

1 BY THE DEFENDANT: No, not yet.

2 BY THE COURT: Not yet. Okay. I'm going to
3 give you an opportunity to confer with your
4 attorneys, but you understand fully what I have gone
5 over with you?

6 BY THE DEFENDANT: Yes, sir.

7 BY THE COURT: Well, once we conclude this
8 hearing, I'll give you an opportunity because it's
9 fixing to be time for the defense to present their
10 case. Now, do you have other witnesses other than
11 potentially the defendant?

12 BY MR. SERMOS: Your Honor, as it stands right
13 now, and Mr. Clark and I obviously are going to talk
14 to Mr. Havard a minute, but the main witness I know
15 that we want is Nurse Rabb, and I talked to him
16 earlier this morning. I told him it probably would
17 be somewhere around twelve or one o'clock because
18 obviously I didn't know exactly, but, in any case,
19 he's at the hospital and I have his phone number.
20 He's not -- when I say he's not -- he's a witness,
21 but, I mean, he's not an earth shattering witness,
22 but he can state about the examination and things
23 that were taken for Mr. Havard, but I believe at this
24 time that may be our only witness. Mr. Clark and I
25 are going to look at a few others, but we have to be
26 very concise.

27 BY THE COURT: Is there anything further that we
28 need to take up at this time?

29 BY MR. HARPER: Well, I'm not sure if this is

1 the appropriate time, Your Honor. Maybe -- I guess
2 it would be better to talk about that later, about
3 the sequestration during closing and so on.

4 BY THE COURT: I am not concerned with that at
5 this moment. So what we're going to do, I will give
6 the defendant and his counsel an opportunity to meet
7 privately in here for **ten minutes** or so to allow you
8 to make a final decision about whether or not the
9 defendant, Mr. Havard, desires to testify or not. So
10 you need to make that decision and then we'll
11 reconvene, and I'll allow the defense to proceed with
12 whatever it has.

13 BY MR. SERMOS: All right. Okay. I tell what.
14 It should -- this Natchez hospital is very close.
15 This guy shouldn't take long to get here.

16 BY THE COURT: Okay. Have you got a phone to
17 call this witness?

18 BY MR. SERMOS: I have got one outside. I'll
19 come out -- a lot of it is going to be based on what
20 Mr. Havard decides, Your Honor.

21 BY THE COURT: Okay. I'll give you an
22 opportunity to meet with him.

23 BY MR. SERMOS: Thank you.

24 (The attorneys were allowed to meet with the defendant
25 privately, the following was made of record, IN THE
26 PRESENCE OF THE JURY, to-wit:)

27 BY THE COURT: For the record, who does the
28 defense call as your first witness?

29 BY MR. SERMOS: We call nurse Brian Rabb, Your

1 Honor.

2 BY THE COURT: I understand that witness is --
3 will be on his way to courtroom.

4 BY MR. SERMOS: That's correct, Your Honor. On
5 his way from the emergency room.

6 (After waiting for the witness Brian Rabb, the following
7 was made of record, to-wit:)

8 BRIAN RABB,
9 having been duly and legally sworn, answered
10 questions on his oath as follows, to-wit:

11 DIRECT EXAMINATION

12 BY MR. SERMOS:

13 Q. Yes. Would you please state your name, please.

14 A. Brian Rabb.

15 Q. And what type of work do you do?

16 A. I am a registered nurse in Natchez Regional's
17 emergency department.

18 Q. Okay. How long have you been a nurse, a
19 registered nurse?

20 A. Signed on in May. Started working in June of
21 2000.

22 Q. And are you acquainted with a Dr. Andrew
23 Barrons?

24 A. I work with him.

25 Q. So -- but he's off today; is that correct?

26 A. Yes, sir.

27 Q. Do you recall back on February 22nd of this
28 year, earlier this year obviously, there was an order by
29 Judge Johnson to take certain specimens from a Jeffrey

1 Havard. Do you remember that? That the deputies brought
2 someone to you at the hospital?

3 A. Yes, but I don't remember the dates or who
4 ordered it, but I --

5 Q. Do you remember Jeffrey Havard or what he looks
6 like?

7 A. Yes. Well --

8 Q. Did you see him in the courtroom today?

9 A. -- I say I do.

10 Q. Okay. Do you recognize him?

11 A. Yes. That's looks like him from what I
12 remember.

13 Q. And how many deputies came to the hospital with
14 him that day; do you remember?

15 A. I don't remember, but it seemed like it was
16 more than one. One or two, maybe three. I can't
17 remember.

18 Q. All right. He was brought there by them. Do
19 you recall why -- what procedures were done on him while
20 he was there?

21 A. We collected a -- what we call a rape kit or
22 what we call it. You know, has certain steps that you
23 have to go through to get it. You know, collect
24 different -- you know -- specimens or whatever or samples
25 of certain things, and that's what we collected was a rape
26 kit.

27 Q. Did you -- for example, what kind of sample?
28 Did collect like under fingernails?

29 A. Yes. That's part of it.

1 Q. And what other type things do you recall Dr.
2 Barrons and you collected then?

3 A. It's numerous. You take hair samples, scrape
4 under fingernails. Take hair from the head and you also
5 take hair from the pubic area.

6 Q. Okay.

7 A. I -- you -- we take blood samples and sometimes
8 we do and sometimes we don't. I can't remember that day
9 exactly if we took blood samples or not. I feel like we
10 did. We usually do. Sometimes we don't, but we take
11 blood samples. You take saliva. Sample of saliva. What
12 else? If I remember correctly, that day there wasn't any
13 articles of clothing that we needed to collect. Sometimes
14 we collect clothing, but I don't think we did that day if
15 I remember correctly.

16 Q. Do you recall what happened with this evidence
17 or these items you took as samples of specimens?

18 A. We collected them and sealed them in a bag, and
19 usually we'll give them to the officers.

20 Q. Do you recall giving them to the officers that
21 day?

22 A. I do not recall. Sometimes -- we have in the
23 past locked them up in some type of cooler before and kept
24 them for -- you know -- or but -- you know -- most of the
25 time we give them to the office, but I can't remember that
26 day what we did.

27 Q. Do you recall -- put it this way. Do you ever
28 get reports back on what you collected?

29 A. No, sir. Never.

1 Q. So you --

2 A. I mean, we don't. No, sir.

3 Q. So, in other words, whatever happens with it,
4 that goes somewhere else. You don't know anything about
5 it, right?

6 A. Yes, sir. It's coming from the nursing view,
7 now.

8 Q. Thank you.

9 BY MR. SERMOS: One moment, please, Your Honor.
10 (Mr. Sermos and Mr. Clark confer.)

11 BY MR. SERMOS: I have no further questions,
12 Your Honor.

13 BY THE COURT: Cross-examination.

14 BY MR. HARPER: The Court will indulge us just a
15 moment, Your Honor.

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

17 BY MR. HARPER: We have nothing, Your Honor.

18 BY THE COURT: You may step down. Is this
19 witness excused under his subpoena?

20 BY MR. HARPER: We don't have him under subpoena,
21 Your Honor. I think he's --

22 BY MR. SERMOS: Yes, sir, Your Honor.

23 BY THE COURT: You may be excused. You may go.

24 (Witness steps down.)

25 BY THE COURT: Does the defense have any other
26 witnesses?

27 BY MR. SERMOS: At this point, the defense would
28 rest.

29 BY THE COURT: Okay. Does the State have any

1 rebuttal?

2 BY MR. HARPER: No, Your Honor. At this time,
3 the People of the State of Mississippi would finally
4 rest our case.

5 BY MR. SERMOS: And we have a motion, Your
6 Honor.

7 BY THE COURT: All right. Ladies and gentlemen,
8 sorry for the slight delay we had about waiting for
9 this last witness, but the case has moved along quite
10 well, and as you've heard, both sides have finally
11 rested their case. We're going to be taking the
12 lunch break at this time. There are some matters
13 that the Court needs to take up with the attorneys
14 over the noon recess. But, again, I want to you --
15 even though you have heard the evidence, it's still
16 not time for you to talk among yourselves about the
17 case. You understand that? You can talk about what
18 you want to at lunch but not about the case. We're
19 going to recess until 1:30. 1:30. Now, again,
20 ladies and gentlemen, we may be able to conclude with
21 this matter today, sometime this afternoon or early
22 evening. We may not. Of course, I have no way of
23 anticipating how long the deliberations will last and
24 what will take place in this case. So we may very
25 well get through with this case today, but there's a
26 possibly that we may not. That just depends. So
27 we're going to recess for lunch at this time. I want
28 you to go have your lunch, and let's have the jurors
29 back at 1:30, and I need the attorneys to stay here

1 and wait for a few minutes.

2 (The jury is excused.)

3 BY THE COURT: Let the record show that both
4 sides have rested their respective cases, and the
5 jury has been excused for their lunch recess, and
6 they have removed themselves from the courtroom. At
7 this time, first, are there any motions?

8 BY MR. SERMOS: Your Honor, we renew our motion
9 for directed verdict and acquittal for the defendant,
10 and we would submit -- in renewing that, we would
11 state for the Court the same thing and would
12 reiterate of what we stated earlier, even with all
13 the evidence now presented by the State and the
14 defense that no reasonable juror could find the
15 defendant beyond a reasonable doubt guilty. We ask
16 the Court to direct a verdict of acquittal at this
17 point.

18 BY THE COURT: Let the record show that for the
19 same reasons previously expressed on the record by
20 the Court in overruling the motion for a direct the
21 verdict upon the State resting its case, the Court
22 will again deny the renewal of the motion for a
23 directed verdict by the defense. Now, first of all,
24 does either side have any further jury instructions
25 to submit to me at this time?

26 BY MR. HARPER: On the guilt phase, Your Honor,
27 or --

28 BY THE COURT: I mean all instructions. They're
29 to be in twenty-four hours before court. Does