well, he stopped her all right. She ain't
17 screaming now. And then what does he do? Now, he's not
18 only injured her rectally, but he shook her so hard that
19 results in her death. What is he going to do then? I am
20 going to clean her up. He washed her up and cleaned her
21 up. Get rid of this evidence. Talking about DNA and DNA
22 on the sheet with both of them's DNA in it, and he -- want
23 to talk about there ain't no DNA on her. My, gosh, the
24 nurses said that's the cleanest baby they had ever seen in
25 their life. Clean her up. Get the evidence out of that.
26 I don't know. He may have taken a shower then himself.
27 He kept asking Ray Brown. Maybe he didn't think he got
28 clean enough. I don't know. He was in the bathroom when
29 Becky got home. Clean her up and lie. Put her in the

1 bed. Don't go in there and wake her up. She's asleep.
2 Put her up. Do you know what happened? No, I ain't got
3 any idea. I don't know what happened. Overwhelming.
4 This is not hard, folks. And I want to say this, too.
5 They want to talk about the police didn't do this and the
6 police didn't do that. You know, the Judge read you the
7 instructions. You know, they keep -- we didn't find some
8 object. It says penetration with a body part or an object
9 or whatever. They didn't know what -- they're out there
10 trying -- they don't know what -- and I don't know what he
11 used. I can't tell you what he used. I don't have to
12 tell you what he used. All I have to prove is that he did
13 it with whatever, and they keep talking about what
14 injuries. Asked Dr. Hayne -- how ever so slight the
15 penetration. Even the slightest penetration is sufficient
16 to warrant a conviction. And my goodness, he wants to ask
17 you why they didn't look for a condom. Do y'all actually
18 think that somebody that would commit this crime would
19 take the time and safety to put on a condom to do it.
20 That's an insult, folks. An insult to you. Reasonable.
21 Common sense. It's not that hard. I have confidence in
22 you. I have confidence in this system. And it's with
23 that confidence that I'm going to submit this case to you
24 on behalf of the People of the State of Mississippi and
25 ask you to go back into the jury room and deliberate it,
26 and return a verdict of guilty of capital murder because,
27 ladies and gentlemen, that's what the evidence warrants.
28 That's justice in this case. That's justice for that
29 child. Thank you. That's all I have.

1 BY THE COURT: All right. Now, ladies and
2 gentlemen, it's time for you to deliberate and to
3 decide this case. You will be allowed to take with
4 you the jury instructions that I read to you
5 previously. Also the exhibits, and also there will
6 be some paper and pencils or pens for you to write
7 with. Now, on the exhibits, I won't send all the
8 exhibits back. Some of these sheets and items
9 dealing with the kits and the blood, I am not going
10 to send those back. If y'all want to see those, just
11 let the bailiff know and I'll get those back for you
12 to see. Also the video will be available if you
13 desire to look at that, there is a transcript in
14 evidence of that, but because that is so bulky and we
15 have to pretty much do that out here, that won't go
16 back in there with you. But if you want to look at
17 the video again or if you want to see these sheets or
18 kits, assault kits, that were placed into evidence,
19 just let the bailiff know and I'll be sure
20 to send them back there so you can look at them.
21 Now, this is just a suggestion, but what you may
22 consider doing the first thing is to select from
23 among yourselves a foreperson. This person's vote
24 counts no more than everyone else on the jury, but it
25 is helpful if you have a foreperson presiding over
26 the deliberations. That way everybody doesn't talk
27 at the same time and also when you get ready to start
28 taking votes, that's real helpful. So that's just a
29 suggestion. Now, your verdict must be unanimous. It

1 has to be unanimous. One of the instructions tells
2 you that. Whichever way it may be, either to find
3 the defendant guilty of capital murder or not guilty,
4 when all twelve of you agree upon a verdict in this
5 case, you're to write it out on a separate sheet of
6 paper. One of the instructions, Number 19, I'm going
7 to place it on top. It tells you exactly how to do
8 this. Whichever way it may be, but when all twelve
9 of you agree upon a verdict in this case. You write
10 it out on a separate sheet of paper and you knock on
11 the door so that the bailiff will know that you have
12 reached a verdict in this case. Now, Mr. Hammett, as
13 the alternate, you will not go back into the jury
14 room with them. You have been here in case something
15 had happened to one of the jurors, and we did right
16 off the bat have something happened to one of the
17 jurors, a problem with her foot. You'd be surprised
18 how often something happens, and that prevents us
19 from having to stop and come back another time and
20 start the trial all over again. I do very much
21 appreciate your duty that you have served in this
22 case, your attendance, but you will not go back into
23 the jury room and you will be discharged. You'll be
24 allowed to go check out of your room and to get your
25 belongings, and somebody will be glad to assist you
26 with that, but I do want to very much thank you for
27 your attentiveness in this case and for your
28 attendance, and if you need any type of excuse, the
29 clerk's office will be glad to assist you with that.

1 So at this time, I am going to direct that the jury
2 retire to the jury room to deliberate and decide this
3 case.

4 (The jury retired to the jury room at approximately 2:40
5 p.m. At approximately 3:20 p.m., a knock was heard
6 on the door, signaling the jury had reached a
7 verdict.

8 The jury returned to the courtroom, and the
9 verdict of guilty of capital murder was read. The
10 Court polled the jury, and the following was made of
11 record, to-wit:)

12 BY THE COURT: Let the record show that the
13 Court on its own motion and initiative has caused the
14 jury to be polled and has received an affirmative
15 response from each and every one of the twelve jurors
16 that this, in fact, their verdict, and, therefore, it
17 will be entered as the unanimous verdict of the jury.
18 All right. Ladies and gentlemen of the jury, I want
19 you to listen to me very carefully. Because the
20 defendant has been found guilty of capital murder, it
21 will be necessary to proceed further with what's
22 known as a sentencing phase to determine whether or
23 not the defendant should receive the penalty of death
24 in this case or not. Now, under the law, it would
25 necessary for us to take a pretty substantial recess
26 at this point of at least about an hour. It will be
27 some further testimony, probably three or four
28 witnesses. I have been trying to gauge that. The
29 testimony, additional testimony, should not be very

1 lengthy. I will say certainly less than an hour.
2 The Court would also have to give a few additional
3 instructions on the law, and then the attorneys will
4 be allowed to make some further arguments to you and
5 then you will retire to the jury room to deliberate
6 and decide that issue. Now, my question is this.
7 It's 3:30. As I said, we would have to take about an
8 hour recess before we could get started on that, and
9 clearly this would take us past five but not a lot
10 past five to move on with this. Of course, I have no
11 way of anticipating how long your deliberations could
12 take. My question to you is this. Would you prefer
13 that we go ahead and proceed on, and let's take this
14 hour recess and come back and go ahead and try to
15 conclude the case today, or would you prefer that we
16 go ahead and recess and let you go on and spend the
17 night at the Eola and come back and start with the
18 sentencing phase tomorrow. It appears to me we don't
19 have a lot more left, but, again, I have no idea
20 about what time that would conclude. I guess what I
21 am going to do. This is just your personal feelings
22 and everything. Those of you that are of the opinion
23 that you'd like to go ahead and take this hour recess
24 now and go ahead and proceed on with the sentencing
25 phase today, would you please raise your hand if you
26 have an opinion that you'd rather do that.

27 (Jurors raise hands.)

28 BY THE COURT: If you have a strong opinion that
29 you'd rather just stop for the day and come back

1 tomorrow. Anyone of that or --

2 (A juror raises his hand.)

3 BY THE COURT: Okay. Let the record show that
4 the Court has made this inquiry of the jury, and I
5 find that by far substantially most of the jurors
6 would like to go ahead and proceed. And it is an
7 early hour today. So I will say this. I am not
8 going to push anybody, any of you past the point
9 where you get tired today or anything because I am
10 not going to that. So what I am going to do, is
11 we're going to take a recess about a hour, and what I
12 want the jurors to be allowed to do, Mr. Vines, why
13 don't we let them go the chancery courtroom at the
14 end. I don't want anybody down there except for the
15 jurors and bailiffs, your personnel. If they'd like
16 to get a cold drink, let's get them some cold drinks,
17 maybe if they want a snack or something like that,
18 we'll do that, but let's do that, and we'll do that.
19 It's necessary under the law that we take this recess
20 at this time, and then we'll go ahead and proceed and
21 see how the time goes, but, again, I am not going to
22 push anybody, particularly not the jurors, past the
23 point of being tired today. So let's do this. I
24 want everybody else to remain where you are, and
25 let's let the jurors go down at the end of the hall.
26 Do any of the jurors have anything back in the jury
27 room?

28 (The jury is excused down to the chancery courtroom at
29 approximately 3:30.)

1 BY THE COURT: Now, let me say this before we
2 recess. The Court is going to take about an hour
3 recess. I am going to need to see the attorneys in a
4 little while before, and we'll go over some
5 instructions or other matters. For all the
6 spectators here. Let me say this, ladies and
7 gentlemen. I can't begin to put myself in either one
8 of your families' position. I realize we have family
9 and friends on behalf of the victim here. I realize
10 we have family and friends on behalf of the
11 defendant. All I am going to tell you is this is a
12 court of law. That's the way it's going to be
13 conducted, and I just cannot under the law allow any
14 disruptions of the court proceedings. So let's
15 please keep that in mind. We're going to take about
16 an hour recess before we start in on the sentencing
17 phase, and I will need to see the attorneys in about
18 ten minutes or so. I'll give y'all a break before we
19 do that.

20 (The following was made in the chambers of the Judge,
21 OUTSIDE THE PRESENCE OF THE JURY, to-wit:)

22 BY THE COURT: Let the record show that the
23 Court is in chambers with counsel for each side and
24 also the defendant. The jury on the guilt innocence
25 phase of this trial after due deliberations did
26 return into open court a verdict finding the
27 defendant guilty of capital murder. The Court on its
28 own motion and initiative polled the jury and
29 determined that the verdict was unanimous. Because

1 of the reasonably early hour of the day, being 3:30
2 when this was returned, the Court explained to the
3 jury the basic process that remained in the case, and
4 the jury was nearly unanimous in their desire to take
5 a recess and proceed with the sentencing phase
6 today. Therefore, the Court declared at least an
7 hour recess and is allowing the jurors in a separate
8 secure location being sequestered with the bailiff to
9 have some refreshments and to take a recess before we
10 proceed with the sentencing phase. The Court's
11 purpose at this time is to go over the proposed jury
12 instructions even though there is still evidence to
13 put on in the sentencing phase, but the Court does
14 not anticipate lengthy evidence on either side during
15 the sentencing phase. So the Court wanted to take
16 this opportunity to allow counsel for each side the
17 opportunity to state their specific objections for
18 the record as to the proposed jury instructions on
19 the sentencing phase. All right. First of all, the
20 Court will take up the State instructions and then
21 the defendant's instructions and pursuant to law,
22 either side that has an objection to an instruction
23 that is being granted will be required to state their
24 specific objections into the record. Now, the Court
25 has been provided with an amended or revised --

26 BY MR. HARPER: S-8, I believe, Your Honor.

27 ON INSTRUCTION S-8: BY THE COURT: S-8 by the
28 State. Mr. Sermos, Mr. Clark, have y'all received
29 that?

1 BY MR. CLARK: Yes, sir.

2 BY THE COURT: Okay.

3 BY MR. HARPER: Your Honor --

4 BY THE COURT: Yes, sir.

5 BY MR. HARPER: We would -- ask to withdraw,
6 move to withdraw S-8. I guess we could call this one
7 S-8 A or would you rather --

8 BY THE COURT: Yes. I will label this S-8 A. I
9 sure will.

10 BY MR. SERMOS: Excuse me, Your Honor. If I may
11 ask one question.

12 BY THE COURT: Yes, sir.

13 BY MR. SERMOS: May I ask the State or ask the
14 Court to ask the State what was the main difference
15 in the one they withdrew and --

16 BY MR. HARPER: The one before had certain
17 information that was left out of it that we were
18 waiting to see what the evidence had shown to
19 determine what the aggravating factors and that type
20 thing or mitigating factors, and now they've been
21 plugged in there basically. Those were substituted
22 in there.

23 BY MR. SERMOS: Okay. Thank you, sir.

24 BY MR. HARPER: It was incomplete in its
25 previous form.

26 BY THE COURT: The Court has reviewed this
27 instruction, and it appears to be the proper
28 sentencing instruction to be submitted by the Court
29 on the sentencing phase. First of all, it sets out

1 in part A that the jury must first unanimously find
2 beyond a reasonable doubt that one or more of what's
3 often referred to as the, I believe, Enmund,
4 E-n-m-u-n-d, factors, which is that the defendant
5 actually killed Chloe Madison Britt or attempted to
6 kill or intended to kill. That a killing take place
7 or contemplated that lethal force would be employed.
8 Of course, in this case the only one that's really
9 applicable is number one. That the defendant
10 actually killed Chloe Madison Britt. The nature of
11 the capital murder charge against the defendant in
12 this case is as set out in the indictment and as
13 provided by law is that the killing was done with or
14 without a design, deliberate design or intent to
15 kill. There is still a requirement under Enmund that
16 the jury find that his actions did result in the
17 death of the alleged victim. That he did actually
18 kill the victim whether it be with or without intent
19 or design to do so. It goes on further to provide in
20 sub part B that the mitigating circumstances do not
21 outweigh the aggravating circumstances. This is the
22 law. It sets out the aggravating circumstances
23 provided by statute that can be considered. Those
24 are set out as, one, that the -- whether the
25 defendant is guilty of capital murder of Chloe
26 Madison Britt. Whether the capital offense was
27 committed with the defendant while engaged in the
28 commission of or an attempt to commit sexual battery
29 which is the alleged underlying felony, and three,

1 whether the capital offense was especially heinous,
2 atrocious, or cruel. The Court has examined this and
3 finds that these would be the three proper
4 aggravating circumstances and the only ones that the
5 jury would be allowed to consider. Previously as the
6 record will reflect, the State initially indicted the
7 defendant on alternative underlying felony of child
8 abuse. This was stricken by amendment made at the
9 beginning of the trial without objection. However, I
10 do recall at that time defense moved the Court
11 because that was being deleted, and they were
12 electing to go forward on the underlying felony of
13 sexual battery only. That the child abuse should not
14 be a part of the record which the Court has so ruled,
15 or should not be part of the evidence in this case,
16 and also that should not be an aggravating factor
17 because it was no longer in the indictment as it is
18 amended. So that would not be a problem and that is
19 not included in this. Furthermore, the instruction
20 sets out that the jury must find beyond a reasonable
21 doubt one or more of the aggravating circumstances
22 which that is the law. If they do not, then they are
23 to
24 return a verdict or a sentence of life imprisonment
25 which this instruction sets out. If the jury does
26 find beyond a reasonable doubt one or more of the
27 statutory aggravating elements, then they are to
28 proceed to consider mitigating elements or
29 circumstances. These are also listed by statute,

1 and there are two listed in this which the Court
2 finds would be the two proper to include. I do note
3 that there are some -- clearly there's unlimited
4 amount of number of possible mitigating circumstances
5 that may fall within two which is the catch-all
6 provision. I am not aware of any other statutory
7 ones that the defense may have that should be
8 considered. I'll be glad to hear from them about
9 that, but clearly you can set out a number or argue a
10 number of them that would fall under two which may
11 not be covered by statute but clearly are a potential
12 mitigating circumstance. If they further find that
13 one or more of those elements of mitigation exist,
14 then the instruction further correctly instructs the
15 jury that they have to determine that the mitigating
16 circumstances do not outweigh or overcome the
17 aggravating circumstances. If they find that the
18 mitigating circumstances outweigh or overcome the
19 aggravating circumstances, then the jury shall not
20 impose the death sentence. Sub part C then sets out
21 the possible alternative verdicts. Number one, in
22 the event that the jury determines to return --
23 impose the death penalty, that must set out and write
24 and find the aggravating circumstances and list those
25 in addition to the Enmund factor which has already
26 been addressed, and then further state that they find
27 that they are insufficient mitigating circumstances
28 to outweigh the aggravating circumstances, and then
29 the foreman signs the verdict. It further provides a

1 blank if they find that life imprisonment is the
2 proper sentence, or if they are unable to unanimously
3 agree on punishment, there's a blank to determine
4 that. It appears to the Court that this does
5 properly set out the law in that the burden is on the
6 State to prove existence of aggravating circumstances
7 beyond a reasonable doubt. However, the only -- that
8 is only as to the existence of aggravating
9 circumstances, and then by law as this instruction
10 sets out, they determine that the mitigating
11 circumstances are insufficient to outweigh or
12 overcome the aggravating circumstances. All right.
13 Now, at this time, I will hear any objections for the
14 record by the defense to this instruction.

15 BY MR. SERMOS: I have no objection, Your Honor.

16 BY THE COURT: It does -- the Court has very
17 carefully considered and does appear to do that. So
18 it would be the Court's intention to grant this at
19 the proper time.

20 BY MR. SERMOS: Your Honor, may I add one
21 thing? I presume with the granting of this
22 instruction that the heinous, atrocious and cruel
23 definitions in this other --

24 BY THE COURT: Yeah. We can address that.
25 That's a model instruction --

26 BY MR. SERMOS: I just want to make sure.

27 BY THE COURT: I'm going to allow you -- I will
28 reserve the right for you to state your specific
29 objections to that. The Court has carefully

1 considered that. That there has been a lot of
2 litigation about that. The Court has carefully
3 considered in light of the evidence, and the Court
4 does find that there is an evidentiary basis in this
5 case for the Court to consider that as one of the
6 aggravating circumstances. In other words, I find
7 that a reasonable jury could find beyond a reasonable
8 doubt that that aggravating circumstance does exist
9 in this case. For the reasons that this is a six-
10 month-old infant victim, small child, there's been
11 clear testimony as to a very traumatic or severe
12 injury to her anus or rectum due to some type of
13 penetration. Also there's evidence of a very severe,
14 violent shaking of her body which she clung to life
15 apparently for some period of time. Was resuscitated
16 and ultimately apparently died from excessive
17 bleeding in the -- or hemorrhage from her brain and
18 swelling of the head and facial area. The
19 circumstances testified -- I am not going to go
20 fully. These are in the record, but I do feel like
21 in this case this is a case where the evidence is
22 there that the jury can consider this as a
23 aggravating factor primarily due to the nature of the
24 injury to this minor child what clearly was -- would
25 have been something that would meet this statutory
26 language.

27 BY MR. SERMOS: Your Honor, may I ask you one
28 thing?

29 BY THE COURT: Yes.

1 BY MR. SERMOS: I know you're probably -- so we
2 are going on to the next one. The State did not
3 withdraw S-9. That's still going forward, correct?

4 BY MR. HARPER: That's correct.

5 BY MR. SERMOS: Thank you.

6 ON INSTRUCTION S-9: BY THE COURT: S-9 is the
7 proper instruction. There has been a lot of
8 litigation about what is the proper instruction and
9 when this is proper for the jury to consider. This
10 does appear to be the latest one approved by our
11 court. So at this time I will allow any objections
12 for on the record by the defendant to S-9.

13 BY MR. SERMOS: One moment, please, Your Honor.
14 Yes, Your Honor. I would object on the record to S-9
15 under the Eighth through the Fourteenth Amendment of
16 the US Constitution that the heinous, atrocious, and
17 cruel instruction and any definition of it especially
18 in this instruction is confusing to jurors, and that
19 there should be a constitutional question as to
20 actually what is heinous, atrocious, or cruel, and
21 what would be unnecessarily tortuous to a victim, and
22 I would object on that basis, the Eighth through the
23 Fourteenth Amendment.

24 BY THE COURT: Okay. It will be granted over
25 those objections.

26 BY MR. SERMOS: Yes, sir.

27 ON INSTRUCTION S-10: BY THE COURT: All right.
28 Then S-10 appears to be a proper instruction. That
29 it's not merely a counting process to determine

1 aggravating circumstances versus mitigating
2 circumstances. As I understand the law, there could
3 be as many as three aggravating circumstances in this
4 case, and the jury could find -- or one juror could
5 find the existence of a mitigating circumstances that
6 in their opinion that overcame or outweighed the
7 aggravating circumstances. So I think this is
8 proper. So any objection to S-10?

9 BY MR. SERMOS: No, Your Honor.

10 ON INSTRUCTION D-18: BY THE COURT: All right.
11 Now on the defendant's instructions that have been
12 submitted in the event of a sentencing phase which we
13 are now facing. Is any objection to D-18 by the
14 State?

15 BY MR. HARPER: No, sir.

16 BY THE COURT: Okay.

17 BY MR. ROSENBLATT: Your Honor, the only
18 objection we would have is in paragraph number three
19 where it says, "by explaining all four potential
20 steps." And then there are subsequent instructions
21 which call this step -- refer to themselves as step
22 three, for example, which are inappropriate mercy
23 instructions. So we would object to that. The use
24 of the phrase "by explaining all four potential
25 steps."

26 BY MR. SERMOS: We would ask then, Your Honor,
27 if it helps, if that's the main thing, we just put --
28 could we just ask the Court to change about
29 explaining these steps or --

1 BY MR. ROSENBLATT: It's in paragraph two also.

2 BY MR. SERMOS: Right.

3 BY MR. ROSENBLATT: It may be because there may
4 be at least --

5 BY MR. SERMOS: There are four, but I understand
6 that it can be confusing. If you would like, Your
7 Honor, where it says two -- in paragraph two it says,
8 "four steps" -- "at least four steps" we can just put
9 several steps.

10 BY MR. ROSENBLATT: That would be fine.

11 BY MR. SERMOS: Is that fine, Mr. Rosenblatt? If
12 the Judge --

13 BY THE COURT: Change it to what, now?

14 BY MR. HARPER: May be several instead of at
15 least four.

16 BY MR. SERMOS: Right.

17 BY MR. HARPER: Several steps.

18 BY MR. SERMOS: That's right.

19 BY THE COURT: There may be at least several
20 steps. Okay. I'll so amend that instruction.

21 BY MR. HARPER: And then the next paragraph,
22 Your Honor, by explaining --

23 BY MR. SERMOS: These steps.

24 BY MR. HARPER: -- the potential steps instead
25 of all four potential steps.

26 BY THE COURT: And the potential steps. And the
27 defendant is agreeable to these two slight
28 amendments?

29 BY MR. SERMOS: Yes, Your Honor.

1 BY THE COURT: With that, are there any other
2 objections of the State?

3 BY MR. HARPER: No, sir.

4 BY THE COURT: All right. Then granted.
5 That's D-18.

6 ON INSTRUCTION D-19: BY THE COURT: Any
7 objections by the State to D-19?

8 BY MR. ROSENBLATT: No objection, Your Honor.

9 BY THE COURT: All right. D-19 will be granted.

10 ON INSTRUCTION D-20: BY THE COURT: Any
11 objection to D-20.

12 BY MR. ROSENBLATT: Your Honor, we would object
13 to D-20. It's a mercy instruction. Because it's
14 encouraging the jury to disregard the aggravating
15 circumstances --

16 BY MR. HARPER: Primarily in the second
17 paragraph, Judge.

18 BY MR. ROSENBLATT: The whole second paragraph
19 is basically a mercy instruction.

20 BY THE COURT: Well, the --

21 BY MR. HARPER: The second --

22 BY THE COURT: Just a second. Just a second.
23 The first sentence of the second paragraph, "You may
24 find a sentence of death is inappropriate even if
25 there's only a single mitigating circumstance and
26 multiple aggravating circumstance." That's a correct
27 statement of the law.

28 BY MR. ROSENBLATT: That is correct. I am
29 sorry, Your Honor.

1 BY THE COURT: The second sentence in the second
2 paragraph. "You may also find that death is not
3 warranted even though there are one or more
4 aggravating circumstances and not a single mitigating
5 circumstance." Now, it's my understanding that
6 that's not the law. That the jury does -- the jury
7 has to find at least a mitigating circumstance or
8 they should find a mitigating circumstance.

9 BY MR. SERMOS: Your Honor, I didn't bring my --
10 I understand law never instructs the jury that they
11 have to find for death no matter what --

12 BY MR. HARPER: But our argument is that this
13 is like a nullification instruction. That is the law
14 that they don't have to do that, but you are --

15 BY MR. SERMOS: Okay.

16 BY MR. HARPER: -- not -- you can't instruct them
17 as to that.

18 BY MR. SERMOS: Okay.

19 BY MR. HARPER: You follow what I am saying?

20 BY MR. SERMOS: Okay. So you're talking about
21 that second --

22 BY MR. HARPER: Second sentence really on down
23 to the bottom of the page.

24 BY MR. SERMOS: Nor does aggravated -- find that
25 you would require a sentence of death. Well, that
26 is --

27 BY MR. ROSENBLATT: That's correct.

28 BY MR. SERMOS: Your Honor, what I would -- may
29 I make a proposal, Your Honor?

1 BY THE COURT: Well --

2 BY MR. SERMOS: Whatever you have in mind.

3 BY THE COURT: Yes, sir. All right. I don't
4 find the word mercy in here, and I understand -- I
5 believe the weighing process again is the jury has to
6 find aggravating circumstances at least one or more
7 beyond a reasonable doubt or that's it.

8 BY MR. HARPER: Right.

9 BY THE COURT: The jury has no burden on it to
10 find mitigating circumstances. There is no burden
11 beyond a reasonable doubt to find mitigating
12 circumstances, but if the jury finds an aggravating
13 circumstance, it's my understanding and appreciation
14 of the law that they must find that the mitigating
15 circumstances are insufficient to overcome the
16 aggravating circumstances in order to return the
17 death penalty, and you can't just -- this borders on
18 mercy. It borders on mercy, but I'm going to grant
19 this instruction.

20 BY MR. HARPER: As is, Your Honor?

21 BY THE COURT: As is.

22 BY MR. ROSENBLATT: Thank you, Your Honor.

23 ON INSTRUCTION D-21: BY THE COURT: Does the
24 State any have objection to D-21.

25 BY MR. HARPER: It is a mercy instruction, Your
26 Honor.

27 BY THE COURT: I do find this is a mercy
28 instruction. I am going to refuse this instruction
29 for that reason.

1 ON INSTRUCTION D-22: BY THE COURT: D-22.

2 BY MR. HARPER: We have no objection.

3 BY THE COURT: That will be granted.

4 ON INSTRUCTION D-23: BY THE COURT: Any
5 objection to D-23?

6 BY MR. ROSENBLATT: Yes, Your Honor. We don't
7 find that the law states presumption of no -- there
8 is no presumption that life is the proper sentence.

9 BY MR. HARPER: Or presumption that there are no
10 aggravating circumstances.

11 BY MR. ROSENBLATT: I would cite the Court to
12 Watts v. State, 733, 214. The summary of the case.
13 Likewise, the defendant is not entitled to an
14 instruction that the defendant enters the sentence
15 phase with the presumption that a life sentence is
16 the proper sentence.

17 BY THE COURT: Okay. The Court does find that
18 this is not the proper statement of the law, and the
19 Court is going to refuse Instruction D-23.

20 ON INSTRUCTION D-24: BY THE COURT: D-24.

21 BY MR. ROSENBLATT: No objection, Your Honor.

22 BY THE COURT: That will be the granted.

23 ON INSTRUCTION D-25: BY THE COURT: All right.
24 D-25.

25 BY MR. ROSENBLATT: No objection, Your Honor.
26 It would be a difficult -- one minor objection is the
27 emphasis on the word "individual," but that's a minor
28 point.

29 BY THE COURT: I will allow that. That will be

1 granted.

2 ON INSTRUCTION D-26: BY THE COURT: D-26.

3 BY MR. ROSENBLATT: Your Honor, again we have a
4 mercy instruction. They're asking for sympathy and
5 mercy to be considered. We have no objection to the
6 use of the word "fairness" in the fourth sentence,
7 but after that, it talks about sympathy and mercy.

8 BY THE COURT: The Court finds this is an
9 improper statement of the law, and the Court is going
10 to refuse Instruction D-26 for the reference to what
11 would be referred to as a sympathy or mercy
12 instruction.

13 BY MR. SERMOS: Your Honor, may I ask the Court
14 one question?

15 BY THE COURT: Yes, sir.

16 BY MR. SERMOS: I want to make sure and ask it
17 in here. Does the Court have any problems if
18 during -- especially during the closing part of the
19 sentencing if I state to the jury that this Court
20 will never order -- will never instruct you that you
21 must sentence the defendant to death. Is that a --

22 BY THE COURT: That's a correct statement.

23 BY MR. SERMOS: Okay. I just want to make --

24 BY THE COURT: And let me say this for the
25 record. I understand the very seriousness of this
26 nature, and I'm not going to tie anybody's hands
27 about argument in this case. The only hands that
28 will be tied will be the State's hand because it will
29 very -- the law about what you can and can't argue

1 will be very strictly adhered to. The only thing is
2 just you cannot argue to the jury that it is the law
3 that mercy is something they can consider --

4 BY MR. SERMOS: Right.

5 BY THE COURT: I mean, mercy can be argued in a
6 way, but you can't instruct them that that is the
7 law, and, clearly, you can't instruct that because
8 you're absolutely right, Mr. Sermos. That is the
9 law. There is never an instance that mandates a
10 death sentence, and I believe I referred to that on
11 voir dire at some point, but you're absolutely
12 correct, and I find no problem with doing that.

13 BY MR. SERMOS: I have one more question, Your
14 Honor, with another statement. Does the Court have
15 any reservations or instructions against me or any of
16 the defense stating to the jury that even if you
17 think he deserved to die, you can still show him
18 mercy and sentence him to life imprisonment without
19 parole?

20 BY THE COURT: Well --

21 BY MR. SERMOS: I mean, do you have --

22 BY THE COURT: I --

23 BY MR. SERMOS: I feel I can make that, but I
24 want --

25 BY THE COURT: You may so argue that.

26 BY MR. SERMOS: I just don't want to do it and
27 then get --

28 BY THE COURT: I understand. I'm going to allow
29 you some leeway because this is clearly a very, very

1 serious matter.

2 BY MR. SERMOS: Thank you, sir.

3 ON INSTRUCTION D-27: BY THE COURT: What about
4 D-27?

5 BY MR. HARPER: No objection to 27.

6 BY THE COURT: That will be the granted.

7 ON INSTRUCTION D-28: BY THE COURT: D-28.

8 BY MR. ROSENBLATT: Your Honor, we would object
9 to D-28 in that basically it's a repeat of S-10.

10 BY MR. SERMOS: I withdraw that, Your Honor.

11 BY THE COURT: I believe it is the same. That
12 will be withdrawn. D-28. That's already covered.

13 ON INSTRUCTION D-29: BY THE COURT: D-29.

14 This appears to be an incorrect statement of the
15 law. It says only if each and every juror finds
16 beyond a reasonable doubt that death is the only
17 appropriate punishment --

18 BY MR. SERMOS: I withdraw that, Your Honor.

19 BY THE COURT: Okay. So that will be withdrawn.
20 That's not a proper statement of the law. Okay. I
21 believe that's all the instructions. Again, this is
22 for the purpose -- even though both sides have not
23 rested during the sentencing phase, I did want to go
24 ahead and cover that. Does either side have any
25 other instructions for the sentencing phase?

26 BY MR. SERMOS: No, Your Honor, but when you're
27 finished --

28 BY MR. ROSENBLATT: No, Your Honor.

29 BY MR. SERMOS: -- I have a question for the

1 Court.

2 BY THE COURT: Certainly.

3 BY MR. SERMOS: Obviously I know Mr. Harper will
4 let me know if there's a disagreement. I understand
5 that Mr. Havard could chose to testify during the
6 sentencing phase. I am not saying we're recommending
7 that, but I would ask the Court to give him
8 instruction on that.

9 BY THE COURT: All right. Mr. Havard, let me
10 state this. What is usually referred to as the guilt
11 or innocent phase has been concluded and whether you
12 agree with it or not, the jury has found you guilty
13 of the crime of capital murder. I know your
14 attorneys have explained this to you, but what
15 remains is the sentencing phase for the jury
16 consistent with the law and the evidence to decide
17 whether or not to impose the death penalty or life
18 imprisonment. You have a right to testify on this
19 phase of the trial if you desire to do so. I do want
20 to advise you about what the issue is in this case.
21 The issue at this point is what the proper penalty
22 is. So it wouldn't necessarily be proper for you to
23 testify and to go back through arguing your guilt or
24 innocence of this, but very clearly you have every
25 right to testify as a witness, to -- you know -- ask
26 the jury -- you know -- to decide on life rather than
27 death. And your attorneys can confer with you, but
28 you have that same right to either testify or not
29 testify at this phase. So I want you to understand

1 that just because you didn't testify in the other,
2 you still have that option to do so. You understand
3 that?

4 BY THE DEFENDANT: Yes, sir.

5 BY THE COURT: Okay. And, again, let the record
6 show he did say that he understood that, and again,
7 Mr. Havard, this is your choice. I don't care what
8 your attorneys advise you. If you desire to do that
9 at this phase of the trial, you will be allowed to do
10 that, but you understand we're not going back and
11 relitigating the issue of whether you're guilty or
12 not because the jury has spoken on that. So you
13 think about it, and if you want to testify on this
14 phase, then you certainly -- just let the Court know.
15 If you want to be called as a witness and your
16 attorneys won't call you, all you have to do is just
17 raise your hand and get my attention and I will do
18 that, but think very carefully about it. Again,
19 they're the professionals here to advise you, but
20 you're the one that is the defendant in this case.
21 So that's ultimately your decision to make. Okay.

22 BY MR. SERMOS: Your Honor, could it be on the
23 record too, that if he did testify that still he
24 would be subject to cross-examination by Mr. Harper.

25 BY THE COURT: That's right. He is subject to
26 cross-examination, but, again, it would be -- the
27 issue here would be the sentence, the proper sentence
28 in this case.

29 BY MR. CLARK: In other words, he couldn't go

1 back and ask questions about why you did it or
2 something like that then, correct?

3 BY THE COURT: It would be subject to --

4 BY MR. CLARK: Go through --

5 BY MR. HARPER: To what he says --

6 BY THE COURT: -- to objection. I would have
7 no idea what he would say and I hate to rule --

8 BY MR. CLARK: Right. Right.

9 BY THE COURT: But this is -- right. It would
10 have to be limited to the issue. As long as he stuck
11 to the issue what's involved, then I wouldn't allow
12 the State to go back and relitigate that.

13 BY MR. SERMOS: May I add one thing, Your Honor?

14 BY THE COURT: Yes, sir.

15 BY MR. SERMOS: Your Honor, I spoke with the two
16 witnesses we intend to call downstairs, Ms. Cheryl
17 Harrell and Ruby Havard. Cheryl Harrell is Jeff's
18 mother. Ruby Havard is the grandmother, and there's
19 a certain degree of unhappiness there, and especially
20 grandmother indicated she was going to try to -- she
21 didn't tell me she was going to try to talk about it
22 here, but she's still having problems with the guilt
23 phase of the trial, and I just wanted the Court to
24 know if I call her, and she starts going out of
25 bounds, I mean, I will -- I'm not going to lead her
26 that way, and I would ask the Court to immediately
27 stop her.

28 BY THE COURT: Let me say this, Mr. Sermos. I
29 understand exactly what you are saying. I understand

1 there's strong feelings on this, and I will certainly
2 allow every leeway possible under the law, but I will
3 try to confine --

4 BY MR. SERMOS: Right.

5 BY THE COURT: -- this to the issues involved.
6 I'm going to do this. I'm going to give you an
7 opportunity -- if you need a little more time before
8 we get started, let's take it, but I don't want -- I
9 want the jury to remain where they are until I ask
10 for them to be brought back. You can confer with
11 your witnesses and talk to Mr. Havard and make a
12 determination of whether he desires to testify, and
13 if y'all will let me know something in about fifteen
14 or twenty minutes, no later than about fifteen or
15 twenty minutes --

16 BY MR. SERMOS: Yes, sir. That's fine.

17 BY THE COURT: When you're ready to proceed.

18 (After a short recess for the defense attorneys and the
19 defendant to confer, the following was made OUT OF
20 THE PRESENCE OF THE JURY, to-wit:)

21 BY THE COURT: Let the record show that the
22 jury after due deliberations did return a verdict
23 finding the defendant guilty as charged of capital
24 murder. The Court on its own motion and initiative
25 polled the jury and found the verdict to be
26 unanimous. The Court has now taken a recess in
27 excess of an hour and has had the jury removed to a
28 different location sequestered by themselves in the
29 courthouse where they have refreshments available to

1 them. At this time, again, it's before five o'clock.
2 It's a quarter to five 5 at this time. So I am going
3 to ask the attorneys. First, is the State ready to
4 proceed with the sentencing phase of this?

5 BY MR. HARPER: Yes, Your Honor.

6 BY THE COURT: And is the defense ready to
7 proceed with the sentencing phase?

8 BY MR. SERMOS: Yes, Your Honor.

9 BY THE COURT: Then at this time, I am going to
10 ask that the jury be brought back into the courtroom
11 and seated in the jury box.

12 (The jury is brought back into the courtroom.)

13 BY THE COURT: Ladies and gentlemen of the
14 jury, it's time to proceed with the sentencing phase
15 of this trial, the jury having found the defendant
16 guilty of the crime of capital murder by unanimous
17 verdict. Now, first of all, does either the State or
18 defense desire to make any type of opening
19 statement or comments at this time?

20 BY MR. HARPER: No, Your Honor. No opening
21 statement.

22 BY THE COURT: What about the defense?

23 BY MR. SERMOS: No opening statement, Your
24 Honor.

25 BY THE COURT: Okay. Then at this time, the
26 Court is going to ask, who does the State call as
27 your first witness on the sentencing phase of this
28 trial?

29 BY MR. HARPER: Your Honor, before we call the

1 witness, we would move the Court under or pursuant to
2 the laws of the State of Mississippi to introduce the
3 testimony, the evidence, and all exhibits that were
4 previously introduced in the guilt phase of this
5 particular trial. We would ask that they be entered
6 into evidence in the sentencing phase in support of
7 the aggravating circumstances that we intend to --
8 that we have presented to the Court in this --

9 BY THE COURT: That's all the testimony and
10 evidence?

11 BY MR. HARPER: Everything from the guilt phase.
12 Yes, sir.

13 BY THE COURT: Any objection to that?

14 BY MR. SERMOS: No, Your Honor.

15 BY THE COURT: All right. That is the law.
16 That will be allowed. So let the record show that
17 the Court is directing that all the evidence and
18 testimony that was produced in the guilt or innocence
19 phase of the trial will be admitted into evidence on
20 the sentencing phase of the trial. Ladies and
21 gentlemen, you're to consider the same evidence that
22 was brought forward in the previous aspect of this
23 case now on the sentencing phase. All right. What
24 does the State have next?

25 BY MR. ROSENBLATT: Your Honor, the State would
26 call Mrs. Lillian Watson.

27 BY THE COURT: Lillian Watson?

28 BY MR. ROSENBLATT: Yes, sir.

29 BY THE COURT: All right. Lillian Watson.

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LILLIAN WATSON,

having been duly and legally sworn, answered questions on her oath as follows, to-wit:

BY THE COURT: You may have a seat. Mr. Rosenblatt, you may proceed.

BY MR. ROSENBLATT: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. ROSENBLATT:

Q. Mrs. Watson, would you tell the jury your relationship to the parties in this case, to Becky and to Chloe Madison Britt?

A. I am Rebecca's mother, and I am Chloe's grammy.

Q. How many children do you have, Mrs. Watson?

A. I have two children and two stepchildren.

Q. Would you tell us a little bit about your relationship with your granddaughter.

A. That's really easy. I was there when she was born, August the 29th. She weighed seven pounds, seven ounces. She was born at eleven o'clock. I cut the cord, and from there, it was a bond.

Q. Becky was alone. I mean, except for you, she didn't have a husband there?

A. That's correct.

Q. So you were her support basically.

A. That's it.

Q. And what was your relationship in that with Maddie after that point?

A. With Maddie she lived with me for, I guess, about four months, and I had another granddaughter, Allie,

1 who was four months at the time Maddie was born. They
2 both lived with me. Every night, I bathed them. I put
3 them both to sleep. They were my babies. And we had a
4 good relationship. After Becky moved, I would babysit
5 from time to time or I would have to -- you know -- I
6 would call and say I want my time. I am fighting for my
7 time with my babies.

8 Q. What was your relationship with Becky during
9 this time?

10 A. We had a good relationship. You know, when she
11 came home, we were -- she was -- we were going to have
12 this baby, and we were very excited and looking forward to
13 Maddie being born. We had -- you know -- we're mother and
14 daughter. We're very, very strong.

15 Q. You obviously had some worries and concerns,
16 though, didn't you?

17 A. Of course. That's a very difficult thing for a
18 young woman to take on having a child at her age and on
19 her own trying to raise it. It's very difficult, and I
20 knew it would be a difficult thing for Becky, but -- you
21 know -- Becky was determined this is mine. I am going to
22 raise her. I'll take care of her. I want your guidance,
23 but I can do this.

24 Q. What steps did you take to support her in that
25 decision to raise Maddie?

26 A. Well, she came home to live with me, and she
27 stayed with me. She actually helped me because I had
28 Allie at that time, and Becky was pregnant and Becky
29 stayed at home and took care of Allie. And we talked

1 everyday about -- you know -- the baby and the future and
2 what she was going to do and -- you know -- the plans of
3 those two being raised together and being like sisters to
4 one another and -- you know -- that was the plan. For
5 those girls to be close.

6 Q. What was your reaction when she moved in to
7 Natchez?

8 A. I didn't want her to move. I didn't want her to
9 move out with me, but Becky is a very independent person,
10 and she from day one said I want to my raise daughter. I
11 want to take care of my daughter. It will be my
12 responsibility, mama. It won't be on you. So I
13 understood.

14 Q. I didn't clarify for the jury. You live in
15 Ferriday.

16 A. I do live in Ferriday.

17 Q. And you drive back and forth every day to
18 Natchez --

19 A. To Natchez Community where I work.

20 Q. You're an ICU nurse?

21 A. I am a ICU nurse.

22 Q. Becky having moved to Natchez, what steps did
23 you take to try to help the situation?

24 A. Well, I was paying for Maddie Moo's day care.
25 She stayed at the same day care with Allie and Becky --

26 Q. And what day care was that?

27 A. At Grace United Methodist. I loved it there
28 because Allie had been there for a while, and Becky had
29 gone over and visited and talked with the people there.

1 She wanted Maddie there. We wanted them to be together,
2 and I continued to pay for that. You know, I wanted to be
3 able to help her as much as I could because it's kind of
4 difficult to find a job and have a baby and do all the
5 things that she wanted to do.

6 Q. During the time when Becky was in Natchez and
7 you were helping with the day care, did you ever have any
8 physical contact with Maddie. Did you ever get to see
9 her?

10 A. I saw her every day. Every day that I went to
11 day care, I would see her, and then Becky would bring
12 her -- you know -- to my house. I would get my Saturdays
13 when I was off to be able to keep her and babysit with her
14 and spend the day. Sometimes Becky would just come spend
15 the day with me, and we'd play with both girls.

16 Q. Mrs. Watson, what has the last ten months been
17 like for you?

18 A. That's hard to describe. I went from one day
19 of having two beautiful granddaughters, one blond and blue
20 eyed and dark haired brown eyed, opposites of each. One
21 calm and sweet and the other one just rambunctious and
22 everywhere all at once.

23 Q. Which is which?

24 A. Allie was my rambunctious one. Maddie Moo was
25 the sweetheart that always just smiled. Allie loved kiss
26 her, and she tolerated anything Allie wanted to do. From
27 that day, we went to complete horror. Having to hold my
28 daughter in my arms and trying to comfort her and just say
29 you know, Becky. You can't go back. You can't look back.

1 You can't blame yourself. I couldn't blame myself, but I
2 wanted to.

3 Q. You went to the hospital that night.

4 A. Uh-hum. And, you know, you always -- you do
5 that. You do the back and forth thing of I should have
6 done this. I should have done that. We had to go through
7 a lot of that, and then just really sort of hiding out.
8 Just trying to heal our wounds which has been impossible
9 to do. It's like the wounds have been on hold for my
10 entire family. My father -- when I told my father -- he's
11 been a minister as long as I can remember, and when I told
12 him what had happened to Maddie, he didn't know all the
13 details. He just knew that Maddie had died and somebody
14 had killed her, and when I told her he said, "I've lived
15 too long. I don't want to be here." And my father passed
16 away November 5th. To say how this has impacted on my
17 family is -- it would take me all day, and I don't want to
18 do that, but Maddie was more than a little picture of a
19 beautiful little girl. Maddie was -- when I saw her the
20 very first time when I cut the cord, Maddie was a little
21 five year old standing on a stage waving at her
22 kindergarten graduation. Maddie was a sixteen year old
23 trying out for the drill team like her mommy did and
24 smiling that beautiful smile across at me. That was
25 Maddie Moo, not this picture that you see, and I saw all
26 those things the moment she was born, and all those things
27 were taken away from us.

28 Q. Mrs. Watson, the jury has to make a
29 determination in this case, but if you would tell us in

1 your view, what do you see as an appropriate outcome from
2 this case?

3 A. I am not a vengeful person. My father was a
4 minister, and I was always taught to not be vengeful. I
5 was also taught an eye for an eye as I know most of you
6 were. I am not here for revenge for Maddie, but I am here
7 for justice for Maddie. Justice means her life was taken,
8 and there's only one way that we can find justice for
9 Maddie. A life for a life.

10 Q. Thank you, Mrs. Watson. Mrs. Watson, if you
11 would answer any questions that the defendant's attorneys
12 have for you.

13 BY THE COURT: Cross-examination.

14 BY MR. SERMOS: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. SERMOS:

17 Q. Yes. Mrs. Watson, it's obvious that you were
18 certainly generous in many ways, especially paying for the
19 day care for Chloe Madison Britt. Let me just ask you
20 this. If you haven't been willing pay for the day care,
21 what would -- where would Chloe have been during the day?

22 A. Well, Becky would have kept her which is -- you
23 know -- she did that at home and she kept my baby, and she
24 kept Chloe at home initially.

25 Q. Did you ever take care of Chloe Madison or
26 Maddie as you call her. Did you take care of her on the
27 weekends ever?

28 A. Just if I asked if I could have her and she
29 would come over and see me because there are lots of

1 grandparents involved here, and so you have to kind of
2 take a number but not often. Sometimes Becky would bring
3 her over and just spend the day with me, and one Saturday
4 I think I kept her overnight. I only got to keep her
5 overnight one time after she moved from the house, but
6 Becky had -- you know -- she was kind of jealous of her
7 time, too. She wanted to spend time with her.

8 Q. It is fair to say that she mainly wanted to
9 spend time with her at night and after the day care time
10 and on the weekends then?

11 A. Well, I don't know if that would be fair to
12 say. I know that when Chloe was ill and she was very ill
13 one time, Becky had a virus. Chloe had a virus.
14 Everybody in the house had a stomach virus, and I was
15 working, and Becky allowed her to her Mama Sita's, to her
16 grandma Lynn's, and she kept her for a few days, and she
17 told her, she said, "Becky, I can keep her longer. You're
18 sick. You're so sick." But Becky said, "No. I want my
19 baby. I want my baby back." And she took her back home
20 with her.

21 BY MR. SERMOS: One moment, please, Your Honor.

22 BY THE COURT: Yes, sir.

23 (Mr. Sermos and Mr. Clark confer.)

24 BY MR. SERMOS: Your Honor, we have no more
25 questions.

26 BY THE COURT: Is there any redirect?

27 BY MR. ROSENBLATT: No, Your Honor.

28 BY THE COURT: You may step down and remain in
29 the courtroom at this time.

1 (Witness steps down.)

2 BY THE COURT: Does the State have any other
3 witnesses on this sentencing phase?

4 BY MR. ROSENBLATT: Your Honor, having adopted
5 the prior record, the State would have nothing
6 further.

7 BY THE COURT: So with that, would the State now
8 rest at this point on the sentencing phase?

9 BY MR. ROSENBLATT: Yes, Your Honor.

10 BY THE COURT: All right. Who would the defense
11 call as any witnesses on the sentencing phase?

12 BY MR. SERMOS: Yes, Your Honor. We would call
13 Jeffrey Havard's mother, Mrs. Cheryl Harrell.

14 BY THE COURT: Cheryl Harrell.

15 CHERYL HARRELL,
16 having been duly and legally sworn, answered
17 questions on her oath as follows, to-wit:

18 BY THE COURT: All right. You may proceed.

19 BY MR. SERMOS: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. SERMOS:

22 Q. Would you please tell the jury your name.

23 A. My name is Cheryl Harrell.

24 Q. And where do you live?

25 A. I live in Chattanooga, Tennessee.

26 Q. All right. And would you describe your
27 relationship with Jeffrey Havard, please.

28 A. My son and I have always been close, even though
29 he didn't live with us. He moved away when he was

1 thirteen years old because of a school problem. He had
2 seen something that happened at a school, and we decided
3 to let him come live here because of that, but we have
4 always been close. Every chance he took, he came to see
5 us. And we've never -- there's never been any problems
6 with us as far as our relationship goes.

7 Q. Let me ask you this. What year was Jeffrey
8 born?

9 A. He was born in '78.

10 Q. And how many years did he live with you?

11 A. Thirteen years.

12 Q. Okay. And did Jeffrey's biological father live
13 at home with you that whole time, or did you -- were you
14 remarried or what? Would you tell the jury --

15 A. No. He never knew his father until he was -- I
16 think sixteen, but he only met him briefly, and father --
17 his real father never had anything to do with him. He
18 never raised -- did anything of the raising. He never
19 supported him.

20 Q. Was Jeffrey born out of wedlock?

21 A. Yes, he was.

22 Q. And how old were you when he was born?

23 A. I believe I was nineteen. Yes. Nineteen.

24 Q. All right. And then when he was a year old, did
25 you get married to somebody?

26 A. Yes.

27 Q. And who did you marry?

28 A. I married Gordon Harrell, Junior.

29 Q. Are you still married to him?

1 A. Yes, I am.

2 Q. Did Jeffrey live with you and Gordon?

3 A. Yes, he did.

4 Q. And where did he live with you all? What city
5 or cities?

6 A. We lived in Laplace, Louisiana, and we have
7 lived in Chattanooga, Tennessee. When he moved to --
8 moved here, we lived in Laplace.

9 Q. Okay. And you said earlier, I believe, that he
10 came to live here at age thirteen?

11 A. Yes.

12 Q. That was here, meaning in Natchez?

13 A. Yes.

14 Q. And who did he come to live with?

15 A. With my parents.

16 Q. And what are their names, please.

17 A. It's Billy and Ruby Havard.

18 Q. And how long did he live with them?

19 A. Until he became of age. Twenty-one.

20 Q. And over the years after he left, from the age
21 of thirteen he came down here, did he stay -- did you and
22 he stay in, shall I say, constant communication with each
23 other?

24 A. Yes. We did. He came on several occasions
25 trying to find a job in Chattanooga on two or three
26 different occasions, but the jobs that he wanted just
27 weren't there.

28 Q. And then he came back down here; is that right?

29 A. That's correct.

1 Q. Had you ever been to the mobile home on 33
2 Montgomery Road where he was living at the time after this
3 incident happened, the death of Chloe Britt?

4 A. Before?

5 Q. Yes. Had you ever been before?

6 A. Yes, I have. Yes.

7 Q. Now, would you tell the jury, Mr. and Mrs.
8 William Havard, William and Ruby, is their house located
9 on that same road.

10 A. Yes, it is.

11 Q. And it's near there, isn't it?

12 A. Yes.

13 Q. We know this is difficult for you, too.

14 A. Yes, sir.

15 Q. Let me just ask you this. Would you please tell
16 the jury why you as Jeffrey's mother basically ask them or
17 beg them, why do you want them to allow him to live and
18 not sentence him to death?

19 A. Because I know in my heart that he's a very
20 kind, tender-loving person. I have three grandbabies.
21 Well, I've got one that's due just any time now, and
22 I've -- my oldest grandbaby has Down's Syndrome, and my
23 son loves that baby. He has taken up for her on different
24 occasions when people have made fun of her and said things
25 about her. He had called me on one occasion when he was
26 on the river on the boat and told me about this. And
27 Jeffrey loves children. When his youngest brother, half
28 brother, was born, he was in California with my
29 father-in-law was on a truck, and when he came home to --

1 he was staying with us at the time. When he came home, he
2 sat for hours holding his baby brother and he never moved,
3 and I have pictures of him holding this child. And I
4 don't think that it's anybody else's right to take a life.
5 That's God's place to do that and not a human being.

6 BY MR. SERMOS: Your Honor, I have no further
7 questions.

8 BY THE COURT: Okay. Cross-examination.

9 BY MR. HARPER: The Court's indulgence just one
10 moment.

11 (Mr. Harper and Mr. Rosenblatt confer.)

12 BY MR. HARPER: Your Honor, we'd have no
13 questions of this witness.

14 BY THE COURT: All right. Ma'am, you may step
15 down, and you may remain in the courtroom now if you
16 desire to.

17 (Witness steps down.)

18 BY THE COURT: All right. Who does the defense
19 call as your next witness?

20 BY MR. CLARK: We call Ruby Havard.

21 BY THE COURT: Ruby Havard?

22 BY MR. CLARK: Yes, sir.

23 BY THE COURT: Ruby Havard.

24 RUBY HAVARD,
25 having been duly and legally sworn, answered
26 questions on her oath as follows, to-wit:

27 BY MR. CLARK: May I proceed, Your Honor?

28 BY THE COURT: You may proceed.

29 DIRECT EXAMINATION

1 BY MR. CLARK:

2 Q. Would you tell us your name, please.

3 A. Ruby Havard.

4 Q. Where do you live, Mrs. Havard?

5 A. 36 Montgomery Road in Natchez.

6 Q. And to whom are you married?

7 A. When was I was married?

8 Q. To whom are you married?

9 A. Oh, William Eugene Havard.

10 Q. And he lives there with you?

11 A. Yes, he does.

12 Q. What relation are you to Jeffrey Havard?

13 A. He's my grandson.

14 Q. Okay. Where does he live?

15 A. Sir?

16 Q. Where did he live prior to this crime?

17 A. He lived at 33 Montgomery Road.

18 Q. Okay. What kind of dwelling was that?

19 A. It was a trailer.

20 Q. And who provided that trailer for him?

21 A. We did. His grandparents.

22 Q. You and your husband?

23 A. Right.

24 Q. Who lived there with him?

25 A. He lived there by himself until the first of
26 February, and Rebecca Britt moved in with him.

27 Q. With her baby, Chloe.

28 A. With her baby.

29 Q. And while she lived there, who provided her with

1 a place to live?

2 A. We did. Jeffrey asked us if she could -- if he
3 could move her and the baby in the trailer because of the
4 circumstances where they were living.

5 Q. Y'all --

6 A. Prior to that.

7 Q. Y'all allowed them to live there?

8 A. We did.

9 Q. And y'all paid the bills?

10 A. We paid the utilities, part of the groceries.

11 Q. Okay. And they didn't pay you any rent?

12 A. No, sir.

13 Q. How long has Jeffrey been living there at that
14 trailer?

15 A. About a year and a half or two. I am not quite
16 sure.

17 Q. He was living there prior to the time that Ms.
18 Britt and her baby moved in?

19 A. Right.

20 Q. And at that time was he working?

21 A. He was working for Carline Boat line out of --
22 right below Baton Rouge, at Geismar, I believe.

23 Q. And that was a -- on the Mississippi River?

24 A. Right.

25 Q. And tributaries. Would he work -- what were his
26 hours? Do you know? Do you remember?

27 A. He worked seven days on and seven days off.
28 Sometimes he worked in the day time and sometimes at
29 night. They had swing shifts.

1 Q. I see. And, Mrs. Havard, could you please tell
2 the jury why you think that Jeffrey should not be given
3 the death penalty?

4 A. Jeffrey is my grandson. Jeffrey stayed with me
5 the first year of his life. Then he went to live with his
6 mother, and when he was twelve years old, he asked us if
7 he could come back and live with us. He liked the schools
8 here. He had always loved us. I guess because he had
9 bonded with us when he was young. Jeffrey is a loving
10 person. He loves children. He has two nieces that he
11 dearly loves. He had pictures of these two nieces in his
12 billfold. He took those pictures out and put the baby --
13 Chloe's picture in his billfold. He has two pictures of
14 Chloe in his billfold, and he dearly loved that baby. He
15 even told me that he had planned to ask Ms. Britt to marry
16 him so you could take care of her and the baby because she
17 had nowhere else to go. He -- she asked her mother to
18 come back home and live with her, and they did not let her
19 come back home to live with them. She was moved in there
20 off of Itasca Drive at the first of February with him.
21 Her and the baby. I lost a son twenty-four years ago,
22 and I pray that y'all can see fit to spare his life
23 because I do not want to lose another -- practically a
24 child because he's been with me since he was twelve years
25 old.

26 Q. Thank you, Mrs. Havard.

27 BY MR. CLARK: We tender the witness.

28 BY THE COURT: Any cross-examination?

29 BY MR. HARPER: No questions, Your Honor.

1 BY THE COURT: You may step down, ma'am, and you
2 remain in the courtroom if you so desire.

3 (Witness steps down.)

4 BY MR. CLARK: That's all we would have, Your
5 Honor.

6 BY THE COURT: Would the defense rest on the
7 sentencing phase?

8 BY MR. CLARK: Yes, sir.

9 BY THE COURT: Okay. Would the State finally
10 rest on the sentencing phase?

11 BY MR. HARPER: Yes, sir. The State would
12 finally rest at this time.

13 BY THE COURT: All right. Ladies and gentlemen,
14 both the State and the defense have rested on the
15 sentencing phase of this case. What remains is for
16 the Court, myself, to give you further instructions
17 on the law dealing with the sentencing phase of this
18 trial. Following that, the attorneys will be
19 allowed to make additional arguments to you than were
20 made previously. This will be on the sentencing
21 phase of this trial. Once that is done, you will
22 retire to the jury room to deliberate and to return a
23 verdict in this case. Now, again, the Court
24 instructs you on the law by way of reading to you
25 what we refer to as jury instructions and, again, you
26 will be allowed to take these with you back into the
27 jury room once you retire to decide a verdict on the
28 sentencing phase.

29 (After the Court having read the instructions, the

1 following was made of record, to-wit:)

2 BY THE COURT: Now, ladies and gentlemen, those
3 are the additional instructions of the law that
4 you're to use and apply in deciding the punishment to
5 be imposed upon the defendant in this case on the
6 sentencing phase. At this time, the Court is going
7 to allow further or additional arguments by counsel.
8 Again, you're to use your own recollection of what
9 the individual witnesses had to say in this case.
10 First the State. Mr. Rosenblatt.

11 BY MR. ROSENBLATT: Your Honor, may I approach
12 the bench?

13 BY THE COURT: Yes, sir.

14 (Mr. Rosenblatt retrieves an instruction.)

15 BY MR. ROSENBLATT: Ladies and gentlemen, this is the
16 sentencing phase in the trial. The Judge just mentioned
17 briefly the instructions. I'm going to call your
18 attention to the Instruction Number 10. That's the last
19 instruction he read to you. What I want to call your
20 attention to is the form of the verdict. It's not overly
21 complicated, but it does have to be done in a particular
22 form. That's in Subsection C of S-10. It tells you the
23 form of the verdict, plus being one of three forms. It
24 can look one of three ways. They're itemized. One, two,
25 or three. Okay. Now, to impose the death penalty under
26 number one, your form of the verdict would look like this.
27 This has to be written on a separate sheet of paper and
28 signed by the foreman. It will say that we, the jury,
29 unanimously find from the evidence beyond a reasonable

1 doubt that the following facts existed at the time of the
2 commission of the capital murder. This takes you back to
3 subsection A. Now, there are a lot of different crimes
4 that fit capital murder, and so these factors won't apply
5 to every case, but it's necessary in every death penalty
6 case regardless of the facts that one of these four
7 factors be found. I would suggest to you that the first
8 factor that the defendant killed Chloe Madison Britt is
9 the factor you would find because we feel like that's what
10 the evidence has proven and that's what your prior verdict
11 has determined. There are other types of case where these
12 other factors come into play, but in the first section
13 then, you would go back to subsection A and you would find
14 that, A, that the defendant has actually killed the
15 victim, Chloe Madison Britt. Then you would go on to the
16 next section that says next "We, the jury, unanimously
17 find the following aggravating circumstances." And that
18 is in subsection B, and in subsection B, we have listed
19 three aggravating circumstances. First, that this
20 defendant has been found guilty of capital murder, which
21 we feel is self-evident. Number two, that that capital
22 offense was committed while the defendant was engaged in
23 the crime of sexual battery, which we also feel is
24 self-evident, and, then, number three, whether the capital
25 offense was especially heinous, atrocious, or cruel, and
26 the Judge has read you a separate instruction. You'll
27 have it to take back with you on exactly what it means to
28 say something is heinous, atrocious and cruel. Now, in
29 one sense, every death has an element of cruelty to it,

1 but in another sense, there are some deaths -- and that's
2 what that instruction will tell you -- that are especially
3 heinous, atrocious, and cruel. That will be for you all
4 to recall the evidence that was presented to you today.
5 You recall that evidence about how this baby died and what
6 was happening to this baby before she died to decide if
7 indeed that factor, that additional aggravating factor of
8 heinous, atrocious, or cruel, would apply. In this
9 section down here, in this number one, would be what your
10 verdict would look like. You would write each factor that
11 you find. That is guilty of capital murder. That the
12 capital murder was committed during the offense of sexual
13 battery, and, finally, that was it was, if you find this,
14 that it was especially heinous, atrocious, or cruel, and
15 having done that, then you say this these aggravating
16 factors exist beyond a reasonable doubt and are sufficient
17 to impose the death penalty, and that there are
18 insufficient mitigating circumstances to outweigh the
19 aggravating circumstances. Now, if you find mitigating
20 circumstances, you don't have to list those anywhere.
21 They can be -- as the defense lawyers will tell you in
22 just a minute, they can be virtually anything to be a
23 mitigating or a lessening circumstance, but if you find
24 those three aggravating circumstances, they do have to be
25 listed on the verdict. Okay. You have list the
26 aggravating circumstances. You don't have to list the
27 mitigating circumstances, and, of course, there are two
28 other forms either that you find that the death penalty
29 should not be imposed and the defendant should be

1 sentenced to life or that you're unable to reach a
2 verdict. But one of those three -- and they're
3 numbered -- three, two, one in Instruction Number 10, one
4 of those three forms of the verdict would be used. Ladies
5 and gentlemen, this is not an easy job that you all have,
6 but there are many times in society when called on to
7 perform tasks that aren't easy. I think of our service
8 men in Uzbekistan, for example. You're called on many
9 times to perform a service as citizens that pushes us out
10 of our comfort zone so to speak, but in doing this
11 service, I just urge you to recall the victim in this
12 case. There are victims and there are victims, and ladies
13 and gentlemen, I would submit to you today that Chloe
14 Madison Britt is the ultimate victim in the sense that she
15 was helpless. She did not provoke this to happen to
16 herself. There is just -- it's just hard for me to put
17 into words what I feel when I see what happened to this
18 precious baby girl. And just keep that in mind as you
19 perform this task that we are here in a sense to protect
20 our citizens. And, ladies and gentlemen, this victim was
21 a loved child. She was loved by her family, and what
22 impressed me during the testimony was she was even loved
23 by those who just came into contact with her. I
24 especially think of Ms. Amanda Goodwin on the stand with
25 tears in her eyes, talking about this child that was in
26 her day care center. I think of Dr. Dar who was at home.
27 She wasn't on call, and they called her to say one of your
28 patients is in the hospital, and she said who is it, and
29 they told her it was Chloe Madison Britt, and what did she

1 say? I will be there. And she was. That's the affect
2 this child had on those around her, and I think it's
3 appropriate to consider as we consider the sentence of the
4 case. Now, ladies and gentlemen, I assure you this is not
5 a happy thing. This is not a happy result for Mr. Harper
6 and me. It's not a happy result certainly for Mr. Havard.
7 It's not a happy result for the victim's family, but it's
8 a just result, and that's what we are here for is justice.
9 Thank you.

10 BY THE COURT: Closing arguments by the
11 defense.

12 BY MR. SERMOS: Thank you, Your Honor. This is
13 obviously a very hard afternoon, the decision that's
14 confronting you right now. When the prosecutor, Mr.
15 Rosenblatt, uses the word aggravating and mitigating
16 circumstances, obviously the main concentration of what I
17 talk to you about would be mitigating circumstances.
18 You've heard the aggravating circumstances as you listened
19 to the evidence that was offered by the witnesses and
20 whether they were experts, nurses, or whatever.
21 Mitigating is something that will lessen the affect of the
22 aggravating circumstances obviously, and mitigating
23 circumstances can be anything that you find in your mind
24 or in your heart or in your soul that enables you and
25 causes you to want to lessen the impact of any aggravating
26 circumstances you may find. I mean, it's been obviously
27 documented here that this young child died a tragic death
28 at a very young age of six months. That is an aggravating
29 circumstance, and Mr. Rosenblatt explained that to you.

1 However, there are certainly certain things you can look
2 at in making your decision, whether it's the testimony of
3 the grandmother, Mrs. Watson, and what she said, or the
4 testimony of Jeffrey Havard's mother, Cheryl Harrell, and
5 what she said about why she would ask you and why she did
6 ask you to spare her son's life, and also the testimony of
7 the grandmother, Ruby Havard, who basically raised Jeffrey
8 during his entire teenage years. When you go back in
9 there, I simply don't know all the things that will be
10 going through your mind about what you decide about the
11 circumstances that are in the instructions the Judge gives
12 you, and I won't even try to fit it on that, but there's
13 two main things I want you to think of when you go back
14 there because I realize even that you have already reached
15 your decision on the guilt phase and you found him guilty
16 of capital murder, but there's two things that you can
17 each individually look at. And one of those primary
18 things that I would ask you to look at is this. One thing
19 you never hear this Judge tell you is or any law tell you
20 in Mississippi is that you have to sentence Jeffrey Havard
21 to death. You may do it and you can do it, but there is
22 no law or no order or no instruction telling you that you
23 have to sentence him to death. The second part of that as
24 you consider this and just consider everything you've
25 heard today is this. Even if you determine Jeffrey Havard
26 should die for what he did because of what you heard today
27 and because of what you have seen and thought about, even
28 if you determine that that's what should happen, you can
29 still show him mercy and sentence him to life in prison

1 without parole, and that means he would never, ever get
2 out under the laws of the State of Mississippi. And
3 that's what he asked you to do. Go back, whether it's
4 because of mitigating circumstances and combination with
5 the decision whether it's emotional or factual or
6 whatever, to determine how you reach the decision to
7 sentence him to life without parole and not death. Thank
8 you very much.

9 BY THE COURT: Any further argument of the
10 defense?

11 BY MR. CLARK: No.

12 BY THE COURT: Okay. Is there any rebuttal
13 argument by the State?

14 BY MR. HARPER: Yes, sir. Please the Court,
15 Your Honor. May I proceed, Your Honor?

16 BY THE COURT: Yes, sir.

17 BY MR. HARPER: Ladies and gentlemen, it's no joy for
18 me to be here today. This has been a very difficult case
19 for me. You know, people like to feel like -- you know --
20 they like their job, but it's -- you know -- certainly no
21 joy in coming up here in this courtroom of trying to
22 convict people of serious crimes, and it's especially no
23 joy to come up here and ask you or any jury to impose the
24 death penalty on somebody. It's not joyful. It's no fun,
25 but you know we have -- as I talked about earlier, a very,
26 very great system of justice in this country, and I feel
27 like that I performed a service. That I do a part in
28 making it work. It's not always easy, but I feel like
29 it's important, and I get some satisfaction from that. As

1 I said, sometimes it's very difficult. Y'all have a duty
2 and a part to play in this, too, and I know that it's very
3 difficult. I know that it is. But it doesn't work unless
4 we do what we're supposed to do. And when I had the
5 privilege of being elected to this office, I took an oath
6 to serve justice, and y'all watched witnesses come in
7 here. They all took oaths to tell the truth, and I feel
8 like they did. I am going to remind you of one more oath,
9 ladies and gentlemen. Y'all took an oath. When you came
10 in here on Monday morning in voir dire to tell the truth,
11 and I asked you several questions. The Judge asked you
12 some questions, and one thing he asked you was are you
13 opposed to the death penalty, and not one of you raised
14 your hand. Not one of you. He told you it's not any
15 problem with it, and there's certainly nothing wrong if
16 you feel that way, but you need to tell us now if you are
17 opposed to it, and not one of you raised your hand. And
18 he asked you another question. Probably the most
19 important one. He asked you if you were selected to serve
20 on this jury and asked -- if you returned a verdict for
21 capital murder, would you consider the death penalty in
22 this case, and every one of you said that you would do
23 that. And, ladies and gentlemen, I am going to hold you
24 to your oath today. I am going to hold you to your oath.
25 It's not easy, but it's got to be done. On behalf of the
26 People of the State of Mississippi and the family of Chloe
27 Madison Britt, I am asking you to return the death penalty
28 in this case. The death penalty is the ultimate penalty.
29 You know, there are some crimes that are simply just so

1 terrible and inhuman that there's really only one penalty
2 that's justice. Only one. And that penalty is the death
3 penalty. And I submit to you, ladies and gentlemen, that
4 this case is one of those. Chloe Madison Britt was a real
5 person. A living, breathing human being, an infant with
6 her whole life ahead of her with all that that
7 encompasses. You know, sometimes I think we get jaded by
8 television and movies we see, movies about people getting
9 killed, but, folks, this is real life, and that little
10 girl is gone, and that family out there is going to suffer
11 for the rest of their lives until they're gone because of
12 that. They got a true loss. So what is justice? If
13 we're not opposed to the death penalty in some cases when
14 it's warranted, then what case is it? If not this case,
15 what case is it? We're not opposed to it. We think it's
16 warranted in some cases. Well, if not this case, which
17 one? That's my question to you. Tom made allusion that
18 we all have duties that are difficult. You know, he
19 talked about people going to war. People go over there to
20 kill and be killed to protect us so that we're safe. Our
21 democracy. These law officers, John Manley and Ray Brown,
22 Buddy Frank. They go out every day with a gun strapped on
23 them --

24 BY MR. SERMOS: Your Honor, we object to this.

25 This is not really pertinent.

26 BY THE COURT: I am going to sustain that
27 objection to that line, to that last line of
28 argument. Let's go ahead and proceed.

29 BY MR. HARPER: They go out and risk their lives

1 every day, and they never know what's going to happen when
2 they go out there. So everybody has got difficult duties,
3 ladies and gentlemen. We just have to accept them, and I
4 am asking you to accept yours today. It's not something
5 that you asked for. It's not easy, but I am asking you on
6 behalf of society to impose the death penalty in this case
7 because, as I said before, if not in this case, which
8 one? Tom -- the Judge read you the instructions. Tom
9 talked to you about mitigating and aggravating
10 circumstances, and it's all in the instructions, but
11 ladies and gentlemen, I talked to you this morning about
12 this earlier today. It's all just common sense. If you
13 read it, it's very, very simple to understand. And I have
14 confidence that you will understand it, difficult as it
15 is. You know, in this country we have the freedom to do
16 with our lives what we choose, to make our own individual
17 decisions about what we think what we ought to do, what
18 ought not to do. But I am telling you, ladies and
19 gentlemen, when Jeffrey Havard chose to commit this
20 horrible crime to take the innocent, precious life of
21 Maddie Britt, to take her away from her family, he made a
22 decision himself that very day and that very decision was
23 to forfeit his right to live. That's what he decided. He
24 did it to himself. Don't let anybody tell you that it's
25 your fault or that you got any concerns or guilt about
26 being here because the only reason we're all here is
27 because of that man sitting right down there. I feel
28 sorry for his family, his mother, and his grandmother. I
29 have great sympathy for them, but they're here because of

1 him. So don't let anybody tell you that this is your
2 fault. It's his decision, and he made that decision on
3 February the 21st of 2002. He's got nobody to blame but
4 himself for it, and I'm asking you on behalf of the People
5 of the State of Mississippi to return to the jury room and
6 deliberate, go back there and deliberate the case and
7 return the death penalty. The death penalty that Jeffrey
8 Havard had every right to expect when he knowingly and
9 willingly in cold blood on February the 21st of this year,
10 sexually assaulted that little infant baby and then shook
11 her so violently that it caused injury serious enough to
12 take her life. He chose that himself, ladies and
13 gentlemen. Thank you, Your Honor.

14 BY THE COURT: All right. Ladies and gentlemen
15 of the jury, it's time for you to retire to the jury
16 room to deliberate and to determine the sentence in
17 this case. Again, you will be allowed to take these
18 additional instructions on the law that I read to
19 you. Also there's some additional paper that you
20 have and may need and some pen and pencils, and also
21 the same evidence has been reintroduced. So the same
22 exhibits that were in there previously, if y'all will
23 take those back in there. So I'm going to direct
24 that the jury retire to the jury room. Ladies and
25 gentlemen, again, one of the instructions tells you
26 exactly how to return your verdict, whichever way it
27 may be. Just follow the instructions exactly on
28 there. It is necessary that it be written out on a
29 separate sheet of paper, and in this case it must

1 also by signed by the foreperson of your jury. Those
2 will be the instructions of the Court. You will be
3 directed back to the jury room.

4 (The jury retires to the jury room at approximately 5:45
5 p.m. to deliberate the case. At approximately 6:40,
6 a note was sent to the Judge, and the following was
7 made of record, to-wit:)

8 BY THE COURT: Let the record show that the
9 Court has all counsel present, the jury having sent a
10 note to the Court through the bailiff. The Court has
11 allowed the attorneys to read the question which is
12 as follows. This will be preserved for the record.
13 Says, "Please define life without parole. One, will
14 he spend the rest of his life in prison or will he
15 ever be eligible for parole. Question" -- this says
16 number two, I guess. "Three, can the law be changed
17 to allow him parole in the future?" All right. Any
18 comments for the record? The State will go first.

19 BY MR. HARPER: Whatever the Court feels
20 appropriate. I don't have any suggestion.

21 BY MR. SERMOS: Okay. Your Honor, what I --

22 BY THE COURT: Let me say this. It would be --

23 BY MR. CLARK: Whatever you want to do.

24 BY THE COURT: It's the Court's understanding
25 that number one, if matters can be answered, they
26 should always be answered truthfully to the jury.
27 There are clearly some questions that can't be
28 answered. It would be my inclination to give you a
29 chance to object to anything before it goes, but it's

1 my inclination to respond that life without parole
2 means life in prison without any eligibility for
3 parole. It essentially says the same thing, but it
4 does, I think, answer the first two questions more
5 adequately about it that life without parole means
6 life in prison without any eligibility for parole.
7 Now, the last question is, of course, the more
8 difficult question. The Court would answer this with
9 a statement that it would be up to the legislature to
10 determine any changes in the law in the future.

11 BY MR. SERMOS: May I ask the Court one thing.
12 Possibly consider one additional --

13 BY THE COURT: All right. What is that?

14 BY MR. SERMOS: Would be to go up to -- like
15 you said, it would be up to the legislature, and I
16 don't know if you want to put it, but "then the
17 legislature would also determine if any new law was
18 to be applied retroactively."

19 BY MR. HARPER: I don't think that would be a
20 correct statement of the law.

21 BY MR. SERMOS: I'm just asking. I'm just
22 asking --

23 BY MR. HARPER: I think if they pass something,
24 it --

25 BY THE COURT: All right.

26 BY MR. HARPER: I think it would be applicable
27 -- what I'm wondering is -- I would suggest adding
28 which they have the prerogative to do.

29 BY THE COURT: No, No. This is what the Court

1 is inclined to do. Everybody listen very carefully.
2 The Court intends to respond as follows. Life
3 without parole means life in prison without any
4 eligibility for parole. It would be up to the
5 legislature to make any future changes in the law.
6 You may state your objections.

7 BY MR. SERMOS: The only thing I would ask, Your
8 Honor, is the Court consider without eligibility for
9 parole or earlier release of any type. I mean, may
10 be that would be confusing, but I think -- what do
11 you think, Robert?

12 BY MR. CLARK: I think --

13 BY THE COURT: I could add "or early release."

14 BY MR. SERMOS: Or early release for any
15 reason.

16 BY THE COURT: The only problem is it's always
17 subject to a governor's --

18 BY MR. CLARK: But --

19 BY THE COURT: I don't want to get into that.
20 Just a second. Based on the suggestion of the
21 defense counsel, the Court would be willing to add
22 "or early release." "Any eligibility for parole or
23 early release."

24 BY MR. SERMOS: Yes, sir.

25 BY THE COURT: So this will be what the Court
26 will write. "Life without parole means life in
27 prison without any eligibility for parole or early
28 release. It would up to the legislature to make any
29 future changes of the law." Any objection to that?

1 BY MR. CLARK: Could you say life without parole
2 means you die in prison?

3 BY MR. SERMOS: I think just what you got is --
4 I like that.

5 BY THE COURT: Okay. That will be how the
6 Court will respond. I will write this in my hand on
7 the note, and it will be preserved for the record.

8 (The note was sent in by way of the bailiff, and at
9 approximately 6:40, another note was sent out and the
10 following was made of record, to-wit:)

11 BY THE COURT: Let the record show that is it
12 now approximately ten minutes until seven o'clock
13 p.m. in the evening. The Court has received a note
14 from the jury by way of the bailiff that reads as
15 follows. "Due to extreme fatigue, we the jury
16 request a recess until tomorrow morning at such time
17 we will continue with the deliberation process,"
18 signed Cindy Ethridge. It's the Court's intention to
19 bring the jury back in the jury room at this time and
20 to allow to them to recess and to honor this request
21 for the evening. So that will be the action of the
22 court. So everybody just remain seated. Mrs.
23 Bailiff, bring the jury back in.

24 (The jury is brought back into the courtroom.)

25 BY THE COURT: All right. Ladies and
26 gentlemen of the jury, I have received your request,
27 and that certainly will be honored. I know it's been
28 a long day. This is a very important decision. I do
29 not want to rush you in any way. Therefore, this

1 will be honored. You will be allowed to recess and
2 go back to the Eola and have your evening meal and
3 stay there tonight, and we will resume deliberations
4 at nine o'clock in the morning. I want to give you
5 plenty of time to get a good night's sleep and have
6 time to have your breakfast in the morning, and what
7 will happen is you will come back over here in the
8 morning and continue with your deliberations. Now,
9 one thing, you are not to deliberate among
10 yourselves, two of you or more of you, like that,
11 because the only deliberations that are to take place
12 are back in the room. So now that you are recessing
13 for the night, talk about anything you want to, but
14 not about the case. Don't resume your deliberations
15 even among smaller groups of yourself until in the
16 morning. So at this time, I want the jury to be
17 allowed to leave before anyone else and you'll resume
18 your deliberations at nine o'clock in the morning.

19 (The jury is excused.)

20 BY THE COURT: I want the jury room to be
21 locked or secured tonight because I believe the
22 evidence is in there. We'll secure the evidence for
23 tonight. Court will be in recess. The jury will be
24 brought back in the morning at nine o'clock, and the
25 deliberations will resume at that time. So is there
26 anything further we need before we recess this
27 evening? Court will be in recess.

28 (Court was recessed for the day and at approximately nine
29 o'clock on Thursday, December 19th, the following was

1 made of record, to-wit:)

2 BY THE COURT: Let the record show that the jury
3 having retired to deliberate on the sentencing phase
4 of this case yesterday evening after a period of
5 deliberations, sent a note to the Court requesting
6 that they be allowed to recess for the evening due to
7 fatigue. The Court found that request to be well
8 taken and granted the request, and the jury was
9 allowed to retire, and, again, they have been
10 sequestered all evening and are back in the courtroom
11 to resume their deliberations at this time today.
12 Now, ladies and gentlemen, there is one matter I do
13 want to bring to your attention before you resume
14 with your deliberations. The State has elected to
15 withdraw one of the aggravating factors that you were
16 advised about yesterday as far as the law. So that
17 remaining -- what that means is that you'll only be
18 allowed to consider the two remaining aggravating
19 factors that are set out in the Court's instructions
20 to you. So when you go back into the jury room
21 before you start your deliberations, if you will send
22 out by way of the bailiff Jury Instruction Number 10
23 which has number 10 written in at the top, I need to
24 make one correction on that before you start your
25 deliberations. So at this time I'm going to direct
26 that you return to the jury room to resume your
27 deliberations, and if the bailiff will get that from
28 the jurors.

29 (The jury retires into the jury room at approximately 9:05

1 a.m.)

2 BY THE COURT: Let the record show that the
3 jury has now retired to the jury room to continue
4 with their deliberations. For the record, this
5 morning prior to reconvening court, the Court met
6 with counsel for the State and the defendant, and the
7 State announced that it was withdrawing number one of
8 the aggravating factors in the sentencing instruction
9 which has been marked number 10 at the top which
10 reads as follows: "One, where the defendant is guilty
11 of the capital murder of Chloe Madison Britt." The
12 remaining two aggravating factors were the commission
13 of the crime where the capital offense committed
14 while in the commission of sexual battery, and
15 whether the offense was especially heinous, atrocious
16 or cruel. The Court essentially found that the
17 State's withdrawal of this number one was well taken
18 because the only two aggravating factors that should
19 be allowed to be considered would be number two and
20 number three. Therefore, that's why the record will
21 show that this was withdrawn from consideration, and
22 the Court has taken the Instruction Number 10 by way
23 of the bailiff and has marked through number one on
24 that instruction. This would be under part B and has
25 initialed that, and because the State is withdrawing
26 one of the aggravating factors that was set out, and
27 there's only two remaining, the Court perceives of no
28 prejudice whatsoever to the defense to really limit
29 the aggravating factors from three to two. Any

1 further statements on the record by either side for
2 that?

3 BY MR. HARPER: No, sir.

4 BY THE COURT: And as the jury was instructed,
5 they will only be allowed to consider the two
6 remaining aggravating factors that are set out in
7 that instruction. The Court will be in recess while
8 the jury is in deliberation.

9 (At approximately 9:45 a.m., a note was sent to the Judge
10 by way of the bailiff, and the following was made of
11 record, to-wit:)

12 BY THE COURT: Let the record reflect that the
13 Court has received a note from the jury by way of the
14 bailiff that states as follows: "What happens to the
15 defendant if the jury cannot agree on a sentence?
16 Who decides his sentencing and what will it be?" The
17 Court has conferred with both counsel for the
18 defendant and also counsel for the State, and the
19 Court is responding to the note as follows: "In that
20 event, the Court would sentence the defendant to life
21 without parole," signed Forrest A. Johnson, Circuit
22 Judge. This is the language preferred by counsel for
23 the defendant, and that will be the response of the
24 Court and I will return this note with the response
25 to the jury by way of the bailiff.

26 (The note is sent in by way of the bailiff. At
27 approximately 10:25, a knock was heard on the door,
28 signaling the jury had reached a verdict.)

29 BY THE COURT: Madame Bailiff, has the jury

1 reached a verdict in this case?

2 BY BAILIFF ANGELETHY: Yes, they have, Judge.

3 BY THE COURT: Ladies and gentlemen, again, keep
4 in mind that this is a court of law. I understand
5 the emotions involved in this on both sides, but
6 let's please respect the fact that this is a court,
7 and I cannot allow any outburst of emotions, whatever
8 the verdict of the jury may be. At this time, I am
9 going to direct that you bring the jury back into the
10 courtroom. Have them seated. They don't have to
11 worry about being seated in any particular order.
12 You may do that at this time.

13 (The jury is brought back in, and the following is made of
14 record, to-wit:)

15 BY THE COURT: The Court is going to read this
16 verdict. The verdict of the jury is as follows. We,
17 the jury, unanimously find from the evidence beyond a
18 reasonable doubt that the following facts existed at
19 the time of the commission of the capital murder. A,
20 one, that the defendant actually killed Chloe Madison
21 Britt. Next, we, the jury, unanimously find that the
22 aggravating circumstances of -- below that -- that
23 the capital offense was committed while the defendant
24 was engaged in the commission of or an attempt to
25 commit sexual battery. Additionally that the capital
26 offense was especially heinous, atrocious or cruel
27 exists beyond a reasonable doubt and are sufficient
28 to impose the death penalty and that there are
29 insufficient mitigating circumstances to outweigh the

1 aggravating circumstances, and we further find
2 unanimously that the defendant should suffer death,
3 signed Cynthia Ethridge, foreman of the jury. Ladies
4 and gentlemen, under the law, it is necessary that I
5 make certain that this is unanimous. You don't have
6 to say anything, but I am going to point to you one
7 at a time, and if this is your verdict, just nod your
8 head yes. Give me some type of affirmative sign. If
9 this is not your verdict, let me know and give me a
10 negative sign.

11 (The Court polls the jury and the following was made of
12 record, to-wit:)

13 BY THE COURT: Let the record show that the
14 Court on its own motion and initiative has caused
15 the jury to be polled and has received an affirmative
16 response from each of the twelve jurors that this is,
17 in fact, the verdict of the jury, and, therefore, it
18 will be accepted as the verdict of the jury. Now,
19 the Court is going to ask at this time, does the
20 State have any further victim's statement or anything
21 of that nature?

22 BY MR. HARPER: The Court will indulge me just a
23 moment, Your Honor.

24 (Mr. Harper conferred with family of the victim.)

25 BY MR. HARPER: No, Your Honor.

26 BY THE COURT: Okay. Then at this time, I am
27 going to ask that the defendant come forward with
28 counsel.

29 (The defendant and counsel approach.)

1 BY THE COURT: Does the defendant have anything
2 to say before the Court proceeds further with
3 sentencing?

4 BY THE DEFENDANT: I am innocent of this.

5 BY THE COURT: Ladies and gentlemen of the jury,
6 it is my policy and practice. I never praise, I
7 never criticize a jury's verdict. That is our system
8 I strongly believe in. Now, to the jury, I will tell
9 you this. What is said back there in that jury room
10 during your deliberations in private, that is
11 private. You don't have to tell anyone what goes on
12 back there or what is said back there unless you want
13 to. Do each of understand that? Now, you have
14 performed a very difficult duty as citizens of this
15 county and state. It's not very pleasant what you
16 have been through, and I recognize that. Most
17 citizens go through their entire life without having
18 to perform a duty such as you have had to perform.
19 In my opinion, this is the most difficult duty that a
20 citizen is ever called upon to perform short of
21 military service in time of war. What you need to
22 do, you need to put this behind you and need to go on
23 with your lives, realizing that you did not volunteer
24 for this duty. Someone had to serve as jurors in
25 this case, and by random selection, that lot fell
26 upon you, and you performed your duty. Now, to the
27 family of the victim, I would say this. We don't
28 know why some things happen in life. Every question
29 is not going to be answered for us this side of the

1 River Jordan. No person or action that anyone can
2 take can bring back Chloe Madison Britt back to this
3 earthly life. You have to realize that. You can
4 take comfort in knowing that because of her age, she
5 died totally sweet and innocent, passing through this
6 life without the sins that we all seem to all
7 accumulate sooner or later. She is in a better place
8 now. My strong advice to you is that you cherish her
9 memory, but you put this behind you and you move on
10 with your lives. Don't cling to bitterness, hatred,
11 or revenge while waiting for the sentence of this
12 Court to be carried out. In doing so, you would only
13 allow the defendant's actions to continue to hurt
14 you. Now to the defendant's family. I would say
15 this. We don't know why people do some of the things
16 they do in life. You can't explain some actions by
17 any form of reason. You need to continue to care
18 about the defendant, to love him, and most
19 importantly to pray for him, but don't confuse that
20 with justice. And do not be upset with his
21 attorneys. I am going to tell you the evidence in
22 this case was overwhelming. In the defendant's
23 statement that he gave severely limited what they
24 could do in this case. They did all they could to
25 try and spare his life. Accept what has happened,
26 and accept that society justice has been rendered and
27 go on with your lives. Now to the defendant. Just
28 when you think that you have seen everything and that
29 you have seen or heard of the absolute low point of

1 evil and human depravity, someone like you comes
2 along and shows us a new low in human behavior. I
3 would hate to face my maker with the blood of an
4 innocent child on my hands. Jeffrey Keith Havard,
5 for the capital murder of Chloe Madison Britt, I
6 hereby sentence you to be put to death by lethal
7 injection by the State executioner, and may God have
8 mercy on your soul. I want the jury to be allowed to
9 leave before anyone else is, and I want the bailiffs
10 to assist them in checking out of the hotel. I want
11 the defendant to be allowed a few moments to say his
12 goodbys to his family members, and then he'll be
13 transported pursuant to law immediately to death row
14 at the Mississippi State Penitentiary at Parchman.

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IN THE CIRCUIT COURT OF ADAMS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VERSUS

CAUSE NO. 02-KR-0141

JEFFREY KEITH HAVARD,

DEFENDANT

* * * * *

TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN A GUILTY
PLEA IN THE ABOVE STYLED AND NUMBERED CAUSE BEFORE THE
HONORABLE FORREST A. JOHNSON, JUNIOR, JUDGE OF THE COURT
AFORESAID, SOLE PRESIDING, ON THE 3RD DAY OF FEBRUARY,
2003, IN THE CIRCUIT COURTROOM OF THE AMITE COUNTY,
MISSISSIPPI COURTHOUSE.

* * * * *

APPEARANCES:

Present and Representing the State:

HONORABLE DEBORAH BLACKWELL
Assistant District Attorney
Sixth Circuit Judicial District
Natchez, MS 39120

Present and Representing the Defendant:

HONORABLE GUS SERMOS
Attorney at Law
P. O. Box 621
Summit, MS 39666

1 BY THE COURT: The Court is going to call Case
2 Number 02-KR-0141 of the Circuit Court of Adams
3 County, Mississippi, in the matter of the State of
4 Mississippi versus Jeffrey Keith Havard. Let the
5 record show that this defendant was previously
6 indicted and charged with capital murder. This cause
7 came on for trial in the Circuit Court of Adams
8 County this past December. Following a four-day
9 trial, the defendant was found guilty of capital
10 murder, and the jury imposed a sentence of death. A
11 motion for a new trial was timely and properly filed
12 by counsel following the sentence and order of the
13 Court, and this matter comes on today on the motion
14 for new trial with counsel being present, the
15 Honorable Gus Sermos, and also assistant district
16 attorney, Deborah Blackwell for the State. Mr.
17 Sermos, you may proceed with your motion.

18 BY MR. SERMOS: Yes, Your Honor. On the motion
19 for judgment notwithstanding the verdict or in the
20 alternative for a new trial, the defendant Jeffrey
21 Havard through his attorney asks the Court to either
22 grant him a new trial due to the weight of the
23 evidence literally being -- I'll put it this way,
24 Your Honor. The evidence was certainly not
25 sufficient either by the overwhelming weight of it
26 which did not support the verdict, and also in its
27 sufficiency and the standard of that would, of
28 course, be for the same standard that is applied to a
29 motion for JNOV which is what this is or a motion for

1 a directed verdict, and we would state for the
2 defendant that even with all the evidence that was
3 testified to, including the defendant's statement,
4 that it was simply not sufficiently shown due to the
5 fact that there was no signs of trauma found on the
6 defendant. That any DNA or anything else that
7 exhibited that he may have caused the damage to the
8 child, especially the damage around her anal area, as
9 the jury found, and we would also state that the new
10 trial should be granted because a jury properly needs
11 to weigh, or reweigh in this case, the evidence or
12 actually the lack of evidence due that there was a
13 statement by the defendant that he had shaken the
14 baby, but there was never an admission by him that he
15 either intended to kill the baby or cause damage to
16 the baby, and that anything that happened certainly
17 must have been accidental. Therefore, we submit to
18 the Court that the Judge either direct a verdict of
19 acquittal, or, in the alternative, the Judge order
20 that Jeffrey Havard receive a new trial.

21 BY THE COURT: Does the State care to make any
22 response to that?

23 BY MS. BLACKWELL: No, sir.

24 BY THE COURT: Let the record show that the
25 Court has very carefully considered this motion.
26 This was a very serious matter that proceeded to
27 trial. The Court made extensive rulings on the
28 record regarding the matters that counsel referred
29 to, and, for the record, I refer back to the Court's

1 rulings during the course of the trial and
2 proceedings. The Court finds that the State very
3 clearly did produce ample evidence to justify the
4 submission of the case to a jury. The jury, apparent
5 to the Court, carefully considered this matter, found
6 the defendant guilty of the charge of capital murder.
7 The Court is not going to go back through all the
8 evidence because that's already been done on the
9 record, but I do find that very clearly there was
10 ample evidence to support the jury's finding of the
11 defendant being guilty of the charge of capital
12 murder notwithstanding the argument that was just
13 made by counsel. So the Court is going to deny and
14 overrule the motion for judgment notwithstanding the
15 verdict or in the alternative for a new trial in each
16 and every respect as set out by the defendant in his
17 motion, and that will be the order and ruling of the
18 Court. And, Mr. Sermos, if you will submit the Court
19 an order on that. I will be glad to sign that.

20 BY MR. SERMOS: Your Honor, may I approach now?

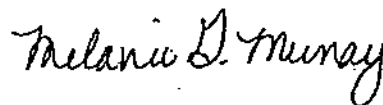
21 BY THE COURT: Yes, sir. That will be the Court's
22 ruling on the matter.
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COURT REPORTER'S CERTIFICATE

I, Melanie G. Murray, Official Court Reporter in and for the Sixth Circuit Court District of Mississippi, do hereby certify that the within and foregoing seven hundred and eleven (711) pages contain a full, true, and correct transcription of my notes and tapes, to the best of my skill and ability, of the proceedings had and done in the STATE OF MISSISSIPPI VERSUS JEFFREY KEITH HAVARD, #02-KR-0141 heard in the Circuit Court of Adams County, Mississippi, Courthouse on December 16, 17, 18, 19, 2002, and following on February 3, 2002.

I do further certify that my certificate annexed hereto applies only to the original and certified transcript. The undersigned assumes no responsibility for the accuracy of any reproduced copies not made under my control or direction.

WITNESS my signature, this the 9th day of April, 2003.



Melanie G. Murray
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Natchez, MS 39120

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