IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

STATE OF FLORIDA,	)	
	)	
Plaintiff,	)	
	)	Case No. 2004-CF-2129
vs	)	
	)	
JOSEPH SMITH,	)	
	)	
Defendant.	)	
	)	

CRIMINAL LAW
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KAREN E. RUSHING
CLERK OF CIRCUIT COURT
SARASOTA COUNTY, FL

Transcript of proceedings reported in the above-entitled cause held before the Honorable ANDREW D. OWENS, JR., Circuit Judge, at the Sarasota County Judge Lynn N. Silvertooth Judicial Center, pursuant to notice, on **November 28, 2005**.

APPEARANCES:

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Assistant State Attorneys
On behalf of the State

ADAM TEBRUGGE, ATTORNEY AT LAW
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On behalf of the Defendant

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P R O C E E D I N G S

(THE DEFENDANT WAS PRESENT IN THE COURTROOM.)

THE COURT: Good morning.

MR. TEBRUGGE: Good morning, Your Honor.

MS. RIVA: Good morning.

THE COURT: I hope all of you had a nice holiday.

I received a letter from one of the jurors and I thought we ought to discuss that. Let me have you all approach.

(BENCH CONFERENCE HELD:)

THE COURT: The jurors are wondering why the Court is so well-prepared and the attorneys are stumbling.

MR. TEBRUGGE: That's an excellent question.

THE COURT: Right. Can I answer it?

MR. TEBRUGGE: Yes, please.

MR. NALES: Just say that the Court has nothing to do.

THE COURT: It said especially Mr. Schaeffer, who seems to just ask the same question over and over.

MR. C. SCHAEFFER: You can't just stop. You've got to start already, Judge.

THE COURT: It's the last alternate juror, number 151, and he said his wife had a CAT scan and she has to have surgery on December the 1st by Dr. Roger Shea. She can't bend over for any reason for three to seven

days. She needs a caregiver. In addition, to be able to be responsible for the care of a three-year-old grandson three days a week. Because of this, he would like to be excused. I don't see any problem in doing that, but I wanted to touch base with all of you. He's the last alternate.

MS. RIVA: Right. I don't see a problem either, Judge.

MR. NALES: Obviously you're going to inquire of all of them when they come in as you normally do and if everybody is okay and everybody is here, that shouldn't be a problem then.

THE COURT: Okay. Unfortunately I left -- I had forgotten about that aspect.

MR. TEBRUGGE: I would ask for a little bit more substantial inquiry, Your Honor, due to the long break that we've had.

THE COURT: Okay. But any -- does anyone have any problem with me excusing him?

MS. RIVA: Not if the other jurors are ready, willing, and able to serve, I have no objection.

THE COURT: Okay. Well, I guess I should wait then and make sure I'm going to have enough. I was hoping to do it privately, but that is a good point.

MR. TEBRUGGE: Or what you can do, Judge, is bring

everybody out and then send them back and just keep him in.

THE COURT: Right.

Okay. When you say you want a more extensive inquiry -- I'm sure it's somewhere --

MR. NALES: I'm glad you're always more prepared than the attorneys.

THE COURT: I am, but I forgot about that aspect. What else do we need to do?

MR. TEBRUGGE: Really I'm just primarily interested in the Court asking open-ended questions; has anyone communicated with you about the case?

THE COURT: Okay.

MR. TEBRUGGE: Have you seen, read, or heard anything about the case?

THE COURT: Okay.

MR. TEBRUGGE: Those are my two.

THE COURT: On the one motion, cumulative and unreliable as it relates to Dr. Vega, the only thing I could see to do initially would be to bring Dr. Vega in, proffer his testimony, and then rule on that. I didn't know any other way to do it unless somebody had a suggestion.

MS. RIVA: The only thing I can do, Judge, is clarify my intent and purpose in calling him and that

might help towards these issues.

THE COURT: Okay.

MS. RIVA: It's not so much to demonstrate the fear and anxiety and those sorts of emotions. It's more to demonstrate the actual medical result of a strangulation type death. He did talk about in the guilt phase unconsciousness, but he did not go into the fact that pressure still had to be maintained in order to effect death, and he did not go into the effect that would occur to the victim before losing consciousness, and those are the areas that I wanted to get into with him.

THE COURT: Okay. Would you still like his testimony proffered?

MR. TEBRUGGE: Yes, I would, and I would still like to argue the motion.

THE COURT: Okay. I have no problem with that.

MR. TEBRUGGE: However, I don't see why we couldn't give opening statements, unless that was the feature of the State Attorney's opening statement.

MS. RIVA: It's not. I do need a ruling on the aggravators because I do, as my opening, go into all of them.

THE COURT: Okay. The motions to strike on four, five, and six, I was going to deny those. I don't have

a written opinion, but the problem that I -- that doesn't mean that I'm going to find those aggravators, but I think that you're entitled to at least argue those and present evidence to them.

MS. RIVA: Yes, sir.

THE COURT: Those were the ones that I reserved on.

MS. RIVA: Yes, sir.

THE COURT: But -- so I would allow you to proceed with -- but that doesn't mean that I'm going to find those.

MS. RIVA: Or that you're going to allow the jury to consider those?

THE COURT: Right. Exactly.

MS. RIVA: I understand.

THE COURT: Okay. I can bring the jurors out. We can go ahead and I can ask them the questions. You can make your openings. How much time do you want?

MS. RIVA: Twenty minutes.

MR. TEBRUGGE: Sounds about right, Judge. Ms. DaSilva will be giving the opening statement.

THE COURT: Okay. Now, I don't really care.

MR. TEBRUGGE: I just wanted to let you know.

THE COURT: Okay. But, I mean, if you want more time, I'll give you more time. When I said I don't

care, I didn't mean that I didn't care if you gave it.

MR. TEBRUGGE: Do you care about that?

THE COURT: Well, I know you're well-prepared. She'll stand behind the podium like she's supposed to. Okay.

MR. C. SCHAEFFER: One other thing, Judge, just for purposes of the record, we had that motion to allow our expert to evaluate the Defendant. I want to inform the Court that Dr. Myers did meet with the Defendant, Mr. Tebrugge was present. This happened on Friday, I think it was.

MR. TEBRUGGE: Yes.

MR. C. SCHAEFFER: Friday. There were the certain limits that the Court put on the questioning in the evaluation process, which we abided by. Mr. Tebrugge raised some additional ones in e-mail, which we also abided by. I wanted the Court to know that there was an evaluation Friday with the limitations previously discussed.

THE COURT: Okay. I've got another copy. The only thing I changed in the standard is I flopped -- I put life in prison without possibility of parole before death and I added, I will give your recommendation great weight in determining what sentence to impose. That's -- other than that --

MS. RIVA: That's the standard.

THE COURT: If one of you will explain to me this sentence, You're instructed that this evidence when considered with the evidence you have already heard is presented in order that you might determine -- if somebody would explain that sentence to me, I would be very happy.

MR. TEBRUGGE: Well, Judge, in the past, in the last trial that we did, we requested and I'm going to request it again right now that the Court not say, And, second, whether there are mitigating circumstances sufficient to outweigh the aggravating circumstances.

It has been my position in the past that that shifts the burden of proof to the Defense and if the Court would review the instructions that you've given in other penalty phases, that is how we handled that in the past.

THE COURT: So we're just simply -- You're saying that in the past I stopped?

MR. TEBRUGGE: No, sir. You would say, And, second, whether the aggravating circumstances outweighed the mitigating circumstances.

MR. NALES: Just scratch out sufficient.

MS. RIVA: Well, and you would have to switch the words, and whether the aggravating circumstances --

THE COURT: And second further --

MS. RIVA: -- outweighed the mitigating. That's fine.

THE COURT: So just change it in the second, whether the aggravating factors outweigh the mitigating circumstances?

MR. TEBRUGGE: Yes, sir.

THE COURT: All right. Any other --

MR. TEBRUGGE: I agree that that's a cumbersome sentence. I could explain it to you, but we don't have all day.

THE COURT: Yes, it is. Okay. Anything else?

MS. RIVA: The only other thing, Judge, after we do our openings and, of course, the State's presentation will be short, the next step would be victim impact and I think that we need to take a break and discuss that outside the presence of the jury. I have a plan and I can share it with the Court and the Defense.

MR. TEBRUGGE: And, Judge, we're down to about four witnesses for today and they're, for the most part, short witnesses, about 15 minutes or so. It looks like we have a full day for tomorrow and then additional witnesses who are only available on Wednesday, and it would take up at least half the day

on Wednesday and probably longer. We are hoping that things will run smoothly. They might not always.

THE COURT: Okay. I always hope that at home, too. They don't always.

All right. Well, I guess we'll go ahead and bring the jurors out, inquire, and then get started.

MS. RIVA: Okay.

(BENCH CONFERENCE CONCLUDED.)

(THE FOLLOWING PROCEEDINGS ENSUED IN OPEN COURT IN THE PRESENCE OF THE JURY.)

THE COURT: Good morning, ladies and gentlemen.

THE JURY: Good morning.

THE COURT: Welcome back. I hope all of you had a nice holiday. And just if any of you are concerned, those are new chairs. We made them a little narrower. So if you feel like your chair is a little snugger today, we did it. The chairs are a little smaller. So you don't have to be concerned.

What I want to do at this time would be to review with each one of you the three questions. We've been away from court now for several days and I want to just make sure about if anyone has communicated with you, if you've read or seen anything about the case, and also to be sure that any decision you make will be based solely on the evidence presented here in this courtroom

and my instructions to you on the law.

So the first question I want to pose to you and I'll ask for a response from each one of you, and if you would, at the time of responding, if you would please state your juror number. Has anyone communicated with you concerning this case during the period of time that we were absent from the courtroom?

JUROR 120: Number 120, no, sir.

JUROR 66: Number 66, no.

JUROR 141: 141, no.

JUROR 96: 96, no.

JUROR 49: 49, no, Your Honor.

JUROR 1: 1, no.

JUROR 31: 31, no.

JUROR 117: 117, no, sir.

JUROR 135: 135, no, sir.

JUROR 30: 30, no, sir.

JUROR 151: 151, no.

JUROR 83: 83, no.

JUROR 11: Number 11, no.

JUROR 79: Number 79, no, Your Honor.

JUROR 90: Number 90, no, sir.

JUROR 127: 127, no, Your Honor.

JUROR 17: Number 17, no, sir.

JUROR 143: Number 143, yes.

THE COURT: Okay. And then the second question: Have any of you seen, read, or heard anything about the case during your absence from the courtroom?

JUROR 120: Number 120, no.

JUROR 66: Number 66, no.

JUROR 141: 141, no.

JUROR 96: 96, no.

JUROR 49: 49, no.

JUROR 1: 1, no.

JUROR 31: 31, no.

JUROR 117: 117, no, sir.

JUROR 135: 135, no, sir.

JUROR 30: 30, no, sir.

JUROR 151: 151, no.

JUROR 83: 83, no, sir.

JUROR 11: 11, no.

JUROR 79: Number 79, no, Your Honor.

JUROR 90: Number 90, no, sir.

JUROR 127: 127, no, Your Honor.

JUROR 17: 17, no, sir.

JUROR 143: Number 143, no, sir.

THE COURT: Okay. And the third question: Can all of you still assure both the State, the Defense, and this Court that any decision you will make in this case will be based solely on the evidence presented in

this courtroom and my instructions to you on the law?

JUROR 120: 120, yes, sir.

JUROR 66: 66, yes, sir.

JUROR 141: 141, yes.

JUROR 96: 96, yes.

JUROR 49: 49, yes, Your Honor.

JUROR 1: 1, yes.

JUROR 31: 31, yes.

JUROR 117: 117, yes, sir.

JUROR 135: 135, yes, sir.

JUROR 30: 30, yes, sir.

JUROR 151: 151, yes, Your Honor.

JUROR 83: 83, yes, sir.

JUROR 11: Number 11, absolutely.

JUROR 79: Number 79, yes, Your Honor.

JUROR 90: Number 90, yes, sir.

JUROR 127: 127, yes, Your Honor.

JUROR 17: 17, yes.

JUROR 143: Number 143, yes, sir.

THE COURT: All right.

What I'm going to do at this time is I would ask if you would take the jurors back and if 151 would remain and then 143 right after that.

(THE JURY EXITED THE COURTROOM.)

THE COURT: Welcome back and I received your

correspondence. Certainly our thoughts and prayers are with you and your wife on that, but under the circumstances I believe I have enough jurors to continue, and under these circumstances I would have no objection to excusing you.

JUROR 151: Thank you, Your Honor.

THE COURT: Well, I hope everything goes very well. We certainly have appreciated your service to the community and I hope all goes well.

JUROR 151: Thank you.

THE COURT: Thank you.

JUROR 151: Was there another juror that you wanted?

THE COURT: I'll get that. But thank you very much. Do you have anything in the -- and I guess we'll make -- you can get with him and get him to his car and so forth.

THE BAILIFF: That's correct.

THE COURT: Okay.

(JUROR 143 ENTERS THE COURTROOM.)

THE COURT: Thank you. In response to the question about a communication, you indicated that during your absence someone had communicated with you. I believe that you said yes to that.

JUROR 143: Yes, I did.

THE COURT: But you also said that you could base any decision on the evidence and the law, but I wanted to inquire a little further about the communication.

JUROR 143: Yes, sir. It wasn't anything to do with evidence in the case or anything like that. Just one of my friends figured out that I was on the jury and I said, I can't talk about it. She says, Oh, I know, and she says, but I couldn't be on the jury because I would -- and I said, Oh, I can't hear that. So that's all that she did.

THE COURT: Okay.

JUROR 143: But that won't affect me any. I'm just saying she blurted something out to me.

THE COURT: Okay. Are you sure that that's not going to have any impact on you at all?

JUROR 143: Absolutely.

THE COURT: So you can assure both the State, the Defense, and the Court that any decision you're going to make in this case is going to be based solely on the evidence that you receive here in this courtroom and my instructions to you on the law?

JUROR 143: Absolutely, sir.

THE COURT: Okay. Was there any other communication other than this friend?

JUROR 143: No, sir.

THE COURT: Was this at your home, or at a place of work, or a party?

JUROR 143: It was at my home.

THE COURT: Okay. Is this a real close friend?

JUROR 143: Yes, I would say so.

THE COURT: Okay. If based upon the evidence that you heard in this case and the law, you felt that your decision should be contrary to the decision that your friend feels is appropriate, would that create any problems for you?

JUROR 143: No, sir.

THE COURT: So what your friend said to you would not in any way impact you in this case; am I correct?

JUROR 143: Yes, sir, you're correct, it would not impact me.

THE COURT: Okay. Thank you very much. I certainly appreciate your candor with us and thank you.

(JUROR 143 EXITED THE COURTROOM.)

THE COURT: All right. So I assume we're ready to bring the jurors back in and I'll give them the preliminary instructions and you'll proceed with openings. I assume we'll probably want to move that podium.

MS. RIVA: Yes, sir. I believe we can move the podium and I also will need the easel.

THE COURT: Okay.

Have you, and I'm sure that you have, but has Mr. Tebrugge seen each exhibit that you intend to use in the opening?

MS. RIVA: Judge, I just passed a smaller version of this over to the Defense table.

THE COURT: Do you all have any exhibits that you want to use, Ms. DaSilva?

MS. DASILVA: During opening, sir, no.

THE COURT: Okay.

MS. RIVA: I'll show you the last final board.

Judge, may we approach?

THE COURT: You may.

(BENCH CONFERENCE HELD:)

MS. RIVA: Judge, on the board are the anticipated aggravators, but the last part of the board is how to decide a death penalty recommendation, and the part that Mr. Tebrugge has issue with is part four, where it talks about victim impact evidence; however, the jury instructions do include that that is something that they are allowed to consider, and as you can see, I do not put it in the weighing process. This is the board that I used for opening in the Earl Watts' case as well. It's the exact same board, actually.

THE COURT: Typically in an opening, unless

something has been introduced, if it's just demonstrative, if there's an argument against it, I usually don't allow the person to use it. But, I mean, certainly they're going to hear victim impact I assume. What is your objection to that?

MR. TEBRUGGE: Well, Judge, it's not included in the standard instructions, but typically we've requested an instruction from the Court along the lines of, you have heard evidence about the impact of this homicide on the family of the victim. This evidence may be considered by you to determine the victim's uniqueness as an individual human being and the resultant loss to community members by the victim's death; however, the law does not allow you to weigh this evidence as an aggravating circumstance.

And that would be my concern with the exhibit. Obviously we haven't gotten to the jury instruction portion of the case, but --

THE COURT: Okay. If you're objecting, I'll ask the State not to use that in their opening as a demonstrative aid.

MR. TEBRUGGE: All right. Well, I am objecting.

THE COURT: Okay.

MS. RIVA: Judge, just for the record, certainly victim impact evidence is going to be presented --

THE COURT: It is. I agree.

MS. RIVA: -- and can be discussed. I do have a part where I do discuss it in the opening, just that they're going to hear it.

THE COURT: I have no problem with that.

MS. RIVA: Okay.

THE COURT: I think it's appropriate.

MS. RIVA: Okay. So I'll use this board because it's what's holding these pieces of paper together, but I won't go to that page.

THE COURT: That's fine. That's great.

(BENCH CONFERENCE CONCLUDED.)

THE COURT: So at this time, Ms. Riva, are you ready?

MS. RIVA: Yes, sir.

THE COURT: All right. If you would bring the ladies and gentlemen back, please.

(THE FOLLOWING PROCEEDINGS ENSUED IN OPEN COURT IN THE PRESENCE OF THE JURY.)

THE COURT: Ladies and gentlemen, at this time we're going to be proceeding with the penalty phase of this trial. At this time I want to give you some preliminary instructions as it relates to this portion of the trial.

Ladies and gentlemen of the jury, you have found

the Defendant, Joseph P. Smith, guilty of murder in the first degree. The punishment for this crime is either life imprisonment without the possibility of parole, or death. Final decision as to what punishment shall be imposed rests solely with the Judge of this court. However, the law requires that you, the jury, render to the Court an advisory sentence as to what punishment should be imposed upon the Defendant. I will give your recommendation great weight in determining what sentence to impose.

The State and the Defendant may now present evidence relative to the nature of the crime and the character of the Defendant. You are instructed that this evidence, when considered with the evidence you have already heard, is presented in order that you might determine, first, whether sufficient aggravating circumstances exist that would justify imposition of the death penalty; and second, whether the aggravating circumstances outweigh the mitigating circumstances.

At the conclusion of the taking of the evidence and after argument of the attorneys, you will be instructed on the factors in aggravation and mitigation that you may consider.

Now, at this time, both the State and the Defense will have an opportunity to make an opening statement

to you. Again, I would remind you that what the attorneys say is not evidence in the case. The evidence is what you actually hear from the witness stand, documents and other items that are admitted into evidence. But I would ask you, as you have done throughout this trial, to please give the attorneys your close attention as this is a very important phase of this trial.

Ms. Riva, at this time are you ready to proceed?

MS. RIVA: Yes, sir.

THE COURT: You may do so.

MS. RIVA: There may be times when we are powerless to prevent injustice, but this --

MS. DASILVA: Judge, I'm going to object, argumentative.

THE COURT: Yes, I would grant that.

MS. RIVA: During this next week, you will have both the power and the obligation to decide what a just sentence is.

MS. DASILVA: Judge, once again I would have to object, argumentative.

THE COURT: I would agree. I really don't think the opening, the purpose of it is to present arguments. You will have the opportunity to present argument.

MS. RIVA: Yes, sir.

The people of the State of Florida have decided through their elected officials that we have a death penalty in the state of Florida and that death can be an appropriate sentence.

Now, as we discussed in jury selection, not every first-degree murder case qualifies for a death penalty sentence. Only those cases which have what we call aggravating circumstances qualify to be considered by the jury for a death penalty sentence.

Now, you are going to receive definitions of various terms that we use during this portion of the trial, but aggravation, of course, means that it somehow worsens or enhances the crime. You will be considering whether the State has proven aggravating circumstances.

In Florida, those circumstances are defined by the statute. We have a limited number of potential aggravating circumstances and you will learn as we proceed what circumstances the State intends to prove to you for this portion of the trial.

Now, as the Court just spoke to you about in that preliminary instruction, you will also, after you consider whether the State has proven an aggravating circumstance, you will then consider whether there are any mitigating circumstances in this case. Of course,

mitigating, meaning to lessen, lessen the crime in some fashion or decrease the potential punishment.

You will then decide when you hear both aggravators and mitigators whether the aggravators in fact outweigh any potential mitigators. I explain all that for this reason. It's not a numbers situation. Although the aggravators or the aggravating circumstances are limited by statute, mitigators are not. So it could be that the Defense can present many potential mitigators and the State may only present a few potential aggravators. What you will be looking at in this case is the quality of the evidence. You will decide the weight to give both aggravators and mitigators. So it's not about quantity. It will be a matter of quality, quality of the evidence to you.

Now, in this case, the State will be relying upon six aggravators in order to speak to you, in order to convince you that death is the appropriate sentence in this case, and I'm going to go through those aggravators.

The first aggravator that the State will be relying upon is that the capital felony, the murder in this case, was committed by a person previously convicted of a felony and under a sentence of felony probation. So you will learn that the Defendant in

this case, back in March of 2003, was convicted for the charge of possession of cocaine, and that he was put on felony probation, specifically he was placed on drug offender probation for one year and that was to be followed by two years of regular probation.

The fact that he was on probation at the time that this murder occurred is an aggravating circumstance for you to consider in deciding what the just sentence is in this case.

The next aggravating circumstance the State will be relying upon is that the capital felony was committed while the Defendant was engaged in the commission of a kidnapping or a sexual battery. The law indicates that when one commits additional certain violent crimes in addition to the murder, that aggravates the murder itself. And so you've already found the Defendant guilty of kidnapping and sexual battery, and you will be asked to consider the fact that not only was there a killing in this case, but the victim endured a kidnapping and a sexual battery, and that is an aggravator under the State of Florida laws.

The third aggravator that the State will be arguing to you, is that the capital felony was committed for the purpose of avoiding or preventing a lawful arrest. We are going to ask you to consider the

fact that the Defendant did not have to kill [redacted]. We will be asking you to reflect back on the testimony that you heard during the guilt phase of this trial. Consider the fact that the Defendant spotted the path that Carlie was taking, placed his car over by the car wash, as you heard testimony about a couple weeks ago, took [redacted], put her in the car, and ultimately committed a sexual battery upon her.

You may have already discussed and you may continue to discuss what the Defendant's motive was in kidnapping [redacted] and you may have come to the decision that he kidnapped her in order to rape her. You will this week be allowed to discuss what then was his motive in killing [redacted] and I will ask you to again go through the facts that have already been presented to you in the guilt phase, talk about the fact that once the Defendant committed the crimes of kidnapping and sexual battery, the only way to not get caught for those crimes would be to eliminate [redacted] as a witness.

You'll be asked to consider this case as if the videotape didn't exist because the testimony showed the Defendant did not know he was being videotaped when he abducted [redacted]

Consider certain other factors. Consider that he

did not obscure his identification when he took her, did not wear a mask, had a shirt that had his name on it. Think of all of the actions that took place in the actual abduction, and then the actions of the Defendant in the sexual battery, and the items that were ultimately taken from her, and you've already heard about those items; the fact that her pants and her underwear and her backpack that contained things, her book report, and you heard about her doing a book report earlier in the day. Think about how all those items were taken by the Defendant, including the ligature that was around her neck and that bound her wrists, and that those items were gotten rid of. You'll be able to talk about why he may have disposed of those items in light of trying to avoid or prevent his own arrest.

You will also be able to discuss his actions when he was in contact with the detective and the answers to the questions the detective posed of him concerning whether he was involved in this abduction. He denied being involved in the abduction. When pictures were taken of him, he indicated, for instance, that bruise on his leg was over two weeks old.

All of these factors should be considered by you in deciding whether the Defendant in fact killed [redacted]

in order to avoid getting caught for his crimes.

The fourth statutory aggravator will be that the capital felony was especially heinous, atrocious, or cruel. For this aggravator, you will be again discussing the medical examiner's testimony, the videotape that we saw of the crime scene, the photographs of the crime scene.

You will be allowed to consider the age of the victim for purposes of this aggravator, the fact that she was 11 years old and that she not only was killed, but endured both a kidnapping, a binding of her wrists, and a sexual battery, all before her ultimate death.

You will be able to consider the method of killing that was used in this case, the fact that this was a ligature strangulation, that a person was behind her and placed that cord around her neck.

You will be able to consider the fact that [redacted] knew at that point that she had already been sexually violated and that soon she would lose consciousness and ultimately her life.

The fifth statutory aggravator that the State will be arguing to you is that this capital felony, this murder was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

In order to prove this aggravator, the State must show that the Defendant had a heightened level of premeditation demonstrated by a substantial period of reflection. You again will turn to the evidence that was already presented to you in the guilt phase for this aggravator as well.

You will be asked to look at the Defendant and his actions before the abduction, the fact that he borrowed somebody else's car in order to carry these crimes out, the fact that he was able to have restraints ready to bind [redacted] in order to effect the sexual battery and ultimately in order to kill her, the fact that he was able to have a ligature ready to place around her neck, and then you will discuss the amount of time that it took to kill Carlie and what occurred to [redacted] just before her death.

We're going to ask you to consider the type of killing this was, the fact that in placing a ligature around someone's neck, that the only effect of that would be death as opposed to other potential methods of killing. We will ask you to consider all of these things for this aggravator.

The final aggravator that the State will present is that the victim of this capital felony was a person less than 12 years of age. Our laws extend extra

protection to children and in this case, we have a killing of a child. The people of the state of Florida recognize that a more severe sanction can be appropriate when one victimizes a child.

Now, after the aggravating circumstances, most of which, as I've stated, you have heard already in the guilt phase, there will be some testimony regarding these circumstances this week from the State, but when we are done with that part of the case, the State will then be allowed to present to you what is called victim impact evidence. In other words, you are going to be allowed to consider the impact that [redacted] death has had on both her family and her community.

You will learn of [redacted] uniqueness as an individual human being and you will hear what her loss has brought to her family, to her school, and to her friends, and to the community at large.

Most of this week will be spent by the Defense presenting to you potential mitigating circumstances. I suspect you will hear from members of the Defendant's family, perhaps from some of his friends. Keep in mind again that the Defense is not limited in statute by the number of potential mitigating circumstances he can present. So you may hear about the Defendant's life from the time he was born until this present moment.

You may hear different aspects of his life. You may hear about drug use on his part and the fact that he has used drugs over the years. You may hear about his behavior while incarcerated in jail. You may hear that he has -- at the time that this murder occurred, he was married, he had a wife and he had three children.

You will learn that there are family members who wish to come forward to speak about Joseph Smith's life. All we ask of you when you receive this testimony, is to be open to the cross-examination of these witnesses by the State. Be open to the idea that family may know some things that Joseph Smith wishes them to know about himself, but they may not know all things about Joseph Smith. There may be more than one side to Joseph Smith and the side that we may wish to get into is the side that committed these crimes against [redacted]

Now, you, as jurors, will have the power to give whatever weight you wish to these mitigating circumstances. It may be that you accept all of these circumstances. It may be that you reject some of them. Our point is, if you accept all of the mitigating circumstances presented by the Defense, the State's position will be that those do not outweigh --

MS. DASILVA: Judge, I'm going to object. This is

argumentative.

THE COURT: I would agree. I would sustain your objection.

MS. RIVA: The State will ask you to consider the aggravating circumstances and as in accordance with the law, weigh those circumstances against any potential mitigating circumstances.

At the close of all the evidence, the State will come back, have an opportunity for a closing argument to you, and we will ask that you impose the sentence, the recommendation of a sentence of death for Joseph Smith based on the crimes that he committed against Carlie Brucia.

THE COURT: Thank you, Ms. Riva.

MS. RIVA: Thank you, Judge.

THE COURT: Ms. DaSilva, are you now ready to proceed?

MS. DASILVA: I am, sir. Thank you.

THE COURT: You may do so.

MS. DASILVA: May it please the Court, Counsel. Good morning.

THE JURY: Good morning.

MS. DASILVA: My name is Carolyn DaSilva, and Adam Tebrugge and I will be presenting the witnesses and presenting the evidence in the case this week.

Now, we would like you to know that we recognize the very serious nature of the crimes that you have convicted Joe of. We respect and accept the verdicts which you rendered ten days ago. Please understand that by presenting evidence we have for you this week, we are in no way trying to argue with your verdict. We are in no way trying to downplay the significance of the crimes by presenting that evidence.

We also acknowledge and understand the terrible impact that the loss of [redacted] has had upon her family. Therefore, we will certainly not be asking her family any questions when they talk to you later today.

But the focus of the next few days that we will present to you will not be on the crime itself. We intend to call witnesses who will help you to get to know Joseph Smith as a person. You will hear about Joe as a son, a brother, a husband, a father, a nephew, a cousin, and a friend.

Joseph Smith was born and raised in Brooklyn, New York. We will begin today by calling some family and friends who knew him best as a child and a young man. These witnesses will help you understand some of Joe's good qualities. Even though some of these people haven't seen Joe in a while, they have fond memories of him and want to share those recollections with you.

Tomorrow and Wednesday we will anticipate you will hear from additional people who also knew Joe. You will hear from neighbors, family, and friends in the Sarasota area. You will learn about Joe's family, his skills as an auto mechanic, his ability to work hard and help other people, his love of animals, and the relationship that he had with his children.

You're also going to learn that Joe has spent a good portion of his adult life badly; pain, addiction, and depression. Please understand that in no way as we present this evidence are we trying to excuse the crime for which Joe has been convicted of. That is not our purpose. Perhaps this evidence will help you understand how a man with good qualities could have fallen so far.

You will see that Joe's struggles with pain, addiction, and depression are well-documented as far back as 1992. He was committed for a brief stay at that time at a New York psychiatric hospital. Soon afterwards, Joe moved to Florida to try to get a new start. But in July of 1993, due to a combination of drug abuse and a work accident, Joe was admitted to the hospital in a coma, which lasted for several days. By 2000, Joe's back pain was severe and debilitating. He became addicted now to prescription pain medications.

You will hear in May of 2000, he went to the hospital severely depressed and begging for help in beating this horrible drug addiction. He was discharged from the hospital after five days, but he was not cured.

In July of 2001, he underwent back surgery for the debilitating back pain, but it did not help his back pain.

In September of 2001, he was again admitted to the hospital because he was depressed, suicidal, and wanted to stop using drugs. Additional surgery was scheduled for Joseph and he tried to join the Drug Court Program, but he was turned down.

October 2001, he was back in the hospital again, continuing to suffer from depression and wanting to get help.

Now, in December of that year, Joe was sentenced to prison for false prescriptions and possession of heroin.

You will hear that Joe Smith, the entire year of 2002, was in prison, but when he left prison, he still did not have the skills to cope with his horrible addiction. You will hear he was again arrested for possession of cocaine in 2003, within a few days of his release from prison.

After that arrest, Joseph sought help. He went to a program called Treatment Alternatives to Street Crimes, TASC. Subsequently, he went to First Step to get help there for his addiction. He spent the entire month of February 2003, there.

Now, you've already met Mr. Ed Dinyes. He was a witness in the first phase of this case. He started a business called Saurus Autos and he took Joe in to be his partner because Joe was a good auto mechanic. Joe was trying at that time, trying to be a good father to his three daughters. He was trying very hard to stay off those drugs.

Now, Joe had a sponsor, you will hear, in Narcotics Anonymous. His name was Gino Longobardi. Gino checked on Joe a lot and tried to help him keep -- stay clean. However, in June of that year, Gino suffered a relapse and died as a result of a drug overdose. And they were very close. Joseph Smith was the person who found Gino's body. It appears that this triggered Joseph to begin again abusing himself and not be able to control his addictions.

In August of that year, Joe called Ed Dinyes, the owner of Saurus Automotive, to come get him because he was using drugs, severely depressed, and suicidal. Joe was sent to Manatee Glens for treatment, but was

discharged after only a few days. Insurance could not pay or would not pay any more.

Joe's drug addiction at this time was putting too much stress on his family, his marriage, and his wife. She would not initially take him back after the treatment. So he stayed with his sister for a few weeks. Ultimately Joseph's wife allowed him to move back home, but his problems by now were too severe.

Ed Dinyes didn't feel Joe should work anymore with him due to his addiction. So now Joe had employment problems. His addiction was now as bad as ever and, of course, now he has marital problems.

In December 2003, Joseph went to the hospital for the final time. Again, begging for help, trying to communicate the hopelessness and depression that he had, the hospital kept him just for a few days and then discharged him. Upon his release from the hospital, his wife asked him to move out.

We will be presenting witnesses to you to show that Joe is a man with many good qualities, but who was unable to control that horrible drug addiction.

Near the end of our presentation on Wednesday, you will hear from Dr. Katie McQueen. She specializes in addiction, recovery, and treatment. She will explain to you why addiction is such a powerful force and she

will try to help you understand why Joe was never able to stop using.

We anticipate you'll also hear from a man named Jim Aiken. He has devoted his entire career to corrections in prisons. Mr. Aiken will give you information about how Joe will spend the rest of his life in prison and what he would experience.

You will hear from people who care about Joseph Smith and who want you to understand his life does have value. Despite the fact that he would spend the rest of it behind prison walls, his life has value.

I respectfully request that you listen to the evidence that you will hear with an open mind so that you have all of the information that you will need in order to make the most important decision that you will ever be asked to make, and I thank you on behalf of Joseph Smith. Thank you, Judge.

THE COURT: Thank you, Ms. DaSilva.

Could I have you all approach, please?

(BENCH CONFERENCE HELD:)

THE COURT: Who is the first witness?

MS. RIVA: It would be Dr. Vega.

THE COURT: Okay. So I'll need to excuse the jury then and we'll proffer his testimony.

MS. RIVA: Yes, sir.

THE COURT: Okay.

(BENCH CONFERENCE CONCLUDED.)

THE COURT: I have a legal issue I've got to resolve. If you would take the ladies and gentlemen of the jury out, please.

THE BAILIFF: Of course.

(THE JURY EXITED THE COURTROOM.)

THE COURT: If you would bring in Dr. Vega, please.

DR. RUSSELL VEGA

The witness herein, being first duly sworn, was examined and testified as follows:

THE COURT: Good morning, Dr. Vega.

THE WITNESS: Good morning.

THE COURT: You look much older than you did a couple of weeks ago.

THE WITNESS: The weekend was a weary one for me, Your Honor.

THE COURT: I was wondering if the weekend was tough for you. We certainly appreciate you being here.

As you've noted, the jury has been excused at this point and at this time we're going to be proffering your testimony. And so, Ms. Riva, you may proceed.

DIRECT EXAMINATION

BY MS. RIVA:

Q. Dr. Vega, where I would like to start with you on the questioning today, would be for you to tell us what you found to be the cause of death of [redacted]

[redacted]

Q. In your opinion, based on all of the information that you had at autopsy, was [redacted] before the ligature was applied?

A. In my opinion, yes.

Q. Why is that? What is the basis for that opinion?

[redacted]

[redacted]

Q. I think that you had testified a couple of weeks ago that once the ligature is applied, a certain amount of force is used before unconsciousness is rendered. Can you tell us what occurs between the time of the ligature being applied and there being a state of unconsciousness on behalf of the victim, what physically occurs to the victim?

A. Yes.

After the initial application of the ligature, the blood flow and possibly airway flow being blocked result in essentially no good blood flow to the brain. If this is maintained, then studies have indicated after a period of probably in the neighborhood of eight to ten seconds, the individual will lose consciousness. In the time period leading up to that, the first -- the first part of that eight to ten-second interval is going to be -- physiologically is not particularly different; in other words, there won't be any loss of functioning of the body or the brain capacity. During the one or two seconds prior to the loss of consciousness, there has been shown to be decrease in some reflexes and visual acuity and some other changes that occur prior to that loss of consciousness.

Q. If it takes eight to ten seconds for the loss of consciousness to occur, does there have to be continued applied pressure even after that unconsciousness occurs?

A. Yes.

Q. Can you explain that for us?

A. If the pressure is removed at some point subsequent to the loss of consciousness, but prior to the development of essentially irreversible brain injury or brain damage, then the reestablishment of blood flow will allow for the, essentially the brain to reestablish its normal state and normal function, and at some point shortly thereafter the reestablishment of consciousness.

Q. And according to the medical science in this area, how long would it take between the time of rendering the person unconscious and to actually render or effect death?

A. The period is going to be somewhat variable depending upon the individual, the conditions, et cetera. In general, it takes at least a few short minutes to get to the point of irreversible brain injury from lack of oxygen, lack of blood flow. The studies that have been done on adults suggest that if the pressure is removed after a period of 45 seconds to a minute, that those individuals will generally fully recover.

Q. And so there had to be pressure maintained beyond that time period?

A. That's right.

MS. RIVA: Those are all the questions that I have, Judge.

MR. TEBRUGGE: No questions for purpose of the proffer, Your Honor.

THE COURT: Okay. Do you want Dr. Vega excused when you present your argument?

MR. TEBRUGGE: Yes, sir.

THE COURT: All right. Dr. Vega, at this time I would ask you if you would please step outside while we do some legal arguments.

THE WITNESS: Certainly.

THE COURT: But if you would remain. Don't leave yet, please.

THE WITNESS: I certainly will.

THE COURT: Thank you very much.

(DR. VEGA EXITED THE COURTROOM.)

THE COURT: All right. So Dr. Vega has now proffered his testimony. The Defense had filed a motion to prohibit cumulative and unreliable testimony which was directed to Dr. Vega's testimony.

Mr. Tebrugge, you may proceed with argument.

MR. TEBRUGGE: Your Honor, there is simply nothing new presented by Dr. Vega's testimony this morning. Virtually every word that he testified to the jury has already heard during the course of the guilt phase. Dr. Vega was on the stand for nearly three hours during the trial of this case. He specifically addressed the

loss of consciousness. He specifically addressed the time period that it would need to effectuate death. There is simply no reason to allow the State Attorney to re-call Dr. Vega to highlight those particular pieces of evidence as we begin this portion of the trial, and I would incorporate all of the arguments that I made in my written motion as well.

I would ask the Court to consider applying a 403 test to this evidence. Even if the Court found that it had some probative value to simply repeat this testimony, it would be our position that the Court should still exclude it as it would only serve to highlight a particular aspect of the case that the jury's already heard about.

THE COURT: All right. Ms. Riva?

MS. RIVA: Judge, I disagree that Dr. Vega testified to all the things that he did today. One of the things that he talked about was what would occur before unconsciousness occurred and I do have to show heinous, atrocious, and cruel, as well as cold, calculated and premeditated.

The doctor also testified today about the reason that he felt she was conscious before the ligature was actually applied and then he went on to state that once the victim loses consciousness, the pressure applied by

the perpetrator must continue. He did not talk about that in the guilt phase of this case and I think it's especially important to show that the pressure had to continue simply to show the cold, calculated and premeditated nature of this crime, that it went beyond a few short seconds. It continued on for at least some short minutes and those are all things that he did not testify to previously in this case and go towards the aggravators in this case as opposed towards the guilt portion of the case.

THE COURT: Did you have any additional argument, Mr. Tebrugge?

MR. TEBRUGGE: Well, Judge, I just disagree with Ms. Riva. He certainly did testify to these things during the trial of the case. It was my specific recollection that Dr. Vega testified during trial that it would take two to three minutes of application of the ligature prior to death. Dr. Vega also testified during the trial that he found no other injuries to the victim in the case that would have rendered her unconscious. So these matters have in fact been covered.

MS. RIVA: May I clarify on that point, Judge?

THE COURT: You may.

MS. RIVA: Because my notes from the Medical

Examiner is that he indicated it would be a few short minutes until death, but he didn't talk about the pressure that had to be maintained in order to effect death, and that is part of what I want to elicit here today, as well as what would occur in those seconds before losing consciousness.

THE COURT: That is what my notes indicate, that he testified that there would be a few minutes until death, loss of consciousness eight to ten seconds, which he testified to today, a few minutes until death. I don't in my notes, that's certainly by no means any substitute for the notes of the official record, have any indication that he testified that there would have to be continued pressure. He did -- I do feel that he had testified as to her cause of death. I don't think there's any issue about that, about the ligature, about the wrist restraints, the eight to ten seconds, unconsciousness prior to death and generally the few minutes. I do think the testimony this morning about the pressure is different.

Does the State have any argument as to why he should be allowed to render an opinion as to the cause of death, et cetera, which he previously did render that?

MS. RIVA: He did, Judge. The only purpose in

doing that was to -- so that he could move on with the remainder of his testimony and put it in context. I think it's a little bit confusing to the jury to just suddenly jump into eight to ten seconds of unconsciousness without having them recall the things that he testified to would have occurred previous to that point.

THE COURT: Okay. Do you have any other argument?

MR. TEBRUGGE: No.

THE COURT: Okay. At this point, for that purpose, I would have to agree with the State that it would be appropriate. I concur with the Defense that portions of his testimony -- the only crucial portion that the State is offering at this time is this continued pressure with the aggravator. I do think the limited questions that the State asked to put it in context for the jury would be appropriate, although similar testimony has been offered. But I do think the State should be able to put it into context as continued pressure.

So I, at this point, I would deny, based upon the proffer that's been presented to the Court, the motion to prohibit cumulative unreliable testimony as filed by the Defense.

Do you want me to bring the jurors in and then

call Dr. Vega?

MS. RIVA: That's fine, Judge.

THE COURT: Okay. If you would do that and then we'll call the doctor in and I'll go ahead and re-swear him.

MR. TEBRUGGE: Judge?

THE COURT: Yes.

MR. TEBRUGGE: Is it only that portion of the testimony that you are allowing? I didn't quite understand the Court's ruling there.

THE COURT: Okay, and I apologize, it probably was unclear. What I did feel is that the relevant testimony that's coming from Dr. Vega today as it relates to the aggravators is this continued pressure. However, I do feel that the State, in view of the limited questioning that they had of Dr. Vega, that they would be able to put that in proper perspective, so that the jury will be able to understand this as opposed to just jumping right in. I did not feel that the questions that they asked -- I would allow them to ask the opinion of death, the eight to ten seconds, the two minutes, and the continued pressure. Although everything other than continued pressure has been testified to, I do think it's appropriate for the State to put this testimony in context so that the jury will

be able to understand this continued pressure. So from that aspect, I would allow them to ask those questions.

MR. TEBRUGGE: May I have a standing objection, Your Honor?

THE COURT: You certainly may.

You may bring the ladies and gentlemen of the jury in.

(THE FOLLOWING PROCEEDINGS ENSUED IN OPEN COURT IN THE PRESENCE OF THE JURY.)

THE COURT: Ms. Riva, is the State ready to call your first witness?

MS. RIVA: Yes, Your Honor. The State would re-call Dr. Vega.

THE COURT: All right. Dr. Vega, please.

DR. RUSSELL VEGA

The witness herein, being first duly sworn, was examined and testified as follows:

THE COURT: Good morning, Dr. Vega.

THE WITNESS: Good morning.

THE COURT: Welcome back.

THE WITNESS: Thank you.

THE COURT: Dr. Vega, after you're seated, if you would please state your name and spell your last name for the record.

THE WITNESS: My name is Russell Scott Vega,

V-E-G-A.

THE COURT: And if you would once again state your occupation or profession for the jury.

THE WITNESS: I'm the Chief Medical Examiner for the 12th District of Florida.

THE COURT: Thank you, sir.

Ms. Riva, you may proceed.

MS. RIVA: Thank you, Judge.

DIRECT EXAMINATION

BY MS. RIVA:

Q. Dr. Vega, last week you testified or I guess it was the week before, you testified concerning your medical opinion with regard to the autopsy and the death of [redacted] I would like to ask you a few specific questions regarding her death and first what I would like for you to do is reiterate for us what you found to be the [redacted] death.

[redacted]

Q. In your opinion, was [redacted] before the ligature was applied in this case?

[redacted]

Q. Can you explain for us what would be occurring medically to the victim in this eight-to-ten-second period?

A. During this time frame, the first portion of it, the majority of these eight to ten seconds would be one where consciousness would be maintained and in all likelihood, no significant physiologic deficits would have been sustained.

During the last one to two seconds of consciousness prior to the development of unconsciousness, there would in all likelihood be some loss of reflexes and visual acuity, and perhaps loss of general motor function.

Q. Once the victim is rendered unconscious, does the pressure that is placed around the neck still have to be maintained in order to effect death?

A. Yes.

Q. Why is that?

A. If the blood flow to the brain is restored prior to the development of irreversible brain injury, then the brain can recover. The time interval required for that is going to be variable dependant upon the circumstances in the individual, et cetera. Studies that have been done on adults have shown that if that pressure is maintained for a period of up to 45 seconds to a minute or so, that release of the pressure after that time can be expected to result in full recovery. So the time period would have to be I think

significantly more than that in a period of a few short minutes.

Q. So, in other words, the pressure would have to be maintained for minutes in order to effect death?

A. That's right.

MS. RIVA: Thank you, sir. Those are all the questions that I have.

MR. TEBRUGGE: No questions.

THE COURT: Dr. Vega, thank you very much. At this time you would be excused. You would remain under subpoena in the event it was necessary to re-call you.

THE WITNESS: Thank you, Your Honor.

THE COURT: Thank you very much.

Ms. Riva, is the State ready to call your next witness?

MS. RIVA: Yes, sir. The next witness will be Linda Atkins.

LINDA ATKINS

The witness herein, being first duly sworn, was examined and testified as follows:

THE COURT: Good morning, Ms. Atkins.

THE WITNESS: Good morning.

THE COURT: Thank you very much for being here today.

If you would, please, if you would please state

your name and spell your last name for the record.

THE WITNESS: It's Linda Atkins, A-T-K-I-N-S.

THE COURT: Thank you, ma'am.

Ms. Riva, you may proceed.

MS. RIVA: Thank you, Judge.

DIRECT EXAMINATION

BY MS. RIVA:

Q. Ms. Atkins, what is your current occupation or profession?

A. I'm a correctional senior probation officer with the Florida Department of Corrections.

Q. How long have you been a probation officer?

A. Since August 1992.

Q. What are your responsibilities as a probation officer?

A. Control and surveillance of your offenders. There are conditions the court imposes on them and it's my duty to make sure that they comply with the conditions.

Q. Now, were you working in this capacity in January and February of 2004?

A. Yes, I was.

Q. Did there come a time when someone by the name of Joseph Smith became a person under your supervision?

A. Yes, there was.

Q. And do you see that person here in the courtroom

today?

A. Yes, I do.

Q. Can you identify him for us?

A. He's wearing a blue jacket with a red tie, sitting between his attorneys.

MS. RIVA: Your Honor, I would ask the record to reflect the Defendant has been identified.

THE COURT: The record should so reflect.

BY MS. RIVA:

Q. Can you explain for the jury when you first became Mr. Smith's probation officer or supervisor?

A. On January 23rd, 2004, I took over the drug offender probation caseload at the Sarasota north office and he was one of my offenders.

Q. Was he current -- was he already on probation with another supervisor when you took over?

A. Yes, he was.

Q. Is it common in your profession that there may be more than one probation officer supervising a person at any given time?

A. It's very common.

Q. Do you know when the Defendant first was placed on probation?

A. Yes, I do.

Q. When was that?

A. On the 6th of March, 2003.

Q. What was the crime that he had committed in order to receive probation?

A. Possession of cocaine.

Q. And what was his sentence for that crime?

A. He was given one year drug offender probation, followed by two years regular probation.

Q. What is drug offender probation? What are the conditions of that type of probation?

A. It's a little bit more structured probation. They're not allowed to drink, they're not allowed to go to bars. Some of the offenders have curfews and they're drug tested quite frequently, and also, they also have mandatory treatment.

Q. Now, you mentioned that you became Mr. Smith's probation officer, was it January 23rd, 2004?

A. Correct.

Q. Was the Defendant on drug offender probation on February 1st, 2004?

A. Yes, he was.

Q. And were you his probation officer?

A. Yes, I was.

MS. RIVA: Those are all the questions that I have.

THE COURT: Mr. Tebrugge.

CROSS-EXAMINATION

BY MR. TEBRUGGE:

Q. Good morning, Ms. Atkins.

A. Good morning.

Q. When was the first time that you met Joe Smith?

A. On February 4th, 2004.

Q. Never before that date?

A. No.

Q. Never since that date?

A. No, unless we're talking about hearings that I've been in.

MR. TEBRUGGE: Thank you very much. No further questions.

THE COURT: May Ms. Atkins be excused and released from her subpoena?

MS. RIVA: Yes, sir.

THE COURT: Any objection, Mr. Tebrugge?

MR. TEBRUGGE: No, sir.

THE COURT: Ms. Atkins, thank you very much for being here today.

Ms. Riva, are you ready to call your next witness?

MS. RIVA: Judge, I think at this point we have some discussions the attorneys need to have with the Court.

THE COURT: All right. We'll go ahead and take

our morning recess then. We'll make sure you all get plenty of exercise this morning.

(THE JURY EXITED THE COURTROOM.)

THE COURT: What we'll do before we begin argument is, let's go ahead and all take a comfort break and then we'll come back and present the argument.

MS. RIVA: Yes, sir.

(RECESS TAKEN.)

THE COURT: Ms. Riva, you indicated you had some things to discuss with the Court?

MS. RIVA: Yes, Judge. The next stage in this case would be for the State to present victim impact evidence. What I have done is collected statements from various family members and from some teachers of [redacted] that I would be seeking to introduce. What I have told each of these individuals is to write out their statement and then if the Court approves the statement and approves the testimony, the witness will then read from the statement rather than just testifying without regard to knowing what the content of their testimony will be.

THE COURT: I appreciate that.

MS. RIVA: So I have -- the father of [redacted] has prepared a statement; the [redacted] has prepared a statement; the

[redacted] has prepared a statement. I also have two teachers from the school that [redacted] was attending, Susan Van Alstine and Noel Gilden, both who have prepared statements. There are grandparents present here in court as well who wish to make a short statement. They are writing their statements as we speak. There has already been one statement written and I have reviewed it and made some changes in accordance with the law.

So my request is to allow these witnesses to read these statements to the jury and also to introduce one photograph of the victim, which has been premarked as State's Exhibit No. 1, and I've shared that photograph with the Defense. I will show the Court the photograph that I am seeking to introduce.

THE COURT: Okay. All right. Thank you.

Since I haven't seen the statements and the victim impact, by statute, is limited to demonstrate the victim's uniqueness as a human being and the resultant loss to the community, if they comply with those limitations, I don't know if you have specific objections or Ms. DaSilva, whoever is doing it.

MR. TEBRUGGE: Judge, before we move into the specifics --

THE COURT: Okay.

MR. TEBRUGGE: -- Your Honor, I certainly have a lot of compassion and respect for everybody who suffered a loss in this case due to the loss of [redacted] however, under the present state of the law, I am compelled to object to the presentation of this testimony. Your Honor, under both the Eighth Amendment, Cruel and Unusual Punishment Clause of the United States Constitution, the 14th Amendment, Due Process Clause of the United States Constitution, and Article One of the Florida Constitution, the Court simply should not allow this evidence to be heard by the jury.

Your Honor, in the state of Florida, evidence must be relevant in order to be admissible. The evidence that is proposed by the Prosecuting Attorney is not relevant to any material fact at issue in these proceedings. It is not allowed to be used by the jury in support of any aggravating factors. Therefore, the only purpose for presenting the evidence is to present highly emotionally charged testimony to the jury and hope that the emotions of the event therefore sway the decision-making process.

Justice Stevens of the United States Supreme Court, in an address to the American Bar Association in August of 2005, strongly cautioned against use of this

type of evidence. He says it infects the entire proceeding and destroys the fairness of the American criminal justice system.

So for those reasons, I would ask the Court not to allow this testimony. If the Court does allow it, I would ask the Court to not allow multiple witnesses to testify to exactly the same things. I would ask the Court to strictly instruct the witnesses to control their emotions on the witness stand and I would ask the Court to review the statements ahead of time to determine whether they're legally appropriate.

THE COURT: All right. The one thing that jumps out at me is the number. Typically I limit it to one or two. It seems like we have an awful lot of the victim impact.

MS. RIVA: Judge, and I think part of the issue in this case is that we do have a situation of a divorced mother and father, both of whom have felt the impact of the death of [redacted] as well as a stepfather, who was very much involved in the life of [redacted]

Under the case law, Forena v. State, a Supreme Court of Florida case, 12 people testified on victim impact and the Supreme Court found that that was not too much, that emotional victim impact evidence is allowed and that up to 12 people is not considered to

be too much for the jury to consider.

Here, we also have a community that was affected, that being her school community, and those teachers that have written statements have a whole other impact they wish to share with the jury regarding the loss of Carlie.

So I think for sure the Court is guided by the case law that supports several witnesses testifying. Some of them are very short. I will give the statements to the Court. You will see they're not long, drawn-out statements. But also, even under the case law, Mr. Tebrugge didn't cite that the Court cannot bar victim impact evidence. The Court has found that that is a right.

THE COURT: I agree. I certainly appreciate Mr. Tebrugge's argument and there certainly is that thread that's running through the U.S. Supreme Court, but the current state of the law in the state of Florida does allow victim impact statements. So I would overrule his objection to completely bar victim impact testimony, although I think that we often run a great risk. I'm unaware of finding a particular case that resulted in a reversal of the sentence because of victim impact testimony, but that's not to say one doesn't exist.

MS. RIVA: And, Judge, I think the extra precautions that I've taken that aren't required in that they prepare a statement, there's not going to be a danger of the witness saying something that could cause reversible error or saying something outside of what they're entitled to say, and that is something that I have asked each and every one of these witnesses to do. They've done that. We've reviewed them. I'm sure that the Court and the Defense and I will review them again to be certain that they're only saying that which the case law allows. And so I would ask that all of these witnesses be allowed to give their statement at this juncture.

THE COURT: Okay. Well, certainly I would not allow more than one teacher. So I'm not going to allow two teachers. But let me see the father's, mother's, stepfather's and one teacher's.

MS. RIVA: I'll give you both teachers, Judge, so that you have it all.

THE COURT: Okay. That's fine. Thank you.

And certainly one of the real grave difficulties that the Court has in a case like this is applying the statute because certainly the feelings of parents, especially no one could really imagine what they must be going through. In looking at [redacted]

statement, I will always feel some guilt, some self-loathing for not being able to save my child, how would that comport with the statute? Now, I'm certainly aware that that's all very true, but I don't know how that would comport with the statute in allowing that. That was -- and, Mr. Tebrugge, you may have other things.

MR. TEBRUGGE: Judge, I worked with the State Attorney on some of my specific objections and we were able -- I think Ms. Riva incorporated many of my specific objections.

THE COURT: And maybe I'm just in error.

MS. RIVA: The only response to that, Judge, is that is the impact her death has had on him. I mean, he has been impacted to the point that he feels guilt all the time because he wasn't able to do anything for [redacted]. As you can see, he continued on that sentence, and we did take that part of the sentence out with regard to his feelings about the Defendant.

THE COURT: Right, and I noted that. And although they refer to it as victim impact evidence and I would concur with you that that certainly is the impact and I'm sure the impact far exceeds anything that he could put in writing; however, such evidence shall be designed to demonstrate the victim's uniqueness as an

individual human being and the resultant loss to the community members by the victim's death. No one would expect anything other than a parent to be extremely depressed. How would the depression of a parent meet the statutory requirement?

MS. RIVA: That's my only response, Judge, is that is the impact he felt as a result of her death. Certainly we want to provide to the jury only that which is in compliance with the law.

THE COURT: Well, and certainly I don't have a magic crystal ball. That, to me, is one of the reasons, although it is allowed, that I do have some problem. I don't think it is truly victim impact and I think they've limited it such that it --

And again, in [redacted] statement, [redacted] may you rest and play with the angels; [redacted] certainly all very true, but I don't know how that statement would comply.

MS. RIVA: Yes, sir, we are in agreement with that. We would be willing to redact that statement out.

THE COURT: And the same with the statement by [redacted] the last, The only peace I have is that I know my angel is with God. I would -- I don't really feel that that would comply with the statute.

MS. RIVA: Yes, sir.

THE COURT: Now, Mr. Tebrugge, you may have other areas and I'm not asking you to waive your general objection to this type of testimony.

MR. TEBRUGGE: Judge, may I just review Mr. Brucia's statement that the Court has? There was one area that I think was redacted, but I would like to confirm that.

THE COURT: You certainly may.

MR. TEBRUGGE: My concern was addressed.

THE COURT: Okay.

MR. TEBRUGGE: So I have no other specific comments as to the [redacted] statements, Your Honor, or the [redacted] statement.

THE COURT: Okay.

Now, when we go to the teachers, certainly Mr. Brucia addresses portions of it.

MS. RIVA: Judge, Ms. Van Alstine had a specific incident or memory of [redacted] that I wanted for her to be able to share. Accompanied with that, which we don't necessarily have to introduce, is the actual note that [redacted] had put together with her fellow students to give to her teacher. I'll give you a copy of that note.

MR. TEBRUGGE: I've seen that.

MS. RIVA: Okay. I can give a copy of that note to the Court.

THE COURT: Although certainly the resultant loss to the community and I'm sure that her fellow classmates, this has been for many of them an extremely difficult time, the fact that they, some of them have had a great deal of difficulty in school, focusing, passing, I don't know how that would really comport with the statute, but you might -- could shed some light on that.

MS. RIVA: Again, Judge, the impact of her death on her friends has been severe.

THE COURT: And I would agree with you just like it's been extraordinary on her parents, but where in the statute is that part of the relevant evidence, the impact on her friends? You may have a case that I'm unaware of because I know that you do this on a regular basis. And certainly her uniqueness as a student and so forth, being helpful to the other kids, and, you know, all of that does show her uniqueness and her loss, but the fact that certain children have had to seek psychological counseling and that they're having trouble in school, I don't know how, and I don't mean to be callous because I know all these are very true feelings, but I do feel that I have to very strictly

limit what is referred to as victim impact, which truly isn't victim impact and I understand that. But --

MS. RIVA: Judge, can we look specifically at the letter to point out the sentences because I think that the --

THE COURT: Which letter do you have reference to?

MS. RIVA: Ms. Van Alstine's.

THE COURT: Okay.

MS. RIVA: That was the one that we were intending to present if we needed to choose.

THE COURT: All right. Is there anything -- Do you want the entire statement?

MS. RIVA: Yes, sir.

THE COURT: Were you -- Are going to also try to introduce this note or did you --

MS. RIVA: The only concern I had about that note, Judge, is I don't necessarily want all of those signatures to become part of the public record. It involves other children as well. So I think that she could refer to the note as she does in her statement.

MR. TEBRUGGE: Your Honor, I think the most problematic paragraph of that statement is the third paragraph.

THE COURT: I agree, about the report. When it was reported [redacted] was missing?

MR. TEBRUGGE: Yes, sir.

MS. RIVA: I don't have a problem with taking that out, Judge.

THE COURT: Okay. Good. That was -- Okay.

All right. Then -- and you did put on the record that 11 people were here, but I do feel that at this time I would limit it to [redacted] and Ms. Van Alstine, and I do feel that it would be inappropriate to introduce the note in evidence under the victim impact.

MS. RIVA: I'm sorry, Judge, I missed the last part.

THE COURT: I do feel it would be inappropriate under victim impact to introduce this note into evidence and have it presented to the jury.

MS. RIVA: Yes, sir.

THE COURT: So I would just, if it's satisfactory, return that to you, as well as, I apologize, I don't know the teacher's name, but the other teacher that --

MS. RIVA: Ms. Gilden.

THE COURT: Okay, Ms. Gilden. Although there's certainly -- I don't mean to -- I'm not choosing one over the other because it's better written. I just think that it is appropriate for the Court to limit the testimony.

The only other issue that arises in the victim impact are the emotions.

MS. RIVA: Yes, sir.

THE COURT: And I know that you've done a very thorough job in speaking with the individuals. I certainly have no objection to someone else reading it if that's more appropriate with the parents. So I don't know how they feel about that.

MS. RIVA: Judge, I think --

THE COURT: If they want to, they're certainly entitled to.

MS. RIVA: They do. We have a backup plan in the event that it becomes emotional.

THE COURT: Okay.

MS. RIVA: I would ask that if it does, that the Court stop the proceeding at that point and we will have someone else continue on with the statement. So any other comments the Court wishes to make to the family is fine with the State. We have certainly talked with and counseled the family regarding the issues that could arise in this part of the case.

THE COURT: Well, I'm sure you've done a great job. I'm sure that there is just no way the Court can ever begin to imagine the loss that you've suffered, but unfortunately in a trial, I really can't take into

account losses. I have to follow the law and make sure that both sides receive a fair trial and I'm not trying to be insensitive to anyone, but that's the burden that's thrust upon the Court as the Judge in a particular case.

So I hope that you all will understand that. I'm sure that you've had opportunities to fully discuss this and if you feel capable of proceeding, I have no objection. If anyone -- certainly no one would think any less of you if under these circumstances it's just something that's too emotional.

I will also -- the other alternative would be if they wanted to present this at the Spencer Hearing outside the presence of the jury since the Court has to make the ultimate decision. If they would feel more comfortable in doing that and presenting this, I certainly would have no objection to them electing to do that.

MS. RIVA: We discussed that as well, Judge, and these particular witnesses do wish to testify at this proceeding.

THE COURT: Okay.

MS. RIVA: Now, there are many other witnesses who have asked to make statements and we've talked to those witnesses about potentially making statements at the

Spencer Hearing.

THE COURT: Okay. All right. I will allow you a continuing objection to all of the victim impact testimony.

MR. TEBRUGGE: And you were referring to the Defense there, Your Honor.

THE COURT: Yes. I'm sorry, Mr. Tebrugge. I pointed and did not -- I would allow the Defense to have a continuing -- the objection that they raised, I would allow you to have a continuing objection to the victim impact testimony.

MR. TEBRUGGE: Yes, sir.

THE COURT: So at this time, we can bring the ladies and gentlemen of the jury back.

MS. RIVA: Judge, I better just make sure -- if I could take those back, I want to make sure that we've made all the redactions.

THE COURT: Okay. And there's no need -- you really don't need to introduce those into evidence.

MS. RIVA: No, sir. In fact, I'm going to give these statements with the deletions to the witnesses themselves so there won't be any confusion.

THE COURT: Okay. That's fine.

MR. TEBRUGGE: Judge, while Ms. Riva's working on that, could perhaps Mr. Nales and I talk with you about

something?

THE COURT: You may.

(BENCH CONFERENCE HELD:)

MR. TEBRUGGE: I'm just worried about getting on my witnesses today later on. I didn't know what your schedule was, things like that.

THE COURT: Have you gotten an e-mail from Walt? What I told her was I would be here until 4:00.

MR. TEBRUGGE: I don't think it will go that long.

MR. NALES: I was going to say, but you mentioned --

MR. TEBRUGGE: Ed's got to go on and three others.

THE COURT: So my plan was to go until you finish.

MR. NALES: Judge, we're not going to be long with the witnesses that he mentioned.

THE COURT: Do you have any other ones after this?

MR. NALES: No. After victim impact, we're done.

THE COURT: We'll probably break for lunch and then we would start back. I was going to take an hour break for lunch.

MR. TEBRUGGE: I just wanted to check with you about that.

MR. NALES: I can't see that we're going to take more than a few minutes with each of the witnesses that they present. We ought to be able to get through four

this afternoon.

THE COURT: Okay.

(BENCH CONFERENCE CONCLUDED.)

THE COURT: So if you would bring the ladies and gentlemen of the jury in.

(BENCH CONFERENCE HELD:)

THE COURT: Is there an instruction I'm supposed to give before?

MR. TEBRUGGE: Ms. Riva and I were discussing that.

MS. RIVA: There's not a specific instruction, but I have -- we could maybe put together one if you want to, Judge. I have some language.

THE COURT: It would be a good idea if you wouldn't mind. I didn't think about that.

Okay. So it is changed, of course. Okay.

MR. TEBRUGGE: I think this is what we have agreed on, Your Honor: You will now be presented with evidence concerning [redacted] - skip this paragraph.

THE COURT: Okay.

MR. TEBRUGGE: I started -- my line just went out of the line, but it would be this sentence.

THE COURT: Okay.

MR. TEBRUGGE: And I think that would at least

accomplish something.

THE COURT: Sure. That works for me.

MS. RIVA: Okay.

(BENCH CONFERENCE CONCLUDED.)

(THE FOLLOWING PROCEEDINGS ENSUED IN OPEN COURT IN THE PRESENCE OF THE JURY.)

THE COURT: Thank you, ladies and gentlemen.

At this time you're going to be presented with evidence concerning [redacted] Though this evidence is permitted by law and pursuant to our statutes, it is designed only to demonstrate [redacted] uniqueness as an individual human being and the resultant loss to the community members by her death. So it's very limited in scope as to the evidence that you're going to receive.

So, at this time, Ms. Riva, are you ready to call your next witness?

MS. RIVA: Yes, Your Honor. The State would call Joe Brucia.

THE COURT: Okay, [redacted]

[redacted]

The witness herein, being first duly sworn, was examined and testified as follows:

THE COURT: And one other very unique aspect of this in view of the very limited purpose of this

testimony, I encourage witnesses to read prepared statements as opposed to the customary question and answering that we do with most other witnesses.

Good morning, [redacted]

THE WITNESS: Good morning, Judge.

THE COURT: If you would, please, sir, if you would please state your name and spell your last name for the record.

THE WITNESS: [redacted]

THE COURT: Thank you, [redacted]

Ms. Riva, you may proceed.

MS. RIVA: Thank you, Judge.

DIRECT EXAMINATION

BY MS. RIVA:

Q. [redacted] where do you currently live?

A. I live in Long Island, New York.

Q. And is -- or was [redacted]?

A. She was.

Q. And have you prepared a statement that you would like to share with the jury regarding the loss of [redacted]?

A. I have.

Q. If you could go ahead now and read that statement to the jury.

A. [redacted] was a truly loving and giving child.

Parents are likely to be biased, but [redacted] grew up in some very turbulent times, much of which I was unaware of at the time. She never complained, never commented on such things, which is a testament on what an exceptional child she was and an extraordinary woman she would have grown to be if only given the chance.

[redacted] has been memorialized at her school with a butterfly garden and at the church with a garden of hope memory walk. One only has to look at some of the sentiments [redacted] classmates at [redacted] used to describe her to realize just what we've lost. Thoughtful, cheerful, sincere, loving, caring, loyal, and generous are just some of the words her classmates engraved on the stepping stones in [redacted] secret butterfly garden.

[redacted] and I truly looked forward to our times together. Although they were too brief for us, they were so joyous and rewarding. We spent every Christmas together for a two-week period and several weeks during each summer. [redacted] especially enjoyed our annual trip to Great Adventure, an amusement park in our neighboring state of New Jersey.

We always had special times together, which are now treasured memories. I always had a close bond with [redacted] I watched as she was born. I gave her her first bath. I doted on her as much as possible, as every parent

should. From a proud moment of first learning to use the toilet to her need for privacy in the changing room when I would buy her a new wardrobe during the summer or at Christmas. One of the rituals we had to go through was our semiannual stop at Payless Shoes. After hello hugs and getting caught up, as soon as we left the airport, [redacted] would ask if we could go to the nearest Payless Shoe Store. I would let her pick out four or five pairs of shoes or sneakers so she would be fully prepared to start her vacation.

When [redacted] was taken from my family and me, it hurt us to the core. Afterward, I would also seclude myself and drink excessively in the evenings alone, isolated in the dark. I would think surely this could not be real. This is some terrible thing you read about. Then life continues and the thoughts fade. But this was my child. It did not fade. Life continued with no enjoyment. There are many times when I no longer wanted to go on and was close to taking my own life. If not for a great support system of loving family and friends, I would not be here today.

As for myself, I am trying to go on with my life and am making some headway, but my life will never be the same.

THE COURT: Thank you, [redacted]

Ms. Riva, are you ready to call your next witness?

MS. RIVA: Yes, Your Honor. At this time the State would call [redacted].

THE COURT: [redacted]

The witness herein, being first duly sworn, was examined and testified as follows:

THE COURT: Good morning, [redacted]

THE WITNESS: Good morning.

THE COURT: If you would, please, if you would please state your name and spell your last name for the record.

THE WITNESS: [redacted]

THE COURT: Thank you, ma'am. Ms. Riva.

DIRECT EXAMINATION

BY MS. RIVA:

Q. [redacted], do you reside here in Sarasota, Florida?

A. No. I live in Tampa now.

Q. You're in Tampa at this point?

A. Yes.

Q. And was [redacted]?

A. Yes.

Q. Have you prepared a statement that you would like to share with the jury regarding the impact her death has had on you?

A. Yes.

Q. Could you go ahead now and read that statement to the jury?

A. Yes.

It was a difficult pregnancy. I had complications my whole term. I could not wait for my baby to be born. On [redacted] my baby girl came into my life. Such a bundle of joy.

When I was -- when she was three months old, her father and I separated. [redacted] and I did everything together. From early in childhood, she was bubbly, silly, friendly and always smiling. She would embarrass me in grocery stores. Out of nowhere she would sing at the top of her lungs. People would stop and listen, smile as they admired [redacted] cuteness and silliness. [redacted] adorable appearance and effervescent disposition made people take notice of her. She was so full of life. Such a happy-go-lucky little girl, an all-American girl.

[redacted] would put music on. No matter what kind, she would dance and sing her heart out. A lot of the times she would sing off key just to make me laugh. [redacted] had a kindness within her, especially when it came to her little brother. When he was born, I had complications, but again, another bundle of joy.

At [redacted] took over. She played mommy.

She loved to feed and bathe her baby brother, [redacted] adored and looked after him. As they got older, they loved to play video games, collect and trade Pokeman cards. They were my little water bugs who loved to swim.

[redacted] character amazed me. She had such style. She took great pride in herself. [redacted] was an A student. School was important to her. I would have to convince her to stay home -- there's a piece missing out of here -- if she was sick.

Q. Okay.

A. Okay -- and if she was sick, I would have to convince her to stay home. She would be afraid of missing something or falling behind in her grades. She loved school and all of her friends.

My mom would always say [redacted] is a social butterfly. She had so many friends. Her home was always full of children and the phone never stopped ringing. [redacted] was always invited out. She was a joy to be around and loved by so many people, a delightful and cheerful addition to the community.

[redacted] was an affectionate little girl, always hugging me and kissing me, never forgetting to say, Mommy, I love you.

[redacted] would visit family. It wasn't long after she arrived that I would get phone calls every day,

sometimes a few times a day just to talk to me, tell me that she missed me and now I miss her.

THE COURT: Would you like to take a little break?

THE WITNESS: I'm okay.

I can no longer watch her grow and no longer can plan for homecoming and shop with her for a gown, prom's, birthday parties, her wedding day, her children, my grandchildren. These dreams are no longer days I will share with [redacted] I can only imagine her in her wedding gown, walking down the aisle. Now that's a dream that I no longer look forward to.

I am not able to cuddle and hold my daughter. I can no longer hear her precious, innocent, soft voice or the silly giggle. I don't have her to talk to. She was and still is very special to me and I miss her. I lost the light of my life, my buddy, my best friend, most of all, my daughter. I cry for her all hours of the day. I cry for her at night.

I am broken. I will never heal. I will never have closure and never again have my daughter by my side. I am in physical pain all the time. I am hoping in time I will become a better person and be able to deal with this loss, but I will never be whole again. My heart will always have a void and tremendous loss.

Not only am I broken but my family is shattered. I feel this killed my mother. It ran my father out of this country and both my brothers are struggling with our reality. My son lost his big sister, his playmate, and his best friend. Our lives have been catastrophically destroyed with irreversible damage. An hour does not pass that I don't think of my daughter, an all-American girl, [redacted] I miss her.

My baby girl who was only [redacted] She had so many wonderful qualities within her. Unfortunately not only am I deprived of her, but so is the world. Every day I mourn for her. I deeply miss her and I will never stop loving my baby girl.

THE COURT: Thank you very much, [redacted]

THE WITNESS: Thank you.

THE COURT: Ms. Riva, are you ready to call your next witness?

MS. RIVA: Yes, sir. The State will call Steven Kansler.

THE COURT: [redacted]

[redacted]

The witness herein, being first duly sworn, was examined and testified as follows:

THE COURT: Good morning, [redacted]

THE WITNESS: Good morning.

THE COURT: [redacted] if you would, please, sir if you would please state your name and spell your last name for the record.

THE WITNESS: [redacted]

THE COURT: Thank you very much. Ms. Riva.

DIRECT EXAMINATION

BY MS. RIVA:

Q. [redacted], I think that you testified previously in this trial and told us that you were [redacted] is that right?

A. That's correct.

Q. Have you prepared a statement that you would like to share with the jury regarding the loss of [redacted]?

A. Yes.

Q. [redacted] go ahead if you now wish to read that statement to the jury.

A. First I would like to say to you and those around you, how can a stepfather have so much feelings for a stepdaughter? I'm here to tell you I never looked at [redacted] as a stepdaughter. She is and was my daughter. [redacted] will always be my daughter.

I never had the opportunities to go to the beach with her, watch her fulfill her accomplishments, graduation from high school, marriage or having her own children, and

the rest of her dreams. I miss her smile and adorable, wonderful personality. Not only do I miss my daughter, but her two brothers miss her more than life itself. Her brothers have been through endless therapy and ask themselves why did this happen.

That's it.

MS. RIVA: Thank you, [redacted]

THE COURT: Thank you, [redacted]

Ms. Riva, are you ready to call your next witness?

MS. RIVA: Yes, sir. The State would call Susan Van Alstine.

THE COURT: Ms. Van Alstine.

SUSAN VAN ALSTINE

The witness herein, being first duly sworn, was examined and testified as follows:

THE COURT: Good morning, Ms. Van Alstine.

THE WITNESS: Good morning, Your Honor.

THE COURT: Thank you for being here. If you would, if you would please state your name and spell your last name for the record.

THE WITNESS: Susan Van Alstine, V-A-N, A-L-S-T-I-N-E.

THE COURT: Thank you. Ms. Riva, you may proceed.

DIRECT EXAMINATION

BY MS. RIVA:

Q. Ms. Van Alstine, were you at one time a teacher of [redacted]?

A. Yes, I was.

Q. And have you prepared a statement that you wish to share with the jury regarding your loss or the loss of her school friends at [redacted] death?

A. I have.

Q. Would you go ahead then and read that statement to the jury.

A. I had the pleasure of being [redacted] teacher beginning in August 2003, at [redacted] when she was a student in my computer applications class. An excellent student, she sat in the front row, on the left side of my room, near my desk, and always brought a smile with her to class. She would continue to brighten my room each day for the first nine weeks of that year, until October when her class rotated to another elective.

On her last day in my class, she took the initiative to create a good-bye and thank you note to me. She recruited every student in the class to sign it and then she proudly and graciously presented it to me before she left my room that morning. I still have that note and I will cherish it always. In some strange way, her handwriting on that piece of paper keeps a little part of her alive to me. It represents who [redacted] was, grateful,

thoughtful and kind.

Even after the first quarter of the school year had passed, I would continue to see her in the halls cheerfully walking with her friends on the way to her next class. Sadly, the last time I saw [redacted] was less than six short months later.

One day late in January, she saw me in the hallway in front of my classroom and ran up and gave me a hug and told me that she missed my class. She asked me about my baby and when it would be due and she seemed very excited that I was pregnant with a baby girl who was expected in June.

Since then, I've seen [redacted] only in pictures on video and in my own memories of her. In those memories, I'm repeatedly reminded of her spirit and energy. She was a beautiful bright spot in every day.

Everything [redacted]embodied was taken from her family, her friends, and our community. We no longer have her bright smile and sparkling eyes, her warm hugs, her energetic spirit, her gracious and welcoming personality, her genuine honesty, her thoughtfulness and her kindness.

Today, a garden cultivated in her memory stands outside the building where [redacted] spent her final days as a [redacted] on the [redacted] [redacted] friends, now in [redacted] have not

forgotten her and probably never will. They walk past her garden each day and think of what she meant to them and what they continue to live without now. As these students prepare to make a transition from middle school to high school, they know that they will do so without their friend [redacted]

As a teacher, I wonder what [redacted] would have been like now, where her interests would lie, which high school academy she might be enrolling in next year and what she would ultimately be ready to do with her life. She was smart and hard working enough to have accomplished anything. She was compassionate, yet decisive, a leader, yet listened to the opinions of others. She was not easily led astray and had pride in the choices that she made.

A member of the chorus, she loved to sing, which may have turned out to be her profession. Maybe she would have been a doctor or a teacher. We can now only imagine what an amazing contribution she would have made and how her family, friends, teachers, and community would have benefited from the products of her life.

THE COURT: Thank you very much.

THE WITNESS: Thank you.

THE COURT: Ms. Riva.

MS. RIVA: Finally, Judge, I do have a photograph that I wish to introduce and publish to the jury,

State's Exhibit No. 1.

THE COURT: All right. You may do so. What was the number? I'm sorry.

MS. RIVA: I believe it's State's Exhibit No. 1.

THE COURT: I would admit State's Exhibit No. 1.

(STATE'S EXHIBIT NO. 1 WAS RECEIVED IN EVIDENCE.)

MS. RIVA: Your Honor, I will hand it to the jurors.

THE COURT: While they're looking at that, can I ask counsel to approach, please?

(BENCH CONFERENCE HELD:)

THE COURT: I assume that that would conclude the additional evidence you're going to present at this time on the penalty phase?

MS. RIVA: Yes, sir.

THE COURT: When do you want to start? What's your pleasure?

MR. TEBRUGGE: We're ready to go whenever you want us to, Judge. Our witnesses are right at our office.

THE COURT: Okay. How much time do you want in between. Because my appointment has moved to 4:00. So I'm fine. So it's 12:15.

MR. TEBRUGGE: Why don't we try and start back at 1:15, 1:30.

MS. RIVA: That's fine.

THE COURT: That works for me. The jurors have their lunch here, so they don't leave. An hour is plenty of time.

MR. TEBRUGGE: All right.

MS. RIVA: Okay. Fine.

(BENCH CONFERENCE CONCLUDED.)

THE COURT: Ms. Riva.

MS. RIVA: Your Honor, that will conclude the State's presentation.

THE COURT: Thank you very much.

So that would conclude the additional evidence that the State was going to be presenting during this penalty phase of the trial.

What I'm going to do at this time is go ahead and recess for lunch and when we return, the Defense will have an opportunity to present any additional evidence that they would like to present during the penalty phase. So at this time, we'll recess and I would like to recess for an hour. So we'll reconvene at 1:20.

(THE JURY EXITED THE COURTROOM.)

THE COURT: All right. Does the State have anything or the Defense before we recess?

MR. TEBRUGGE: No, sir.

MS. RIVA: No, sir.

THE COURT: Okay. Thank you very much. We'll

stand in recess until 1:20.

(LUNCHEON RECESS TAKEN.)

(END OF VOLUME)