

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 451-600

VOLUME 6 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

1 IN THE CIRCUIT COURT OF ADAMS COUNTY, MISSISSIPPI

2

3 STATE OF MISSISSIPPI

4

5 VERSUS

CAUSE NO. 02-KR-141

6

7 JEFFREY HAVARD

DEFENDANT

8

VOLUME FOUR

9 \* \* \* \* \*

10 TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN A TRIAL IN  
11 THE ABOVE STYLED AND NUMBERED CAUSE BEFORE THE HONORABLE  
12 FORREST A. JOHNSON, JUNIOR, JUDGE OF THE COURT AFORESAID,  
13 AND A JURY OF TWELVE MEN AND WOMEN, ON THE 16TH, 17TH,  
14 18TH, AND 19TH DAYS OF DECEMBER, 2002, IN THE CIRCUIT  
15 COURTROOM OF THE ADAMS COUNTY, MISSISSIPPI COURTHOUSE.

16 \* \* \* \* \*

17 APPEARANCES:

Present and Representing the State:

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

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

23 Present and Representing the Defendant:

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

26 HONORABLE ROBERT CLARK  
27 Attorney at Law  
Vidalia, LA  
28

29

1 lawyer for advice before we ask you any questions, to have  
2 him with you during questioning. If you cannot afford a  
3 lawyer, one will be appointed for you before any  
4 questioning if you wish. If you decide to answer any  
5 questions now without a lawyer present, you will still  
6 have the right to stop answering at any time. You also  
7 have the right to stop answering at any time until you  
8 talk to a lawyer." That's the first half of the waiver of  
9 advice of rights.

10 Q. That's the rights themselves?

11 A. Right.

12 Q. And you asked him if he understood those?

13 A. Correct.

14 Q. And he said that he did?

15 A. Correct.

16 Q. Did he appear to understand them to you?

17 A. Yes, he did.

18 Q. Okay, sir. Read the second part, please.

19 A. It's the waiver of rights. "I have read this  
20 statement of my rights and understand what my rights are.  
21 I am willing to make a statement and answer questions. I  
22 do not want a lawyer at this time. I understand and know  
23 what I am doing. No promises or threats have been made to  
24 me and no pressure or coercion of any kind has been used  
25 against me." And it's signed Jeff Havard.

26 Q. Did he appear to understand that?

27 A. Yes, sir.

28 Q. And did he sign it indicating that he would, in  
29 fact, talk with you?

1 A. Yes, sir.

2 Q. And waive his rights. Okay, sir.

3 BY MR. HARPER: May I publish this to the jury,  
4 Your Honor.

5 BY THE COURT: Yes. You'll be allowed to  
6 publish Exhibit 16 to the jury.

7 (Mr. Harper passes Exhibit 16 to the jury.)

8 BY MR. HARPER:

9 Q. After y'all -- I believe you said the next thing  
10 that happened was that he -- you obtained a consent to  
11 search from him; is that correct?

12 A. That's correct. I believe that's the way it  
13 went.

14 Q. When you say a consent to search, why don't you  
15 tell us what that is.

16 A. Consent to search, that's a form similar to that  
17 one right there, and what we were wanting to do is the  
18 last place that the baby was known to be alive was at 33  
19 Montgomery Road. So that was part of the crime scene  
20 also. So what we do is -- it was his trailer. So what we  
21 did was got him -- he signed the consent to search the  
22 trailer, and consent to search was to gather evidence  
23 pertaining to the crime.

24 Q. Okay. And is this a form similar to the one  
25 that you just went over --

26 A. Yes, sir.

27 Q. -- with them, except it deals with --

28 A. Right. Consent to search. Right.

29 BY MR. HARPER: May I approach, Your Honor?

1 BY THE COURT: Yes, sir.

2 BY MR. HARPER:

3 Q. I'm going to hand you another document and ask  
4 if you'll look at that and tell me whether or not you can  
5 identify that, please.

6 A. That's it. Permission to search form.

7 Q. And is this one -- has this one been executed?

8 A. Yes, sir. It has.

9 Q. And do you know -- do you recognize that as  
10 being the one that was executed on that night?

11 A. Yes.

12 Q. How are you able to tell that?

13 A. I know because Major Manley is the one that  
14 filled it out that night.

15 Q. Who, if anyone, signed it?

16 A. Jeffrey Havard.

17 Q. Who witnessed it?

18 A. I did.

19 Q. And John Manley?

20 A. Right.

21 Q. And for what location is this one?

22 A. 33 Montgomery Road.

23 BY MR. HARPER: Your Honor, we'd move at this  
24 time to introduce this document into evidence.

25 BY MR. SERMOS: We request to look at it, Your  
26 Honor.

27 BY THE COURT: All right.

28 (Mr. Sermos reviews document.)

29 BY MR. SERMOS: No objection, Your Honor.

1 BY THE COURT: The Court will allow the consent  
2 to search to be introduced as Exhibit 17 in this  
3 case.

4 DOCUMENT MARKED AS STATE'S EXHIBIT 17

5 BY MR. HARPER: Your Honor, may I publish this  
6 to the jury?

7 BY THE COURT: You will be allowed to publish  
8 that to the jury.

9 (Mr. Harper passes Exhibit 17 to the jury.)

10 BY MR. HARPER:

11 Q. Now, after you got the consent to search  
12 executed, Deputy Frank, did y'all talk to him at that  
13 time?

14 A. Yes, sir. We did. We -- we didn't get -- we  
15 talked to him briefly at that time. I say "briefly," I  
16 don't recall just exactly how long. We got his version of  
17 the events that happened that night.

18 Q. Did you make a report as to what he told you  
19 happened that night?

20 A. Yes, sir, I did.

21 Q. Do you recall what he said happened that night?

22 A. I recall. What I --

23 Q. Why don't you tell the best you can recall.

24 A. What I recall him saying was that him and the  
25 baby's mother and the baby was at the trailer. The baby  
26 was a bit fussy that night so Rebecca took the baby  
27 riding, which is the baby's mother to calm her down, and  
28 he stayed home to clean the trailer or whatever. And then  
29 when she got back home, he sent Rebecca to the grocery

1 store to pick up some groceries. He said he gave her  
2 \$40.00 to pick up some groceries, and she left, and when  
3 she left, the baby was in the swing asleep. Well, then  
4 the baby woke up and got fussy again. So he said the  
5 baby's diaper, he figured, was dirty. He took the baby in  
6 there and he laid her on the bed, and he pulled the diaper  
7 off of the baby. The diaper wasn't dirty, but then he  
8 said the baby spit up on herself. When --

9 Q. Did he say what bed he put her on; do you  
10 recall?

11 A. In his bed.

12 Q. His bed? Okay.

13 A. Right. And said the baby spit up on herself and  
14 on the bed. So he got the baby, and he took her in there,  
15 and he gave her -- he give her a bath then. And he  
16 said -- you know -- once he gave her the bath, he had  
17 rubbed her down with some lavender baby lotion, and  
18 everything was fine. He just laid her back down in the  
19 bed, and then the mother came home from getting groceries,  
20 and he said the mother went in and checked on the baby.  
21 And then he sent her back to the video store to pick up  
22 some videos to watch. And he said when she came back, he  
23 was in the bathroom, and she came home and he heard her  
24 screaming and Chloe wasn't breathing. He said he got out  
25 of the bathroom, and they went to get in the car and he --  
26 about getting a T-shirt and went back in the house and got  
27 a T-shirt, and he came back to the car and took the baby  
28 to the hospital.

29 Q. That was pretty much the gist of the statement

1 --

2 A. That was pretty much a roundabout way of the  
3 statement he gave us that night.

4 Q. Okay, sir. After you got that statement from  
5 him, what, if anything, did you do at that point in time?

6 A. That's when we went to 33 Montgomery Road.

7 Q. And who, if anyone, went there with you?

8 A. Myself, Major Manley, Deputy Ray Brown, Deputy  
9 Ronnie Coleman. We were all there.

10 Q. What type of residence is located at 33  
11 Montgomery Road?

12 A. It's a house trailer.

13 Q. Okay.

14 A. It's a single house trailer.

15 Q. How did y'all obtain access to the house? Was  
16 it locked?

17 A. No, it was not locked.

18 Q. So you were just able to open the door and  
19 enter?

20 A. Yes, sir.

21 Q. What, if anything, did you do once you got in  
22 the trailer?

23 A. We took photos of the trailer. We took photos  
24 of everything -- you know -- what we thought was pertinent  
25 which was most everything. And we looked for the bed  
26 linens that he said that the baby had spit up on. We  
27 looked in the bathroom. We looked in the bedrooms. We  
28 just more or less processed the crime scene and gathered  
29 evidence.



1 Q. You said you were looking for sheets. Did you  
2 find some sheets?

3 A. Yes. We did.

4 Q. Okay.

5 A. They were laying in the kitchen. Kitchen  
6 meaning -- well, there's a diagram. Kitchen meaning right  
7 as you walk --

8 Q. Why don't you come right down if you would.

9 BY MR. HARPER: Please the Court, Your Honor,  
10 we'd ask that he would be able to come down and show  
11 us on the diagram.

12 BY THE COURT: Certainly. That will be allowed.

13 BY MR. HARPER:

14 Q. Which way did y'all enter the trailer, Deputy  
15 Frank?

16 A. We entered the trailer -- this would be the back  
17 door. We entered the trailer here.

18 Q. Okay. And what did you determine -- or how did  
19 you -- did you determine where the bedroom was that Mr.  
20 Havard and Ms. Britt --

21 A. Right. It's -- this bedroom here was more or  
22 less -- you could tell was a spare bedroom. It had like a  
23 little bed in there if I remember, but it was more or less  
24 junked up like most people's spare bedroom. This room  
25 here had the baby bed in it. This was the baby bed here,  
26 and, of course, you had the master bedroom here.

27 Q. Okay.

28 A. And then the bedroom linens and stuff that we  
29 found were laying here, and, you know, there was clothes

1 here like they were going to be washed.

2 Q. This appears to be the washer and dryer?

3 A. Right. This is the washer and dryer. It's  
4 like a little hallway right here in front of this second  
5 bathroom.

6 Q. And where were the clothes again?

7 A. Right here.

8 Q. And what all -- if you recall, what did you find  
9 there?

10 A. We found like a -- I think it might have been a  
11 comforter and I don't know what they call them. Little  
12 bed covers, mattress covers, or whatever. And sheets if I  
13 recall right. I don't -- I know that was there for sure.

14 Q. Okay. Would you take one of these stickers and  
15 put it as best you can recall where you found the clothes  
16 in there.

17 A. The best I recall, I think they were laying  
18 right here.

19 Q. Okay.

20 A. Here in front of the stove right here. And the  
21 stove -- like I say, it's a little wider. It's just a  
22 little narrow hallway right there.

23 Q. Thank you, sir.

24 (The witness returns to the witness stand.)

25 BY MR. HARPER:

26 Q. Now, you mentioned taking photographs of the  
27 inside of the trailer. I want to show you what's been  
28 marked as State's Exhibit 9 and ask if you will look at  
29 that and tell me whether or not you can identify that

1 photograph or not, please, sir.

2 A. Yes. That's the inside of the trailer right  
3 there. Major Manley -- the back door is right this side  
4 of that chair right here. So you come in right here and  
5 then you're looking left down the hall. This is the bed  
6 linens in front of the stove right here.

7 Q. That's one and the same as the ones you marked  
8 on the --

9 A. Correct. Correct. Right here in front of the  
10 stove, and then like I say, this little hall ain't but  
11 about two and a half foot wide. It's small. The washer  
12 and dryer are right here. They're not directly across  
13 from this, but it ain't just a couple of feet and that's  
14 where your washer and dryer are. That's the reason they  
15 were stacked up here.

16 Q. You obviously didn't take this pictures?

17 A. No. Because I'm standing right there --

18 Q. Because you're in them.

19 A. I didn't realize that either.

20 Q. Okay. All right. Thank you very much. This is  
21 what room in the house?

22 A. The living room and the kitchen and the hallway  
23 going into the spare bedroom.

24 BY MR. HARPER: Your Honor, we'd ask that we be  
25 able to publish that photograph. That's Number 9.

26 BY THE COURT: Number 9. You'll be allowed to  
27 publish Exhibit 9 to the jury.

28 (Mr. Harper passes Exhibit 9 to the jury.)

29 BY MR. HARPER:

1 Q. I hand you now what's been marked as State's  
2 Exhibit 10, Deputy Frank, and ask you to tell me what that  
3 is.

4 A. That's the Blockbuster video bag. He said he  
5 had sent her to Blockbuster, and that's showing that she  
6 did go to Blockbuster.

7 Q. Okay.

8 A. And there is some of the baby lotion that he  
9 was talking about that he had rubbed onto the baby.

10 Q. Where was this located in the trailer if you can  
11 recall?

12 A. I am pretty sure it was inside the living room.  
13 Right inside the living room door there, but I need to see  
14 another picture to be sure one hundred percent sure, but  
15 I'm pretty positive that's where it was.

16 BY MR. HARPER: May I publish this to the jury?

17 BY THE COURT: The Court will allow you to  
18 publish Exhibit 10 to the jury.

19 (Mr. Harper passes Exhibit 10 to the jury.)

20 BY MR. HARPER:

21 Q. Deputy Frank, y'all found these bed linens. Did  
22 y'all collect any physical -- any of the clothing --

23 A. We collected all of that. Every bit of it.

24 Q. And I believe you collected some of these  
25 things in these photographs?

26 A. Yes, sir. We did.

27 Q. Okay, sir. And who, if anyone, was the one that  
28 actually took physical custody of them at the trailer?

29 A. Major Manley.

1 Q. Is that pretty much his function. He's --

2 A. Right. He is the head over criminal  
3 investigation at the sheriff's office.

4 Q. So anything that any of y'all would have  
5 found --

6 A. Right.

7 Q. -- that y'all feel was determined to be  
8 pertinent, y'all would have given to him?

9 A. Correct.

10 Q. Okay.

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

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

14 BY MR. HARPER: Your Honor, we'll tender this  
15 witness at this time. One last question. I am  
16 sorry. Please the Court.

17 BY THE COURT:

18 Q. Deputy Frank, the person that you talked with  
19 that night that gave you that statement that you told the  
20 jury about --

21 A. Correct.

22 Q. And you knew to be Jeffrey Havard, is he present  
23 in the courtroom today?

24 A. Yes, sir. He is.

25 Q. Would you point him out and describe what he's  
26 wearing, please, sir.

27 A. He's standing -- he's sitting beside Robert  
28 Clark. The suit and tie with -- I can't see good -- a  
29 striped shirt on.

1 BY MR. HARPER: Your Honor, we would ask that  
2 the record reflect the witness has identified the  
3 defendant, Jeffrey Keith Havard.

4 BY THE COURT: Let the record so reflect.

5 BY MR. HARPER: We tender the witness.

6 BY THE COURT: Cross-examination.

7 CROSS-EXAMINATION

8 BY MR. CLARK:

9 Q. Deputy Frank, did you ever go back out to 33  
10 Montgomery Road after that particular morning again?

11 A. I don't recall if I've even been back out there  
12 since then.

13 Q. Was that crime scene taped off at any time that  
14 you know about? Was it secured?

15 A. After we left that night?

16 Q. Yes.

17 A. I don't believe so. No.

18 Q. In other words, was the trailer left open when  
19 y'all left?

20 A. Yes, sir. It was left just like we found it.

21 Q. Okay.

22 A. You're -- Jeffrey Havard says that's the way he  
23 left. We left it open.

24 Q. Well, yeah. They left in a rush, didn't they?

25 A. Right. Right.

26 Q. Going to the hospital. All right. Now, in  
27 your search of this house --

28 A. Uh-hum.

29 Q. -- for evidence and other items, did you find or

1 did you take any evidence of any type of blunt objects or  
2 anything like that?

3 A. Blunt objects meaning?

4 Q. Blunt objects.

5 A. I am sorry?

6 Q. Blunt objects.

7 A. We took a lot of stuff into evidence that  
8 night. We took -- like I say, we took the lotion. We  
9 took stuff like what he explained to us. We took dirty  
10 diapers--

11 Q. Right.

12 A. -- out of the --

13 Q. Bed linens.

14 A. Bed linens.

15 Q. Mattress covers.

16 A. Mattress --

17 Q. Comforters?

18 A. Yeah.

19 Q. Things like that?

20 A. Things like that.

21 Q. Did you take any type of blunt objects?

22 A. No.

23 Q. Did you find any type of --

24 A. Not that I -- not that I recall. It's according  
25 to what you're calling a blunt object. I don't have the  
26 evidence list in front of me. I am not --

27 Q. You weren't told to look for any blunt objects.  
28 Is that what you're saying?

29 A. It's not what I am saying at all.

1 Q. But you say you did not even look for any or you  
2 didn't find any? I am trying to get an understanding as  
3 to what you were looking for?

4 A. We were collecting evidence. What we thought  
5 was evidence, we collected. Whatever it was, we collected  
6 it. Anything we thought at all was pertinent to the  
7 investigation, we collected. That's the reason we were  
8 there.

9 Q. And you didn't take any blunt objects into  
10 your --

11 A. Like I say, I don't recall whether there was a  
12 blunt object or not.

13 BY MR. CLARK: Thank you.

14 BY MR. HARPER: Just a couple of questions, Your  
15 Honor.

16 REDIRECT EXAMINATION

17 BY MR. HARPER:

18 Q. Deputy Frank, if you got out the blunt objects  
19 in that trailer, you'd just about have to hook a truck to  
20 it and carry it home, wouldn't you?

21 A. That's correct.

22 BY MR. CLARK: Objection, Your Honor --

23 BY MR. HARPER: That's all I have.

24 BY MR. CLARK: -- to the form of the question.

25 BY THE COURT: I sustain the objection.

26 Any further redirect? You may step down.

27 (Witness steps down.)

28 BY THE COURT: Who does the State call as your  
29 next witness?



1 BY MR. HARPER: Your Honor, we would ask that  
2 Deputy Frank be finally released from our subpoena.

3 BY THE COURT: He'll be released from his  
4 subpoena.

5 BY MR. ROSENBLATT: Your Honor, the State would  
6 call Major John Manley. All right.

7 BY MR. SERMOS: Yes, sir. We'll agree to that.

8 BY MR. CLARK: We will release him, too, Your  
9 Honor, because we had him under subpoena also.

10 BY THE COURT: He'll be released also. Major  
11 John Manley.

12 JOHN MANLEY,  
13 having been duly and legally sworn, answered  
14 questions on his oath as follows, to-wit:

15 BY MR. ROSENBLATT: May I proceed, Your Honor?

16 BY THE COURT: You may proceed.

17 DIRECT EXAMINATION

18 BY MR. ROSENBLATT:

19 Q. What's your name and rank?

20 A. My name is Major John Manley.

21 Q. With whom are you employed?

22 A. Adams County Sheriff's office.

23 Q. In what capacity?

24 A. I'm a supervisor with the sheriff's office. I  
25 am in charge of criminal investigations.

26 Q. How long have you been doing that, Major  
27 Manley?

28 A. I've held this title approximately six years  
29 now.

1 Q. You do more than a few investigations?

2 A. Many investigations.

3 Q. Murder investigations?

4 A. Yes, sir.

5 Q. Death scenes?

6 A. Yes, sir.

7 Q. Major Manley, I'm going to direct your attention

8 back to the last February, the evening of February 21st.

9 I believe you were roused out that night?

10 A. Yes, sir. I was.

11 Q. Would you tell the jury how that came about.

12 A. Yes, sir. I received a call from Deputy Buddy

13 Frank who advised me of a situation at the Natchez

14 Community Hospital. Based on what he told me, I went to

15 the hospital, went to the emergency room. At that point,

16 I contacted Deputy Frank, and he was in the emergency room

17 area. I observed a young six-month-old child that was in

18 the trauma room. The child had been treated by Dr.

19 Patterson, Dr. Cadle, and also Dr. Dar.

20 Q. Okay. And were you able to observe any injuries

21 on this child?

22 A. Yes, sir. I did.

23 (Mr. Sermos moves the easel with Exhibit 1 for a better

24 view of the witness.)

25 Q. What did you see, Major Manley?

26 A. I observed that the baby had some bruises on

27 the forehead, some bruises on the leg area. I observed

28 that there was a clear liquid fluid that was coming from

29 the nose. The baby was still attached to -- still had

1 tubes running into its nose at this time. The diaper had  
2 been removed. The diaper was dirty. It had feces inside  
3 the diaper. The --

4 Q. Were they normal looking feces?

5 A. No, it was not.

6 BY MR. SERMOS: Object, Your Honor. They have  
7 medical experts that can testify to things like that.

8 BY THE COURT: I'll sustain as to the  
9 conclusion. I will allow him to describe what he  
10 saw, but I'll sustain as to him giving any  
11 conclusions as to that.

12 BY MR. ROSENBLATT:

13 Q. Thank you. Go ahead, please.

14 A. Yes, sir. I saw feces in the diaper. Loose  
15 feces. Liquidy. The legs were raised. I observed the  
16 rectum. The rectum was distended to a larger than normal  
17 size, and also I observed what appeared to be a tear in  
18 the rectum.

19 Q. Having observed this child, Major Manley, in  
20 your experience as an investigator, what did you conclude  
21 had happened to the baby?

22 A. It's my conclusion that the victim been  
23 sexually assaulted.

24 Q. When you saw Chloe Madison Britt, I believe she  
25 was dead at that time?

26 A. Yes, sir. She was.

27 Q. What did you do next in the course of your  
28 investigation?

29 A. The coroner was called to the scene. I notified

1 Sheriff Ferrell. We took photographs of the baby. We  
2 retrieved all items that was in the trauma room at that  
3 time, and as a result of that, we -- I had Jeffrey Havard  
4 who was at the hospital, I had him transported to the  
5 sheriff's office pending the outcome of the investigation.

6 Q. What about Rebecca Britt? What did you do with  
7 her?

8 A. Rebecca Britt was also taken to the sheriff's  
9 office for questioning.

10 Q. At that initial stage, was also a suspect?

11 A. Not at that point.

12 Q. What did you do about -- well, let me back up to  
13 Jeffrey Havard. What was your involvement with him at the  
14 sheriff's station?

15 A. Later on when I arrived back at sheriff's  
16 office, we had immediately taken his clothing and took  
17 them away from him. And a later point in time, myself and  
18 Deputy Buddy Frank talked with Mr. Havard.

19 Q. Did you do anything precautionary prior to  
20 talking with him?

21 A. We advised him of his rights.

22 Q. Major Manley, I am going to show what's been  
23 identified as State's Exhibit 16 and ask you what that is.

24 A. This is our standard interrogation advice of  
25 rights form.

26 Q. And at the bottom, what is that?

27 A. This would be waiver of rights.

28 Q. And who signed the waiver of rights?

29 A. Jeffrey K. Havard and it was witnessed by

1 myself and Deputy Buddy Frank.

2 Q. What does it mean by signing a waiver of rights?

3 A. It means that he's willing to speak to us  
4 freely and voluntarily, and that he did not want a lawyer  
5 at that time.

6 Q. Did he?

7 A. I am sorry?

8 Q. Did he?

9 A. No.

10 Q. Did he speak to you?

11 A. I am sorry. Yes, sir.

12 Q. What did he say to you?

13 A. He gave us a verbal statement of what had  
14 occurred that night.

15 Q. And what did he tell you had occurred?

16 A. He told us that he had slept most of that day.  
17 That he had gotten up late that day. I think he told me  
18 around five or maybe six that evening. That Rebecca Britt  
19 and the baby had arrived at home. He stated that at a  
20 later time, he gave Rebecca \$40.00 to go to the Natchez  
21 Market to buy some groceries. He stated that Rebecca left  
22 the baby in his care. The baby was in the swing in the  
23 living room, and that after Rebecca had left, the baby had  
24 started crying. He told me that he thought that maybe the  
25 baby needed a diaper change. He took the baby into the  
26 master bedroom, undid the diaper, and saw the diaper was  
27 okay, and that it did not need changing. He stated that  
28 while he was doing that, the baby had spit up. Had got  
29 some vomit or whatever into his hair, and at that point,

1 he gave the baby a bath, thinking that would calm her  
2 down. He gave her a bath. He rubbed lotion on her, and  
3 he put another diaper on her at which point he placed her  
4 in her crib in her bedroom and went back into the living  
5 room area. He stated that at a later time that Rebecca  
6 Britt had returned home. That Rebecca had forgotten to go  
7 to the Blockbuster video store to get some videos. He  
8 gave her some more money. She left. Went to the  
9 Blockbuster store, and at that time, he went and he took  
10 the linen off the bed in the master bedroom and stated  
11 that he was going to wash it. After doing that, he went  
12 into the bathroom and at some point in time, Rebecca  
13 Britt arrived at the trailer. She knocked on the door to  
14 let him know that she was there, and a short time later,  
15 he heard Rebecca scream, saying that the baby was blue and  
16 not breathing. He stated that Rebecca did CPR on the  
17 baby, and then they loaded the baby up into the vehicle  
18 and took the baby to the Natchez Community Hospital.

19 Q. Okay. I am missing something, Major Manley.  
20 When he talked to you, he didn't say anything about  
21 dropping the baby on the toilet?

22 A. No, sir. He did not.

23 Q. He didn't mention dropping her in any way  
24 whatsoever?

25 A. No, sir.

26 Q. He didn't say anything about causing any injury  
27 to the baby, did he?

28 A. No, sir.

29 Q. It was a mystery to him what had happened to

1 the baby?

2 A. He did not know what had happened to the baby  
3 and he couldn't understand why we had him at the office  
4 talking to him.

5 Q. What course did your investigation take after  
6 interviewing Mr. Havard?

7 A. We got a consent to search form signed by Mr.  
8 Havard, giving us consent to search his residence at 33  
9 Montgomery Road.

10 Q. Who else occupied that mobile home with him?

11 A. Rebecca Britt.

12 Q. Major Manley, let me show you --

13 (Mr. Rosenblatt shows document to Mr. Sermos and Mr.  
14 Clark.)

15 BY MR. ROSENBLATT:

16 Q. Let me show you a form and ask you to identify  
17 this for me, please, sir.

18 A. This is our standard permission to search form.

19 Q. And who signed that one?

20 A. Signed by Rebecca Britt.

21 Q. So in other words, you got all the occupants of  
22 the trailer to sign a consent to search?

23 A. Yes, sir. I did.

24 Q. All right.

25 BY MR. ROSENBLATT: I ask that this be  
26 introduced as an exhibit at this time.

27 BY THE COURT: Any objection to that?

28 BY MR. SERMOS: No, Your Honor.

29 BY THE COURT: The Court will allow this to be

1 introduced as Exhibit 18.

2 DOCUMENT MARKED AS STATE'S EXHIBIT 18

3 BY MR. ROSENBLATT:

4 Q. Major Manley, having gotten the consent to  
5 search, what did you all do?

6 A. Myself and Deputy Buddy Frank and Deputy Ray  
7 Brown, we went to 33 Montgomery Road and entered a trailer  
8 from the rear.

9 Q. I am going to show you what's been marked as  
10 Exhibit Number 3 and ask you what that is.

11 A. This is 33 Montgomery Road.

12 Q. That's --

13 A. The trailer occupied by Rebecca Britt and  
14 Jeffrey Havard.

15 Q. What time of day were y'all doing this?

16 A. This was approximately 3:00 a.m. if I remember  
17 correctly.

18 Q. That's the mobile home, but it was dark when  
19 y'all were doing this?

20 A. Yes, sir. It was dark and it was raining.

21 Q. I am sorry? Say that again.

22 A. It was raining that night.

23 Q. Cold, dark, and rainy?

24 A. Yes, sir.

25 Q. Deputy Manley, let me show you what's been  
26 marked as Exhibit Number 9 and ask you what that is?

27 A. This would be living room area of the trailer.  
28 This is the baby's swing here, and, of course, the chair  
29 in this area here is the kitchen area. And this area



1 right here is a bundle of clothing that we later took.

2 Q. Okay. And where is that bundle of clothing?

3 A. This bundle of clothing -- this is the stove  
4 right here. This clothing is right next to the stove.

5 Q. Okay. Now, Major Manley, Mr. Sermos moved it  
6 backward, but can you see that diagram of the mobile home.  
7 There's an orange dot on the edge of the kitchen area.

8 Does that --

9 A. I'm sorry. It's a little bit far away for me.  
10 (Mr. Rosenblatt moves Exhibit 1 closer up.)

11 A. Yes, sir. That would be the approximate area  
12 right there.

13 Q. Is that where you found the bundle of clothing?

14 A. Yes, sir.

15 Q. When you say bundle of clothing, what are we  
16 talking about?

17 A. This is the bed linens that had been wrapped  
18 up. Everything had been wrapped up together and wadded  
19 up.

20 Q. Now, when you say wrapped up and wadded up, what  
21 do you mean, Major Manley?

22 A. What I am referring to, there's several items  
23 that are inside this bundle right here. They're all  
24 wrapped up in one big sheet or comforter. I don't  
25 remember exactly what that is.

26 Q. Now, when y'all went into the trailer, did you  
27 know ahead of time what you were looking for?

28 A. Not at that time. He had told us that he had  
29 stripped the bed when the baby had spit up.

1 Q. Let me show you Exhibit Number 11 and ask you  
2 what that indicates.

3 A. This is a towel that is inside of a sheet, a  
4 fitted bed sheet.

5 Q. Is that typical of what y'all found? Everything  
6 bundled up like that. Is that what you meant?

7 A. Yes, sir.

8 Q. In other words, all the bed linens just rolled  
9 up together sort of?

10 A. Yes, sir.

11 Q. Now, you called that a fitted sheet.

12 A. That's what I would call a fitted sheet.

13 Q. Does the fitted sheet have any distinguishing  
14 characteristics about it?

15 A. It has what appears to be -- it's what we call  
16 sun and clouds diagram.

17 Q. Major Manley, let me show you Exhibit Number 12  
18 and ask you to identify -- it's similar --

19 A. This would be another sheet with the cloud and  
20 sun on it.

21 Q. Be the top sheet?

22 A. Yes, sir.

23 Q. You don't see the elastic around it?

24 A. I don't see it in this photograph.

25 Q. That's that same pattern?

26 A. Yes, sir.

27 Q. What are these sheets made of; do you recall?  
28 I mean, they're not slick.

29 A. I think they may be cotton, but I am not

1 positive of that.

2 Q. Okay. What did you do with all this evidence  
3 that you collected?

4 A. We collected it and we brought it back to the  
5 sheriff's office, and it was placed -- well, it was placed  
6 in the bags and marked as exhibits to be sent to the state  
7 crime lab.

8 Q. Now, just roughly, Major Manley, how many pieces  
9 of evidence did y'all ship up to the crime lab?

10 A. Roughly, I'd think it's twelve or thirteen  
11 items.

12 Q. So basically you tested a lot of stuff? You  
13 sent a lot of stuff up there?

14 A. Yes, sir.

15 (Mr. Rosenblatt shows item to Mr. Sermos and Mr. Clark.)

16 BY MR. ROSENBLATT:

17 Q. Major Manley, do you have any protective  
18 garments?

19 A. Not on me, no.

20 Q. I am going to hand you a bag and ask you to  
21 identify that for me, please, sir.

22 A. This bag is marked with our case number 76725.  
23 It has my initials on it, JAM. It's marked bag number  
24 nine and exhibit number nine. At the top it says "fitted  
25 sheet found in kitchen beside stove." It has white hearts  
26 and suns.

27 Q. Major Manley, would you find a photograph that  
28 corresponds with that physical item.

29 A. This one.

1 Q. Fitted sheet?

2 A. Yes, sir.

3 Q. Okay. The exhibit referring to Exhibit Number  
4 11?

5 A. Yes, sir.

6 Q. Now, Major Manley, before you open that bag, let  
7 me ask you. Did that bag look exactly the way it did when  
8 you first bagged it?

9 A. Yes, sir.

10 Q. Did you have that little computer stickie thing  
11 on there?

12 A. No, sir. This was put on by the state crime  
13 lab.

14 Q. So what's different about that bag now than when  
15 you first bagged everything?

16 A. It has a sticker applied to it with the state  
17 crime lab identification on it.

18 Q. And it also, I see, has some green tape at the  
19 bottom and has been resealed once.

20 A. Yes, sir.

21 Q. Whose green tape is that?

22 A. That's also from the state crime lab.

23 Q. So this item would have been sent to the state  
24 crime lab for examination; is that correct?

25 A. Yes, sir.

26 Q. And how would it have gotten back?

27 A. We went and brought it back.

28 Q. And other than the state crime lab seal on  
29 there, the package is sealed in the way you remember

1 putting the item in there?

2 A. Yes, sir.

3 Q. If you would, if you would carefully open that  
4 bag and examine the contents and see if it's what you  
5 remember putting in that bag.

6 (Witness opens the bag.)

7 BY MR. ROSENBLATT:

8 Q. Major Manley, let me just remind you, if I  
9 could, that we are dealing with possible biological  
10 evidence.

11 A. Yes, sir.

12 BY THE WITNESS: Your Honor, may I stand up?

13 BY THE COURT: Yes. You will be allowed to  
14 stand up.

15 A. Yes, sir. This would be the fitted sheet.

16 Q. Okay. Major Manley, was it whacked up like  
17 that when you submitted it?

18 A. No, sir. It was not.

19 Q. What's the significance of those holes cut out  
20 there?

21 A. These are going to be the samples that the  
22 state crime lab cut out for DNA comparisons.

23 Q. But that is the sun and clouds fitted sheet that  
24 you're referring to?

25 A. Yes, sir.

26 Q. Same one that was found in the mobile home that  
27 evening?

28 A. Yes, sir.

29 Q. Would you repackage that as best you can,

1 please, sir.

2 (Witness complies.)

3 BY MR. ROSENBLATT:

4 Q. That's fine. Major Manley, this bag with Case  
5 Number 76725 on it and exhibit number nine and state crime  
6 lab sticker, that's substantially in the same condition it  
7 was when you sent it off and then later retrieved it for  
8 tests?

9 A. Yes, sir.

10 Q. And you have examined the contents of that bag?

11 A. Yes, sir.

12 Q. And except for the sample cut out, the contents  
13 of that bag is what you remember putting in that bag of  
14 what you retrieved from the mobile home that night?

15 A. Yes, sir. It is.

16 Q. The mobile home where Chloe Madison Britt spent  
17 her last living moments?

18 A. Yes, sir.

19 BY MR. ROSENBLATT: Your Honor, at this time I  
20 move to introduce this as an exhibit.

21 BY THE COURT: Any objection?

22 BY MR. SERMOS: Yes, Your Honor. We object to  
23 that. May I state the objection?

24 BY THE COURT: Do what?

25 BY MR. SERMOS: May I state the objection?

26 BY THE COURT: Yes, sir.

27 BY MR. SERMOS: Your Honor, as I remember back  
28 in chambers, we talked about the photograph, and I  
29 could understand certain relevance of that, but as

1 far as the actual item itself, I don't see what the  
2 probative value is of that since that's --

3 BY THE COURT: All right. The Court --

4 BY MR. SERMOS: I don't know what it establishes.

5 BY THE COURT: The Court is going to direct  
6 that it be marked for identification only at this  
7 time as B for identification pending further  
8 testimony in this case.

9 DOCUMENT MARKED FOR IDENTIFICATION AS B

10 BY MR. ROSENBLATT: Thank you, Your Honor. And  
11 we do certainly intend to offer further testimony.  
12 Your Honor, at this time, we would now publish  
13 Exhibit Number 11 which is the picture of the fitted  
14 sheet to the jury.

15 BY THE COURT: You will be allowed to so publish  
16 Exhibit 11.

17 (Mr. Rosenblatt passes Exhibit 11 to the jury.)

18 BY THE COURT: Mr. Rosenblatt, let's do this. I  
19 think we'll take a short recess now. It's getting on  
20 up close to four. This is going to be about a  
21 ten-minute recess, Mrs. Angelethy. The witness,  
22 you're welcome to step down, but the Court is going  
23 to be in recess for approximately ten minutes.

24 (After a short recess, the following was made of record,  
25 to-wit;)

26 BY THE COURT: You may resume with your direct  
27 examination of the witness.

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

29 BY MR. ROSENBLATT:

1 Q. Major Manley, I'm now going to show you another  
2 bag marked bag number seven and ask you to identify that  
3 for me, please, sir.

4 A. Once again, this has our case number on it. It  
5 has my initials on it. Has bag number seven, exhibit  
6 number seven, and this is the top sheet found in kitchen  
7 at the stove, and also bears the seal from the state crime  
8 lab and also the seal at the bottom from the state crime  
9 lab.

10 Q. And either you personally or someone in your  
11 office bagged that piece of evidence and transported it to  
12 the crime lab and brought it back for us here today?

13 A. Yes, sir.

14 Q. And that bag other than the crime lab indication  
15 on there is exactly the way it was when you bagged it?

16 A. Yes, sir.

17 Q. Now, if you would, open that bag and see if the  
18 contents are what you remember them to be when you put  
19 them in there.

20 (Witness opens bag.)

21 A. Okay. This would be the top sheet with the sun  
22 and moon -- clouds.

23 Q. And I notice it also has some cut outs in it?

24 A. Yes, sir. It does.

25 Q. All right, sir. And what that -- did you put  
26 those in there?

27 A. No, sir.

28 Q. What do you expect those to have been made by?

29 A. Those would have been made by personnel at the



1 state crime lab.

2 Q. Now, Major Manley, I'm going to ask you to  
3 compare that to the photograph and ask you if that's the  
4 same sheet we're talking about there?

5 A. Yes, sir, it is.

6 Q. That would be Exhibit Number 12 which is the  
7 photograph of the sheet, and you are actually holding the  
8 sheet before us now?

9 A. Yes, sir.

10 BY MR. ROSENBLATT: Your Honor, once this sheet  
11 is repackaged, I'm going to ask that this item be  
12 marked for identification purposes.

13 BY THE COURT: Yes, sir.

14 BY MR. CLARK: What's that number?

15 BY MR. SERMOS: Seven.

16 BY MR. ROSENBLATT: It doesn't have a number  
17 yet.

18 BY MR. SERMOS: It was number seven the Major  
19 said.

20 BY MR. ROSENBLATT: I'm sorry. Excuse me.

21 BY THE COURT: The Court will allow this to be  
22 marked as C for identification.

23 DOCUMENT MARKED FOR IDENTIFICATION AS C

24 BY MR. ROSENBLATT: May I confirm the number  
25 with the court reporter, Your Honor?

26 BY THE COURT: Do what?

27 BY MR. ROSENBLATT: Confirm the exhibit item  
28 with the court reporter?

29 BY THE COURT: Yes, you may.

1 (Mr. Rosenblatt confirms the exhibit number with the court  
2 reporter.)

3 BY MR. ROSENBLATT: This will be Identification  
4 C, Your Honor?

5 BY THE COURT: That's correct.

6 BY MR. ROSENBLATT: May I proceed, Your Honor?

7 BY THE COURT: Yes, you may.

8 BY MR. ROSENBLATT:

9 Q. Major Manley, I'm going to show you three items  
10 as a group, and let you look at those, and as a group if  
11 you would explain to the jury with those items are.

12 A. Yes, sir. This envelope here marked Exhibit  
13 Number 18, it bears our case number. It's one purple top  
14 tube drawn from Rebecca Britt. It bears my initials and  
15 as I say, it's marked Exhibit 18.

16 Q. All right, sir.

17 A. And it also bears the label from the state  
18 crime lab and the sticker at the bottom that was applied  
19 by the state crime lab.

20 Q. I am going to ask that you leave those sealed,  
21 but just go through the other two and tell us what they  
22 are.

23 A. One marked as Exhibit 16, this is a sexual  
24 assault kit. It was taken from the defendant, Jeffrey  
25 Havard. It was drawn by Brian Rabb, I believe, the name  
26 is, from the Natchez Regional Hospital.

27 Q. Okay.

28 A. This was also submitted to the state crime lab.

29 Q. And the last?

1           A.    This once again is a sexual assault kit. It's  
2 got the name Chloe Britt. This was taken by the state  
3 medical examiner, and this was also submitted to the state  
4 crime lab.

5           Q.    Now, Major Manley, explain to the jury what's  
6 the point of having the three blood samples from these  
7 three individuals?

8           A.    It's to compare with any possible blood that we  
9 had found at the crime scene.

10          Q.    So in other words, compare and testing these  
11 items is of no value if you don't have anything to compare  
12 them to; is that right?

13          A.    That's correct.

14                BY MR. ROSENBLATT: Your Honor, I would ask that  
15 these items be introduced as a composite exhibit at  
16 this time.

17                BY THE COURT: All right. Is there objection to  
18 these?

19                BY MR. SERMOS: We would ask them marked for  
20 identification, Your Honor.

21                BY THE COURT: All right. The Court will so  
22 order at this time. The Court will direct that the  
23 first item which is the vial of blood from Rebecca  
24 Britt will be marked as D for identification. Let  
25 the record show that the exhibits numbered that were  
26 just testified to by the witness are not the exhibit  
27 numbers in this case, but --

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

29                BY THE COURT: -- were in the investigation. So

1 that will be marked for D for identification. The  
2 sexual assault kit of the defendant, one Jeffrey  
3 Keith Havard, will be marked as E for identification,  
4 and then the sexual assault kit of the alleged  
5 victim will be marked as F for identification.

6 BY THE COURT: Thank you, Your Honor.

7 BLOOD SAMPLES MARKED FOR IDENTIFICATION AS D, E, AND F  
8 RESPECTIVELY

9 BY MR. ROSENBLATT: May I proceed, Your Honor?

10 BY MR. ROSENBLATT:

11 Q. Now, Major Manley, because of the Court's  
12 ruling, let me get a little more information from you on  
13 these items that which have now been marked for  
14 identification as D, E, and F. First of all, Exhibit D.  
15 That's actually your markings and writing on that exhibit?

16 A. Yes, sir. It is.

17 Q. So you would have obtained that sample. Your  
18 department would have obtained that sample?

19 A. Yes, sir. We did.

20 Q. Your department would have transported that  
21 sample to the crime lab?

22 A. That's correct.

23 Q. And then your department would have retrieved  
24 that envelope that we have before us today.

25 A. That's correct.

26 Q. Okay. Now, then on Exhibit Number E, that's a  
27 sexual assault kit that your department directed to be  
28 drawn from the defendant?

29 A. Yes, sir. Per court order.

1 Q. Right. And then your department oversaw the  
2 taking of that sample?

3 A. Yes, sir. The defendant was taken to the  
4 hospital by Deputy Frank Smith, and he observed the test  
5 being drawn.

6 Q. So he was actually present?

7 A. Yes, sir.

8 Q. Someone from your department, and your  
9 department then transported that sample to the state crime  
10 lab?

11 A. That's correct.

12 Q. And your department retrieved that sample from  
13 the state crime lab?

14 A. That's correct.

15 Q. Now, then with Exhibit Number F, we have a  
16 little different situation in that your department didn't  
17 actually draw that sample, did it?

18 A. No, sir. We did not. This was drawn by the  
19 state medical examiner.

20 Q. That would be Dr. Stephen Hayne.

21 A. That's correct.

22 Q. But your department did retrieve that sample  
23 from the state crime lab.

24 A. That's correct.

25 Q. And your department has kept that sample in its  
26 custody?

27 A. Yes, sir.

28 Q. Thank you.

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

1 BY MR. ROSENBLATT:

2 Q. Major Manley, the suspect in the case that you  
3 dealt with on the night of February 21st and subsequently  
4 thereafter and obtain these samples, do you see him in the  
5 courtroom here today?

6 A. Yes, sir. I do.

7 Q. What's his name?

8 A. His name is Jeffrey Keith Havard.

9 Q. Would you point him out to us, please, sir.

10 A. Yes, sir. He's sitting at the end of the table  
11 next to Robert Clark, his attorney.

12 BY MR. ROSENBLATT: Would the record please  
13 reflect that this witness has identified the  
14 defendant.

15 BY THE COURT: Let the record so reflect.

16 BY MR. ROSENBLATT:

17 Q. In the course of your investigation, did you  
18 have an opportunity to collect any personal data on Mr.  
19 Havard?

20 A. As far as date of birth and all, yes, sir. I  
21 did.

22 Q. Do you know how old he is?

23 A. Yes, sir. He's twenty-three -- he was  
24 twenty-three years of age when we talked to him.

25 Q. And you got all that information when you booked  
26 him in?

27 A. Yes, we did.

28 Q. And how did you get that information?

29 A. Through him, and we also had other records

1 checked.

2 Q. Okay. And what's his date of birth as far as  
3 you know, or do you have that?

4 A. His date of birth is November 11th, 1978.

5 BY MR. ROSENBLATT: Thank you, Major Manley. I  
6 tender the witness, Your Honor.

7 BY THE COURT: Cross-examination.

8 CROSS-EXAMINATION

9 BY MR. SERMOS:

10 Q. Major Manley, you're essentially, other than the  
11 sheriff, you're the chief officer that was responsible for  
12 this investigation; is that right?

13 A. Yes, sir. I oversaw the investigation.

14 Q. And on one of your reports you have got, stated  
15 at the top of it says "Crime scene report, capital murder"  
16 and it talks about being at the hospital and everything.  
17 What actually do you consider in your parlance here the  
18 crime scene?

19 A. Well, what I consider to be a crime scene is  
20 that we first got the report at the hospital. I observed  
21 the baby which would have been a part of the crime scene,  
22 and then at a later point in time, I went to the residence  
23 which would also be considered the crime scene.

24 Q. All right.

25 BY MR. SERMOS: One moment, please, Your Honor,  
26 and let me get one thing.

27 BY THE COURT: Certainly.

28 (Mr. Sermos retrieves document.)

29 BY MR. SERMOS:

1 Q. When you went to 33 Montgomery Road, you went  
2 with several other deputies; is that right?

3 A. Yes, sir. I did.

4 Q. Did you walk in at the same time the other  
5 deputies did? I believe it was Mr. Smith or Brown -- I am  
6 sorry -- was there also. Were you there when he was  
7 there?

8 A. Yes, sir. We were all present there.

9 Q. When you went there and you left, did you secure  
10 the scene with any yellow tape or anything?

11 A. No, sir.

12 Q. And why didn't you do that?

13 A. Because at that point, I thought that I was  
14 through with the crime scene.

15 Q. Okay. When you went there, you had already  
16 talked to one or two of the doctors; is that right?

17 A. Yes, sir.

18 Q. Had you talked to Dr. Patterson?

19 A. Yes, sir. I did.

20 Q. And had Dr. Patterson told you that she thought  
21 from her professional view and opinion of seeing Chloe  
22 Britt's rectum that it had looked like it had been torn.  
23 Did she tell you that?

24 A. Yes, sir. It appeared to be a tear.

25 Q. Did she tell you it looked like maybe some  
26 blunt object did that?

27 A. She told me something had been inserted. She  
28 never mentioned anything about a blunt object.

29 Q. Okay. So something had been inserted which



1 could be a lot of different things, right?

2 A. That's correct.

3 Q. When you were at the mobile home there and you  
4 had those consent searches because Mr. Havard voluntarily  
5 signed the consent search and so did Rebecca; isn't that  
6 right?

7 A. That's correct.

8 Q. When you went there, at any time in your  
9 investigation when you looked around in that mobile home,  
10 were you looking for any kind of device or object that  
11 could have caused that wound to the baby?

12 A. That's one of the thing I looked for. Yes, sir.

13 Q. And we have all this evidence here, but I  
14 don't -- I haven't seen on any of the lists that anything  
15 that was found. Was it -- did you ever find anything that  
16 you thought might have caused that?

17 A. When I talked about something of that nature, I  
18 am thinking in terms of a sex toy is what I am thinking  
19 of. Nothing of nature was found.

20 Q. Did you ever -- did you ever look around for any  
21 hair brush handles? That's a blunt object. Did you ever  
22 look around for any of those?

23 A. She never told me that it was a blunt object,  
24 but --

25 Q. But an object then. We'll say object.

26 A. She said something had been inserted, but when  
27 she said something had been inserted, in my mind that  
28 could be a penis. It could be digital. It could be a sex  
29 toy.

1 Q. And as you've stated earlier, Jeffrey Havard was  
2 taken to Natchez Regional Medical Center where a Dr.  
3 Barrons and a Nurse Rabb did a sexual assault kit on him;  
4 isn't that right?

5 A. Yes, sir. He was taken for a sexual assault  
6 examination.

7 Q. Did you ask Dr. Barrons what all he looked at  
8 on Mr. Havard?

9 A. No, sir. I never spoke to Dr. Barrons.

10 Q. Okay. As far as any other objects, there's no  
11 objects in evidence? In other words, there's no mop  
12 handles, broom handles, hair brush handles. Nothing like  
13 that, is there? In evidence.

14 A. Nothing like that was taken in evidence. No,  
15 sir.

16 Q. And nothing that was submitted to a crime lab  
17 or anything else to see if it had any tissue, blood, feces  
18 or DNA of Chloe Britt on it; isn't that right.

19 A. You're talking about a blunt object?

20 Q. I'm talking about any kind of object. Nothing  
21 that had any feces, blood, fluid, or DNA from Chloe Britt.  
22 You haven't had anything like that, do you?

23 A. I know we sent several items to the state crime  
24 lab and they did their examination. I know that there  
25 were some items found that had all three samples --

26 Q. But those things are like a sheet or something  
27 like that, but no objects, nothing that could have caused  
28 that rectal tearing, right?

29 A. I did not take any objects and send it to the

1 crime lab and get a return on it.

2 Q. Thank you.

3 BY MR. SERMOS: May I approach, Your Honor?

4 BY THE COURT: Yes, sir.

5 BY MR. SERMOS:

6 Q. Major Manley, these are the photographs that I  
7 got from -- apparently taken by you all in the bathroom.  
8 Do you remember that or seeing that?

9 A. We have several photos. I don't remember this  
10 one in particular, but I wouldn't dispute you that this is  
11 one.

12 Q. Okay. All right. And this is another one right  
13 here.

14 A. Yes, sir.

15 Q. All right. Do you recall any of those at all?

16 A. Yes, sir. I recall this one specifically.

17 Q. Thank you, sir.

18 BY MR. SERMOS: Your Honor, could we have these  
19 marked for identification?

20 BY MR. HARPER: We have no objection to them  
21 being introduced, Your Honor.

22 BY THE COURT: Will you be seeking to introduce  
23 them into evidence?

24 BY MR. SERMOS: I believe so, Your Honor.

25 BY THE COURT: Okay. Do you care to do that  
26 now, or you'd rather wait about that?

27 BY MR. SERMOS: No, sir. I'll tell you. We'd  
28 ask to go ahead and have them marked and introduced.

29 BY THE COURT: There's no objection by the

1 State?

2 BY MR. HARPER: No, sir.

3 BY THE COURT: Then the Court will allow these  
4 two photographs to be introduced as Exhibit 19 and  
5 Exhibit 20.

6 PHOTOGRAPHS MARKED AS DEFENDANT'S EXHIBIT 19 and 20

7 BY MR. SERMOS:

8 Q. Mr. Manley, did you or one of the deputies go  
9 into the bathroom in the mobile home where the tub is and  
10 see if anybody even -- if you could find any signs that  
11 anybody had been given a bath or taken a bath?

12 A. When we went into the bathroom area, I observed  
13 the baby tub that was leaning up against the wall. I  
14 observed the shower, but this was approximately six hours  
15 after the incident had occurred. So if anyone had taken a  
16 shower, it's my belief that whatever residue had been left  
17 would have been dry by that time.

18 Q. Okay.

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

20 (Mr. Sermos and Mr. Harper confer.)

21 BY MR. SERMOS: Your Honor, may I approach  
22 again?

23 BY THE COURT: Certainly.

24 BY MR. SERMOS:

25 Q. Major Manley, do you recall that being --

26 A. The bathtub. The baby bath. Yes, sir.

27 Q. Was that standing there like when your officers  
28 took the picture of it?

29 A. Yes, sir.

1 Q. And that's what you remember seeing in there?

2 A. Yes, sir.

3 BY MR. SERMOS: Your Honor, we would ask to have  
4 this marked for identification and admitted into  
5 evidence.

6 BY THE COURT: All right. Is there any  
7 objection to this photograph?

8 BY MR. HARPER: No, sir.

9 BY THE COURT: The Court will allow that to be  
10 introduced as Exhibit 21.

11 PHOTOGRAPH MARKED AS DEFENDANT'S EXHIBIT 21

12 BY MR. SERMOS:

13 Q. Officer Manley, when you were there and you all  
14 went through the house, of course, and you talked about  
15 all these sheets and everything that were in a bag down at  
16 the end of the hall, and that was in one of the  
17 photographs that the district attorney showed you. All  
18 that stuff was stacked up there but it hadn't been washed,  
19 had it?

20 A. No, sir.

21 Q. So -- and I believe, of course, it will come out  
22 later that Mr. Havard told you that he had put that down  
23 there to wash it, though, didn't he?

24 A. That's what he told us. He was going to wash  
25 those items.

26 Q. But he hadn't washed it, had he?

27 A. No, sir. He had not.

28 Q. And he had gone to the hospital voluntarily;  
29 isn't that right?

1 A. To my understanding, yes, sir.

2 Q. In other words, of his own free will?

3 A. Yes, sir.

4 Q. So when he left that mobile home and he left it  
5 unlocked also apparently; isn't that correct?

6 A. Yes, sir. He did.

7 Q. And nobody made him leave. He went of his own  
8 free will and left those clothes and those bags by the  
9 machine just like you showed them, correct?

10 A. Correct.

11 Q. Now, as far as those things that you looked at  
12 that were on the side of tub in there, those things were  
13 all there when you got there. So is it fair to say or  
14 would you agree that all those things were on that tub  
15 just like that when Jeffrey Havard went to the hospital  
16 with Rebecca to take the baby?

17 A. I can only testify, Mr. Sermos, that those  
18 items were there when I got there.

19 Q. But it's certainly fair to say that Mr. Havard  
20 couldn't have gotten back there to those items, could he?

21 A. That's correct.

22 Q. As far as any sexual assault kits that were done  
23 -- let me ask you this. I am sorry. Did you review or  
24 read any reports on any sexual assault kit that were done  
25 on the baby, Chloe Madison Britt?

26 A. Yes, sir. I saw a report from the crime lab in  
27 reference to that.

28 Q. Okay. And that report stated from the crime lab  
29 person that the crime lab did not find on or in Chloe

1 Britt any DNA or any residue or specimen from Jeff Havard;  
2 is that right?

3 A. It's my understanding no DNA was found.

4 BY MR. SERMOS: Your Honor, I need to review a  
5 note. May I have the Court's permission to publish  
6 these or hand them to the jury so they can and pass  
7 them around?

8 BY THE COURT: All right. That will be allowed.

9 BY MR. SERMOS: These are just these three in  
10 evidence, Your Honor.

11 BY THE COURT: That will be allowed.

12 (Mr. Sermos passes exhibits to the jury.)

13 BY MR. SERMOS: Okay. Your Honor, I have no  
14 further questions of this witness.

15 BY THE COURT: Okay.

16 BY MR. SERMOS: I will --

17 BY THE COURT: Yes, sir.

18 BY MR. SERMOS: I am sorry, sir. I would  
19 request that on a lot of the witnesses we've release  
20 them, but I would ask that we do not release Major  
21 Manley from his subpoena. That he be on standby  
22 somewhere.

23 BY THE COURT: Let the record show that you do  
24 reserve that right.

25 BY MR. ROSENBLATT: I have one or two --

26 BY THE COURT: Certainly. You'll be allowed  
27 redirect.

28 REDIRECT EXAMINATION

29 BY MR. ROSENBLATT:

1 Q. Major Manley, Mr. Sermos asked you at length  
2 about looking for a blunt object, looking for a blunt  
3 object. Did Dr. Patterson ever identify to you what the  
4 object was that penetrated this baby?

5 A. No, sir. She never made any indication as to  
6 what type of item had been inserted into the baby. She  
7 never mentioned a blunt object.

8 Q. If Mr. Havard had used his fingers, he rather  
9 wouldn't have left them at the mobile home, would he?

10 A. No, sir.

11 Q. If Mr. Havard had used his penis, he wouldn't  
12 have left it at the mobile home, would he?

13 A. No, sir.

14 BY MR. ROSENBLATT: Thank you.

15 BY THE COURT: You may step down, but keep in  
16 mind, you will remain under subpoena and be available  
17 to the Court if called by the other side.

18 (Witness steps down.)

19 BY THE COURT: All right. Would counsel  
20 approach the bench.

21 (After a bench conference about length of witnesses, the  
22 following was made of record, to-wit:)

23 BY THE COURT: All right. Who does the State  
24 call as your next witness?

25 BY MR. HARPER: Deputy Frank Smith, Your Honor.

26 FRANK SMITH,

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

29 BY MR. HARPER: May I proceed, Your Honor?



1 BY THE COURT: You may.

2 DIRECT EXAMINATION

3 BY MR. HARPER:

4 Q. State your name, please, sir.

5 A. Frank Smith.

6 Q. Deputy Smith, with whom are you employed, sir?

7 A. Adams County Sheriff's office.

8 Q. In what capacity?

9 A. As a deputy sheriff.

10 Q. How long have you been working with the  
11 sheriff's office in that capacity?

12 A. Almost twelve years.

13 Q. I'd like to direct your attention, Deputy Smith,  
14 to an investigation involving the murder of a child, Chloe  
15 Madison Britt, that was initiated on the evening of  
16 February 21st, 2002, and ask first of all, were you  
17 involved in the investigation on that particular day?

18 A. Yes, sir, I was.

19 Q. What, if anything, did you do on the 21st?

20 A. Myself and Major Manley conducted an interview  
21 with the defendant. Obtained both a written and a video  
22 statement from him.

23 Q. Was that on the 21st, the night of the murder,  
24 or was that subsequent to that?

25 A. That was on the 23rd.

26 Q. Were you involved at all on the 21st?

27 A. Nothing prior to that day. No, sir.

28 Q. So on the 23rd is the first time you had any  
29 involvement?

1 A. Yes, sir.

2 Q. Would you tell us -- well, let me ask you this.  
3 Prior to that, possibly on the 22nd, did you have occasion  
4 to be involved in the transportation of the defendant to  
5 the doctor's office or to the hospital for a sexual  
6 assault kit to be administered against him?

7 A. Yes, sir. I was advised by the sheriff and  
8 Major Manley to take the defendant along with Deputy James  
9 Pace to the Natchez Regional to obtain DNA samples on an  
10 order signed by Judge Johnson. He was transported to the  
11 hospital. The doctor, Dr. Barrons, and also a nurse,  
12 Brian Rabb, collected whatever evidence was necessary  
13 according to the kit, and I took possession of the  
14 evidence, brought it back to the sheriff's office and  
15 secured it as evidence.

16 Q. Would one of those items been blood samples from  
17 him?

18 A. Yes, sir.

19 Q. And you observed those being taken from him?

20 A. Yes, sir. I did.

21 BY MR. HARPER: May I approach the witness, Your  
22 Honor?

23 BY THE COURT: Yes, you may.

24 BY MR. HARPER:

25 Q. I'd like to show you what's been marked for  
26 identification as Exhibit E and ask if you will tell me  
27 whether or not you can identify that, please.

28 A. Yes, sir. This is the package that I hand  
29 delivered back to the sheriff's office and placed into

1 evidence.

2 Q. And you observed the doctor and the nurse take  
3 those samples and place them in this bag before obtaining  
4 it?

5 A. Yes, sir. I did.

6 Q. Now. That was on the 22nd. Did you do  
7 anything else on the 22nd?

8 A. The defendant was brought back to the sheriff's  
9 office and secured, and evidence was placed -- you know --  
10 was secured also, and that's the only thing else I had to  
11 do with it until that day.

12 Q. On the next day, the 23rd, you said that you  
13 were involved in some interviews with the defendant?

14 A. Yes, sir.

15 Q. How did that come about to your knowledge?

16 A. I had already went home, and the dispatcher,  
17 Lanice Loyed -- Loyed had contacted me at my residence,  
18 and I was advised that Jeffrey Havard had stated that he  
19 would only talk to either myself or either John Manley.  
20 And at that point, I told her that I would be en route to  
21 the office. To go ahead and advise Major Manley of that.  
22 I got back dressed and met Major Manley at the office.

23 Q. Was this from Mr. Havard based on y'all trying  
24 to talk to him, or did he indicate he wanted to talk to  
25 somebody?

26 A. No, sir. I was advised through the sheriff's  
27 office that he had requested through a jailer to talk to  
28 either me or John Manley and that he was ready to talk.

29 Q. Okay. And what did you do when you say you

1 advised you would come on to the station?

2 A. Yes, sir. I advised the dispatcher that I  
3 would be on my way up there and go ahead and call Major  
4 Manley and advise him of that. That I was sure he would  
5 want to come up there as well.

6 Q. About what time was this when you got this call?

7 A. Arrived back at the sheriff's office, and we  
8 brought the defendant over. I think it was about 6:30.

9 Q. P.m.

10 A. Yes, sir.

11 Q. Okay. All right. And what happened when you --  
12 did y'all, in fact, sit down to talk with him at that  
13 point?

14 A. Yes, sir. Once I got to the sheriff's office  
15 and Major Manley met me there, we went over and got the  
16 defendant, brought him across the hall to Major Manley's  
17 office. Sat down and advised him of his rights, and he  
18 signed the advice of rights form which was witnessed by  
19 myself and Major Manley, and he proceeded to tell us what  
20 had happened that afternoon or that --

21 Q. Now, on that particular day, did you execute  
22 more than one advice of rights form with him?

23 A. Yes, sir. We did. We obtained an advice of  
24 rights for the written statement, and also after we  
25 obtained the written statement from him, we took -- did  
26 another advice of rights and for the purposes of the  
27 video.

28 Q. Do you have those forms with you?

29 A. Yes, sir. I do.

1 Q. Let me first of all ask you to produce the  
2 advice of rights form that you initially did with him on  
3 the 23rd before you talked with him.

4 A. This is the advice of rights that we obtained  
5 for the written statement that we obtained from Jeffrey  
6 Havard.

7 Q. How are you able to determine that is, in fact,  
8 the advice of rights?

9 A. It's signed -- it's witnessed by myself. Also  
10 Major John Manley and signed by the defendant, the date,  
11 and the time, and it's at the Adams County jail.

12 Q. It appears that this was at 6:19 on the 23rd;  
13 is that right?

14 A. Yes, sir.

15 BY MR. HARPER: Your Honor, we'd move at this  
16 time to introduce this into evidence.

17 BY THE COURT: Show it to counsel.

18 BY MR. HARPER: Yes, sir.

19 (Mr. Harper shows to defense counsel.)

20 BY MR. SERMOS: No objection, Your Honor.

21 BY THE COURT: All right. The Court will allow  
22 that to be introduced as Exhibit 22 in this case.

23 DOCUMENT MARKED AS STATE'S EXHIBIT NUMBER 22

24 BY MR. HARPER:

25 Q. I'll show you State's Exhibit 22 and ask again  
26 if you will tell me what that is, please, sir.

27 A. That's the advice of rights form signed and  
28 witnessed by myself and signed by the defendant, Jeffrey  
29 Havard.

1 BY MR. HARPER: Your Honor, may I publish that  
2 to the jury?

3 BY THE COURT: You'll be allowed to publish that  
4 to the jury.

5 (Mr. Harper passes exhibit to the jury.)

6 BY MR. HARPER:

7 Q. Now, so after you executed that one, y'all  
8 talked to him; is that right?

9 A. Yes, sir.

10 Q. Were you aware that he had talked with law  
11 enforcement prior to that?

12 A. I was aware that he had talked to them. I  
13 wasn't -- you know -- I wasn't present during that. No,  
14 sir.

15 Q. Do you have any idea whether or not what he told  
16 you on the 23rd was inconsistent with what he said before?

17 A. I wasn't present when he made the other  
18 statement. So I couldn't say whether they were consistent  
19 or not.

20 Q. On this particular occasion after the initial  
21 rights form was done, just tell us what you did.

22 A. After the advice of rights form was signed,  
23 Major Manley and myself proceeded to talk to Jeffrey, and  
24 basically just asked him to give us his version of what  
25 happened that night. He told us his version of what  
26 happened. After he was finished -- we asked him questions  
27 throughout the -- throughout that, and he was asked to  
28 write a statement. The statement is basically him writing  
29 his story of what happened. After he finished writing the

1 statement, it was witnessed and signed by myself and Major  
2 Manley, and that was basically it after he had written the  
3 statement.

4 Q. And you have that written document with you  
5 now?

6 A. Yes, sir. I do.

7 Q. Before we talk about that specifically, did  
8 y'all continue to talk to him after he gave a written  
9 statement?

10 A. After we -- after he -- excuse me. After we  
11 finished the written statement, then we advised him that  
12 we would like to do a video statement, and he said sure.  
13 That he didn't have a problem with it, and at that time,  
14 then we did another advice of rights which was done while  
15 the video was on. He was advised that he was being  
16 videoed, and that -- you know -- he stated that he was  
17 doing it freely and voluntarily, and he didn't have any  
18 objection to being videoed.

19 Q. Y'all did, in fact, take a video statement as  
20 to what he told you on the 23rd?

21 A. Yes, sir. We did.

22 Q. And I'll ask you is the statement that he gave  
23 on the video and his written statement, are they  
24 consistent? Do they basically say the same thing or are  
25 they different?

26 A. They were basically the same. The major  
27 difference between the written statement and the video  
28 statement is that during the video statement we're asking  
29 questions and he's giving a response. With the written

1 statement, that's basically him writing his story without  
2 us interfering or talking to him while he's writing.

3 Q. And you have this written statement with you  
4 now?

5 A. Yes, sir.

6 Q. Would you produce it, please, sir?

7 BY MR. HARPER: May I approach, Your Honor?

8 BY MR. HARPER:

9 Q. It appears to be a three-page, handwritten  
10 statement; is that correct?

11 A. Yes, sir.

12 Q. Whose handwriting is that?

13 A. That's Jeff -- the defendant, Jeffrey Havard.

14 Q. He wrote it in his own hand?

15 A. Yes.

16 Q. And who, if anyone, signed it?

17 A. It's witnessed by myself and Major John Manley.

18 Q. And signed by --

19 A. And signed by the defendant.

20 Q. Looks like 6:47 or 8:47?

21 A. I believe so.

22 Q. On the 23rd.

23 BY MR. HARPER: Your Honor, we would --

24 (Mr. Harper shows document to Mr. Sermos and Mr. Clark.)

25 BY THE COURT: The Court will allow that to be  
26 introduced as Exhibit Number 23 in this case.

27 DOCUMENT INTRODUCED AS STATE'S EXHIBIT NUMBER 23

28 BY MR. HARPER: Please the Court, rather than  
29 publish this at this time, I'd like to go ahead and



1 -- I don't want to publish. I may want to at a later  
2 time, but --

3 BY THE COURT: Okay. You will be able to  
4 reserve that right.

5 BY MR. HARPER:

6 Q. Now, you indicated that y'all -- when you  
7 talked to him about doing the video statement, he agreed  
8 to do that and you executed another rights waiver form at  
9 that time?

10 A. Yes, sir. We -- it's -- talked to him about  
11 doing a video statement. He said that was fine, and we  
12 went through another advice of rights form, and he was  
13 read that on a video, and he was -- he signed the form and  
14 it was witnessed by myself and Major Manley.

15 Q. Do you have that document?

16 A. Yes, sir. I do.

17 Q. That was your part of it?

18 A. Yes, sir. It's also noted on the bottom of the  
19 advice of rights.

20 Q. This was on it?

21 A. Yes, sir.

22 Q. Now, how are you able to identify this as being  
23 that particular statement?

24 A. At the bottom of the advice of rights form,  
25 it's written in Major Manley's handwriting videotaped  
26 statement. That way we know that this is the advice of  
27 rights we use for the video.

28 Q. And it's signed by whom?

29 A. It's signed -- witnessed by Major Manley and

1 myself, and it's signed by the defendant, Jeffrey Havard.

2 Q. It appears this one was begun at 9:07 p.m. and  
3 completed at 9:08 p.m. on 2-23-02?

4 A. Yes, sir.

5 BY MR. HARPER: We would move at this time to  
6 introduce this one.

7 (Mr. Harper shows document to Mr. Sermos.)

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

9 BY THE COURT: The Court will allow this to be  
10 introduced as Exhibit Number 24.

11 DOCUMENT MARKED AS STATE'S EXHIBIT 24

12 BY MR. HARPER:

13 Q. I hand you back Exhibit Number 24 which  
14 purports to be the rights waiver for the video statement;  
15 is that correct?

16 A. Yes, sir. It is.

17 BY MR. HARPER: May I publish this to the jury?

18 BY THE COURT: You will be allowed to publish  
19 that to the jury.

20 BY MR. HARPER:

21 Q. This videotape that you took, Deputy Smith, what  
22 type of video did y'all use over there?

23 A. It's your standard VHS tape. It's a thirty  
24 minute tape. A small cassette.

25 Q. You obviously have it with you?

26 A. Yes, sir.

27 Q. And how are you able to determine that that is,  
28 in fact, the taped statement that you took on February the  
29 23rd of 2002?

1 A. It's normal procedure for us to write the case  
2 number, the defendant, and either one of us could have  
3 signed it. In this case, Major Manley signed the box, put  
4 his initials. Also the same information is noted on the  
5 cassette along with the case number.

6 Q. Were you present when he signed on it?

7 A. Yes, sir. I was.

8 BY MR. HARPER: And, Your Honor, at this time --

9 BY MR. HARPER:

10 Q. Have you watched this tape since it was done?

11 A. Yes, sir. I reviewed it prior to trial.

12 Q. Is consist -- does it fairly and accurately  
13 represent what he told you that night?

14 A. Yes, sir. It does.

15 BY MR. HARPER: Your Honor, we would move at  
16 this time to introduce the videotape.

17 BY MR. SERMOS: No objection, Your Honor.

18 BY THE COURT: The Court will allow the  
19 videotape to be introduced as Exhibit Number 25 in  
20 this case.

21 VIDEOTAPE MARKED AS STATE'S EXHIBIT 25

22 BY MR. HARPER:

23 Q. Now, I am going to hand you back what's been  
24 marked as State's Exhibit 25 and ask again if you'll  
25 identify that for me, please, sir.

26 A. Yes, sir. This is the video, the original  
27 videotape that was taken of the defendant in his  
28 statement.

29 Q. On February the 23rd, 2002?

1 A. Yes, sir.

2 BY MR. HARPER: Your Honor, at this time, we  
3 would ask the Court that we be allowed to play this  
4 videotape statement for the jury.

5 BY THE COURT: The Court will allow that to be  
6 played, and bring the VCR and TV and place it.  
7 Again, the defendant and counsel will be allowed to  
8 take up a position so they will be allowed to see  
9 this.

10 BY MR. HARPER: Please the Court, Your Honor,  
11 I'm going to allow Deputy Smith to load it --

12 BY THE COURT: Yes. If you need to step down to  
13 play that.

14 BY MR. HARPER: Please the Court, Your Honor,  
15 I'd ask Officer Wisner, he's our resident expert on  
16 videos.

17 BY THE COURT: The Court will allow him to  
18 assist with the playing of the video.

19 BY MR. HARPER: Please the Court, Your Honor.  
20 Would it be all right if we sit here?

21 BY THE COURT: Who would like to sit --

22 BY MR. HARPER: I said would it be all right if  
23 we sit here?

24 BY THE COURT: Certainly. As long as you don't  
25 get in the view of the jurors. You may proceed  
26 whenever you're ready.

27 (Exhibit Number 25, the videotaped statement, is played  
28 for the jury.)

29 BY MR. HARPER:

1 Q. I'll ask you again, Deputy Smith. Does that  
2 fairly and accurately represent the conversation you had  
3 with Jeffrey Keith Havard on February 23, 2002?

4 A. Yes, sir. It does.

5 BY MR. HARPER: Okay. The Court will indulge  
6 me just a moment, Your Honor.

7 BY THE COURT: Yes, sir, Mr. Harper.

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

9 BY MR. HARPER: Your Honor?

10 BY THE COURT: Yes, sir.

11 BY MR. HARPER: We would submit a certified copy  
12 of the transcript of the tape into evidence also at  
13 this time, if it please the Court, and a copy has  
14 been provided to defense counsel.

15 BY THE COURT: Any objection to that?

16 BY MR. SERMOS: No objection, Your Honor.

17 BY THE COURT: All right. Then the Court will  
18 allow that to be introduced as Exhibit Number 26,  
19 which is a transcript of the videotape statement that  
20 was just played for the jury.

21 BY MR. HARPER: Your Honor, I'll tender the  
22 witness, Your Honor, and I would like at this time to  
23 publish that written statement for the jury if that  
24 please the Court.

25 BY THE COURT: All right. The Court will allow  
26 that. That's Exhibit Number 23, I believe.

27 (Mr. Harper passes exhibit to the jury.)

28 BY MR. HARPER: And with that, Your Honor, I  
29 tender this witness.

1 BY MR. SERMOS: Just one moment, please, Your  
2 Honor.

3 BY THE COURT: Certainly. Cross-examination.

4 BY MR. SERMOS: Yes, sir. Thank you.

5 CROSS-EXAMINATION

6 BY MR. SERMOS:

7 Q. Deputy, you were one of the officers that  
8 transported Mr. Havard to Natchez Regional Medical Center  
9 for that sexual assault kit; is that correct?

10 A. Yes, sir. I was.

11 Q. And that was per order by this judge here, Judge  
12 Johnson, for an order for a body search of suspect; is  
13 that right?

14 A. Yes, sir. It is.

15 Q. And was the doctor there to perform that Dr.  
16 Andrew Barrons?

17 A. Yes, sir.

18 Q. Did you watch Dr. Barrons perform that test?

19 A. Yes, sir. Myself and Deputy James Pace were in  
20 the room while the test was being conducted.

21 Q. Okay. And during that time, in fact, the  
22 Judge's order states for the physician to extract samples  
23 of pubic hair, facial hair, head hair, blood, saliva,  
24 semen or seminal fluid. Do you know if the doctor took  
25 all those samples?

26 A. I remember him recovering items from the areas  
27 that you had stated.

28 Q. Do you remember him actually examining Mr.  
29 Havard as far as physically looking on him like in his

1 private area or hair on his head?

2 A. He conducted -- he collected whatever evidence  
3 was requested. I am not sure of the medical way of doing  
4 that. He did observe the defendant -- you know --  
5 throughout his body.

6 Q. Okay. So the defendant had to get undressed?

7 A. Yes, sir.

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

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

10 BY MR. SERMOS: Your Honor, we have no more  
11 questions of this witness.

12 BY THE COURT: Is there any redirect by the  
13 State?

14 BY MR. HARPER: No, Your Honor. No further  
15 questions.

16 BY THE COURT: You may step down.

17 (Witness steps down.)

18 BY THE COURT: Would this witness be excused?

19 BY MR. HARPER: No, Your Honor. We would ask  
20 that this witness be excused and released from his  
21 subpoena.

22 BY THE COURT: Does the defense desire to have  
23 this witness remain --

24 BY MR. SERMOS: Your Honor, we would, of  
25 course, not abuse the privilege. We would ask that  
26 our subpoena remain standing and be on standby.

27 BY THE COURT: Officer, you can go, but if you  
28 will be available tomorrow if notified to be up here  
29 to testify. Okay. Ladies and gentlemen of the jury,

1 first of all, I know you're -- some of you are  
2 looking at this Exhibit Number 23, a written  
3 statement. You will be allowed an ample opportunity  
4 tomorrow to do that. So don't worry if you don't get  
5 to see that. That will be passed around so that you  
6 can see it tomorrow. Now, it is about time to  
7 recess, and we have made substantial progress today.  
8 We've covered fourteen witnesses. I am advised that  
9 the State essentially has two remaining witnesses for  
10 their case in chief which will be available first  
11 thing in the morning. So we have made substantial  
12 progress on the case. What that means is that there  
13 is a chance that we can conclude this case tomorrow.  
14 That depends on a lot of other circumstances, but I  
15 just wanted to let you know. If we are able to  
16 conclude it tomorrow, it will at least be about this  
17 time, I would think, tomorrow if we're able to  
18 conclude it. There's a possibility that we may not be  
19 able to conclude tomorrow, but I just wanted to let  
20 you know that maybe we can get through with it  
21 tomorrow. If not tomorrow, then certainly by the day  
22 after which will be Thursday. So I just wanted to  
23 advise you about what's going on. The case has moved  
24 along quite satisfactorily. Keep in mind what I said  
25 about not talking to anyone about this case. Also  
26 you have not heard all the evidence in this case. So  
27 when you're among yourselves, when you're eating  
28 tonight or other times when you're together, you can  
29 talk about anything you want to but not about the



1 evidence in the case because it's not time for you to  
2 do that yet. So please keep that in mind. So at  
3 this time, the Court is going to recess for the  
4 evening. We will start promptly at nine o'clock in  
5 the morning. I want the jurors to be allowed to  
6 leave before anyone else does. Again, the statement,  
7 Exhibit Number 23, you'll be given an ample  
8 opportunity tomorrow to look at that and see that and  
9 read it in its entirety. So make sure you get all  
10 your belongings. At this time, I want to the jurors  
11 to be allowed to leave to go back to the Eola to eat  
12 their evening meal and to retire for the evening.

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1 (Court reconvened at 9:00 the next morning on the 18th  
2 day of December, and the following was made of  
3 record, to-wit:)

4 BY THE COURT: Who does the State call as your  
5 next witness?

6 BY MR. ROSENBLATT: Your Honor, the State would  
7 call Mrs. Amy Winter.

8 AMY WINTER,  
9 having been duly and legally sworn, answered  
10 questions on her oath as follows, to-wit:

11 BY MR. ROSENBLATT: May I proceed?

12 BY THE COURT: You may proceed.

13 DIRECT EXAMINATION

14 BY MR. ROSENBLATT:

15 Q. Ms. Winter, we thank you for being with us this  
16 morning. Would you tell the jury where you work, please,  
17 ma'am.

18 A. I am employed at the Mississippi Crime  
19 Laboratory in Jackson.

20 Q. And that's a big place, and what part of it do  
21 you work?

22 A. I am employed as a forensic biologist, and I'm  
23 assigned to the bioscience section of the laboratory, and  
24 this is the area in which I look at items of evidence to  
25 determine if there might be any blood, semen, or other  
26 body fluids on it. Attempt to identify those as a body  
27 fluid, and then after that, I would perform DNA testing on  
28 these items to determine what their source might be, who  
29 could have left that stain and to testify to that in

1 court.

2 Q. Mrs. Winter, would you tell the jury what sort  
3 of educational background you have that qualifies you for  
4 this work.

5 A. Yes, sir. I earned a Bachelor of Science degree  
6 in General Science from Mississippi State University in  
7 May of 1992.

8 Q. And have you had any other specialized training  
9 after that?

10 A. Yes. I have completed two training programs at  
11 the Mississippi Crime Laboratory. The first one is in  
12 serological analysis which is the study of body fluids,  
13 blood and semen. In this training program, I examine  
14 different items of evidence for blood or semen or other  
15 body fluids under an experienced analyst. I also  
16 underwent practical exercises, examinations, and tests and  
17 qualifying tests to determine that I was competent, and  
18 then just recently I've completed a DNA training program  
19 in which I underwent the same type of training. I  
20 analyzed samples to determine if there was any DNA there  
21 and what the profile would be in comparison to other  
22 samples and was given a competency test to determine that  
23 I was competent to perform these tests.

24 Q. So when you say a competency test, you are  
25 certified to do the work that you do?

26 A. Yes. The crime laboratory has certified me to  
27 perform these tests.

28 Q. As far as national organizations of forensic  
29 experts, do you belong to any organizations in your work?

1           A.    Yes.  I'm a member of several professional  
2 organizations.  I am a member of the American Academy of  
3 Forensic Sciences.  I am also a member of the Southern  
4 Association of Forensic Scientists and the Mississippi  
5 division of the International Association for  
6 Identification.  In addition, I hold certification as a  
7 criminalist with the American Board of Criminalistics.

8           Q.    Mrs. Winter, how long have you been doing  
9 serology and DNA analysis?

10          A.    In total, I've been employed at the crime  
11 laboratory for almost eight years.  I've been performing  
12 serological testing for about six years and DNA testing  
13 casework since January.

14          Q.    And have you ever been qualified as an expert  
15 witness in a circuit court in this state before?

16          A.    Yes, I have.

17          Q.    About how many times?

18          A.    I've been qualified as an expert around  
19 thirty-four or thirty-five times in both -- combined in  
20 serology and DNA analysis.

21                BY MR. ROSENBLATT:  Your Honor, we move at this  
22 time to offer Mrs. Winter as an expert in the field  
23 of serology and DNA analysis.

24                BY THE COURT:  Any voir dire on her  
25 qualifications?

26                BY MR. SERMOS:  We accept her, Your Honor.

27                BY THE COURT:  All right.  Let the record show  
28 that the Court is going to accept the witness as an  
29 expert in the field of serology and DNA analysis by

1 virtue of her education, training, skill, and  
2 experience. Ladies and gentlemen, the significance  
3 of an expert witness or a witness being accepted as  
4 an expert in a field is that they are allowed to give  
5 opinions about matters where normally a normal lay  
6 witness is not. All right. Mr. Rosenblatt, you may  
7 proceed.

8 BY MR. ROSENBLATT:

9 Q. Mrs. Winter, I know it's hard to do briefly.  
10 We hear a lot about DNA on television and trials and that  
11 sort of thing. Would you tell the jury briefly -- just  
12 give us an overview about what is DNA and the  
13 significance.

14 A. DNA stands for deoxyribonucleic acid,  
15 and it is the genetic blueprint that determines what we're  
16 going to look like and our physical characteristics. It's  
17 present in every cell in our body. For example, you can  
18 find it in skin cells, blood cells -- white blood cells  
19 that is. A sperm cell, things of that nature. So it's  
20 found throughout the body, and it's consistent throughout  
21 the body. So whatever your DNA type is in your skin cells  
22 is the same as what would be in your white blood cell or  
23 in a sperm cell. You inherit your DNA from your  
24 biological parents. So half your DNA comes from your  
25 biological mother, and the other half comes from the your  
26 biological father. And we test several different areas of  
27 the DNA molecule to achieve a DNA profile that can be used  
28 to compare a known sample of an individual. In other  
29 words, we know what their DNA is by testing that sample,

1 to questioned DNA samples, such as a piece of evidence  
2 that has a blood stain on it. This is what we're  
3 referring to in DNA testing, and the type of testing that  
4 I perform is called short tandem repeat analysis, and I am  
5 testing thirteen different areas of the DNA molecule, and  
6 in that, I am attempting to achieve a profile of all  
7 thirteen of these different areas for comparison purposes.

8 Q. So we're not concerned about the DNA that we  
9 all share as humans, then, are we? You're looking at  
10 those areas in which we differ one from another?

11 BY MR. SERMOS: Objection, Your Honor. He's  
12 testifying for the witness.

13 BY MR. ROSENBLATT: This is a preliminary  
14 matter, Your Honor. I'm just trying to get an  
15 explanation from the witness.

16 BY THE COURT: I understand, but let the  
17 witness testify. You may go ahead and answer that.

18 A. That is correct. Only a small portion of our  
19 DNA varies from individual to individual. About 99.9  
20 percent of our DNA is the same. That .01 percent that is  
21 different is what is being tested in forensic science,  
22 and it's that variation that can be used to differentiate  
23 between an individual and between blood stains and pieces  
24 of evidence in a case.

25 Q. And, Mrs. Winter, if I were just to hand you a  
26 blood sample and have you test it and tell me whose DNA  
27 this is, could you do that by itself?

28 A. No. At this point with the technology and the  
29 scientific procedures that we have in place, we do not

1 necessarily identify an individual based solely on their  
2 DNA type. What is done is it is -- a comparison is made  
3 to determine if the type found from the questioned stain  
4 or the evidence is the same as what we have found in the  
5 known blood sample of individual. If the DNA profiles  
6 match or they are the same, we say it's consistent. Once  
7 we determine it's consistent, we determine how significant  
8 that match is. How likely is it that it came from that  
9 individual, and at that point we would apply a statistical  
10 analysis to attach a probability that it could come from  
11 somebody else other than the person involved in the case  
12 that it matched to.

13 Q. Mrs. Winter, in general, would you tell us the  
14 steps that you go through in performing such an analysis.  
15 In other words, from the time you get a sample to  
16 submitting a report, how is that done?

17 A. Well, there are several basic steps in the  
18 testing procedure. The first one is to actually extract  
19 the DNA from the sample. A small cutting of the stain  
20 would be tested. It would be extracted in a small tube to  
21 pull the DNA out of the sample. We would determine how  
22 much DNA is actually there, and then we would perform a  
23 process called PCR or polymerase chain reaction which  
24 allows us to copy the areas of the DNA molecule that we  
25 want to type so that we can get information from a very  
26 small stain. Whereas without this process, we may not be  
27 able to get the information we need. Then we would type  
28 that sample and then we would also type the known samples  
29 that -- of blood that were drawn from the individuals in

1 the case and do a comparison. As I mention earlier, from  
2 the questioned evidence found at the crime scene or  
3 collected from an item and compare that to the individuals  
4 in the case to see if it could have come from one of those  
5 individuals.

6 Q. Now, you confirm for me, not only are you  
7 certified but your laboratory is certified; is that  
8 correct?

9 A. The laboratory at this point is undergoing  
10 certification or accreditation by an outside laboratory.

11 Q. And your work is checked somehow?

12 A. Yes. There are a lot of measures and procedures  
13 in place with forensic DNA testing to ensure the quality  
14 of our work. There are guidelines that determine how we  
15 will go about testing a stain. We have protocols in place  
16 that are to be followed at all times, and we have checks  
17 and balances or quality control measures that we use to  
18 ensure that when we test these stains, we do it accurately  
19 and achieve the correct results all the time.

20 Q. Now, Mrs. Winter, did you perform this sort of  
21 analysis for us in this case?

22 A. Yes. I did perform DNA testing in the case  
23 that is being presented today.

24 Q. Mrs. Winter, I'm going to hand you what's been  
25 marked for identification Exhibits D, E, and F, and just  
26 ask you in general what these represent in terms of what  
27 you explained to us about comparisons.

28 A. The first item that was marked Exhibit D for  
29 identification is a small manilla envelope that is labeled



1 "One purple top of tube of blood drawn from white female"  
2 or WF, Rebecca Britt. It's labeled with a crime lab case  
3 number and submission number, and it's also got the crime  
4 laboratory tape. This is the item or the packaging that a  
5 purple top test tube of blood was submitted in, and this  
6 purple top test tube of blood would be used for or was  
7 used for comparison purposes in this case to compare to  
8 any DNA that we got from a questioned or evidence sample.

9 Q. In other words, that sample, you knew where it  
10 came from?

11 A. Yes. It's known. We know that the source of  
12 this sample because it was a sample drawn directly from an  
13 individual by a health professional. So we know this  
14 blood came from this individual. Whereas with questioned  
15 evidence, that is the sample that comes from a sheet, a  
16 shirt, or a stain from the crime scene, and we don't know  
17 who could have contributed it. State identification  
18 Exhibit E is a small, white envelope that is a suspect  
19 sexual assault evidence collection kit labeled, "Suspect's  
20 name, Jeffrey Havard," and it bears crime lab case number,  
21 submission number, and the evidence tape, and this is an  
22 item that is used to collect known samples and possibly  
23 some questioned samples from someone that is an alleged  
24 suspect of a sexual assault, and this contained a blood  
25 sample that was also a known sample to have come from  
26 Jeffrey Havard to use for DNA comparison. And State's  
27 Exhibit for identification F is a large, white envelope  
28 that is also a sexual assault evidence collection kit, but  
29 it's from the victim, Chloe Britt, and it also contains

1 the crime lab case number and submission number and the  
2 evidence seal. And, again, this is a piece of evidence  
3 that is used to collect items of an alleged sexual assault  
4 victim, and it contains things like oral and vaginal swabs  
5 to determine if semen might be present. It would also  
6 contain fingernail scrapings sometimes, and sometimes it  
7 contains a known blood sample to be used also for  
8 comparison purposes.

9 Q. And all three of those samples would have been  
10 received by your laboratory, processed by your laboratory  
11 and returned to the sheriff's office for us today; is  
12 that correct?

13 A. That's correct.

14 Q. And you're able to determine that by the  
15 markings on it and the crime lab tape.

16 A. That's correct.

17 Q. And they're packaged today. They would have  
18 been packaged after you were finished with them; is that  
19 correct?

20 A. That's correct. I mentioned the evidence seal  
21 earlier, and that evidence seal is to show that this  
22 evidence is sealed. That no one could have gone into it,  
23 and these evidence seals have not been broken. So this  
24 shows that no one has gone into the evidence since it was  
25 sealed at our laboratory.

26 Q. Thank you.

27 BY MR. ROSENBLATT: Your Honor, at this time,  
28 I'd move to introduce these three previously marked  
29 for identification exhibits as evidence in this case

1 for calling the predicate to be laid yesterday.

2 BY THE COURT: All right. Is there any  
3 objection to that?

4 BY MR. SERMOS: No objection.

5 BY THE COURT: The Court will allow these three  
6 exhibits which have been previously marked for  
7 identification only. This will be D, E, and F to be  
8 introduced as Exhibit 27, 28, 29 in this case in that  
9 order.

10 DOCUMENT MARKED AS STATE'S EXHIBITS 27, 28, AND 29.

11 BY MR. ROSENBLATT: May I proceed, Your Honor?

12 BY THE COURT: You may proceed.

13 BY MR. ROSENBLATT:

14 Q. Mrs. Winters, you may want to don your  
15 protective ware.

16 A. Okay.

17 Q. Mrs. Winters, as you can see your crime lab tape  
18 is still very much in tact. We whacked it open yesterday  
19 in court so it's not quite so sealed. I'm going to hand  
20 you what's been marked for identification purposes as  
21 Exhibit B in this case. Your submission number five,  
22 formally sheriff's exhibit number nine, and ask you if you  
23 had occasion to test that item. Take a minute and look at  
24 this.

25 A. Yes. What's been handed to me is State's  
26 Exhibit B for identification is a large, brown paper bag  
27 that is open at the top. It's labeled bag number nine,  
28 Exhibit 9. It bears the crime lab case number and  
29 submission number, and it says up at the top of it "Beside

1 stove," and inside it contains a white piece of butcher  
2 paper and in that is a flannel type cotton sheet with a  
3 cloud print. This white paper is used to package up  
4 evidence once it's been processed to preserve any trace  
5 evidence that might be there.

6 BY MR. ROSENBLATT: Your Honor, would it be  
7 permissible for Mrs. Winter to stand?

8 BY THE COURT: Certainly. She'll be allowed to  
9 stand for purposes of her testimony.

10 BY MR. ROSENBLATT:

11 Q. Now, would you take a look at it and see if you  
12 had occasion to test that item and, if so, what you  
13 found.

14 (The witness takes sheet out of the bag.)

15 Q. Mrs. Winter, we have a fitted sheet and a top  
16 sheet. If you would decide whether that's the fitted  
17 sheet or the top sheet for us.

18 A. I am sorry. I'm trying to get my orientation on  
19 the sheet. Yes. This is the -- this sheet was examined  
20 in the laboratory to determine if human blood was on the  
21 sheet, and this is a fitted sheet. The white sheet with  
22 blue cloud and yellow sunshine design, and as you can see,  
23 it's kind of hard to hold up the entire item at one time,  
24 but there are several cuttings and markings on the sheet.  
25 You can see some large holes and some markings that say  
26 things like T-1, T-7, et cetera, and what this is is these  
27 are different areas that were thought to possibly be  
28 blood, and they were marked so that you could identify one  
29 stain from another. So each different test site has its

1 own number, starting with test site one and on up to the  
2 final stain. And you can see some of them have been cut  
3 out for further examination to attempt to ID if human  
4 blood was present or not. It's these stains that were  
5 further used in the DNA testing. This large stain here  
6 towards the middle of the sheet that is marked T-13 was  
7 tested further for DNA testing, and there was one other  
8 stain. It's kind of hard to find because the sheet is so  
9 large. It's up here. Yes. Here we go. Towards the top  
10 of the sheet, the front side where the pattern is, there's  
11 another large stain marked T-4 and that stain was also  
12 collected and tested further for DNA analysis.

13 Q. Mrs. Winter, you said you tested these stains.  
14 Did they, in fact -- were they, in fact, human blood?

15 A. If I may refer to my notes. I believe one of  
16 them was identified as human blood and the other one was  
17 insufficient for human blood determination.

18 Q. Feel free to refer to your notes.

19 A. The last stain that I indicated, T-4, that was  
20 at the top of the sheet on the front side was a weak  
21 stain, and in order to try to determine if human blood was  
22 present, it might have to have been consumed and DNA  
23 testing wouldn't have been able to be done on it. So a  
24 screening test was done to determine that it might be  
25 blood, and it was collected or preserved to go straight  
26 for DNA testing. And the initial -- the first stain  
27 towards the middle of the sheet that was marked T-13 was  
28 identified as human blood before DNA testing was performed  
29 on it.

1 Q. Mrs. Winter, on the spots that were tested for  
2 DNA, do you have results that you can share with the jury  
3 on those?

4 A. Yes, I do.

5 Q. And what are those results?

6 A. In testing those two stains that were just  
7 mentioned, a DNA profile was obtained from both of these  
8 stains that could be compared back to the individuals in  
9 this case. On the first stain, T-13, the first stain that  
10 was shown, that was a blood stain that was consistent with  
11 the victim, Chloe Britt.

12 Q. And on the other stain?

13 A. The other stain that was obtained from this  
14 sheet was determined to be -- I am sorry. One second.

15 Q. Take your time.

16 A. The cutting from test site four that was at the  
17 top of the sheet was consistent with a mixture. In other  
18 words, it was determined that DNA from more than one  
19 individual was present in that stain, and upon comparing  
20 that to the known samples of the individuals in this case,  
21 it was consistent with a mixture of Rebecca Britt and  
22 Jeffrey Havard.

23 Q. So Rebecca and her boyfriend Jeffrey's DNA was  
24 on the top stain, the smaller stain?

25 A. That's right. The DNA in that mixed -- the  
26 mixture of that DNA in that stain was consistent with  
27 those two individuals.

28 Q. Chloe's blood and DNA was in the big stain in  
29 the middle of the sheet?

1 A. That's correct.

2 Q. Now, Mrs. Winter, if you want to share  
3 statistics with us, that's fine. What I want to know is  
4 how sure are you about what you're telling us.

5 A. Well, I am a hundred percent sure of what I am  
6 telling you. As far as statistical analysis as how  
7 significant this match is, on the stain that was  
8 consistent with Chloe Britt, it was determined that the  
9 frequency of this profile was one in greater than ten  
10 billion --

11 Q. I am sorry. Ten billion?

12 A. Ten billion. So the likelihood of this stain  
13 having come from someone other than Chloe Britt is greater  
14 than one in ten billion.

15 Q. There are only six billion people in the world,  
16 aren't there, Mrs. Winter?

17 A. That's correct.

18 BY MR. ROSENBLATT: Your Honor, at this time and  
19 in light of the predicate laid yesterday, I move to  
20 introduce Exhibit Number B for identification into  
21 evidence.

22 BY THE COURT: Any objection to this?

23 BY MR. SERMOS: No objection, Your Honor.

24 BY THE COURT: The Court will allow what has  
25 previously been marked as B for identification to be  
26 introduced as Exhibit Number 30 in this case.

27 DOCUMENT MARKED AS STATE'S EXHIBIT 30

28 BY MR. ROSENBLATT:

29 Q. Now, Mrs. Winter, I going to hand you what's

1 been previously marked as Exhibit Number C for  
2 identification. Again, cut open at the top and sealed by  
3 you and ask if you can identify that for me.

4 A. Yes. This item that's been marked as State  
5 identification C is a large, brown paper bag that has been  
6 cut open at the top, and it's labeled with crime lab case  
7 number and submission number, and it's also labeled top  
8 sheet found in kitchen at stove. And it's also wrapped in  
9 white butcher paper, and it contains a white flannel flat  
10 sheet with the blue cloud and yellow sunshine pattern.

11 Q. Would you --

12 A. Sure.

13 Q. -- show us that, please?

14 (Witness pulls sheet out of the paper bag.)

15 Q. I believe you mentioned this is the top sheet?

16 A. Yes. This is the flat sheet as opposed to the  
17 other one that was the fitted sheet. Again, you can see  
18 that there are several test sites on here as I mentioned  
19 earlier, and there are cuttings that have been taken from  
20 the sheet. On the backside of the sheet, it does not have  
21 the pattern. Towards the -- towards the edge and the  
22 bottom is a stain marked TB-8, and this stain was tested  
23 and determined to be human blood, and then it was tested  
24 in the DNA analysis procedures.

25 Q. And you said it was human blood on --

26 A. Yes.

27 Q. -- that sheet? And you did test it for DNA?

28 A. That's correct.

29 Q. That one spot?



1 A. Yes.

2 Q. Whose DNA was in that spot?

3 A. The DNA from this spot that I just showed you  
4 was consistent of that of Chloe Britt.

5 Q. And was anyone else's DNA in that spot?

6 A. No. There was not.

7 Q. If you want to refer to your notes and check  
8 that for me, please.

9 A. Oh, I am sorry. I apologize.

10 Q. That's quite all right.

11 A. There are several cuttings from the sheets.

12 Q. I was going to say it's cut up pretty good.

13 A. Yes. This one that was marked TB-8 on the top  
14 sheet was consistent with a mixture of Jeffrey Havard and  
15 Chloe Britt.

16 Q. Was the mama's DNA in that spot?

17 A. No. She was excluded as a donor to the mixture  
18 of this stain.

19 Q. When you say excluded as a donor to the mixture  
20 of this stain, what do you mean?

21 A. That means that her -- the mixture was not  
22 consistent with her DNA type.

23 Q. In other words, to a statistical certainty, or I  
24 mean, are you saying --

25 A. She can -- she can -- excuse me. Let me put  
26 this back in here.

27 (Witness returns sheet back in the bag.)

28 A. She can completely be excluded as the source of  
29 that stain. Her DNA is not in that mixture.

1 Q. But Jeffrey Havard's DNA and Chloe Britt's DNA  
2 is in that mixture?

3 A. Yes. The components of that are consistent  
4 with those two individuals.

5 Q. And, again, to that level of certainty that you  
6 described before or to something close to that?

7 A. Well, with this situation, it's a little  
8 different because this is a mixed stain. There's no way  
9 to differentiate and achieve a frequency as stated  
10 earlier, the one in greater than ten billion. This  
11 situation a probability of exclusion was used, and this is  
12 just a formula used to determine what percentage of the  
13 population could have been excluded as a donor of the DNA  
14 in this stain, and in this particular situation, it was  
15 determined that 99.96 percent of the population could be  
16 excluded as a donor to the stain.

17 Q. Ninety-nine point nine six.

18 A. That's correct.

19 Q. Now, Mrs. Winter, do you know Jeffrey Havard?

20 A. No, sir. I do not.

21 Q. You don't have any reason to come in here and --

22 BY MR. SERMOS: Objection, Your Honor. He's  
23 testifying for the witness. Ask a question, please.

24 BY MR. ROSENBLATT: I'm sorry. I --

25 BY THE COURT: I'll sustain the objection.

26 BY MR. ROSENBLATT: Your Honor, at this time, we  
27 will move to introduce the top sheet which contains  
28 the mixture of Jeffrey Havard and the child, Chloe  
29 Britt's DNA on it as an Exhibit.

1 BY THE COURT: Is any objection to that?

2 BY MR. SERMOS: No objection.

3 BY THE COURT: Let the record show that what has  
4 previously been marked as C for identification will  
5 be admitted into evidence as Exhibit Number 31 in  
6 this case.

7 DOCUMENT MARKED AS STATE'S EXHIBIT 31

8 BY MR. ROSENBLATT: Your Honor, I tender this  
9 witness to the defense.

10 BY THE COURT: All right. Cross-examination.

11 CROSS-EXAMINATION

12 BY MR. SERMOS:

13 Q. Mrs. Winter, you were -- all this stuff was sent  
14 to you; is that right? You never came down and got it?

15 A. No. The evidence that was examined that I am  
16 testifying to today was brought to the crime laboratory by  
17 a law enforcement officer.

18 Q. And so you've never been to the scene of the  
19 alleged crime where Chloe Britt lived with Jeffrey Havard,  
20 have you?

21 A. No, I have not.

22 Q. And for all the information you've told us so  
23 far before we go any further, any stains or blood or DNA  
24 samples that came from those sheets, you don't know how  
25 long they had actually been on those sheets, do you?

26 A. No, I don't.

27 Q. In other words, when you got it, some of those  
28 stains could have been there for a month or two months;  
29 isn't that right?

1 A. That's correct.

2 Q. Perhaps even four or five months; isn't that  
3 correct?

4 A. That's correct. There's no way for me to  
5 determine the age or how long a stain has been on an item.

6 Q. So if something -- you talked about a mixture.  
7 We'll just go ahead and talk about that right now. If  
8 something -- whether it's a stain on this floor or on that  
9 sheet, if there is one DNA product put down and then three  
10 weeks later or thirty minutes later or twelve hours later,  
11 another DNA pattern, product, whether it's saliva, blood,  
12 or whatever is put down on the same spot or right near  
13 that spot to cause a mixture, you wouldn't be able to  
14 detect a time differential, would you?

15 A. No, I would not. The only possibility to  
16 detect a time differential is there's a possibility that  
17 degradation could have occurred in time. For instance, if  
18 one stain is deposited and then a year later, another  
19 stain is deposited, the DNA present in the first stain  
20 could have degraded to such a point that the DNA is not  
21 detectable.

22 Q. And, of course, in this case there was no  
23 degradation, was there?

24 A. Not that I'm aware of.

25 Q. And you'd be aware of it because you did the  
26 test. As far as -- you mentioned some other things. In  
27 fact, I believe you talked about different things about  
28 DNA and where it's found and, for example, you mentioned  
29 fingernail scrapings. Didn't you say something about

1 that?

2 A. Well, there can be an individual's DNA found in  
3 fingernail scrapings, and so on occasion the samples are  
4 collected to determine if there might be any foreign DNA  
5 in an individual's fingernails scrapings that might link  
6 two individuals in a crime.

7 Q. Okay. And there can also be DNA taken -- for  
8 example, you mentioned a sex assault kit. For example,  
9 if this case, of course, there's certainly allegations of  
10 sexual assault. If there were DNA from Chloe Britt, if  
11 Jeffrey Havard had done something to her, for example, had  
12 he put his penis in her anywhere, if there were samples  
13 taken from his penis or from under his fingernail  
14 scrapings if he had been accused of putting his finger in  
15 her somewhere, you could find that DNA, couldn't you, if  
16 you got the samples?

17 A. It is possible that there could be DNA detected  
18 from a penile swabbing or from fingernails scrapings. I  
19 don't have any knowledge of whether or not that was ever  
20 done, but I did not test any such samples in this case.

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

22 BY THE COURT: Yes, sir.

23 BY MR. SERMOS: May I approach the witness, Your  
24 Honor?

25 BY THE COURT: Yes, sir.

26 BY THE WITNESS: Excuse me. Am I through with  
27 my gloves? Am I going to need gloves?

28 BY MR. SERMOS: You're not going to need them as  
29 far as I am concerned.

1 BY THE COURT: You may go ahead --

2 BY THE WITNESS: Thank you.

3 (Witness removes gloves.)

4 BY MR. SERMOS:

5 Q. Would you please look at that and see if that's  
6 your signature, and are you aware of that report?

7 A. Yes. What I've been handed is a copy of my  
8 Mississippi Crime Laboratory serological analysis report  
9 that is signed by me and was submitted on March 19th of  
10 this year.

11 Q. Okay. Do you have -- in this book you have  
12 here, do you have an original of this report or a copy?

13 A. I have a copy.

14 Q. Okay.

15 BY MR. SERMOS: One moment, please.

16 BY MR. SERMOS:

17 Q. If you would, could you please --

18 BY MR. ROSENBLATT: May I see it?

19 BY MR. SERMOS: I'm sorry.

20 (Mr. Rosenblatt reviews document.)

21 MR. SERMOS:

22 Q. Could you please look at a copy --

23 A. Yes.

24 Q. -- if you would.

25 A. Sure.

26 Q. Then I can bring you this back.

27 A. Okay.

28 Q. You have a copy of it --

29 A. Yes.

1 Q. Okay. This is -- put it this way. Would you  
2 please explain to the jury what you did on this report?

3 A. Sure. Again, this is a serological analysis  
4 report that I submitted on March 19th of this year, and it  
5 is analysis on the sexual assault evidence collection kit  
6 that was submitted on Chloe Britt, and I examined two oral  
7 swabs, two vulvar swabs, four vaginal swabs, and two  
8 rectal swabs to determine if semen might be present on  
9 these samples.

10 Q. All right. Would you please tell the jury what  
11 the results were of your examination.

12 A. The results of my serological examinations for  
13 the presence of semen were negative on these items.

14 Q. So that would be negative on oral swabs from  
15 Chloe Britt, right?

16 A. Yes.

17 Q. And negative from vulvar swabs which is swabs  
18 that have been taken from her genital urinary area;  
19 is that correct?

20 A. That's correct.

21 Q. And vaginal swabs, swabs taken from the vagina  
22 of Chloe Britt, negative?

23 A. That's correct.

24 Q. And any rectal swabs from Chloe Britt. Negative  
25 also; is that correct?

26 A. That's correct.

27 BY MR. SERMOS: Your Honor, we would ask that --  
28 do we have a copy we can admit into evidence?

29 BY THE WITNESS: Sure. You can have this copy.

1 BY MR. SERMOS: Your Honor, we would ask that a  
2 copy of this report be admitted into evidence.

3 BY MR. HARPER: No objection, Your Honor.

4 BY THE COURT: All right. The Court will allow  
5 a copy of such report of this witness to be  
6 introduced as Exhibit Number 32 in evidence.

7 DOCUMENT MARKED AS DEFENDANT'S EXHIBIT 32

8 BY MR. SERMOS: One moment, please, Your  
9 Honor. I have no further questions of this witness,  
10 Your Honor.

11 BY THE COURT: Okay. Any redirect?

12 BY MR. ROSENBLATT: Briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. ROSENBLATT:

15 Q. Mrs. Winter, let me refer you to the report that  
16 Mr. Sermos just showed you that's now been marked as  
17 Exhibit Number 32.

18 A. Okay.

19 Q. And I just want to be clear on something because  
20 we're talking about blood, DNA, and all sorts of other  
21 things, and I don't want to get them mixed up. In this  
22 report that you gave a negative result for, is this a DNA  
23 test?

24 A. No, it is not a DNA test.

25 Q. What are you looking for in that report?

26 A. Again, this is a test to determine if any semen  
27 was present on these four items, and in doing this, I am  
28 attempting to determine if any sperm cells might be  
29 present or any seminal fluid might be present on these



1 items.

2 Q. So if Jeffrey Havard had inserted his penis into  
3 Chloe Britt and not ejaculated, then there wouldn't  
4 necessarily be any semen in there, correct?

5 A. That's correct. That is one of several reasons  
6 why semen might not be present if a sexual assault  
7 occurred.

8 Q. How about if he had bathed the baby thoroughly,  
9 scrubbing her well inside and outside, would that lessen  
10 the chance of finding semen in the baby?

11 A. That is a possibility as to why semen might not  
12 be present.

13 Q. How about if he had stuck his fingers or some  
14 other object into the baby, would there be semen present?

15 A. Not necessarily. Again, if something other  
16 than the penis was used to insert into the vaginal cavity,  
17 then that would also could explain why semen might not be  
18 present.

19 Q. So the mere fact that you don't find semen  
20 doesn't mean there wasn't a sexual assault, does it?

21 A. That's correct. None of my examinations are to  
22 determine if sexual assault occurred. My examinations are  
23 to determine if any semen might be present to show a  
24 transfer of body fluid from one individual to another.

25 Q. Now, on the sheets, what effect does running  
26 through the washer have on your DNA samples?

27 A. More than likely, if something has been washed,  
28 the chance of getting DNA is going to be very slim. There  
29 is still a slight possibility that there might be some DNA

1 present even after it's gone through the washing machine,  
2 but more than likely, the stain would be washed off in the  
3 process.

4 Q. Does it appear to you as though these sheets had  
5 been through the washer prior to your testing them?

6 A. According to the appearance and the stains that  
7 were present, they did not appear washed.

8 Q. But about to be, though.

9 BY MR. SERMOS: Objection, Your Honor.

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

11 BY MR. SERMOS: Absolutely --

12 BY THE COURT: I sustain.

13 BY MR. SERMOS: We would ask the Court to  
14 admonish the jury to disregard the district  
15 attorney's comment.

16 BY THE COURT: Ladies and gentlemen, you're to  
17 disregard that last comment.

18 BY MR. ROSENBLATT: I apologize, Your Honor.  
19 Mrs. Winter, that's all I have.

20 BY THE COURT: You may step down. Would this  
21 witness be excused by both sides finally?

22 BY MR. SERMOS: Yes, Your Honor.

23 BY THE COURT: You will be released under your  
24 subpoena.

25 (Witness steps down.)

26 BY THE COURT: I tell you what. We'll take a  
27 short recess about ten minutes. I want the State to  
28 check and see if your other witness is here --

29 BY MR. HARPER: He's here, Your Honor.

1 BY THE COURT: -- before we proceed. Let's take  
2 about a ten-minute recess because I know that may be  
3 lengthy.

4 (After a short recess, the following was made of record,  
5 to-wit:)

6 BY THE COURT: Who does the State call as your  
7 next witness?

8 BY MR. HARPER: We call Dr. Stephen Hayne, Your  
9 Honor.

10 BY THE COURT: Dr. Stephen Hayne.

11 STEPHEN HAYNE,  
12 having been duly and legally sworn, answered  
13 questions on his oath as follows, to-wit:

14 BY THE WITNESS: Good morning, Your Honor.

15 BY MR. HARPER: May I proceed, Your Honor?

16 BY THE COURT: Yes, sir.

17 DIRECT EXAMINATION

18 BY MR. HARPER:

19 Q. Would you state your name, please, sir.

20 A. Stephen Timothy Hayne, sir.

21 Q. And Dr. Hayne, what is your profession?

22 A. I'm a physician practicing in the fields of  
23 anatomic, clinical, and forensic pathology.

24 Q. Okay, sir. And do you currently have a position  
25 with the state medical examiner's office?

26 A. I do, sir.

27 Q. And what is that position?

28 A. State pathologist with the Department of Public  
29 Safety.

1 Q. How long have you held that position, Dr. Hayne?

2 A. Approximately seventeen, eighteen years, sir.

3 Q. How long have you been practicing in the area  
4 in the field that you are now practicing in?

5 A. Almost thirty years.

6 Q. Dr. Hayne, if you would, tell us your education,  
7 experience, and training that qualifies you in that field  
8 of forensic pathology.

9 A. I graduated from medical school at Brown  
10 University. I did my pathology training at Letterman Army  
11 Medical Center at the Presidio at San Francisco.

12 Rotations at different institutions in the San Francisco  
13 Bay area. I worked -- I went to two duty stations. First  
14 at Fort Levinworth, Kansas, and Munsen Army Hospital

15 down -- Blachfield Army Hospital at Fort Campbell,  
16 Kentucky. I worked in the north Alabama area, the Shoals

17 medical laboratory for two years. I worked in Mississippi  
18 for going on some seventeen or eighteen years now. I have  
19 been affiliated with the medical examiner's office

20 continuously and also work as senior pathologist at Rankin  
21 Medical Center. Worked at other hospitals in the Jackson  
22 metropolitan area. I also served as the medical director

23 of the laboratory at Madison County Medical Center and  
24 also at the renal laboratories in Ridgeland, Mississippi.

25 Q. Okay, sir. And as a forensic pathologist, Dr.  
26 Hayne, what do you primarily do? What is your primary  
27 field? What does that involve?

28 A. The primary task is to come to conclusions as to  
29 the cause and manner of death involving the death of

1 a human being. That requires most commonly contact with  
2 coroners, with other investigative agents. Also  
3 performing post mortem examinations or autopsies and  
4 attempting to come to conclusions as to cause and manner  
5 of death.

6 Q. Okay, sir. And, Doctor, approximately how many  
7 autopsies have you performed since you've been practicing  
8 as a forensic pathologist?

9 A. I don't keep an exact number but about  
10 twenty-five thousand.

11 Q. And obviously a good many of those while you  
12 were serving with the state medical examiner's office here  
13 in Mississippi?

14 A. Yes, sir.

15 Q. And I'll ask you, have you been qualified to  
16 testify in court before?

17 A. Yes, sir.

18 Q. Approximately how many times?

19 A. Twenty-five hundred, maybe three thousand times.

20 Q. Okay, sir. And, in fact, have you been  
21 qualified to testify as an expert in the field of forensic  
22 pathology right here in this court district and in Adams  
23 County before?

24 A. Yes, sir. In this courtroom.

25 Q. How many times roughly? I know it's --

26 A. Ten or fifteen times, sir.

27 BY MR. HARPER: Your Honor, we would tender Dr.  
28 Hayne as an expert in the field of forensic  
29 pathology.

1 BY MR. CLARK: We'll accept him, Your Honor.

2 BY THE COURT: Let the record show that the  
3 Court will accept the witness, Dr. Steven Timothy  
4 Hayne, as an expert in the field of forensic  
5 pathology. This Court has accepted this witness  
6 numerous times in the past in such field, and the  
7 Court finds that by virtue of his education,  
8 training, experience, skill, and knowledge, that he  
9 is so qualified and will be accepted. Now, again,  
10 ladies and gentlemen, because he is accepted as an  
11 expert witness, he will be allowed to give opinions  
12 within his expertise. All right. Mr. Harper, you  
13 may proceed.

14 BY MR. HARPER:

15 Q. Dr. Hayne, I'd like to direct your attention to  
16 an autopsy that -- or to the date, specifically February  
17 the twenty -- I believe it was the 22nd of this year,  
18 2002, and ask if you had occasion to perform an autopsy on  
19 that date on a six-month old or approximately six-month-  
20 old infant child by the name of Chloe Madison Britt.

21 A. I did, sir. And the --

22 Q. Okay, sir --

23 A. -- autopsy started at 6:50 in the evening. The  
24 autopsy was requested by the county coroner medical  
25 examiner investigator of this county, the county of  
26 jurisdiction. Mr. Lee requested that, and that request  
27 was in compliance with the Coroner's Reorganization Act of  
28 1986 Amended.

29 Q. Okay, sir. And if you would, Dr. Hayne, just

1 tell us briefly -- or what an autopsy entails for the jury  
2 and for myself. What exactly you're talking about when  
3 you're doing an autopsy on someone and what your purpose  
4 for doing that is.

5 A. An autopsy or post mortem examination is  
6 essentially defined by the term autopsy. Auto opsis, I  
7 see, I observe, I look. The primary purpose is to come to  
8 a conclusion as to the cause and manner of death. The  
9 cause of death being the medical reason an individual  
10 died, whether it be from a heart attack or gunshot wound  
11 or literally thousands of possibilities. While the manner  
12 of death is a classification of that death, whether it be  
13 suicide, homicide, accident, natural, some cases pending  
14 to additional information is gathered, and in rare cases,  
15 undetermined. When one cannot come to a final conclusion.  
16 An autopsy is an examination of a body, and the initial  
17 step is not actually looking at the body but receiving  
18 information concerning the death from the submitting  
19 officer, in this case, Mr. Lee. That's followed by an  
20 external examination, looking at the external surfaces of  
21 the body, and always focusing on any aspect that may be  
22 associated with the cause of death and the manner of  
23 death. There is collection of evidence appropriate to  
24 that step. Photographic documentation. I use body  
25 illustration diagram sheets to document, the pieces of  
26 paper, the findings that I'm observing, their locations,  
27 and extent and size. That's followed by, then, an  
28 internal examination, looking at the body organs after  
29 opening the body. Looking at the head, looking at the

1 scalp, looking at the contents of the chest and abdominal  
2 cavities to see if there's any evidence of injury or  
3 disease at those locations, as well as collecting evidence  
4 appropriate to that step of the examination. It's  
5 followed after completion of that with a discussion of the  
6 case with the submitting officer. Again, in this case,  
7 Mr. Lee, county coroner medical examiner investigator.  
8 Then a microscopic review of the tissues is performed.  
9 Small segments of tissue are removed, and they are  
10 reviewed under a microscope, and ultimately, if other  
11 information is required, other agencies may be asked to do  
12 certain procedures. To assist in the generation of the  
13 final document. The cause and manner of death, the two  
14 most important aspects of that document, and by the rules  
15 of the attorney general of this state, the individual  
16 performing a post mortem examination under the coroner's  
17 office through the medical examiner's office must generate  
18 a written report, must summarize the pertinent findings,  
19 and also must come to a conclusion as to the cause of  
20 death and the manner of death.

21 Q. Okay, sir. And just to clarify. As I  
22 understand what you are saying, Doctor, you examined the  
23 body, but your primary focus is to what the cause of death  
24 was and in examining it, you pretty much concentrate on  
25 that primarily. Would that be safe to say?

26 A. The examination of the body is focused driven.  
27 It is essentially to assist an individual in coming to a  
28 conclusion as to cause of death and manner of death.

29 Q. You might make observations about the body and



1 about other things, about other significant things but the  
2 most significant thing and what you're looking for is what  
3 caused the death?

4 A. Cause of death and then the classification of  
5 that death.

6 Q. Okay.

7 A. The medical reason that that individual died as  
8 well as the classification of the death into one of six  
9 possibilities.

10 Q. Okay, sir. And referring back to the  
11 individual, the child, Chloe Madison Britt, did you, in  
12 fact, do those things in your autopsy with her?

13 A. I did, sir.

14 Q. Okay. Would you tell us about your autopsy.  
15 What you were able to find and what your examination  
16 showed you of Chloe Madison Britt.

17 A. On the external examination, there were injuries  
18 consisting predominantly of bruises or contusions  
19 medically. They were located over the forehead at several  
20 sites, measuring up to approximately one inch  
21 individually. There was also a bruise located on the back  
22 of the scalp, extending to the left, measuring  
23 approximately two and one half inches. There was also a  
24 bruise located over the nose, measuring approximately one  
25 quarter of an inch. There was also a contusion to involve  
26 the upper lip that measured approximately one half inch,  
27 and there was a tear of the frenulum just inside the  
28 mouth. That piece of tissue that attaches the upper part  
29 of the lip to the maxilla, the upper ridge that holds the

1 teeth, and there was a tear that measured approximately  
2 one quarter of an inch located just inside the mouth.  
3 There was also bruising located over the front surface of  
4 the right thigh, measuring approximately one inch, and  
5 there was also a bruise located over the front surface of  
6 the left thigh that also measured -- or this measured  
7 slightly larger, almost an inch and a half at that site.  
8 So there were bruises located over the external surface of  
9 the body, including the forehead, also the upper lip, the  
10 nose, the back of the head, and there was also bruising  
11 located to the front surfaces of both the right and the  
12 left thighs, sir.

13 Q. Okay, sir. Did you notice anything or did you  
14 observe anything concerning the rectum or rectal area?

15 A. I would include that in the internal  
16 examination. On the internal examination, examination of  
17 the lower gastrointestinal tract revealed the presence of  
18 a contusion, measuring approximately one inch, and that  
19 was located at approximately the nine o'clock area of the  
20 rectum extending to approximately the ten o'clock to  
21 eleven o'clock area, sir.

22 Q. You would have done that during your internal  
23 examination?

24 A. Yes, sir.

25 BY MR. HARPER: May I approach the witness, Your  
26 Honor?

27 BY THE COURT: Yes, sir.

28 (Mr. Harper hands the witness a glass of water.)

29 BY MR. HARPER: May I proceed, Your Honor?

1 BY THE COURT: Yes, sir.

2 BY MR. SERMOS: Excuse me, Your Honor. One  
3 moment. May we move this back just a little bit?

4 BY THE COURT: Absolutely.

5 BY MR. SERMOS: We just can't see.

6 BY MR. HARPER: I am sorry.

7 (Mr. Sermos moves the easel so the defense table can see.)

8 BY MR. HARPER:

9 Q. Dr. Hayne, I am going to hand you what's been  
10 marked as State's Exhibit 4 and ask if you'll look at that  
11 and tell whether or not that -- I think that photograph  
12 may be taken prior to your examination, but is that  
13 consistent with what you saw when you made the examination  
14 of the child?

15 A. It shows an injury located over the front  
16 surface of the left thigh on the decedent, Chloe Britt.  
17 That is the injury that I described measuring  
18 approximately two inches located over the front surface of  
19 the left lower extremity, sir.

20 Q. Okay, sir. I see the right lower extremity is  
21 in there. Can you -- are you able to observe the injuries  
22 that you noted there?

23 A. There's an injury located over the front surface  
24 of the right thigh, and that is slightly smaller,  
25 measuring approximately one inch, and it appears to be in  
26 view in this photograph, sir.

27 Q. Okay, sir. You mentioned several. I'm going to  
28 show you several photographs. Can you identify this  
29 photograph, Doctor? It's State's Exhibit 6.

1           A.    State's 6 is a facial view of the decedent, and  
2 it specifically shows injuries that I have described,  
3 injuries located over the upper lip as well as over the  
4 forehead consisting of bruises located at those sites,  
5 sir.

6           Q.    Is that consistent with what you saw on that  
7 date of February 22nd when you did your autopsy?

8           A.    Yes, sir. Consistent and also documented.

9           Q.    In fact, you took this photograph or it was  
10 taken while at your direction; is that right?

11          A.    That's correct, sir.

12          Q.    I'll hold this one up, Doctor, and ask if you  
13 can identify this one.

14          A.    Yes, sir. This shows the facial area of the  
15 decedent, and specifically it shows the bruises located to  
16 the upper lip, sir. And in the very top of it, you can  
17 see the bruises located over the forehead.

18          Q.    Okay, sir. And, again, this photograph was  
19 taken by you or at your direction?

20          A.    It was taken by me, sir.

21          Q.    And it fairly and accurately represents what you  
22 saw on that particular day?

23          A.    It does, sir.

24          Q.    I hand you what's been marked as State's Exhibit  
25 8 and ask if you'll look at that and tell me whether or  
26 not you can identify what's in that photograph, please.

27          A.    I can, sir.

28          Q.    What is that, sir?

29          A.    It shows a tear of the frenulum, a piece of

1 tissue attaching the upper lip to the upper jaw, sir.

2 Q. Okay. And, again, does that fairly and  
3 accurately represent the injuries that you saw on that  
4 child on the date of February 22, 2002?

5 A. It does, sir.

6 Q. Again, this was taken by you or at your  
7 direction at the autopsy.

8 A. Taken by me, sir.

9 Q. Okay. I hand you what's been marked as State's  
10 Exhibit 15 and ask if you'll look at that, and tell me  
11 whether or not you can identify that photograph. Yes,  
12 sir. It is the back of the head of the decedent and upper  
13 part of the back of the decedent, sir.

14 Q. And is there anything significant in that  
15 photograph that you can see?

16 A. There was a bruise located over the back of the  
17 head extending towards the left ear, sir.

18 Q. And, again, this photograph was taken by you and  
19 it fairly and accurately represents that injury that you  
20 saw?

21 A. Yes, sir.

22 Q. Would you point that one out for us.

23 A. Right there, sir.

24 BY MR. HARPER: Please the Court, Your Honor.  
25 I don't think this photograph -- I don't think it's  
26 been published to the jury. May I publish it to the  
27 jury.

28 BY THE COURT: You'll be allowed to do so.

29 That's number --

1 BY MR. HARPER: Number 15.

2 BY THE COURT: You will be allowed to publish  
3 Exhibit 15 to the jury.

4 (Mr. Harper passes Exhibit 15 to the jury.)

5 BY MR. HARPER:

6 Q. I hand you now what's been marked as State's  
7 Exhibit 14 and ask if you'll look at that and tell me  
8 whether or not you can identify what's in that photograph?

9 A. Yes, sir.

10 Q. And would you tell us what that one --

11 A. It shows the back of the head of the decedent  
12 and upper part of the back and shows a bruise starting in  
13 the mid back area going towards the left back of the head,  
14 sir.

15 Q. And I'll will hold that one up and ask if you  
16 would point this out for us, please?

17 A. A bruise located here.

18 Q. Okay, sir. And that fairly and accurately  
19 represents the injury you saw on the child, Chloe Madison  
20 Britt, on February 22nd at the time of your autopsy?

21 A. Yes, sir.

22 Q. And you took this photograph also?

23 A. I did, sir.

24 BY MR. HARPER: Again, Your Honor, I don't think  
25 this one has been --

26 BY THE COURT: You will be allowed to publish  
27 that one to the jury also.

28 (Mr. Harper passes Exhibit 14 to the jury.)

29 BY MR. HARPER:

1 Q. Finally I would hand you what's been marked as  
2 State's Exhibit 5 and ask if you'll look at that  
3 photograph and tell me whether or not you can identify  
4 what's in that photograph.

5 A. Identify what is in --

6 Q. Yes, sir.

7 A. What it depicts, sir?

8 Q. Yes, sir.

9 A. It depicts the bruise located to the rectum of  
10 the decedent, sir. That photograph was taken by me during  
11 the course of the post mortem examination.

12 Q. Okay, sir. I'll ask you, Dr. Hayne. What  
13 would that be indicative of, the injuries that you saw to  
14 the rectal area, if you can answer that question.

15 A. It would be consistent with penetration of the  
16 rectum with an object, sir.

17 Q. Okay. Now, I didn't mean to interrupt you, but  
18 I thought it might behoove us to go ahead and go through  
19 the pictures. So you've testified about your external  
20 examination and what you were able to see. What, if  
21 anything, did you do after that, Dr. Hayne?

22 A. An internal examination was conducted. The  
23 bruise was identified in the rectal area, and of greater  
24 importance, I think, was the presence of significant  
25 injury to the head area. When the scalp was reflected,  
26 there were bruises located over the scalp. There was also  
27 as the calvarium or skull cap was removed. There was also  
28 a collection of blood located between the skull and the  
29 brain itself, and it -- what's called the subdural space,

1 collection of a volume of approximately thirty CC's which  
2 would be several tablespoons of blood located at that  
3 site.

4 Q. Would that be normal for that -- for that blood  
5 to be in the --

6 A. No. It would indicate injury. It would  
7 indicate trauma had occurred.

8 Q. For in laymen's term if you would for me and  
9 whoever else might -- would you tell us -- as I understand  
10 it, Dr. Hayne, you actually take the skull, open it, and  
11 where you can see inside. Would that be correct?

12 A. Yes, sir. Initially you make an incision going  
13 over the top of my head -- if I may use my finger --  
14 behind each ear. The scalp is moved forward and back  
15 exposing the skull cap itself, and located underneath the  
16 skin surface of the scalp itself, there were multiple  
17 bruises as I indicated. After removal of the skull cap  
18 itself, there was a collection of blood between the inner  
19 surface of the skull and outer surface of the brain.  
20 There are small bridging vessels, small veins that go from  
21 the inner surface of the skull to the outer surface of the  
22 brain, and when the head is injured, there's transfer of  
23 force. The brain usually oscillates back and forth, and  
24 it will tear these vessels, and that will allow for the  
25 collection of blood in that space, the subdural space,  
26 between the inner surface of the skull and the outer  
27 surface of the brain. There's also other injury to the  
28 brain itself, and that is that surface of the brain had  
29 extensive hemorrhage or bleeding over it called a



1 subarachnoid hemorrhage. So when you actually held the  
2 brain in your hand, that blood remained in contact with  
3 the brain itself as opposed to the subdural hemorrhage  
4 which was left inside the skull itself when the brain was  
5 removed. There was also other injury that was  
6 identifiable and subsequently confirmed by microscopic  
7 examination. That is that the eyes when they were  
8 enucleated or removed and sectioned. There was obvious  
9 blood in those in the chambers of the eye and the optic  
10 nerves that run to the eye from the brain also had  
11 hemorrhage that one could readily recognize at the time of  
12 the autopsy. The eye is actually part of the brain. It's  
13 an extension of the brain. So it's included in the  
14 examination of the brain, and there was, I felt,  
15 significant -- there was bleeding inside the eyes called  
16 retinal hemorrhages as well as bleeding over the surface  
17 of the scalp, bleeding between the inner surface of the  
18 skull and the brain and also bleeding over the surface of  
19 the brain itself.

20 Q. Would you term it incidental bleeding in these  
21 areas that you've described or excessive bleeding? How  
22 would you term that?

23 A. I consider them lethal.

24 Q. Lethal.

25 A. Lethal. It would produce death, sir.

26 Q. Okay, sir. Now, you have some charts, Dr.

27 Hayne. Did you want to show us anything in regard to  
28 these -- what you told us in --

29 A. I think it shows on that one chart the bleeding

1 over the surface of the brain.

2 Q. Would you --

3 BY MR. HARPER: Your Honor, if it please the  
4 Court, we'd ask that he be allowed to come down and  
5 show them the charts.

6 BY THE COURT: He'll be allowed to step down if  
7 he needs to testify.

8 (Witness steps down.)

9 BY MR. HARPER: Let's move it up where the jury  
10 can see it better, if I don't drop it.

11 BY THE COURT: Again, defense counsel and the  
12 defendant may move around so that they can see --

13 BY MR. HARPER:

14 Q. Dr. Hayne, before we start, let me just ask you.  
15 These diagrams are part and parcel of your autopsy report;  
16 is that correct?

17 A. Yes, sir. They're made during the course of the  
18 post mortem examination.

19 Q. Okay, sir. And, if you would, what does this  
20 particular chart depict?

21 A. They're several different views of the brain,  
22 looking down on the top of the brain, looking at the  
23 bottom of the brain upward, and looking at the left side  
24 of the brain, and also looking at the right side of the  
25 brain, and on the illustrations, I added notes essentially  
26 indicating by the cross checks that there was extensive  
27 bleeding in the subarachnoid space on the surface of the  
28 brain itself. That there were no contusions or bruises  
29 and no tears of the brain itself. Also indicated that

1 there were no fractures. They were no breaking of the  
2 bones composing of the skull, skull cap, base of the  
3 skull, and other bones structures. Also indicated that  
4 there was a collection of approximately thirty CC's of  
5 blood in the subdural space. That space -- may I draw on  
6 this?

7 Q. Yes, sir. Absolutely.

8 A. If you look at the skull, we've opened it. The  
9 brain will sit approximately like that, and there was a  
10 space between the inner surface of the skull and outer  
11 surface of brain. The subdural space and that is the  
12 bleeding that I am referring to down here. There's a  
13 collection of blood in this space, and in addition, there  
14 was bruising eluded to, involved the scalp in several  
15 locations. Some of which were visible on the external  
16 examination. Bruises located underneath the scalp --

17 Q. Let me interrupt you a second. When you got  
18 into the internal examination, you found more bruising  
19 than what you were able to see from the external --

20 A. Yes, sir.

21 Q. -- examination by eye.

22 A. That's correct, sir. And then on the surface  
23 of the brain itself were the areas of bleeding, the  
24 subarachnoid hemorrhage, and if one looks at the optic  
25 tracts, part of the cranial nerves that go to the eye.  
26 There was also bleeding around those structures, and when  
27 one examined the eye itself and a cross section of it, the  
28 several layers of the retina and they were bleeding in  
29 multiple layers of the retina, inside of the eye itself,

1 and extending to the optic nerve which runs back to the  
2 brain.

3 Q. Okay, sir. All right. Thank you, Doctor. You  
4 indicated earlier that what you observed there would be  
5 lethal. Were you able to come to a conclusion as to cause  
6 of death in this particular case?

7 A. Yes, sir.

8 Q. What was that?

9 A. It was consistent with the shaken baby syndrome,  
10 sir.

11 Q. And would you tell the jury what you mean by  
12 that, and if want to have a seat or if you want to use  
13 your diagrams.

14 BY MR. HARPER: If the Court, please, Your  
15 Honor. I ask that he be free to get up and come to  
16 the charts if he needs to, to show something.

17 BY THE COURT: He'll have that option if he so  
18 desires.

19 A. It would be consistent with a person violently  
20 shaking a small child. Not an incidental movement of a  
21 child, but violently shaking the child back and forth to  
22 produce the types of injuries that are described as shaken  
23 baby syndrome, which is a syndrome known for at least  
24 forty-five years now. Coined by a Dr. Coffee who analyzed  
25 several of these in Denver, Colorado, and the classic  
26 triad for shaken baby syndrome is one, the presence of a  
27 subdural hemorrhage; and, two, the presence of retinal  
28 hemorrhage; and, three, the absence of other potentially  
29 lethal causes of death. Other etiologies or causes of

1 death. So it's inclusionary and exclusionary. Both  
2 inclusionary findings were present. The subdural  
3 hemorrhage, the retinal hemorrhage, and also there was an  
4 exclusionary competent. I did not find any other cause of  
5 death, sir.

6 Q. You indicated that it would require what you  
7 call violent shaking, and I know somewhat demonstrated.  
8 How violent are we talking about, Dr. Hayne? I mean, is  
9 this something --

10 A. The type of injuries that you can see that  
11 parallel these are in motor vehicle crashes, falls from  
12 significant heights and the like, sir.

13 Q. So we're talking about violent shaking?

14 A. We're talking about very violent shaking.

15 Q. Okay. And that was your determination as to  
16 cause of death?

17 A. Yes, sir.

18 Q. Okay, sir. And did you make a determination as  
19 to manner of death?

20 A. Yes, sir.

21 Q. And what was that?

22 A. I thought it was consistent with homicide, sir.

23 Q. Obviously the child was six months old. Could  
24 she do this to herself?

25 A. No, sir.

26 Q. Okay. It would have to be someone else that did  
27 it?

28 A. It was another person, sir.

29 Q. Violently shaken.

1           A.   Violently shaking, producing these injuries  
2 and, of course, there were other injuries that were  
3 identified on the body, but were not participatory in the  
4 death of the child.

5           Q.   And, again, this is what your concentration on  
6 is what caused the death. So I would assume that your  
7 examination, although thorough, was on the head injuries?

8           A.   Yes, sir. As opposed to a clinical physician  
9 who is treating an individual who obviously is alive or  
10 has a potential of being resuscitated, and that, of  
11 course, focuses different than a person like me who I am  
12 looking at the cause and manner of death, sir.

13          Q.   Okay, sir. Now, Dr. Hayne, after you had  
14 completed -- or if you would, just go on. You did your  
15 internal examination. I believe you talked about some  
16 microscopic -- you completed the complete examination as  
17 you described to us earlier that you had performed.

18          A.   Yes, sir.

19          Q.   Okay, sir. What, if anything, else did you do  
20 or if you would tell us anything of significance that you  
21 were able to find during the course of your examination  
22 other than what you've already described.

23          A.   The other significant findings were the  
24 collection of evidence.

25          Q.   Okay, sir.

26          A.   Photograph documentation, evidence that was  
27 submitted to the Mississippi State Crime Lab.

28          Q.   Okay, sir. Would that include the extraction of  
29 blood from the victim?

1 A. Yes, sir. There were several tubes of blood  
2 extracted, removed, phlebotomized for different reasons.  
3 Toxicology, DNA, serology, and the like, sir.

4 Q. And those were transported -- transferred to the  
5 crime lab --

6 A. Yes, sir.

7 Q. -- delivered to them?

8 A. Under the chain of custody.

9 Q. Yes, sir.

10 BY MR. HARPER: The Court will indulge me just  
11 one moment, Your Honor.

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

13 BY MR. HARPER:

14 Q. Dr. Hayne, getting back to your photographs, you  
15 talked about the injury to the mouth and the frenulum, I  
16 believe you called it?

17 A. Yes, sir.

18 Q. What would that be indicative of to you?

19 A. It could be insertion of an object in the mouth,  
20 pulling of the lip, even pushing down on the upper part of  
21 the jaw to produce that.

22 Q. Could be consistent with insertion --

23 A. It could be.

24 Q. Penetration?

25 A. Yes, sir.

26 BY MR. HARPER: The Court will indulge me one  
27 more --

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

29 BY MR. HARPER: Your Honor, I believe that's all

1 I would have, and we tender Dr. Hayne at this time.

2 BY THE COURT: Cross-examination.

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

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

5 CROSS-EXAMINATION

6 BY MR. SERMOS:

7 Q. Dr. Hayne, as far as your examination and I  
8 don't want to even try to put words in your mouth, but,  
9 essentially, the shaken baby syndrome here and the cause  
10 of death and then the manner of death, those two things,  
11 especially the shaken baby syndrome, that is a totally  
12 separate item from any allegations or indications of  
13 rectal or sexual abuse; is that correct?

14 A. The cause of -- yes. The cause of death that I  
15 addressed was the shaken baby syndrome. The manner of  
16 death, of course, is a product of the cause of death. The  
17 other findings were separate, sir. They did not  
18 constitute lethal injuries that would produce death in and  
19 of themselves, sir.

20 Q. And then the next question is when you use the  
21 word in your report "contusion" -- excuse me one moment,  
22 please, and I'll get right to. You had used the word in  
23 the rectum there would have been a contusion. In your  
24 definition from a medical expert standpoint, is a  
25 contusion and a tear the same thing?

26 A. No, sir.

27 Q. Okay. Would you please tell the jury what the  
28 difference would be?

29 A. A tear is a laceration most commonly whether



1 it's a complete, full thickness disruption of the -- in  
2 this case, the mucosal surface as opposed to a skin  
3 surface. A contusion is a collection of blood underneath  
4 the mucosal surface.

5 Q. Okay.

6 A. It's a product of tearing of vessels underneath  
7 the skin or mucosal surface and bleeding at that site with  
8 the subsequent collection of blood.

9 Q. So that could be caused by something different  
10 than would cause a tear; is that correct?

11 A. Could be, or it could be the same object.

12 Q. If there were any tears down there in your  
13 report when you put a contusion of the anus is noted, I  
14 presume you would have also written tears were noticed  
15 also; is that correct?

16 A. If I had seen them, I would put down  
17 laceration. I did not see it in this case, and I did not  
18 exclude it, but I just didn't see it.

19 Q. The next part of that is you mentioned in your  
20 report on -- actually it's page two after your cover  
21 sheet. You put well-formed stool is present within the  
22 luminal space of the large bowel.

23 A. Yes, sir.

24 Q. Is the large bowel by what you're referring to  
25 here, the descending colon?

26 A. It would include the descending colon, yes.

27 Q. Okay. So where the next question comes from is  
28 this. At the time the baby was deceased, was in the  
29 hospital, the other witness have testified that there was

1 feces coming out of the baby's anus and rectal area, and  
2 that it was basically diarrhea type. Now, is there a  
3 difference in diarrhea and well-formed stool?

4 A. Yes, sir.

5 Q. Okay. My next question would then be what would  
6 cause -- if these witnesses testified to this that there  
7 was diarrhea, loose bowels, and basically this was at the  
8 time of death. When would the well-form stool form? Was  
9 it already there?

10 A. I think the well-formed stool is already  
11 present, and that would include the ascending as well as  
12 transverse colon. Now, if there was injury to a lower  
13 part of the colon that could be a transfer of fluid in  
14 that site, and you can get a semi-liquid stool while you  
15 have solid stool in the first part of the colon.

16 Q. Okay. And then that would go to the next part  
17 of what you probably would have done -- it's not in your  
18 report anywhere, and I don't presume it existed, but had  
19 there been some damage into or of the descending colon,  
20 you would have noticed that; is that correct?

21 A. I would have, sir.

22 Q. And when you stated that around the rectum or  
23 the anular ring -- someone has talked about the anus or  
24 the anular ring, the sphincter. That there was that  
25 contusion there, and that could be caused -- I believe you  
26 said by an object?

27 A. Yes.

28 Q. If an object had -- when you state that, the  
29 object merely has to come into contact with the anus and

1 it doesn't necessarily imply any massive insertion, does  
2 it?

3 A. No. It implies force.

4 Q. Right.

5 A. It implies injury to the mucosal surface  
6 subsequently tearing the small vessels underneath the  
7 mucosal surface.

8 Q. Okay. And then, shall we say, and I'll ask you  
9 for your expert opinion on this also. If some object were  
10 to have been inserted in that child's anus and even gone  
11 into the descending colon or the rectal area and that  
12 object were found, then that object should have either  
13 some form of tissue, matter, blood, or feces on it.  
14 Wouldn't you expect that?

15 A. I would expect to at least see fecal material  
16 on it, sir. Maybe other items.

17 Q. Okay.

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

19 BY THE COURT: Certainly.

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

21 BY MR. SERMOS: We have no further questions,  
22 Your Honor.

23 BY THE COURT: All right.

24 BY MR. HARPER: Just a few questions, Your  
25 Honor.

26 BY THE COURT: Redirect.

27 REDIRECT EXAMINATION

28 BY MR. HARPER:

29 Q. Dr. Hayne, your examination, I believe you said,

1 was done roughly six o'clock on the 22nd?

2 A. Yes, sir. It was almost seven o'clock, sir.

3 Q. Okay, sir. Which my understanding that the  
4 child came to the hospital was about 9:40 on the night  
5 before. So it was about twenty-two hours or something to  
6 that effect by the time you did your examination?

7 BY MR. SERMOS: Your Honor, we object to this  
8 line of questioning. The State had the opportunity  
9 to review this with the State's witness on direct.

10 BY MR. HARPER: Your Honor, they've asked some  
11 questions. I think -- I am trying to lay some  
12 predicate to ask some questions consistent with --

13 BY THE COURT: All right. Keep in mind your  
14 redirect will be limited to matters brought out on  
15 cross-examination.

16 BY MR. HARPER: I understand, sir.

17 BY MR. HARPER:

18 Q. My question to you, Dr. Hayne, with that length  
19 of time, would some form of rigor mortis have set in on  
20 this child at that point?

21 A. Yes, sir. The child was in full rigors, very  
22 stiff.

23 Q. How could that affect, if at all, the rectal  
24 area as far as how tight it was or loose, or could it  
25 affect that?

26 A. It would contract it, sir.

27 Q. Okay.

28 A. But make the luminal diameter, the actual  
29 diameter of the rectum smaller, sir.

1 Q. And if there were a tear in that -- a slight  
2 tear or whatever, as it contracted, could be less visible  
3 and, in fact, almost appear to be a contusion at that  
4 point if it contracts to that extent. Would that be a  
5 safe statement?

6 A. I think the contusions would remain. The small  
7 tear, after we washed the body and after rigor has already  
8 set up, we may not see that, sir.

9 Q. And as you stated before, your examination is  
10 primarily concerned with the injuries that caused the  
11 death; is that right?

12 A. Yes, sir.

13 Q. You would have observed other injuries but --

14 BY MR. SERMOS: Objection, Your Honor. He's  
15 going on the things he already asked him when he  
16 first started direct.

17 BY THE COURT: I'll sustain that last question.

18 BY MR. HARPER:

19 Q. Would it be safe to say that the doctor  
20 examining the child at the hospital would have looked at  
21 that injury more closely than you did?

22 A. They would have looked at it under different  
23 circumstances. I think we would look at it very  
24 carefully, too.

25 Q. I understand.

26 A. But I think there would be alterations in the  
27 body that we would see that they would not see.

28 Q. Or that they might see that you could not see.

29 A. That's correct, sir.

1 Q. Thank you, sir.

2 BY MR. HARPER: That's all I have, Your Honor.

3 BY THE COURT: You may step down.

4 BY THE WITNESS: Thank you, Your Honor.

5 (The witness steps down.)

6 BY MR. HARPER: Your Honor, we'd ask that Dr.  
7 Hayne be released.

8 BY THE COURT: You'll be released.

9 BY MR. HARPER: Oh, Your Honor, I am sorry.

10 BY THE COURT: Okay. Who does the State call as  
11 your next witness?

12 BY MR. HARPER: The Court indulge us just a  
13 moment.

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

15 BY MR. HARPER: Your Honor, at this time, the  
16 People of the State of Mississippi would rest our  
17 case.

18 BY THE COURT: Okay. Ladies and gentlemen, the  
19 State has rested. The case has been moving along  
20 quite satisfactorily. It's going to be necessary to  
21 take a short recess at this time. So this will be  
22 about a fifteen-minute recess. If you will, use the  
23 facilities down at the end of the hall. Keep in mind  
24 what I said about no contact with anybody involved in  
25 this case, and I'm going to need to see counsel and  
26 the court reporter in the jury room. So this will be  
27 about a fifteen-minute recess.

28 (The following was heard in the chambers of the Judge,

29 OUTSIDE THE PRESENCE OF THE JURY, to-wit:)

1 BY THE COURT: All right. Let the record show  
2 that the Court is in chambers with counsel for each  
3 side with the State having announced that it rests  
4 its case. First of all, the Court will take up any  
5 motions at this time.

6 BY MR. SERMOS: Your Honor, first let the record  
7 also show that counsel for the defendant are present  
8 with the defendant himself also.

9 BY THE COURT: Let the record so reflect.

10 BY MR. SERMOS: The first motion we have or  
11 perhaps being the only one, but at any rate at this  
12 time, Your Honor, we ask that -- we offer and make a  
13 motion for a directed verdict of acquittal on behalf  
14 of the defendant, and we would state that the -- what  
15 we ask the Court to look at in considering this  
16 motion is that the Court should consider the evidence  
17 introduced in the light most favorable to the State,  
18 accepting all evidence introduced by the State as  
19 true, together with all reasonable inferences  
20 therefrom. Looking at that standard, dear Lord --  
21 Judge here, and thinking about all the evidence we  
22 heard from the State and everything that was  
23 testified to, we would say that the Court should  
24 direct a verdict of acquittal for the defendant  
25 because, number one, there was no confession. Number  
26 two, there were no eyewitnesses to this crime.  
27 Number three, even though there is indications of DNA  
28 evidence around the scene of the crime on bed sheets  
29 or whatever and even though there were indications

1 from the report of the death of the child, part of  
2 evidence that went in for the Court to consider was  
3 also the video offered of the defendant's statement,  
4 and we offer that in for the Court to consider that  
5 is evidence that the State offered also for the Court  
6 to weigh in its decision in -- as evidence introduced  
7 by the State in all reasonable inferences. We would  
8 state that a reasonable inferences from that is  
9 certainly not a prima facie case because even the  
10 defendant's statement offered into evidence he stated  
11 that whatever happened was an accident. He  
12 explained it, and that the State is essentially even  
13 though they produced the actual -- the baby was dead.  
14 In this case of capital murder with the underlying  
15 offense of sexual battery, there has been not enough  
16 evidence to substantiate sexual battery of the child  
17 by the defendant. So we ask the Court to direct a  
18 verdict of acquittal.

19 BY THE COURT: All right. Does the State have  
20 any response for the record?

21 BY MR. HARPER: Your Honor, I think the  
22 evidence speaks for itself. I think it's overly  
23 clear that the case -- that the State has met its  
24 burden at this point, at least to the extent of  
25 submitting it to the jury. In the statement of the  
26 defendant himself he even made admissions that he may  
27 have penetrated the rectal area of the child with his  
28 hands, which I think is significant. And we would  
29 submit to the Court that there's ample evidence to



1 overcome a directed verdict.

2 BY THE COURT: All right. First of all, the  
3 Court notes as that counsel for the defendant has  
4 pointed out, the Court is to consider the evidence in  
5 the light most favorable to the State together with  
6 all reasonable inferences. The Court is cognizant of  
7 the fact that this is a charge of capital murder.  
8 Now, first of all, counsel is correct that there is  
9 no confession in this case and there are no  
10 eyewitnesses. That is not a requirement. Neither is  
11 a requirement to survive a motion for a directed  
12 verdict in any case or even in a capital murder  
13 case. Now, the indictment as amended charges the  
14 underlying felony crime of sexual battery which is  
15 any type of penetration by an individual of a certain  
16 age older than a child who's under the age of  
17 fourteen, I believe. There's been some testimony  
18 about the -- about a tear in the victim's mouth. The  
19 evidence from all the witnesses who have testified is  
20 that this possibly could have been caused by some  
21 type of insertion, but it also clearly could have  
22 been caused by some type of external force, fall, or  
23 something coming into contact with the victim's  
24 mouth. There's been no evidence of any penetration  
25 of the child's vaginal area. The evidence as to the  
26 mouth is clearly not sufficient to sustain a charge  
27 or to go to the jury on a charge of penetration of  
28 the child's mouth. That is only just a possibility  
29 or speculation that there's some type of insertion in

1 the child's mouth. Clearly the predominant part of  
2 the evidence is that it would more likely have been  
3 caused by some type of external force to the child's  
4 mouth. While it is a possibility, it's clearly far,  
5 far sufficient to sustain any type of sexual battery  
6 of the child's mouth. However, the child's anus is  
7 a different matter. The clear testimony is that the  
8 child was seen by day care personnel up until  
9 approximately five o'clock p.m. on the date in  
10 question. Diapers were changed. Numerous -- were  
11 numerous diaper changes, and there was nothing wrong  
12 with the child's anus. It was normal. We have heard  
13 the testimony of the various witnesses as to the  
14 events at the defendant's home that evening leading  
15 up to the child being carried to the emergency room  
16 of the Community Hospital. When the child was  
17 presented to the emergency room, emergency personal  
18 in administering to the child medical care attempted  
19 to insert a thermometer in the child's anus which is  
20 the normal customary medical procedure for an infant  
21 that age. The testimony is that the medical personal  
22 were immediately alarmed and totally surprised to  
23 notice the child's anus in a very unusual state and  
24 referred to, testified as gaping. The size of at  
25 least an inch. A diameter of at least an inch. The  
26 size of approximately a quarter which is extremely  
27 unusual for an infant this age. The clear inference  
28 from this testimony, the clear conclusion from this  
29 testimony is that the child's anus suffered some type

1 of violent intrusion into it. This is substantiated  
2 from the testimony of various witnesses who have  
3 testified. There is evidence of some bruising on the  
4 outside, but, clearly, there is sufficient evidence  
5 that's been presented to support some type of  
6 insertion or penetration into the minor victim's anus  
7 of such a violent nature as to cause the condition as  
8 observed by the medical personal at the Community  
9 Hospital emergency room. Now, there's been testimony  
10 as to the child's whereabouts prior to presentation  
11 to there. In the statement that was taken from the  
12 defendant, he himself places the child by virtue of  
13 that statement in his exclusive care, custody, and  
14 control during the time period in question. On the  
15 statement, he offers and can offer no explanation  
16 whatsoever to the condition of the child's anus. The  
17 testimony of Dr. Hayne is such that whatever injury  
18 or intrusion, penetration to the child's anus did not  
19 result in the child's death. That is a different  
20 matter. The Court finds that clearly there's  
21 evidence that would support a finding of sexual  
22 battery. What has been testified to by Dr. Hayne is  
23 that the child's death was result of what is commonly  
24 referred to as shaken baby syndrome or the violent  
25 shaking of the infant such as to cause very clear,  
26 unmistakable classic signs of retinal hemorrhaging  
27 and subdural hemorrhaging of the brain with the  
28 absence of any other explanation for death. The  
29 testimony of the medical personnel at the Community

1 Hospital as to the swelling of the face of the child  
2 at the time of her death and Dr. Hayne's testimony  
3 clearly supports injury to the brain by virtue of  
4 being shaken violently such as to cause bleeding  
5 resulting in the child's death. Now, from all the  
6 testimony, a reasonable jury could clearly find  
7 beyond a reasonable doubt and even excluding any  
8 reasonable hypothesis consistent with innocence that  
9 the defendant being admittedly without question the  
10 sole one that was with the child at the time of these  
11 apparent injuries and whatever happened to her anus,  
12 committed a sexual battery upon a six-month-old  
13 child, he being twenty-three years of age at the  
14 time, by insertion of his penis or some other object  
15 into the child's anus, partially or clearly to some  
16 extent. That clearly satisfies an insertion under  
17 the law. A reasonable jury could also find that the  
18 defendant shook the infant child so severely during  
19 the course of this or following the sexual battery  
20 such that it caused the injuries complained of that  
21 necessitated taking the child to the emergency room  
22 and her subsequent death. The defendant himself in a  
23 statement admits shaking the child, but he gives a  
24 much different version and tries to explain it as  
25 essentially accidental means following dropping of  
26 the child. However, significantly again, there is no  
27 evidence whatsoever or any type of inference other  
28 than what happened to the child's anus happened while  
29 the child was in the exclusive care of the defendant.

1 He virtually admitting this but not giving any  
2 explanation whatsoever as to what happened to her  
3 anus. So he has given a version somewhat consistent  
4 with the accident as to the shaking of the baby but  
5 no explanation whatsoever as to the trauma to the  
6 child's anus. Therefore, a reasonable jury could  
7 clearly find, as the Court noted, that he was guilty  
8 of the crime of -- or he committed crime of sexual  
9 battery upon this six-month-old infant, and further  
10 kill this child with or without intent or design.  
11 During the course of this sexual battery, the  
12 indictment and the law does not require intent to  
13 cause the death but merely that the death was  
14 actually caused by the defendant which is clear  
15 testimony that a jury could so find beyond a  
16 reasonable doubt and also that the underlying crime  
17 of sexual battery took place. Therefore, the  
18 defendant's motion for a directed verdict on the  
19 charge of capital murder will be denied and  
20 overruled.

21 BY MR. SERMOS: Your Honor, may I ask one thing?

22 BY THE COURT: Yes, sir.

23 BY MR. SERMOS: When you were describing about  
24 what Dr. Hayne said about some of the injuries, I  
25 might have heard wrong, but I wanted to make sure.  
26 When you're talking about the brain area and eyes, it  
27 sounds like you said and I wanted to make sure she's  
28 got it. It sounded like you said rectal  
29 hemorrhaging, but it was retinal hemorrhaging.

1 BY THE COURT: Retinal. That's what I intended  
2 to say. Thanks for being correct.

3 BY MR. SERMOS: Yes, sir.

4 BY THE COURT: That's what I was referring to.  
5 Now, at this time, because the State has rested and  
6 the Court has overruled the motion for a directed  
7 verdict, I'm going to advise the defendant, Mr.  
8 Havard, of his right to testify or not to testify.

9 BY MR. SERMOS: Thank you.

10 BY THE COURT: Mr. Havard, the things I am going  
11 to be talking about I'm sure have already been  
12 discussed with you by your attorneys, but I want to  
13 make sure you understand this. You have an absolute  
14 constitutional right to either testify in this case  
15 or to not testify. That is your decision to make.  
16 First of all, if you do testify, you will be subject  
17 to cross-examination by one of the two attorneys for  
18 the State, not both of them but by one of them on  
19 cross-examination as you've seen other witnesses  
20 cross-examined by your own attorneys. You cannot  
21 just testify or tell your side and then refuse to  
22 answer questions. So I want you to understand that.  
23 Also if you do testify, there's been no evidence in  
24 the file or any that I've noticed in the previous  
25 hearings that the State has any evidence of any prior  
26 crimes that can be used to impeach you, and  
27 apparently, I don't think there's any such evidence  
28 as such. So the main thing you need to be aware of  
29 if you do chose to testify, you will be subject to

1 cross-examination by the State. Now, this is your  
2 choice, to either testify or not testify. If you  
3 choose to testify, that will be the procedure that  
4 will be followed. If you choose not to testify, that  
5 is also your right. Under the Constitution, no one  
6 could force you to testify. If you choose not to  
7 testify, the Court will even be willing to instruct  
8 the jury that legally they're not to hold that  
9 against you in any way. That's not evidence. They  
10 cannot consider that fact or take any bad inference  
11 against you in this case because of the fact that you  
12 did not testify. Now, your attorneys can advise you  
13 about what in their professional, legal opinion is  
14 the best thing for you to do, either to testify or  
15 not testify, but ultimately the decision comes down  
16 to you. In other words, if your -- if your attorneys  
17 advise you not to testify but you want to testify,  
18 all you have to do is let me know, and I will see to  
19 it that you will be allowed to testify. If they  
20 advise you or want you to testify and you don't want  
21 to testify, all you have to do is let me know, and I  
22 will see to it that even if they -- I will not allow  
23 them to try to call you as a witness if you do not  
24 want to be called as a witness. So this is your  
25 decision to make. First of all, do you have any  
26 questions about what I've just gone over?

27 BY THE DEFENDANT: No, sir.

28 BY THE COURT: Have you made a decision about  
29 whether you desire to testify in this case or not?

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

1 anybody have any further jury instructions?

2 BY MR. ROSENBLATT: Your Honor --

3 BY THE COURT: Let's have them right now. Let's  
4 get them.

5 BY MR. ROSENBLATT: Your Honor, the sentencing  
6 phase instructions will require a last minute  
7 revision depending on the factors that are introduced  
8 at the hearing, but apart that from, we don't --

9 BY MR. HARPER: We've introduced it. It just  
10 may need to be amended to reflect what the factors --

11 BY THE COURT: Okay. So nobody has any further  
12 jury instructions at this time?

13 BY MR. HARPER: No, sir.

14 BY MR. CLARK: We don't.

15 BY THE COURT: Now, we will proceed. I want the  
16 attorneys back at 1:15. We will take up the  
17 instructions briefly, and we'll proceed to argue this  
18 case and submit it to the jury on the guilt phase.  
19 Now, in the event, in the event that the defendant is  
20 found guilty of capital murder, what does the State  
21 have by way of evidence that intends to proceed with  
22 on the sentencing phase?

23 BY MR. HARPER: Your Honor, we intend to ask the  
24 Court to adopt the testimony, evidence from the guilt  
25 phase, assuming that there is a conviction. We  
26 intend to ask the Court to adopt or to introduce that  
27 conviction and the underlying -- including the  
28 underlying aspect of it, and also, Your Honor, we may  
29 have one additional witness that we intend to call at



1 this time from the family.

2 BY THE COURT: So you might -- looking at one  
3 additional witness --

4 BY MR. HARPER: One additional witness.

5 BY THE COURT: In the event that he's found  
6 guilty --

7 BY MR. HARPER: Yes, sir.

8 BY THE COURT: -- of capital murder?

9 BY MR. HARPER: Yes, sir.

10 BY THE COURT: What about the defense? In the  
11 event that the defendant is found guilty of capital  
12 murder, do you anticipate lengthy testimony by the  
13 defense on the sentencing phase?

14 BY MR. SERMOS: Your Honor, as I see it right  
15 now, we have two witnesses on the sentencing phase  
16 that would testify. Would be basically mitigation  
17 witnesses, and that would obviously -- there may be  
18 one or two more but we're just talking about only two  
19 that we're really looking at.

20 BY THE COURT: Well, both sides need to be  
21 prepared to go forward with the sentencing phase  
22 because obviously this case is going to submitted to  
23 the jury on the guilt or innocence phase shortly  
24 after lunch. The Court, of course, has no way of  
25 anticipating how long the deliberations will be or  
26 what may be the result of those deliberations, but it  
27 is foreseeable that the jury could return a verdict  
28 finding the defendant guilty of capital murder  
29 without a lengthy deliberation in this matter, and if

1 that is the situation, then there will be ample time  
2 today to go ahead and proceed into the sentencing  
3 phase of this trial if that becomes necessary. So  
4 does each side understand?

5 BY MR. HARPER: Yes, sir.

6 BY MR. ROSENBLATT: Yes, Your Honor.

7 BY THE COURT: If you have any further  
8 instructions, I suggest you get those gathered up and  
9 get them to the Court.

10 BY MR. HARPER: Your Honor, you understand what  
11 we're talking about on that sentencing instruction?  
12 We've submitted it but it may need to be revised  
13 based on what comes out in the course of the hearing.

14 BY THE COURT: Okay. I think you can fairly  
15 anticipate what's going to be coming out in the  
16 hearing in the event --

17 BY MR. HARPER: We'll try to prepare that over  
18 the lunch hour then, Your Honor, and have it ready.

19 BY MR. SERMOS: Excuse me, Your Honor. Let me  
20 just ask you this to make sure I understand. So if  
21 we were to have a verdict like that and the verdict  
22 is there, are you saying we would literally within  
23 two minutes go into the sentencing phase, or would we  
24 have a half hour or so to --

25 BY THE COURT: Not two minutes. At least a half  
26 an hour or so --

27 BY MR. SERMOS: Okay.

28 BY THE COURT: But what I'm saying --

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

1 BY THE COURT: -- if this jury comes back at a  
2 reasonable time this afternoon and their verdict is  
3 guilty of capital murder, then there would be no  
4 reason not for the Court to take a short recess and  
5 then I'll go ahead and proceed, but that's why I want  
6 you to have your witnesses ready to be later on this  
7 afternoon if we get to that point. There's several  
8 things that may happen. Number one, the  
9 deliberations could be rather lengthy today, or,  
10 number two, the jury could not return a verdict of  
11 finding the defendant guilty of capital murder by  
12 reason of a not guilty verdict or a hung jury. Those  
13 are possibilities. So I am just saying in the event  
14 that it does happen quickly, and it comes back with a  
15 verdict finding the defendant guilty of capital  
16 murder, each side needs to be prepared later on today  
17 because we still have plenty of time left today. I  
18 need to see the attorneys at 1:15 back in the jury  
19 room.

20 (After a lunch recess, the following was made of record in  
21 the chambers of the Judge, OUT OF THE PRESENCE OF THE  
22 JURY, to-wit:)

23 BY THE COURT: Let the record show that the  
24 Court is in chambers with counsel for each side and  
25 also the defendant for the purpose of taking up jury  
26 instructions, both sides having rested their  
27 respective cases. The Court will go through the two  
28 Court's instructions first, and then the State's  
29 instructions, and then the defendant's instructions.

1 Pursuant to law either side that has an objection to  
2 an instruction that is being granted, you need to  
3 state your specific objection on the record.

4 ON INSTRUCTION C-1: BY THE COURT: First of  
5 all, the Court is going to grant Instruction C-1  
6 which is a two-page general, informational  
7 instruction that is granted in each case. This will  
8 be granted.

9 ON INSTRUCTION C-2: BY THE COURT: The Court is  
10 going to grant Instruction C-2 which is a form of the  
11 verdict for the jury to either find the defendant  
12 guilty of capital murder or not guilty. Now on the  
13 State's instructions.

14 BY MR. HARPER: Your Honor, we would withdraw  
15 S-1.

16 BY MR. ROSENBLATT: I am sorry.

17 ON INSTRUCTION S-1: BY THE COURT: S-1 will be  
18 withdrawn.

19 ON INSTRUCTION S-2: BY THE COURT: Is any  
20 objection to S-2?

21 BY MR. SERMOS: I don't. Do you?

22 BY MR. CLARK: Unh-unh.

23 BY MR. SERMOS: No objection.

24 BY THE COURT: All right. S-2 will be granted.  
25 This is an instruction on the elements of the  
26 underlying felony crime as charged in the indictment  
27 of sexual battery. It does appear to the Court to  
28 adequately and properly set out the legal elements of  
29 the underlying crime of sexual battery. It is

1 required by law that the jury be so instructed on  
2 the elements of that crime, and this instruction  
3 appears to do that. That will be granted.

4 ON INSTRUCTION S-3: BY THE COURT: Okay. Is  
5 there any objection to S-3? This appears to be the  
6 instruction dealing with the elements of capital  
7 murder.

8 BY MR. CLARK: On the last line, Judge, could  
9 we -- mine has got "capital A murder."

10 BY THE COURT: That should be -- I will strike  
11 the "A."

12 BY MR. HARPER: Granted as amended.

13 BY THE COURT: Is there any objection to that?

14 BY MR. SERMOS: You got any objection?

15 BY MR. CLARK: No.

16 BY MR. SERMOS: No, Your Honor.

17 BY THE COURT: That will be granted. It does  
18 appear to properly set out the elements particularly  
19 since the other instruction defines the elements of  
20 sexual battery.

21 ON INSTRUCTION S-4: BY THE COURT: All right.  
22 S-4 appears to be the form instruction for the  
23 definition of sexual penetration. Is there any  
24 objection to that.

25 BY MR. SERMOS: Not by me.

26 BY THE COURT: That does appear to properly set  
27 out the definition of sexual penetration and is a  
28 form instruction.

29 ON INSTRUCTION S-5: BY THE COURT: All right.

1 Any objection to S-5? This appears to be the  
2 standard instruction that some amount of penetration  
3 is required by the evidence not full penetration.

4 Any objection to this as submitted?

5 BY MR. SERMOS: No, Your Honor.

6 BY THE COURT: Then that will be granted.

7 That's S-5.

8 BY MR. HARPER: Your Honor, the Court's C-2 --  
9 we'll withdraw this in light of the Court's C-2.

10 ON INSTRUCTION S-6: BY THE COURT: That will be  
11 withdrawn.

12 BY MR. CLARK: Talking about number six, Ronnie?

13 BY MR. HARPER: Right.

14 ON INSTRUCTION S-7: BY THE COURT: As to S-7,  
15 this appears to be the proper instruction that's  
16 proper to give to the jury in the guilt phase or  
17 guilt innocence phase of a capital murder case which  
18 clearly informs the jury to avoid any confusion that  
19 they're not dealing with any issue of sentence at the  
20 this stage of the trial. So that is to avoid  
21 confusion. Is there any objection to S-7?

22 BY MR. SERMOS: I am sorry, Your Honor. I just  
23 want to ask. You said deals only with guilt or  
24 innocence, and then it goes to the -- if you find him  
25 guilty, you will then and only then consider the  
26 appropriate sentence to be imposed. I presume it's  
27 going to be clarified there they'll consider that at  
28 a later time.

29 BY THE COURT: That's right. As I understand,

1 the Court has reviewed the cases, and there are cases  
2 that indicate this is a proper instruction to be  
3 given for the reason that it could be confusing.  
4 Some jurors might even tend to jump ahead and try to  
5 even discuss the issue of sentencing in the event  
6 that the defendant were found guilty, and that's the  
7 purpose, as I understand, of this instruction. So  
8 for the record, are there any objections to this  
9 instruction?

10 BY MR. SERMOS: No, Your Honor.

11 BY THE COURT: Okay. That's all the  
12 instructions that the Court has from the State on the  
13 guilt innocence phase. I realize there's been some  
14 other instructions, but I believe they're submitted  
15 in the event that they're needed for a sentencing  
16 phase.

17 BY MR. HARPER: That's correct Your Honor.

18 ON INSTRUCTION D-1: BY THE COURT: All right.  
19 At this time, we'll take up the defendant's  
20 instructions. First of all, the Court is going to  
21 deny Instruction D-1 which is a pre-emptory  
22 instruction. This will be the denied for the reason  
23 stated by the Court on the -- in the record in  
24 denying the motion for a directed verdict. Once the  
25 State rested and also denying its renewal once both  
26 sides have rested. So this will be refused.

27 ON INSTRUCTION D-2: BY THE COURT: Is there any  
28 objection to D-2?

29 BY MR. HARPER: None, Your Honor.

1 BY THE COURT: It appears to be a proper  
2 instruction. That will be granted.

3 ON INSTRUCTION D-3: BY THE COURT: Any  
4 objection to D-3?

5 BY MR. HARPER: No, Your Honor.

6 BY THE COURT: All right. The Court finds this  
7 is proper. The defendant elected not to testify, and  
8 this does instruct the jury that no inference of any  
9 kind may be drawn against his decision. Mr. Havard,  
10 I explained to you before and I do take it that you  
11 did make that decision or election after conferring  
12 with your attorneys not to testify in this case?

13 BY THE DEFENDANT: Yes, sir.

14 BY THE COURT: Okay. Let the record so reflect.  
15 This will be granted.

16 ON INSTRUCTION D-4: BY THE COURT: All right

17 --

18 BY MR. HARPER: D-4, Your Honor. I don't know  
19 that it's relevant in this case. I don't think  
20 there's been any reputation or character --

21 BY MR. SERMOS: We'll withdraw it, Your Honor.

22 BY THE COURT: I think that's probably well  
23 taken, but -- and I understand you have to anticipate  
24 you never know what's going to come up at trial --

25 BY MR. CLARK: That's right.

26 BY THE COURT: But that will be withdrawn by the  
27 defendant.

28 ON INSTRUCTION D-5: BY THE COURT: All right.

29 Is there any objection to D-5?



1 BY MR. HARPER: No, sir. No, sir.

2 BY THE COURT: That will be granted. It  
3 appears to be a proper instruction on the burden of  
4 proof.

5 BY MR. HARPER: No objection to six, Your Honor.

6 ON INSTRUCTION D-6: BY THE COURT: Six will be  
7 granted. D-6.

8 ON INSTRUCTION D-7: BY THE COURT: Any  
9 objection to D-7?

10 BY MR. HARPER: No, sir. I think appears to be  
11 the standard instruction.

12 BY THE COURT: That will be granted.

13 ON INSTRUCTION D-8: BY THE COURT: Any  
14 objection to D-8? This is the two theory --

15 BY MR. HARPER: Your Honor, we would object to  
16 it on that basis that it is the two theory.

17 BY THE COURT: Let the record show that the  
18 Court has carefully considered Instruction D-8. It  
19 is what I always refer to as a two-theory  
20 instruction that is proper in a circumstantial  
21 evidence case. Although the Court's inclination and  
22 opinion is that this is not such a case, I am going  
23 to grant this instruction out of an abundance of  
24 caution because it has been requested by the  
25 defendant and because this is a capital murder case,  
26 I want to give the defendant the full benefit of any  
27 even close questionable call. So although I would  
28 tend to believe that this would not be proper in this  
29 case or not be necessary to instruct the jury of this

1 any reason for thirteen?

2 BY MR. SERMOS: Withdraw, Your Honor.

3 BY THE COURT: That will be withdrawn by the  
4 defendant.

5 ON INSTRUCTION D-14: BY THE COURT: All right.  
6 The Court does not feel that D-14 would be proper in  
7 that the defendant has elected not to testify in this  
8 case, and it talks about prior inconsistent  
9 statements of witness. Actually he's not a witness  
10 in this case. There's been a statement introduced of  
11 his by law but --

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

13 BY THE COURT: Okay. That will be withdrawn.  
14 That would have been proper if he had testified.  
15 That was a prior inconsistent statement, but that  
16 will be withdrawn by the defense.

17 ON INSTRUCTION D-15: BY THE COURT: Okay. Any  
18 objection to D-15?

19 BY MR. HARPER: No, sir.

20 BY THE COURT: That will be granted.

21 ON INSTRUCTION D-16: BY THE COURT: Any  
22 objection to D-16? There has been some expert  
23 testimony.

24 BY MR. HARPER: Your Honor, we would object to  
25 that. I think it's a comment on the witness -- on  
26 the testimony but --

27 BY THE COURT: The Court is going to grant the  
28 instruction over those objections.

29 BY MR. HARPER: We would object to D-17 as it

1 affect, it has been requested and out of an abundance  
2 of caution, I am going to grant this instruction.

3 ON INSTRUCTION D-9: BY THE COURT: All right --

4 BY MR. HARPER: Your Honor, we would object to  
5 nine on the same basis, and that it's duplicitas with  
6 eight.

7 BY THE COURT: All right. I am going to grant  
8 D-9 for the same reasons as just previously stated.  
9 Let the record show that this will be granted over  
10 the objections of the State.

11 BY MR. HARPER: No objection to ten, Your Honor.

12 ON INSTRUCTION D-10: BY THE COURT: Okay. Ten  
13 will be granted. That is a proper instruction.

14 BY MR. HARPER: Your Honor, we would object to  
15 eleven.

16 ON INSTRUCTION D-11: BY THE COURT: All right.  
17 What is the purpose of eleven?

18 BY MR. SERMOS: We withdraw eleven, Your Honor.

19 BY THE COURT: That will be withdrawn. I didn't  
20 think that was applicable in this case.

21 ON INSTRUCTION D-12: BY THE COURT: Is there  
22 any objection to D-12? It appears to be a proper  
23 instruction --

24 BY MR. HARPER: No, sir. No objection.

25 BY THE COURT: -- on the testimony of witnesses.  
26 That will be granted.

27 BY MR. HARPER: We object to thirteen, Your  
28 Honor.

29 ON INSTRUCTION D-13: BY THE COURT: Is there

1 being a comment on the witnesses' testimony or  
2 singled out certain witnesses' testimony which I  
3 think would be improper.

4 ON INSTRUCTION D-17: BY THE COURT: Does the  
5 defense have any authority to support this? There  
6 have been some law enforcement officers that have  
7 testified. Their testimony has not really been what  
8 I would term the critical issues in this case, but  
9 does the defense contend this is a proper  
10 instruction?

11 BY MR. SERMOS: Your Honor, I can't offer any  
12 authority, and the one reason I decided to offer it  
13 was based on the discovery of the case and what I  
14 thought would proceed to trial. I felt sure there  
15 would be a lot of officers offering evidence that was  
16 actually hearsay or what they heard --

17 BY THE COURT: Well --

18 BY MR. SERMOS: -- stuff like that.

19 BY THE COURT: I will grant this instruction.  
20 I do have some question as to whether or not it's  
21 proper. It does -- if not involve a comment on the  
22 evidence, it borders on it, but it's of no real  
23 significance that I see, but it is a correct  
24 statement of the law. It's clear that law  
25 enforcement officer's testimony is to be considered  
26 as any other witness. So I will grant this  
27 instruction.

28 BY MR. SERMOS: Your Honor, my next instruction  
29 eighteen as you probably already know any way, goes

1 in to the --

2 BY THE COURT: The remaining instructions,  
3 I believe, are dealing with possibility of a  
4 sentencing phase; is that correct?

5 BY MR. CLARK: Yes, sir.

6 BY THE COURT: I believe all the rest of them --

7 BY MR. SERMOS: Yes, sir. It is.

8 BY THE COURT: Is that all the instructions  
9 that each of you have?

10 BY MR. HARPER: Yes, sir.

11 BY THE COURT: Okay. Now, how long would  
12 either side request for the argument?

13 BY MR. HARPER: Your Honor, we talked about it  
14 previously, and I -- we both agree that --

15 BY MR. CLARK: Thirty.

16 BY MR. HARPER: -- thirty minutes per side total  
17 would be sufficient.

18 BY THE COURT: Is that --

19 BY MR. SERMOS: Yes, sir.

20 BY THE COURT: -- what the defense --

21 BY MR. SERMOS: That was our suggestion also.

22 BY MR. CLARK: That's what we -- we had thought  
23 about that, too.

24 BY THE COURT: There's a couple of matters.  
25 That will be thirty minutes per side. Are both of  
26 you, Mr. Clark, and, Mr. Sermos, going to argue?

27 BY MR. SERMOS: Your Honor, if it's fine with  
28 the Court, what Mr. Clark and I talked about is  
29 rather than just one of us -- the State will probably

1 have the two prosecutors, and we may want to hit on  
2 different points. What we basically ask the Court is  
3 we want to do basically fifteen minutes each.

4 BY THE COURT: Okay. What I will do is, whoever  
5 goes first, you want me to let you know when you get  
6 to fifteen minutes?

7 BY MR. SERMOS: Yes, sir. That will be fine.

8 BY THE COURT: I'll just give a warning and let  
9 you know, and, of course, you can do twenty-nine or  
10 one or one and twenty-nine, however you want to. The  
11 State will be a little bit different situation.

12 BY MR. SERMOS: Yes, sir.

13 BY THE COURT: Regardless of how much time or  
14 little time you take on the front argument, you can  
15 use under no circumstances no more than fifteen  
16 minutes on the rebuttal argument of the last  
17 argument. You can use it all on the front end if you  
18 want to, but even if you use two minutes on the front  
19 end, no more than fifteen minutes on the rebuttal  
20 argument. Also I want to strongly caution the State,  
21 the defendant has elected as he has a constitutional  
22 right to not testify in this case. The jury is being  
23 instructed on that, and there's not to be any type of  
24 arguments or inference whatsoever that calls this  
25 attention to the jury. So that is the law, and there  
26 will be no direct or indirect reference to his  
27 decision not to testify in this case.

28 BY MR. HARPER: Yes, sir.

29 BY THE COURT: And, again, let's keep in mind

1 that this is solely on the issue of guilt or  
2 innocence of the charge against the defendant of  
3 capital murder.

4 BY MR. SERMOS: Based on sexual battery.

5 BY THE COURT: Based on sexual battery.

6 That's correct. Let the record show that at the  
7 beginning of the trial, there was an amendment made  
8 which appears in the file. This was done without  
9 objection because essentially what the State had done  
10 was charged two underlying crimes, and the State made  
11 election to proceed with the sexual battery, and the  
12 indictment was amended to drop the portion that dealt  
13 with felonious child abuse. There has been some  
14 evidence of some bruising or what have you, but all  
15 of that evidence really goes toward the possible  
16 commission of the alleged sexual battery. So the  
17 Court finds that that should not be argued in this  
18 case as some type separate event or crime or any type  
19 of child abuse.

20 BY MR. SERMOS: May I --

21 BY THE COURT: Yes.

22 BY MR. SERMOS: First thing, when I made the  
23 motion for a directed verdict, Your Honor, and  
24 acquittal also renewed it, I believe you stated that  
25 at this point also that we would not be going into  
26 the matters on closing -- basically this is what I  
27 recall -- concerning the damage to the lip, the  
28 frenulum. That it was strictly on the sexual battery  
29 part. That that was a part -- even though the Dr.

1 Hayne testified about the cause of death and the  
2 manner of death that I understood the Court to imply  
3 that we would not be going into the possible damage  
4 to the frenulum as a part of the sexual battery.

5 BY MR. ROSENBLATT: The finding of the jury will  
6 not be for a particular type of sexual battery. The  
7 jury is free to find penetration without specifying  
8 which orifice of the body was penetrated.

9 BY MR. CLARK: I thought the Court had limited  
10 that --

11 BY THE COURT: That may be true, but let me  
12 state this.

13 BY MR. SERMOS: I want to double check now.

14 BY THE COURT: That may be correct. The  
15 instructions go to sexual battery which is any  
16 penetration, but there must be evidence to support  
17 sexual battery to go to the jury, and this Court has  
18 made its findings that the evidence that supports the  
19 charge of sexual battery, the underlying felony going  
20 to the jury is that of the anal opening of this minor  
21 child. The reason for that and the reason for the  
22 State's comments as to the possibility of sexual  
23 battery involving the child's oral opening is this.  
24 That is clearly a possibility. Dr. Hayne said that  
25 could have been caused by something being inserted in  
26 the child's mouth, but we've heard testimony, I  
27 believe, from Dr. Patterson. I believe the other  
28 doctor --

29 BY MR. HARPER: Dar.