

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CALHOUN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2014- 002131

Mikal D. Mahdi, #5238

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

Vol. XXVI of XXVIII

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STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM CALHOUN COUNTY

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MIKAL D. MAHDI,

APPELLANT

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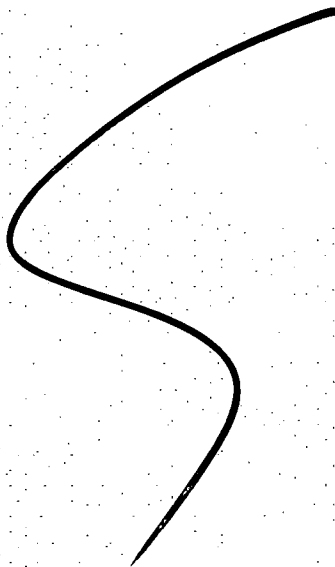
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COPY

STATE OF SOUTH CAROLINA)
)

COUNTY OF WILLIAMSBURG)
)
)

THE STATE OF SOUTH CAROLINA,
PLAINTIFFS

VS.)
)

GENERAL SESSIONS COURT

MIKAL D. MAHDI,
DEFENDANT

) JUNE 21, 2006
) ST. MATHEWS, S.C.

B E F O R E :

THE HONORABLE CLIFTON NEWMAN, JUDGE.

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

MR. DAVID M. PASCOE, JR.
SOLICITOR FOR THE STATE

MR. DONALD N. SORENSON,
ASSISTANT SOLICITOR FOR THE STATE

MR. CARL B. GRANT,
ATTORNEY FOR DEFENDANT

MR. GLENN WALTERS,
ATTORNEY FOR DEFENDANT

MARGARET T. SULLIVAN,
COURT REPORTER

1 (THEREUPON, THE FOLLOWING HEARING TAKES PLACE JULY
2 1, 2005.)

3 THE COURT: THIS IS THE MATTER OF STATE V. MIKAL
4 JAMES MAHDI. MR. -- I THINK, MS. HUDGINS.

5 MS. HUDGINS: THANK YOU, YOUR HONOR.

6 THE COURT: YES.

7 MS. HUDGINS: MAY IT PLEASE THE COURT, YOUR HONOR,
8 BEFORE YOU I HOPE YOU HAVE A COPY OF MY MOTION. IT IS A
9 MOTION TO BE RELIEVED AS COUNSEL. YOUR HONOR APPOINTED
10 ME TO BE CO-COUNSEL IN THIS CASE. AND LEAD COUNSEL IS
11 MR. CARL GRANT. YOUR HONOR, APPOINTED ME TO REPRESENT
12 MR. MAHDI. AS I WAS REVIEWING THE DISCOVERY IN MARCH OF
13 THIS YEAR, MARCH OF 2005, IT CAME TO MY ATTENTION THAT
14 SEVERAL OF WITNESSES THAT HAVE BEEN INTERVIEWED BY LAW
15 ENFORCEMENT, I KNEW. THESE ARE WITNESSES THAT WERE
16 INTERVIEWED AT THE WASHINGTON STREET UNITED METHODIST
17 CHURCH IN COLUMBIA, SOUTH CAROLINA, YOUR HONOR.

18 I HAVE A VERY CLOSE RELATIONSHIP WITH TWO
19 WASHINGTON STREET UNITED METHODIST CHURCH MEMBERS. I AM
20 A MEMBER OF THAT CONGREGATION. MY HUSBAND AND I WERE
21 MARRIED IN THAT CHURCH. BUT MORE IMPORTANTLY, THE
22 WITNESSES THAT WERE INTERVIEWED WERE EMPLOYEES OF THE
23 CHILD DEVELOPMENT CENTER THAT IS HOUSED THERE WITHIN THE
24 CHURCH BUILDING. YOUR HONOR, BOTH OF MY CHILDREN
25 ATTENDED THAT CHILD DEVELOPMENT CENTER. THEY WERE NOT

1 THERE AT THE TIME THIS ALLEGED INCIDENT TOOK PLACE. THEY
2 WERE THERE PREVIOUSLY. I HAVE SERVED ON THE BOARD OF
3 DIRECTORS FOR THAT CHILD DEVELOPMENT CENTER.

4 THE WITNESSES, AS I SAY, WERE EMPLOYEES. ONE OF
5 THEM IS AN EMPLOYEE THAT WORKED IN THE INFANT ROOM. SHE
6 CARED FOR BOTH OF MY CHILDREN. I KNOW HER VERY WELL. I
7 KNOW THE DIRECTOR VERY WELL AS A RESULT OF MY SERVING ON
8 THE BOARD OF DIRECTORS AT THE CHILD DEVELOPMENT CENTER.
9 YOUR HONOR, I BELIEVE THAT THERE IS ALSO A JANITORIAL
10 PERSON THAT HAS ALSO BEEN INTERVIEWED THAT WAS AN
11 EMPLOYEE OF THE CHURCH. I KNEW HER AS WELL. ANOTHER
12 WITNESS IS A MOTHER OF CHILDREN AT THAT DAY CARE CENTER,
13 AND AN ATTORNEY IN COLUMBIA YOU MIGHT KNOW. AND WE
14 CONSIDER A FRIEND.

15 YOUR HONOR, IN LIGHT OF THAT, I BECAME ALARMED AND
16 THOUGHT THAT THERE MAY BE A CONFLICT. I WASN'T CERTAIN.
17 SO WHAT I DID WAS, I GOT OUT THE RULE, I BELIEVE RULE
18 1.7. THE RULES OF PROFESSIONAL CONDUCT, YOUR HONOR. AND
19 I REVIEWED THOSE RULES IN TERMS OF CONFLICTS OF INTEREST
20 AND WHEN I COULD GO FORWARD IN REPRESENTING SOMEBODY, AND
21 I COULD NOT. THE RULES SEEM TO INDICATE OR IN CONFERRING
22 WITH THE RULES THAT IN A SITUATION LIKE THIS, IT IS
23 SOMETIMES BEST TO CONSULT OTHER MEMBERS OF THE BAR TO GET
24 THEIR FEEDBACK. I IMMEDIATELY CONTACTED LEAD COUNSEL
25 MR. GRANT, AND DISCUSSED THE CONFLICT WITH HIM.

1 I AT THAT POINT, WAS LEANING TOWARD THE FACT THAT I
2 THINK IT'S MISCONDUCT AND WOULD NOT BE ABLE TO -- I MEAN
3 IN MY REPRESENTATION. MR. GRANT AGREED WITH ME. I THEN
4 CALLED JOHN DELGADO WHOM I SHARE OFFICE SPACE. HE
5 AGREED THAT THERE WAS OBVIOUSLY A CONFLICT. AND IN
6 TALKING WITH MR. NETTLES WHO I ALSO SHARE OFFICE SPACE,
7 HE AGREED. AND THEN OUT OF AN ABUNDANCE OF PRECAUTION,
8 YOUR HONOR, I CONTACTED PROFESSOR FREEMAN AT THE
9 UNIVERSITY OF SOUTH CAROLINA, SCHOOL OF LAW. HE REMINDED
10 OF THE UTMOST IMPORTANCE THAT LAWYERS FACE ON
11 REPRESENTATION. PROFESSOR FREEMAN, I KNOW PROFESSOR
12 FREEMAN. HE WAS VERY GENEROUS WITH HIS TIME. HE SAT AND
13 TALKED WITH ME. AND I ASKED HIM, HE SAID THERE IS NO
14 QUESTION IN HIS MIND THAT I NEEDED TO MOVE BEFORE THIS
15 COURT TO BE RELIEVED.

16 I APOLOGIZE TO THE COURT FOR THE DELAY. THIS WAS
17 SOMETHING THAT CAME TO MY ATTENTION. AND AS I SOON AS IT
18 CAME TO MY ATTENTION, MY THOUGHT WAS TO DO WHATEVER I
19 NEEDED TO DO TO BRING IT TO THE COURT'S ATTENTION. I
20 JUST, I DON'T THINK THIS IS THE TYPE OF CONFLICT THAT
21 MR. MAHDI WOULD EVEN WAIVE. AFTER REVIEWING THE RULE 1.7
22 OF THE ETHICAL RULES, I THINK IT IS SUCH A PROBLEM WITH
23 MY RELATIONSHIP WITH THOSE WITNESSES, IT IS TO THE DEGREE
24 THAT I WOULD NOT BE ABLE TO EFFECTIVELY CROSS EXAMINE
25 THOSE WITNESSES. AND OBVIOUSLY MR. MAHDI NEEDS

1 REPRESENTATION OF TWO CAPABLE LAWYERS. SO AT THIS POINT,
2 YOUR HONOR, I WOULD MOVE TO RELIEVED.

3 THE COURT: MR. GRANT.

4 MR. GRANT: YES, YOUR HONOR. YOUR HONOR, MS.
5 HUDGINS, DID INDEED CONSULT WITH ME. AND AFTER HEARING
6 EVERYTHING SHE SAID TODAY, IN INDULGING WITH WHAT SHE
7 TOLD ME BEFORE THE HEARING BEGAN, WE JOIN IN THE MOTION.

8 THE COURT: MR. MAHDI, IF YOU WOULD STAND, PLEASE.
9 IF YOU WOULD RAISE YOUR RAISE YOUR RIGHT HAND TO BE SWORN.

10 (THEREUPON, THE DEFENDANT IS SWORN.)

11 THE COURT: NOW YOU HAVE HEARD WHAT MS. HUDGINS AND
12 MR. GRANT REGARDING HER DESIRE TO BE RELIEVED AS YOUR
13 LAWYER BASED ON THE CONFLICT THAT SHE BELIEVES EXISTS. IS
14 THAT CORRECT?

15 THE DEFENDANT: YES.

16 THE COURT: AND WHAT IS YOUR POSITION CONCERNING
17 THAT?

18 THE DEFENDANT: I FEEL HER CLAIMS HAVE A LOT OF
19 MERIT, AND I THINK SHE SHOULD BE RELIEVED.

20 THE COURT: AND YOU AGREE THAT SHE SHOULD BE RELIEVED?

21 THE DEFENDANT: YES, SIR.

22 THE COURT: THANK YOU VERY MUCH. AND WHAT SAYS THE
23 STATE?

24 MR. PASCOE: WE CERTAINLY HAVE NO OBJECTION TO HER
25 BEING RELIEVED, YOUR HONOR.

1 THE COURT: BASED ON EVERYTHING THAT I HAVE HEARD I
2 AGREE THAT IT APPEARS THAT MS. HUDGINS WOULD NOT PROVIDE
3 MR. MAHDI THE REPRESENTATION THAT HE DESERVES TO RECEIVE,
4 THAT HE IS TO RECEIVE, BASED ON THE FACTS AND
5 CIRCUMSTANCES THAT SHE HAS OUTLINED. I THEREFORE GRANT
6 HER MOTION TO BE RELIEVED AS HIS COUNSEL. AND NOW
7 CONCERNING REPLACEMENT OF MS. HUDGINS, MR. GRANT.

8 MR. GRANT: YES, YOUR HONOR. YOUR HONOR, MAY IT
9 PLEASE THE COURT. YOUR HONOR, I WOULD MOVE THE COURT TO
10 APPOINT ATTORNEY GLEN WALTERS OF THE ORANGEBURG BAR TO
11 SERVE AS CO-COUNSEL IN THIS CASE WITH ME. MR. WALTERS IS
12 A LAWYER WITH A WEALTH OF TRIAL EXPERIENCE.
13 PARTICULARLY, IN THE CRIMINAL DEFENSE EXPERIENCE. IN
14 FACT, MR. WALTERS RECENTLY COMPLETED A CAPITAL MURDER OUT
15 OF BARNWELL COUNTY WITH THE PRESIDING JUDGE PERRY
16 BUCKNER. AND I THINK HE AND I MAKE A GOOD TEAM. AND HE
17 WOULD BRING A WEALTH OF EXPERIENCE TO THE TEAM. AND I
18 ASK THE COURT TO APPOINT HIM AS CO-COUNSEL IN THIS CASE.

19 THE COURT: MR. WALTERS.

20 MR. WALTERS: MAY IT PLEASE.

21 THE COURT: WALTERS OR WALKER?

22 MR. WALTERS: MR. WALTERS.

23 THE COURT: MR. WALTERS.

24 MR. WALTERS: MAY IT PLEASE THE COURT, I WILL BE
25 HONORED TO SERVE WITH MR. GRANT AS CO-COUNSEL. I HAVE

1 ALSO CONSULTED WITH MR. MAHDI. AND HE SAID HE IS OKAY
2 WITH ME SERVING AS CO-COUNSEL WITH REGARD TO THIS CASE.

3 THE COURT: ALL RIGHT. AND CONCERNING THE CODE
4 SECTION, I THINK 16-3-26, THE RULES REGARDING BEING DEATH
5 PENALTY QUALIFIED. MR. WALTERS, WHAT IS YOUR EXPERIENCE?

6 MR. WALTERS: MAY IT PLEASE THE COURT, YOUR HONOR,
7 I'VE PRACTICED LAW SINCE 1990. AND SINCE 1990, I HAVE
8 TRIED CRIMINAL CASES. THAT INCLUDES MISDEMEANORS AND
9 FELONIES.

10 THE COURT: AND WHAT DEATH PENALTY EXPERIENCE DO YOU
11 HAVE?

12 MR. WALTERS: THAT INCLUDES A PREVIOUS PENALTY CASE
13 THAT WAS TRIED IN BARNWELL COUNTY, STATE VS. ALLEN
14 WALKER, WITH PERRY BUCKNER.

15 THE COURT: THANK YOU, SIR.

16 MR. WALTERS: THANK YOU.

17 THE COURT: MR. MAHDI, IF YOU WILL STAND, AGAIN,
18 PLEASE. WHAT IS YOUR POSITION CONCERNING MR. GLEN
19 WALTERS BEING APPOINTED TO REPRESENT YOU ALONG WITH CARL
20 GRANT, WITH MR. GRANT BEING THE LEAD COUNSEL?

21 THE DEFENDANT: I HAVE NO OBJECTION.

22 THE COURT: THANK YOU, SIR. DO YOU BELIEVE HE SHOULD
23 BE APPOINTED?

24 THE DEFENDANT: YES.

25 THE COURT: THANK YOU. WHAT SAYS THE STATE?

1 MR. PASCOE: THE STATE TAKES NO POSITION, YOUR
2 HONOR. WE HAVE NO OBJECTION.

3 THE COURT: IN THE ORDER THIS FROM THE SUPREME COURT
4 ATTACHED IN RE: ATTORNEYS IN DEATH PENALTY CASES, WHICH
5 SET FORTH THE GUIDELINES FOR ATTORNEYS CERTIFIED TO
6 HANDLE THE DEATH PENALTY CASES. THE LEAD COUNSEL, THE
7 SECOND COUNSEL IT SAYS: THAT LEAD COUNSEL MUST HAVE AT
8 LEAST 5 YEARS EXPERIENCE, A LICENSED ATTORNEY, AND AT
9 LEAST 3 YEARS EXPERIENCE IN THE ACTUAL TRIAL OF FELONY
10 CASES. SHALL BE CERTIFIED AND DESIGNATED BY THE SUPREME
11 COURT. THE SECOND COUNSEL SHALL HAVE AT LEAST 3 YEARS
12 EXPERIENCE AS A LICENSED ATTORNEY. AND WILL NOT BE
13 REQUIRED TO BE FURTHER CERTIFIED TO BE ELIGIBLE FOR
14 APPOINTMENT.

15 I FIND THAT MR. GLEN WALTERS IS CERTIFIED TO SERVE
16 AS SECOND COUNSEL. AND THAT MR. MAHDI IS IN AGREEMENT
17 WITH HIS APPOINTMENT. I FIND THAT IT IS APPROPRIATE TO
18 BE APPOINTED. AND I APPOINT YOU AS SECOND COUNSEL IN
19 THIS CASE, MR WALTERS.

20 MR. WALTERS: THANK YOU, YOUR HONOR.

21 THE COURT: ANY OTHER MATTERS THAT THE COURT SHOULD
22 CONSIDER AT THIS TIME, MR. SOLICITOR?

23 MR. PASCOE: YOUR HONOR, IT IS MY UNDERSTANDING THE
24 DEFENSE MAY HAVE A MOTION WITH REGARDS TO THE MENTAL
25 EVALUATION.

1 THE COURT: YES, SIR. MR. GRANT.

2 MR. GRANT: THANK YOU, YOUR HONOR. MAY IT PLEASE
3 THE COURT. YOUR HONOR, AT THIS TIME WE WOULD MOVE FOR A
4 MENTAL EVALUATION OF MR. MAHDI. I AM SURE THEY
5 CONSIDERED THE GRAVITY OF PUNISHMENT SOUGHT BY THE STATE,
6 AND ALSO AFTER DISCUSSING VARIOUS ISSUES ABOUT THIS CASE
7 WITH MR. MAHDI, WE FEEL THAT A MENTAL EVALUATION SHOULD
8 BE HAD.

9 THE COURT: WHAT SAYS THE STATE?

10 MR. SORENSON: IF IT PLEASE THE COURT, YOUR HONOR.

11 THE COURT: YES.

12 MR. SORENSON: I GUESS THE ONLY THE ISSUE WE ASK
13 ABOUT IS ARE THEY MOVING TO EVALUATE FOR COMPETENCY,
14 CRIMINAL RESPONSIBILITY OR CAPACITY TO CONFORM?

15 MR. GRANT: OUR REQUEST IS BOTH, YOUR HONOR.
16 COMPETENCY AND CRIMINAL RESPONSIBILITY.

17 MR. SORENSON: I DON'T BELIEVE WE HAVE ANY OBJECTION
18 TO THAT.

19 THE COURT: BASED ON THE NATURE OF THE CHARGES AND
20 THE GRAVITY OF THE PUNISHMENT SOUGHT BY THE STATE; AS WELL
21 AS A MANNER IN WHICH THE COURT'S TYPICALLY PROCEED WITH
22 REGARD TO THESE KINDS OF MATTERS, I FIND THAT A COMPETENCY
23 WOULD BE APPROPRIATE TO ACCESS THE DEFENDANT'S COMPETENCY
24 TO STAND TRIAL AND HIS CRIMINAL RESPONSIBILITY AND
25 CAPACITY TO CONFORM HIS CONDUCT UNDER THE LAW. I AM GOING

1 TO THEREFORE GRANT THE DEFENSE'S MOTION FOR A COMPETENCY
2 EVALUATION.

3 MR. SORENSON: MAY IT PLEASE THE COURT, YOUR HONOR.

4 THE COURT: YES, SIR.

5 MR. SORENSON: IT'S MY UNDERSTANDING THERE ARE SOME
6 NEW FORMS THAT WE NEED TO USE FOR THAT.

7 THE COURT: ALL RIGHT.

8 MR. SORENSON: MR. GRANT, ARE YOU GOING TO NEED FOR
9 US TO PREPARE THAT STUFF?

10 MR. GRANT: YES. IF IT IS EXPEDITED BY USING YOUR
11 FORMS, I WILL LET YOU PROVIDE THE FORM.

12 THE COURT: IT IS NOW MANDATED THAT CERTAIN
13 PROCEDURES AND FORMS IN THE LIGHT OF COMPETENCY
14 EVALUATIONS, AND IF YOU WILL PREPARE THE FORMS AND
15 ASSURING THAT DEFENSE COUNSEL HAS BEEN PRESENTED WITH AND
16 TO THE COURT SO WE CAN SEE. ANY OTHER MATTERS? STATE OR
17 DEFENSE?

18 MR. PASCOE: YES, YOUR HONOR. AT THIS TIME, STATE
19 REQUESTS THAT WE HAVE A TRIAL DATE SCHEDULED FOR THIS
20 MATTER BY THE COURT.

21 THE COURT: STATE MOVES THAT THE COURT SET A TRIAL
22 DATE IN THIS MATTER. ANY COMMENT BY THE DEFENSE?

23 MR. GRANT: YES, SIR, YOUR HONOR. YOUR HONOR, IN
24 LIGHT OF THE FACT THAT MR. WALTERS JUST GOT APPOINTED
25 HERE A FEW MINUTES AGO, AND OF COURSE, MR. MAHDI IS

1 ENTITLED TO EFFECTIVE REPRESENTATION OF BOTH COUNSEL AND
2 EVERYONE IN THE CASE. WE WOULD MOVE THE COURT TO NOT SET
3 A TRIAL DATE BEFORE THE EXPIRATION OF A ONE YEAR PERIOD
4 FROM THE DATE OF TODAY. I THINK THAT THAT AMOUNT OF TIME
5 WILL GIVE MR. WALTERS AN ADEQUATE OPPORTUNITY TO GET AS
6 PREPARED AS NECESSARY FOR THIS CASE. AND APPARENTLY
7 THERE IS SOME RECENT AMERICAN BAR ASSOCIATION STANDARDS
8 FOR REPRESENTATION OF CAPITAL CASES, WHICH I HAVE NOT
9 READ THEM.

10 AND I HAVE BEEN ADVISED BY MS. HUDGINS THAT
11 INDICATES THAT IN A DEATH PENALTY CASE THAT COUNSEL
12 SHOULD HAVE A MINIMUM OF A ONE YEAR PERIOD OF TIME TO
13 PREPARE FOR TRIAL. SO CONSIDERING THAT INFORMATION, WE
14 MOVE THE COURT TO NOT SET A TRIAL DATE UNTIL THE
15 EXPIRATION OF AT LEAST A ONE YEAR PERIOD FROM TODAY'S
16 DATE.

17 THE COURT: WHAT SAYS THE STATE?

18 MR. PASCOE: YOUR HONOR, THE STATE'S POSITION IS THAT
19 IT WOULD UNREASONABLE TO ASK FOR A TRIAL DATE FROM EXACTLY
20 A YEAR FROM TODAY. IT IS MY UNDERSTANDING THAT MR. GRANT
21 WAS APPOINTED TO THIS CASE IN NOVEMBER OF LAST YEAR. SO I
22 THINK ANY TRIAL DATE FROM NOVEMBER OF 2005 ON, WOULD BE
23 MORE THAN REASONABLE IN THIS MATTER.

24 THE COURT: ANYTHING FURTHER ON THIS ISSUE? STATE OR
25 DEFENSE?

1 MR. GRANT: NO, YOUR HONOR, WE STAND ON OUR
2 POSITION.

3 THE COURT: THE COURT NOTES IN THIS CASE THAT THE
4 DEFENDANT WAS SERVED WITH A NOTICE OF THE STATE'S INTENT
5 TO SEEK THE DEATH PENALTY BY NOTICE FILED SEPTEMBER 2,
6 2004. THIS COURT MUST GRANT, WAS APPOINTED AND GRANTED,
7 GIVEN EXCLUSIVE JURISDICTION TO HEAR THIS CASE. LATER IN
8 THAT MONTH THE PUBLIC DEFENDER OF CALHOUN COUNTY WAS
9 APPOINTED INITIALLY TO REPRESENT MR. MAHDI. AND HE FILED
10 A MOTION TO BE RELIEVED AS COUNSEL. AND THE COURT
11 ENTERTAINED THAT MOTION AND GRANTED IT, APPOINTING
12 MR. GRANT TO REPRESENT THE DEFENDANT AS LEAD COUNSEL. AND
13 THAT ORDER BEING SIGNED IN NOVEMBER OF 1994 -- OF 2004.

14 AT WHICH TIME THAT ORDER WAS SIGNED DECEMBER 7TH
15 2004. AT WHICH TIME MS. CATHERINE HUDGINS WAS APPOINTED
16 AS CO-COUNSEL. AND MR. GRANT HAS BEEN SERVING AS LEAD
17 COUNSEL FOR A PERIOD OF TIME. NOW TODAY, WE RELIEVED
18 MS. HUDGINS AND APPOINTED MR. WALTERS TO -- AS CO-COUNSEL
19 AND SECOND COUNSEL.

20 AND I FIND THAT THE DEFENDANT CERTAINLY IS ENTITLED
21 TO EFFECTIVE REPRESENTATION BY COUNSEL AND GIVEN ADEQUATE
22 AMOUNT OF TIME TO PREPARE AND PROVIDE AN EFFECTIVE
23 DEFENSE. THE DEFENDANT AS WELL AS THE VICTIM IN THE
24 CASE, IS ENTITLED TO HAVE MATTERS ADDRESSED IN COURT IN A
25 REASONABLY EXPEDITIOUS PERIOD OF TIME. AS WELL, THAT THE

1 DEFENDANT HAS THE RIGHT TO A SPEEDY TRIAL. AND THE STATE
2 HAS THE RIGHT TO PROMPT ADJUDICATION OF THE MATTERS
3 WITHOUT IMPINGING ON THE DEFENDANTS RIGHTS TO A FAIR
4 TRIAL. AND I BELIEVE THAT GIVEN THE FACT THAT MR. GRANT
5 HAS BEEN WORKING ON THIS MATTER SINCE DECEMBER OF 2004,
6 COME JANUARY OF 2005, MORE THAN ONE YEAR HAS PAST.
7 JANUARY OF 2006, EXCUSE ME, MORE THAN ONE YEAR HAS
8 PASSED. THAT IN THE ABSENCE OF ANY SHOWING OF
9 UNPREPAREDNESS BY THE DEFENSE OR ABSENT ANY OTHER
10 CIRCUMSTANCE WHICH WOULD INDICATE TO THE COURT THAT THE
11 THE DEFENSE IS NOT READY TO PROCEED, I WILL NOT
12 ARBITRARILY SET DATES A YEAR IN ADVANCE OR THIS YEAR IN
13 ADVANCE. I BELIEVE THAT A TRIAL DATE OF JANUARY OF 2006,
14 SHOULD AFFORD ALL PARTIES AN OPPORTUNITY TO BE FULLY
15 PREPARED TO LITIGATE THIS MATTER. I AM GOING TO SET A
16 TRIAL DATE FOR JANUARY 23RD 2006.

17 AND IN THE EVENT THERE ARE PROBLEMS WITH BEING
18 PREPARED TO PROCEED BASED ON ADA STANDARDS OR OTHERWISE,
19 THAT THE MATTER SHOULD BE BROUGHT AGAIN TO THE COURT FOR
20 THE COURT TO REVISIT THIS ISSUE. THE COURT WILL SET A
21 TRAIL DATE FOR JANUARY 23, 2006, AND COURT ADMINISTRATION
22 WILL BE CONTACTED SO THERE WILL BE A 2-WEEK TERM OF COURT
23 IN CALHOUN COUNTY SO WE CAN DEAL WITH THIS CASE.

24 THE COURT: ANY OTHER MATTERS?

25 MR. PASCOE: YOUR HONOR, IT HAD COME TO MY ATTENTION

1 LAST MONTH, I RAN THIS BY ATTORNEY, CARL GRANT. I JUST
2 WANTED TO PUT IT ON THE RECORD; THAT YOUR HONOR MAY BE
3 DISTANTLY RELATED TO SOMEONE IN MY SUMMERVILLE OFFICE WHO
4 HANDLES JUVENILE CASES. HER NAME IS KIM LANG. I JUST
5 WANTED TO MAKE SURE, YOU KNOW, THAT THAT WAS ON THE
6 RECORD.

7 THE COURT: MR. GRANT.

8 MR. GRANT: YES, YOUR HONOR. YOUR HONOR, FIRST OF
9 ALL, LET ME ACKNOWLEDGE THAT THE SOLICITOR DID IN FACT
10 BRING THAT TO MY ATTENTION. AND, YOUR HONOR, IF I MAY
11 STATE FOR THE RECORD WHAT I UNDERSTAND THE SCENARIO IS.
12 IT IS MY UNDERSTANDING, JUDGE, AND YOUR HONOR MAY HAVE
13 MET A GENTLEMAN BY THE NAME LINWOOD LANG IN THE
14 ST. GEORGE AREA. I ADVISED ALL THIS TO MY CLIENT, MR.
15 MAHDI, IN THE PRESENCE MR. WALTERS. AND THE COURT FOUND
16 OUT THAT MR. LANG IS A HALF BROTHER OF HIS. AND MR. LANG
17 HAS A SON NAMED LINWOOD LANG, JR. AND I KNOW ALL THESE
18 PEOPLE. HE IS A FUNERAL HOME DIRECTOR IN ST. GEORGE,
19 SOUTH CAROLINA. AND I KNOW HIS SON WHO WORKS IN THE
20 FUNERAL HOME WITH HIS FATHER, LINWOOD LANG, JR. AND I
21 KNOW HIS SON'S WIFE, KIMBERLY. KIMBERLY APPARENTLY WORKS
22 IN THE SUMMERVILLE OFFICE OF THE SOLICITOR'S OFFICE FOR
23 MR. PASCOE.

24 WE HAVE EXPLAINED TO OUR CLIENT THE RELATIONSHIP.
25 AND THAT YOUR HONOR DOESN'T EVEN REALLY KNOW KIM LANG.

1 IN FACT IN CHAMBERS WHEN WE TALKED ABOUT IT, THE COURT
2 DIDN'T KNOW WHO SHE WAS. AND WE HAD TO EXPLAIN TO THE
3 COURT HOW THERE PROBABLY WOULD BE A RELATIONSHIP.

4 WE HAD EXPLAINED ALL THAT TO MR. MAHDI, YOUR HONOR.
5 AND WE HAD ADVISED HIM THAT IT WOULD BE OUR POSITION TO
6 NOT MAKE ANY CHALLENGE TO THE COURT ON ANY BASIS OF A
7 CONFLICT. BECAUSE NUMBER 1, WE DON'T FEEL THERE IS A
8 CONFLICT. HOWEVER, WE WOULD LIKE THE COURT TO RESTATE
9 FOR RECORD IF THE COURT FEELS ANY REASON TO RECUSE
10 HIMSELF FROM THIS CASE. WE MADE NO MOTION TO RECUSE. WE
11 HAVE NO OBJECTIONS TO THE COURT SERVING AS THE TRIAL
12 JUDGE IN THIS CASE, BUT I WOULD LIKE THE COURT TO MAKE A
13 DIRECT INQUIRY OF MR. MAHDI HIMSELF.

14 THE COURT: MR. MAHDI, WHAT DO YOU SAY?

15 THE DEFENDANT: I FEEL THERE IS NO CONFLICT, SIR.

16 THE COURT: THANK YOU, MR. MAHDI. LET ME SAY THAT I
17 HAVE A HALF BROTHER WHOSE NAME IS LINWOOD LANG. AND
18 MR. GRANT YOU MIGHT HAVE COUCHED IT IN TERMS OF MAY HAVE A
19 DISTANT RELATIVE. A BROTHER IS A BROTHER. HE IS A PERSON
20 I AM QUITE FOND OF HAVING COME TO KNOW HIM BETTER WITHIN
21 THE PAST -- I MET HIM YEARS AGO. AND HAVING GOTTEN TO
22 KNOW HIM QUITE A BIT SINCE THEN, AS WELL AS HIS CHILDREN,
23 INVOLVING LINWOOD JR. AND I AM AWARE OF THE KIN. BUT
24 KIM LANG I DID NOT KNOW HER EMPLOYMENT WITH MR. -- THE
25 SOLICITOR'S OFFICE, THE FIRST CIRCUIT SOLICITOR'S OFFICE.

1 I DON'T PROCLAIM TO DENY ANY RELATIVES WHETHER THEY ARE
2 HALF BROTHERS OR HALF BROTHER'S CHILDREN'S WIVES OR
3 OTHERWISE. BUT I HAVE NO ASSOCIATION WITH THE FIRST
4 CIRCUIT SOLICITOR'S OFFICE. AND I DID NOT, CANNOT
5 CONCEIVE OF ANY BASIS TO RECUSE MYSELF BASED ON THAT AS IT
6 RELATES TO THIS CASE.

7 ANY MATTERS THAT, IF THE DEFENSE SHOULD HAVE ANY
8 CONCERNS INVOLVING ANY OF THAT, THAT SHOULD BE ADDRESSED
9 TO THE THE COURT THROUGH A MOTION IF NEED BE. BUT I DO
10 NOT SEE IT AS A BASIS FOR RECUSAL OR THAT IT WOULD IN ANY
11 WAY EFFECT THE COURT'S ABILITY TO SIT AS A FAIR AND
12 IMPARTIAL ARBITER OF THIS MATTER. ALL RIGHT. ANYTHING
13 ELSE?

14 MR. PASCOE: NOTHING FROM THE STATE, THANK YOU.

15 THE COURT: REGARDING ANY, MR. GRANT?

16 MR. GRANT: YES, YOUR HONOR. ONE OTHER MATTER FROM
17 THE DEFENSE. THE SOLICITOR'S OFFICE BROUGHT TO OUR
18 ATTENTION IN CHAMBERS THAT PURSUANT TO THE ORDER SIGNED
19 BY JUDGE WILLIAMS PURSUANT TO A SCHMERBER HEARING, THAT
20 OUR CLIENT IS REQUIRED TO PROVIDE BLOOD AND SAMPLES OF
21 HAIR AND OTHER MATTERS THAT ARE PURSUANT TO THE ORDER. I
22 HAVE NOW SPOKEN WITH MR. MAHDI AND MR. WALTERS, AND HE
23 WILL INDEED COOPERATE. THERE WON'T BE ANY NEED TO TRY TO
24 FORCE HIM.

25 MR. PASCOE: OKAY.

1 THE COURT: ARE THERE ANY OTHER DISCOVERY ISSUES THAT
2 NEED TO BE ADDRESSED BY THE COURT?

3 MR. PASCOE: NOTHING FROM THE STATE, YOUR HONOR.

4 MR. WALTERS: NONE FROM THE DEFENSE AT THIS TIME,
5 YOUR HONOR.

6 THE COURT: WELL HOPEFULLY WE HAVE IT SET FOR TRIAL.
7 AND THE COURT WOULD REQUEST THAT ANY FILING IN THIS CASE
8 BE COPIED DIRECTLY TO THE COURT. SO THAT I WILL BE AWARE
9 OF ANY MATTERS THAT ARE FILED IN THIS CASE IMMEDIATELY.
10 MR. CLERK, YOU WILL NEED TO ISSUE AN ORDER REGARDING THE
11 DRAWING OF A CERTAIN NUMBER OF JURORS FOR THIS TERM OF
12 COURT.

13 WE NEED TO LOOK INTO THE ISSUE REGARDING WHEN JURY
14 SELECTION -- WHEN JURORS NEED TO COME IN FOR ANY
15 PREQUALIFICATIONS AND SO FORTH. IF THERE ARE ANY
16 DISCOVERY ISSUES THAT ANY COUNSEL BELIEVES SHOULD BE
17 ADDRESSED, I INVITE YOU TO CONTACT ME EXPEDITIOUSLY SO
18 THAT THIS MATTER CAN PROCEED AS BEING SCHEDULED. AND AS
19 TO ANY OTHER UNFORESEEN CIRCUMSTANCES REGARDING BEING
20 READY TO TRY THE CASE AS WE'VE JUST DISCUSSED THIS TODAY.
21 I LOOK FORWARD TO WORKING WITH EVERYONE CONCERNING THIS
22 MATTER. ANYTHING FURTHER, MR. GRANT?

23 MR. GRANT: NOTHING FURTHER FROM THE DEFENSE, YOUR
24 HONOR.

25 THE COURT: THE STATE?

1 MR. PASCOE: NO, YOUR HONOR.

2 THE COURT: THANKS TO ALL AND COURT WILL BE
3 ADJOURNED.

4 (THEREUPON, COURT ADJOURNS.)

5 THE COURT: BACK ON THE RECORD REGARDING THE MAHDI
6 MATTER, MR. GRANT.

7 MR. GRANT: YES, YOUR HONOR. YOUR HONOR, AT THIS
8 TIME THE DEFENDANT, OUR ATTEMPT, IMMEDIATELY CONSIDERED
9 OUR POSITION IN REGARDS TO OUR REQUEST THAT OUR CLIENT --
10 A MOTION THAT OUR CLIENT BE EVALUATED FOR CRIMINAL
11 RESPONSIBILITY AND COMPETENCY TO STAND TRIAL. AFTER
12 TALKING WITH CO-COUNSEL IN THIS MATTER, WE'VE DECIDED OUR
13 BEST STRATEGY IS TO HAVE MR. MAHDI ONLY EVALUATED ON
14 COMPETENCY TO STAND TRIAL. AND THAT IS OUR MOTION TO THE
15 COURT; THAT YOU AMEND YOUR EARLIER RULING, AND DIRECT
16 THAT MR. MAHDI IS ONLY EVALUATED ON COMPETENCY TO STAND
17 TRIAL. AND THIS IS ESPECIALLY PERTINENT, YOUR HONOR, IN
18 LIGHT OF THE FACT THAT WE HAVE NO INTENTIONS OF ASSERTING
19 AN INSANITY DEFENSE IN THIS CASE. AT LEAST AT THIS
20 POINT. WE HAVE NO INFORMATION THAT AN INSANITY DEFENSE
21 WILL BE USED IN THIS CASE.

22 THE COURT: WHAT SAYS THE STATE?

23 MR. SORENSON: MAY IT PLEASE THE COURT, YOUR HONOR.
24 I GUESS OUR CONCERN IF I REMEMBER CORRECTLY, THAT THE
25 BASIS THAT MR. GRANT RAISED EARLIER TODAY FOR ASKING AT

1 THAT TIME FOR BOTH COMPETENCY AND CRIMINAL
2 RESPONSIBILITY -- EVALUATION AND CRIMINAL RESPONSIBILITY
3 WAS BASICALLY CITING THE NATURE OF THE CHARGES, AND THE
4 SERIOUS NATURE OF THE CHARGES, AND THE PENALTY THAT IS
5 BEING SOUGHT. ON THAT REGARD WHEN WE DEAL WITH THE
6 NATURE OF THE CHARGES, I THINK WE ARE TALKING ABOUT HIS
7 CRIMINAL RESPONSIBILITY. IT IS SOMETHING WE THINK IF YOU
8 ARE GOING TO DO ONE, THAT THEY BOTH NEED TO BE DONE. I
9 AM NOT SURE WHAT BASIS HE PUTS FORWARD JUST TO HAVE HIM
10 EVALUATED JUST FOR COMPETENCY.

11 AND IF THERE IS SOME ISSUE AS TO COMPETENCY AT THIS
12 POINT AND TIME, AND HE STARTS RAISING THAT THERE IS SOME
13 ISSUE DEALING WITH THE NATURE OF THE CHARGES, THAT THAT
14 WOULD THEN SUGGEST THAT WE ARE DEALING MORE WITH HIS
15 CRIMINAL RESPONSIBILITY OR HIS CAPACITY TO CONFORM AS
16 OPPOSED TO NECESSARILY HIS COMPETENCE.

17 THE COURT: MR. GRANT.

18 MR. GRANT: YES, YOUR HONOR. IT IS OUR POSITION THAT
19 IT IS OFTEN THAT DEFENDANTS ARE EVALUATED SIMPLY ON THE
20 ISSUE OF COMPETENCY IN CAPITAL CASES. AND NUMBER 2, IF
21 THE COURT IS INCLINED TO FEEL THAT IF YOU ARE GOING TO
22 ORDER THAT HE IS GOING TO GET EVALUATED FOR MENTAL
23 CAPACITY TO STAND TRIAL, THEN HE MUST ALSO BE EVALUATED ON
24 CRIMINAL RESPONSIBILITY. AND ONE MUST GO WITH THE OTHER.
25 THEN AT THIS TIME WE WOULD WITHDRAW OUR MOTION FOR A

1 PSYCHOLOGICAL EVALUATION AT ALL. WE ONLY WANT HIM TO BE
2 EVALUATED FOR COMPETENCY. AND IF WE CAN'T GET THAT, THEN
3 WE WITHDRAW OUR MOTION.

4 THE COURT: WHAT SAYS THE STATE?

5 MR. SORENSON: YOUR HONOR, WE'LL LEAVE THAT
6 OBVIOUSLY IN YOUR HONOR'S DISCRETION. IF WE COULD JUST
7 ASK FOR LEAVE TO POSSIBLY IF WE COULD COME UP WITH ANY
8 RESEARCH OR SOMETHING TO SUPPORT POSSIBLY US MOVING TO
9 HAVE HIM EVALUATED. THEN IF YOUR HONOR SEES GRANTING
10 MR. GRANT'S REQUEST WE COULD THEN BY WAY OF MOTION
11 OBVIOUSLY TO MR. GRANT -- YOUR HONOR, IF WE WISH TO SEEK
12 TO HAVE HIM EVALUATED IN THAT REGARD. THAT IS SOMETHING
13 I WOULD LIKE TIME TO AT LEAST DO SOME RESEARCH ON.

14 THE COURT: ANYTHING FURTHER, MR. GRANT?

15 MR. GRANT: NO, YOUR HONOR. WE STAND ON OUR MOTION
16 AS AMENDED.

17 THE COURT: FIRST, THE COURT DOESN'T ISSUE ADVICE OR
18 OPINIONS AS TO MORE CONTINGENT ORDERS. WHATEVER THE ORDER
19 OF THE COURT WILL BE THE ORDER OF THE COURT. AND IT WOULD
20 NOT BE SUBJECT TO THE DEFENDANT BEING ABLE TO CHANGE THE
21 DEFENSE'S MIND BASED ON WHAT THE COURT ORDERS. THE COURT
22 DOESN'T ISSUE ORDERS IN THAT FASHION. I WILL TAKE THE
23 ENTIRE MATTER UNDER ADVISEMENT AND ALLOW COUNSEL TEN DAYS
24 TO SUBMIT ANY BRIEFS ON THE ISSUE THAT YOU WOULD LIKE TO
25 SUBMIT AS TO WHETHER THE - AS TO THE APPROPRIATENESS OF

1 THE LIMITING THE COURT'S MENTAL EVALUATION ORDER TO
2 COMPETENCY. NOT TO INCLUDE CRIMINAL RESPONSIBILITY.

3 I WILL SAY HOWEVER THAT THE PURPOSE GENERALLY FOR
4 EVALUATION WOULD BE FIRST ON THE ISSUE OF WHETHER THE
5 DEFENDANT IS COMPETENT TO STAND TRIAL. AND WHETHER OR
6 NOT THE DEFENDANT CAN CONFORM HIS CONDUCT TO THE
7 REQUIREMENTS OF LAW. AND THAT IF THE ISSUE IS TO BE
8 RAISED DURING THE COURSE OF THE TRIAL AS RELATES TO GUILT
9 OR INNOCENCE REGARDING THIS DEFENSE OR CRIMINAL
10 RESPONSIBILITY OR ANY OTHER DEFENSE INCLUDING DEFENSE OF
11 INSANITY, THE BURDEN IS ON THE DEFENSE TO SHOW THOSE
12 THINGS.

13 THE DEFENSE IS THE MOVING PARTY. AND IN MAKING THE
14 INITIAL MOTION THE DEFENDANT DID NOT CITE ANY BASIS,
15 BASED ON THE FACTS IN QUESTIONING MR. MAHDI'S COMPETENCE.
16 THE DEFENSE BASED IT ON THE NATURE OF THE CHARGE PRETTY
17 MUCH. AND THE COURT GRANTED IT FOR THE MOST PART BASED
18 ON THE NATURE OF THE CHARGE AND NOT BASED ON ANY BIZARRE
19 CONDUCT OR ANYTHING THAT WOULD INDICATE ANY MENTAL
20 PROBLEMS OF -- BY MR. MAHDI. SO CONSIDERING THAT FIRST
21 OF ALL, THE BURDEN IS ON THE DEFENSE TO SHOW ANY
22 INSANITY OR ANY INCOMPETENCE. AND THEN SECONDLY BASED ON
23 THE MOTION OF THE DEFENDANT NOT CITING ANY OTHER THAN THE
24 GRAVITY OF THE DEFENSE FOR THE MOST PART, I AM NOT
25 INCLINED TO ISSUE AN ORDER THAT WOULD JUST BE SO BROAD

1 THAT IT AMOUNTS TO A DISCOVERY ORDER BY THE STATE. THE
2 TYPE OF ORDER THAT FOSTERS DISCOVERY BY THE STATE MORE
3 THAN ANYTHING ELSE. BUT I WILL LEAVE ALL THAT JUST FOR
4 DEFENSE. I WILL TAKE THE MATTER UNDER ADVISEMENT AND SEE
5 WHAT'S WHAT.

6 ALL RIGHT.

7 MR. GRANT: THANK YOU, YOUR HONOR.

8 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
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CERTIFICATE

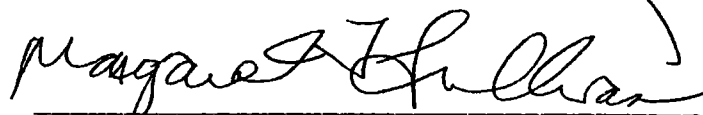
STATE OF SOUTH CAROLINA)

COUNTY OF CALHOUN)

I, MARGARET T. SULLIVAN, OFFICIAL COURT REPORTER FOR
THE THIRD JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA,
DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD
AND EVIDENCE INTRODUCED IN THE ABOVE CAPTIONED CASE,
RELATIVE TO APPEAL, IN GENERAL SESSIONS COURT ON JULY 1,
2005 IN CALHOUN COUNTY, ST. MATHEWS, SOUTH CAROLINA.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

4-13-07
DATE


MARGARET T. SULLIVAN

COURT REPORTER

MY COMMISSION EXPIRES OCTOBER 3, 2011

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COPY

STATE OF SOUTH CAROLINA)
)

COUNTY OF WILLIAMSBURG)
)
)

THE STATE OF SOUTH CAROLINA,
PLAINTIFFS

VS.)
)

GENERAL SESSIONS COURT

MIKAL D. MAHDI,
DEFENDANT

) JULY 1, 2005
) ST. MATHEWS, S.C.

B E F O R E :

THE HONORABLE CLIFTON NEWMAN, JUDGE.

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

MR. DAVID M. PASCOE, JR.
SOLICITOR FOR THE STATE

MR. DONALD N. SORENSON,
ASSISTANT SOLICITOR FOR THE STATE

MR. CARL B. GRANT,
ATTORNEY FOR DEFENDANT

MR. GLENN WALTERS,
ATTORNEY FOR DEFENDANT

MARGARET T. SULLIVAN,
COURT REPORTER

1 (THEREUPON, THE FOLLOWING HEARING TAKES PLACE JUNE
2 21, 2006.)

3 THE COURT: THIS IS THE STATE VERSUS MIKAL DEAN
4 MAHDI. STATUS CONFERENCE. IF THE ATTORNEYS PRESENT WILL
5 IDENTIFY THEMSELVES ONCE AGAIN FOR THE RECORD.

6 MR. PASCOE: YES, SIR. MY NAME IS SOLICITOR DAVID
7 PASCOE WITH THE STATE, YOUR HONOR. I'M HERE WITH DEPUTY
8 SOLICITOR DON SORENSEN AND ASSISTANT SOLICITOR CAROL
9 FRICK.

10 MR. WALTERS: MAY IT PLEASE THE COURT, GLEN WALTERS
11 FOR THE DEFENSE, YOUR HONOR.

12 THE COURT: I NOTICE THAT MR. GRANT IS NOT HERE.
13 THAT IS THE FIRST ISSUE THAT WE NEED TO ADDRESS,
14 MR. WALTERS.

15 MR. WALTERS: MAY IT PLEASE THE COURT, YOUR HONOR,
16 MR. GRANT INFORMED ME HE WOULD BE UNABLE TO CONTINUE THE
17 REPRESENTATION OF MR. MAHDI. WE HAVE FILED A FORMAL
18 MOTION FOR THE COURT TO RELIEVE ATTORNEY GRANT FROM
19 REPRESENTING MR. MAHDI.

20 THE COURT: AND, MR. WALTERS, TELL ME AGAIN, ARE YOU
21 QUALIFIED AS A FIRST CHAIR OR A SECOND CHAIR?

22 MR. WALTERS: SECOND CHAIR, YOUR HONOR, NOT FIRST
23 CHAIR. YOUR HONOR, IF I COULD WITH THE COURT'S
24 PERMISSION, ONE ATTORNEY THAT WAS ASSOCIATED WITH
25 MR. GRANT'S OFFICE IS JOSHUA KOGER. MR. KOGER IS AN

1 EXPERIENCED PUBLIC DEFENDER. IN FACT HAS PRACTICED FOR A
2 NUMBER OF YEARS OVER IN BAMBERG, AIKEN, BARNWELL AREA.

3 OF COURSE, HE IS WELL QUALIFIED TO HANDLE A CASE OF
4 THIS NATURE. AND CERTAINLY WE WOULD RECOMMEND HIM. WE
5 HAVE TALKED TO HIM. OF COURSE THAT WOULD HAVE TO BE THE
6 COURT'S DECISION. SO WE WOULD SUBMIT THAT FOR YOUR
7 HONOR TO CONSIDER.

8 THE COURT: MR. MAHDI, IF YOU WOULD STAND PLEASE.
9 ARE YOU FAMILIAR WITH THE PHYSICAL CONDITION OF THE --
10 IN GENERAL OF MR. CARL GRANT?

11 THE DEFENDANT: YES, I AM.

12 THE COURT: AND WHAT DO YOU THINK ABOUT THIS ENTIRE
13 MATTER?

14 THE DEFENDANT: I FEEL IT WOULD BE IN MY BEST
15 INTEREST TO RECEIVE ANOTHER ATTORNEY.

16 THE COURT: MR. SOLICITOR.

17 MR. PASCOE: YES, SIR. YES, SIR, I CONCUR. I HAVE
18 SPOKEN WITH MR. GRANT'S WIFE. SHE ACTUALLY CALLED MY
19 OFFICE TWICE THIS WEEK TO LET ME KNOW THAT MR. GRANT WAS
20 GOING TO ASK TO BE RELIEVED BECAUSE OF HIS HEALTH
21 CONDITION. IT COULD BE MANY MONTHS OR EVEN YEARS BEFORE
22 HE WILL BE ABLE TO COME INTO THE COURTROOM. THAT'S MY
23 UNDERSTANDING. SO I WOULD CONCUR IN GETTING ANOTHER
24 ATTORNEY APPOINTED AS SOON AS POSSIBLE, SO WE COULD
25 HAVE -- SET THIS TRIAL DATE AS SOON AS POSSIBLE. THE GOOD

1 NEWS AS FAR AS GETTING THE CASE READY FOR TRIAL IS THAT
2 BOTH AT THIS TIME, THE STATE AND THE DEFENSE, WERE READY
3 TO GO TO TRIAL IN AUGUST OF THIS YEAR. IN TWO MONTHS. SO
4 THE INVESTIGATIONS OF BOTH SIDES ARE DONE. THE WITNESSES
5 ARE LINED UP FOR BOTH SIDES. WE THEREFORE WOULD ASK THAT
6 AN ATTORNEY BE APPOINTED AS SOON AS POSSIBLE. WE HAVE NO
7 OBJECTION TO THE ATTORNEY THAT MR. WALTERS INQUIRED ABOUT
8 FOR THE RECORD JUST NOW. AND WOULD LIKE TO SET A TRIAL
9 DATE AS SOON AS POSSIBLE. THIS CASE, YOUR HONOR, IS NOW
10 GOING ON 2 YEARS OLD. I HAVE GOT A VICTIM'S FATHER WHO IS
11 83-YEARS-OLD. HE WANTS SOME CLOSURE. BOTH SIDES HAVE
12 BEEN READY TO GO TO TRIAL. AND LET ME JUST SAY THIS, THIS
13 CASE TAKES TOP PRIORITY IN MY OFFICE. AND WHATEVER TRIAL
14 DATE YOUR HONOR SETS, WHETHER IT'S IN AUGUST, SEPTEMBER,
15 OCTOBER, THE STATE OF SOUTH CAROLINA WILL BE READY.

16 THE COURT: MR. WALTERS, CONCERNING THE CURRENT
17 STATUS OF THE CASE AND THE WITHOUT DISCLOSING ANY
18 PRIVILEGED MATTERS BETWEEN YOU AND YOUR CLIENT, AS FAR AS
19 ANY OUTSTANDING DISCOVERY ISSUES, INVESTIGATIVE ISSUES,
20 WHAT IS THE CONCURRENT STATUTE OF THOSE FROM THE
21 DEFENSE'S READINESS FOR TRIAL?

22 MR. WALTERS: YOUR HONOR, WE ARE PROGRESSING
23 FORWARD. ATTORNEY GRANT HAD ALL THE PARTIES INVOLVED,
24 ALL THE EXPERTS, ALL, AND MYSELF, WAS SCHEDULED TO
25 CONTINUOUS MEETINGS TO UPDATE AND TO MAKE SURE THAT WE

1 RETRIEVED THE INFORMATION AND INVESTIGATE CAREFULLY ALL
2 THE FACTS. OF COURSE THAT IS STILL ONGOING AT THIS TIME.
3 AND UNDER HIS DIRECTION BEING AN EX-MILITARY MAN, THAT'S
4 ESSENTIALLY HOW THE CASE IS PROCEEDING FORWARD. SO WE
5 ARE ON TRACK AND PROGRESSING FORWARD TO RESOLVING ALL THE
6 ISSUES AND MAKE SURE WE ARE PREPARED TO TRY THIS CASE.

7 THE COURT: IN REGARD TO YOUR CONVERSATION WITH
8 MR. KOGER.

9 MR. WALTERS: YES.

10 THE COURT: DID HE INDICATE TO YOU A TIME LINE,
11 AMOUNT OF TIME THAT HE THINKS IT WOULD TAKE FOR HIM TO BE
12 IN A POSITION TO TRY THIS CASE?

13 MR. WALTERS: MR. KOGER INDICATED THAT HE COULD BE
14 READY FOR AUGUST 28TH. IN NO WAY AM I TRYING TO BELITTLE
15 THIS PROCESS. AND MY CLIENT INDICATED THAT HE'S HAD
16 SUFFICIENT TIME. WHAT I EXPLAINED TO HIM WAS THAT NO. 1,
17 THIS IS A MURDER TRIAL. AND MOST OF THE DEFENSE LAWYERS
18 THAT I ASSOCIATE WITH, WE'VE ALL TRIED MURDER CASES
19 BEFORE. AND IT IS JUST A SECOND PHASE WITH REGARDS TO A
20 SENTENCING PHRASE, IF THE CASE SHOULD REACH THAT POINT.
21 AND THAT INVOLVES THE GATHERING OF EXPERTS. AND OF
22 COURSE PROCEEDING TO THE NATURE OF THE SENTENCING PHASE.

23 SO HE IS WELL PREPARED TO ADDRESS THAT. AND HE
24 CERTAINLY HAS TRIED MANY MURDER CASES. AND AS FAR AS THE
25 SENTENCING PHRASE IS CONCERNED, IF WE SHOULD REACH THAT

1 POINT, WE ARE WELL PREPARED TO ADDRESS THAT ISSUE ALSO.
2 AND THAT'S NOT TO BELITTLE THE PROCESS IN ANY WAY. BUT I
3 GUESS THAT'S HOW DEFENSE LAWYERS CONCEPTUALIZE IN DEATH
4 PENALTY CASES. THERE IS A PHASE OF GUILT OR INNOCENCE.
5 AND OF COURSE IF THERE IS A VERDICT THAT IS UNFAVORABLE,
6 THEN OF COURSE WE ARE PREPARED FOR THE SENTENCING PHASE.

7 THE COURT: REGARDING THE ISSUE OF DISCOVERY, HAS THE
8 STATE PROVIDED, AND I AM GOING TO ASK YOU A SERIES OF
9 QUESTIONS SO THAT I CAN ACCESS THE STATUS OF THIS CASE
10 FROM THE COURT'S PERSPECTIVE. HAS THE STATE PROVIDED A
11 WITNESS LIST TO YOU?

12 MR. WALTERS: YOUR HONOR, I DON'T BELIEVE THEY HAVE
13 PROVIDED A WITNESS LIST, BUT I'VE STATED FOR THE RECORD
14 THE SOLICITOR HAS BEEN VERY COOPERATIVE. WHATEVER HE HAS
15 GOT IN HIS HANDS THAT HE IS SUPPOSED TO PROVIDE, HE HAS
16 DONE SO. WE HAVE NOT HAD ANY CONFRONTATIONS OR
17 DISAGREEMENTS WITH REGARDS TO EVIDENCE INFORMATION BEING
18 PROVIDED. THEY HAVE PROVIDED EVERYTHING THEY DO HAVE THAT
19 IS REQUIRED UNDER RULE 5 AND SERVED IT. IF YOUR HONOR
20 ORDERS THAT WE EXCHANGE A WITNESS LIST, WE WILL BE GLAD TO
21 DO SO. BUT WE HAVE NEVER HAD A PROBLEM WITH THE
22 SOLICITOR'S OFFICE. THEY HAVE COMPLIED WITH RULE 5. AND
23 ANY OF THE OTHER RULES REQUIRED, THEY HAVE IN THIS
24 PARTICULAR CASE.

25 THE COURT: HAVE YOU RECEIVED A LIST OF PHYSICAL

1 EVIDENCE THAT THE STATE INTENDS TO USE?

2 MR. WALTERS: WE HAVE RECEIVED INFORMATION UNDER THE
3 RULE 5. THE INFORMATION THEY INTEND TO USE, YOUR HONOR.

4 THE COURT: HAVE YOU RECEIVED THE ANY TESTING OF
5 GUNS---

6 MR. WALTERS: YOUR HONOR, WE HAVE---

7 THE COURT: ---OR SCIENTIFIC AND OTHERWISE?

8 MR. WALTERS: WE RECEIVED ALL THE REPORTS. AND THEY
9 HAVE BEEN PROVIDED. AND OF COURSE WHEN WE MET BEFORE,
10 THERE WAS SOME QUESTION ABOUT WHETHER WE GOT CERTAIN
11 DOCUMENTS. I THINK THEY'VE EVEN SENT US COPIES OF THE
12 SAME DOCUMENTS. SO WE HAVE RECEIVED THEM.

13 THE COURT: HAVE YOU RECEIVED ALL THE EXCULPATORY OR
14 MITIGATING EVIDENCE WHICH THE STATE IS, IF IT EXISTS, THAT
15 THE STATE IS REQUIRED TO EXPOSE TO YOU?

16 MR. WALTERS: YES, SIR, YOUR HONOR. AND OF COURSE IF
17 THERE IS ANYTHING THAT HAS NOT BEEN PROVIDED, I DON'T
18 BELIEVE THE SOLICITOR WOULD WITHHOLD IT FROM ME. AND
19 CERTAINLY WILL PROVIDE IT.

20 THE COURT: ARE THERE ANY VIDEOTAPES THAT WILL BE
21 PRODUCED DURING THE TRIAL?

22 MR. SORENSEN: YES, SIR. WE HAVE PROVIDED COPIES OF
23 ALL THIS. THEY HAVE COPIES OF PHOTOGRAPHS, VIDEOTAPES,
24 AUDIO TAPES.

25 THE COURT: MR. MAHDI, ARE YOU SATISFIED WITH THE

1 PERFORMANCE OF COUNSEL? HAVE YOU MET WITH MR. WALTERS?

2 THE DEFENDANT: YES, SIR.

3 THE COURT: AND MR. GRANT?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: AND YOU UNDERSTAND THE CONDITION OF
6 MR. GRANT AND ALSO THE PROSPECT OF ANOTHER LEAD COUNSEL
7 BEING INTRODUCED INTO THIS TRIAL. AND, OF COURSE, I HAVE
8 NOT DECIDED ON THE ISSUE OF RELIEVING MR. GRANT AT THIS
9 POINT BECAUSE I NEED TO RECEIVE MORE SPECIFIC INFORMATION
10 CONCERNING HIS CONDITION AND PROGNOSIS. AND WHETHER IT'S
11 SHORT TERM OR LONG TERM. I WON'T DO THAT ON THE OPEN
12 RECORD IN COURT AT THIS TIME. BUT YOU ARE SATISFIED THAT
13 YOU ARE SUFFICIENTLY AWARE OF HIS PHYSICAL CONDITION?

14 THE DEFENDANT: YES, SIR, I AM.

15 THE COURT: DOES IT APPEAR TO YOU THAT THERE IS A
16 SUFFICIENT AMOUNT OF TIME BETWEEN JUNE 21ST AND THE END OF
17 AUGUST TO HAVE THIS CASE READY?

18 THE DEFENDANT: FROM WHAT I HAVE LEARNED FROM MY
19 LAWYER.

20 THE COURT: SIR?

21 THE DEFENDANT: FROM WHAT I HAVE LEARNED FROM MY
22 LAWYER IT SEEMS TO BE A SUFFICIENT AMOUNT OF TIME.

23 MR. WALTERS: EXCUSE ME, YOUR HONOR. I ALSO WANT TO
24 STATE ON THE RECORD THAT MY CLIENT WITH YOUR PERMISSION,
25 I BELIEVE ULTIMATELY WITH AN ORDER OF THE COURT'S

1 PROTECTION, WE WILL BE ALLOWED 30 DAYS OFF BEFORE THE
2 TRIAL SO THAT WE WOULD HAVE THAT TIME ALSO TO WORK ON THE
3 CASE. AND HE MAY NOT BE AWARE. I DID EXPLAIN THAT TO
4 HIM. BUT THERE IS USUALLY, CUSTOMARILY, IN THE COURSE OF
5 THE TRIAL, 30 DAYS THAT ARE GIVEN OFF BEFORE THE TRIAL TO
6 COMPLETE WHATEVER WORK HAS TO BE DONE.

7 THE COURT: REGARDING THE COMPETENCY TESTING THAT
8 THE COURT ORDERED, HAS THAT BEEN COMPLETED?

9 MR. WALTERS: I BELIEVE SO, YOUR HONOR.

10 THE COURT: HAS THE STATE RECEIVED REPORTS
11 CONCERNING THAT?

12 MR. SORENSEN: YOUR HONOR, YES, SIR.

13 THE COURT: AND THE DEFENSE HAS THEM AS WELL?

14 MR. WALTERS: YES, SIR, YOUR HONOR. ALL OF THEM.

15 THE COURT: MR. WALTERS, ARE THERE ANY OUTSTANDING
16 MOTIONS THAT THE COURT NEEDS TO CONSIDER TODAY?

17 MR. WALTERS: NO, SIR, YOUR HONOR. I BELIEVE THE
18 ONLY MOTION WE HAVE BEFORE THE COURT IS THE RECENT
19 INFORMATION WE FOUND OUT ABOUT IS MR. GRANT. AND OF
20 COURSE WE MADE THAT MOTION BEFORE THE COURT. AND AS FAR
21 AS ANY DISCOVERY INFORMATION, THE SOLICITOR HAS PROVIDED
22 ALL THE INFORMATION. IF ANYTHING IS MISSING CERTAINLY I
23 CAN CONTACT SOLICITOR PASCOE AND THEY CAN PROVIDE IT TO
24 ME. I DON'T ANTICIPATE ANY PROBLEMS.

25 THE COURT: THE COURT NOTES THAT THERE IS PENDING

1 THE NOTICE OF MOTION AND MOTION FOR A CHANGE OF VENUE OR
2 IN THE ALTERNATIVE---

3 MR. WALTERS: YES, SIR.

4 THE COURT: ---A CHANGE OF VENIRE. AND THE COURT
5 WILL ADDRESS THAT AT THE APPROPRIATE TIME. AND ALSO THE
6 FILE CONTAINS THE COURT'S ORDER FOR A COMPETENCY. AND
7 THE COURT WILL HAVE TO CONDUCT A HEARING AND RULE ON
8 THAT. THE FILE ALSO CONTAINS A MOTION FOR BRADY AND
9 OTHER FAVORABLE MATERIAL FILED BY THE DEFENDANT. AND YOU
10 STATED THAT THAT -- THAT YOU ARE SATISFIED THE STATE HAS
11 SUFFICIENTLY COMPLIED WITH THAT MOTION.

12 MR. WALTERS: YES, SIR, YOUR HONOR.

13 THE COURT: REGARDING THE ISSUE OF THE MOTION TO
14 RELIEVE MR. GRANT. IS THERE ANYTHING ELSE YOU WANT TO
15 PUT ON THE RECORD?

16 MR. WALTERS: SIMPLY, YOUR HONOR, IT'S AN UNFORTUNATE
17 EVENT. NOW UNDER THE CIRCUMSTANCES HE'S MADE A DECISION
18 TO REMOVE HIMSELF FROM THE CASE. HE FEELS IT WOULD BE IN
19 THE BEST INTEREST OF HIS CLIENT.

20 THE COURT: IS THERE ANYBODY ELSE PRESENT HERE IN THE
21 COURTROOM, WHO CAN GIVE THE COURT ANY ADDITIONAL
22 INFORMATION CONCERNING MR. GRANT THAT MIGHT NEED TO BE
23 TAKEN UP IN CAMERA, IN CHAMBERS?

24 MR. WALTERS: YES, YOUR HONOR. WE CAN CERTAINLY
25 PROVIDE INFORMATION IN CAMERA.

1 THE COURT: ALL RIGHT. THANK YOU, YOU BE MAY BE
2 SEATED. MR. SOLICITOR.

3 MR. PASCOE: YES, SIR.

4 THE COURT: ANYTHING ELSE THE STATE WOULD LIKE TO
5 ADDRESS AT THIS TIME?

6 MR. PASCOE: NOTHING AT THIS TIME, OTHER THAN WE CAN
7 BE READY ON AUGUST THE 28TH. WE ARE VERY FORTUNATE. WE
8 HAVE TWO VERY COMPETENT LAWYERS FOR MR. MAHDI, MR. GRANT
9 AND MR. WALTERS, WHO WORKED EXTREMELY HARD IN PREPARING
10 THIS CASE FOR TRIAL. AND THEY ARE IN THE OFFICE ON A
11 DAILY, CERTAINLY A WEEKLY BASIS, GOING OVER THE FILE
12 LOOKING AT THE WITNESSES. SO I AM NOT SURPRISED THAT
13 THEY ARE READY TO GO FORWARD WITH THE TRIAL IF POSSIBLY
14 ON AUGUST 28. THE ONE THING I DO WANT TO DO, IS PROVIDE
15 SOME OTHER THINGS TO THE DEFENSE MAYBE BY THE END OF THIS
16 WEEK; SUCH AS, I WOULD LIKE TO GIVE THEM A COPY OF THE
17 COMPLETE WITNESS LIST WE INTEND ON RELYING ON BOTH IN OUR
18 CASE IN CHIEF IN TRIAL AND IN THE PENALTY PHASE. I AM
19 GOING TO GET THAT TO MR. WALTERS BY THE CLOSE OF
20 BUSINESS FRIDAY.

21 THE COURT: I WILL THEN MAKE THAT AN ORDER OF THE
22 COURT THAT THAT BE PROVIDED TO HIM BY THE END OF THIS---

23 MR. PASCOE: THANK YOU.

24 THE COURT: ---BUSINESS ON FRIDAY. AND REGARDING
25 ANY INDIVIDUALS WHO ARE PRESENT WHO CAN PROVIDE THE COURT

1 ANY ADDITIONAL INFORMATION IN CHAMBERS CONCERNING
2 MR. GRANT'S CONDITION, WHO IS THAT?

3 MR. WALTERS: MS. HODGES IS PRESENT. SHE IS WITH
4 MR. GRANT'S OFFICE.

5 THE COURT: MS. HODGES, WHAT IS YOUR FULL NAME?

6 MS. HODGE: JANAY HODGES.

7 THE COURT: WE WILL TAKE A RECESS AND GO TO CHAMBERS
8 TO DISCUSS THAT.

9 MR. PASCOE: DO YOU WANT THE ATTORNEYS PRESENT?

10 THE COURT: FIRST I WILL MEET WITH MS. HODGES AND
11 THEN SEE WHETHER OR NOT I NEED ANYTHING FURTHER FROM
12 ANYONE.

13 MR. PASCOE: YES, SIR.

14 (THEREUPON, THE COURT TAKES A SHORT RECESS AND
15 CONVERSES IN CHAMBERS WITH MS. HODGES.)

16 THE COURT: I HAD AN OPPORTUNITY TO RECEIVE SOME
17 INFORMATION CONCERNING MR. GRANT'S PHYSICAL CONDITION. I
18 AM NOT CONVINCED AT THIS POINT THAT GIVEN THE AMOUNT OF
19 TIME AND EFFORT EXTENDED BY MR. GRANT IN THIS CASE, THAT
20 IT WOULD BE IN THE BEST INTEREST OF ALL PARTIES INVOLVED,
21 NOT NECESSARILY ALL, THE PARTIES INVOLVED, IT WOULD BE IN
22 THE JUSTICE TO GRANT AN ORAL MOTION TO SUBSTITUTE COUNSEL
23 AT THIS TIME. THERE IS NO WRITTEN MOTION TO SUBSTITUTE
24 COUNSEL. THERE IS NO MOTION, WRITTEN MOTION, TO WITHDRAW
25 AS COUNSEL. AND I AM NOT GOING TO ACT ON THAT AT THIS

1 TIME.

2 MR. WALTERS: THANK YOU, YOUR HONOR.

3 THE COURT: I CERTAINLY REALIZE THAT TIME IS OF THE
4 ESSENCE REGARDING ANY EFFORT TO SUBSTITUTE ANOTHER
5 LAWYER. I WOULD COMMENT HOWEVER THAT THIS CASE IS NOT
6 SIMPLY ANOTHER MURDER CASE. THAT IT IS DIFFERENT. WHERE
7 THE DEATH PENALTY IS SOUGHT. IT IS THE TYPE OF CASE
8 WHERE THE ACTIONS OF EVERYONE INVOLVED IN THIS CASE WILL
9 BE SCRUTINIZED BY MANY COURTS, MANY TRIBUNALS DEPENDING
10 ON THE RESULTS. AND WHEREAS EVERYONE MIGHT BE ON ONE
11 COURT AT THIS MOMENT AND TIME THAT QUICKLY CHANGES. SO I
12 AM GOING TO ACT IN A DELIBERATE MANNER WITH REGARD TO
13 EVERY ISSUE IN THIS CASE. PARTICULARLY THE ISSUE OF
14 REPRESENTATION OF LEAD COUNSEL. ARE THERE ANY OTHER
15 MATTERS THAT NEED TO BE ADDRESSED NOW?

16 MR. WALTERS: NO, SIR, YOUR HONOR.

17 MR. PASCOE: I BEG THE COURT'S INDULGENCE. JUST FOR
18 CLARIFICATION, YOUR HONOR, AS OF RIGHT NOW THE DATE IS
19 STILL SET FOR AUGUST 28TH?

20 THE COURT: RIGHT NOW THE DATE IS STILL SET. AND I,
21 AS OF RIGHT NOW MR. GRANT IS STILL COUNSEL. IF I, MY
22 OPTIONS ARE EITHER TO HAVE MR. GRANT REMAIN AS COUNSEL
23 AND GIVE HIM TIME TO MEND. AND THEN HAVE THE CASE
24 HEARD. OR TO SUBSTITUTE NEW COUNSEL, EVEN SUBSTITUTING
25 NEW COUNSEL. AND MAKE A DETERMINATION AS TO WHETHER OR

1 NOT 6 WEEKS OR SO IS A SUFFICIENT AMOUNT OF TIME FOR
2 COUNSEL TO BE SUBSTITUTED IN THE PROCEEDING IN A CASE OF
3 THIS MAGNITUDE.

4 MR.. PASCOE: YES, SIR.

5 THE COURT: ALL RIGHT. WE WILL BE IN RECESS.

6 ---END OF REQUESTED TRANSCRIPT OF RECORD---

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CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF CALHOUN

I, MARGARET T. SULLIVAN, OFFICIAL COURT REPORTER FOR
THE THIRD JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA,
DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD
AND EVIDENCE INTRODUCED IN THE ABOVE CAPTIONED CASE,
RELATIVE TO APPEAL, IN GENERAL SESSIONS COURT ON JUNE 21,
2006 IN CALHOUN COUNTY, ST. MATHEWS, SOUTH CAROLINA.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

4.13.07
DATE

Margaret T. Sullivan
COURT REPORTER
MY COMMISSION EXPIRES OCTOBER 3, 2011

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STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT

CASE NO. 04-GS-09-242,
04-GS-09-243,
04-GS-09-244

STATE OF SOUTH CAROLINA)

)

)

MOTIONS HEARING
TRANSCRIPT OF RECORD

)

versus

)

DATE:

MIKAL D. MAHDI,

)

AUGUST 30, 2006

)

DEFENDANT

BEFORE:

HONORABLE CLIFTON NEWMAN, PRESIDING JUDGE

APPEARANCES:

DAVID PASCOE, ESQUIRE
SOLICITOR
DON SORRENSON, ESQUIRE
ASSISTANT SOLICITOR

FOR THE STATE

GLENN WALTERS, ESQUIRE
JOSHUA KOGER, ESQUIRE
ATTORNEYS AT LAW

FOR THE DEFENDANT

HARRY A. WALKER (MRS.)
COURT REPORTER, FIRST JUDICIAL CIRCUIT
POST OFFICE BOX 127
ROWESVILLE, SOUTH CAROLINA 29133

1 DATE:

2 AUGUST 30, 2006

3 THE COURT: ALRIGHT, COUNSELOR, THE
4 STATE OR THE DEFENSE.

5 MR. WALTERS: GOOD MORNING, YOUR
6 HONOR.

7 THE COURT: GOOD MORNING.

8 MR. WALTERS: MAY IT PLEASE THE
9 COURT.

10 THE COURT: YES, SIR.

11 MR. WALTERS: YOUR HONOR, THERE ARE
12 SEVERAL MOTIONS THAT WE HAVE FILED WITH THE COURT IN
13 REGARDS TO THE MAHDI CASE. I BELIEVE IT'S A TOTAL OF
14 ABOUT FORTY-THREE MOTIONS. I BELIEVE WE PROVIDED THE
15 STATE COPIES OF THOSE MOTIONS, THEY'VE BEEN FILED WITH
16 THE COURT, AND I BELIEVE THEY'RE A PART OF THE RECORD
17 HERE. WITH YOUR HONOR'S PERMISSION, I'LL BEGIN WITH THE
18 FIRST MOTION.

19 THE COURT: ALRIGHT. ARE THERE
20 PARTICULAR MOTIONS THE STATE OPPOSES, OR WOULD YOU LIKE
21 TO TALK ABOUT THEM ONE BY ONE?

22 SOLICITOR SORRENSON: YOUR HONOR, IT
23 MAY EASIER TO GO THROUGH THEM JUST ONE BY ONE, EVEN
24 THOUGH THE VAST MAJORITY OF THEM ARE EITHER, EITHER
25 MOTIONS THAT WE HAVE NO OPPOSITION TO, OR IN SOME CASES

1 MOTIONS THAT WE REALLY, THEY'RE NOT DIRECTING US TO DO
2 ANYTHING, SO, THEY'RE MOTIONS THAT WE JUST TAKE ANY
3 OPINION OF THAT WE DON'T REALLY HAVE ANY SAY SO IN.

4 THE COURT: ALRIGHT, VERY GOOD. MR.
5 WALTERS.

6 MR. WALTERS: MAY IT PLEASE THE
7 COURT, YOUR HONOR.

8 THE COURT: YES, SIR.

9 MR. WALTERS: AS MR. SORRENSON
10 STATED, I BELIEVE THERE ARE MANY MOTIONS THEY WILL AGREE
11 TO, AND SOME MOTIONS ARE DIRECTED TOWARD THE COURT.

12 THE FIRST MOTION THAT WE HAVE IS
13 WITH REGARDS TO WRITTEN STATEMENTS AND PRODUCING THOSE
14 STATEMENTS. IN THIS PARTICULAR CASE WE'VE BEEN INFORMED
15 THAT THE RULE FIVE MATERIAL THAT WE'VE COVERED, IT DOES
16 NOT REVEAL THAT THERE WERE ANY STATEMENTS GIVEN BY MR.
17 MAHDI AS FAR AS WRITTEN STATEMENTS WITH REGARDS TO THIS
18 CASE, AND I THINK THE, THE STATE HAS BEEN FORWARD WITH
19 ALL THE INFORMATION THEY'VE PROVIDED UNDER RULE FIVE.

20 THE COURT: MR. SORRENSON.

21 SOLICITOR SORRENSON: THAT WOULD BE
22 CORRECT, YOUR HONOR, I'M NOT SURE THAT'S WHAT THAT FIRST
23 MOTION DEALS WITH, BUT I GUESS I'LL ADDRESS THAT -

24 MR. WALTERS: WE'LL ADDRESS IT IF
25 THE OCCASION ARISES, BUT -

1 SOLICITOR SORRENSON: WELL, THIS IS
2 THE ONLY WRITTEN STATEMENTS OF THE WITNESSES, ---

3 MR. WALTERS: RIGHT.

4 SOLICITOR SORRENSON: --- AND US
5 MAKING MENTION OF THOSE STATEMENTS IN FRONT OF THE JURY.

6 MR. WALTERS: RIGHT.

7 SOLICITOR SORRENSON: BUT AS TO MR.
8 MAHDI, YOUR HONOR, THERE IS NOT, THERE IS NO WRITTEN
9 STATEMENT. THEY ATTEMPTED TO INTERVIEW HIM AND HE ENDED
10 UP INVOKING HIS RIGHT TO A LAWYER, SO THERE'S NOT ANY
11 WRITTEN STATEMENT FROM MR. MAHDI.

12 MR. WALTERS: AND IN ADDITION TO
13 THAT, THE MOTION ADDRESSES, AND ESPECIALLY WITH OPENING,
14 THERE'S ANOTHER MOTION THAT ADDRESSES IT FURTHER WITH
15 REGARDS TO ANTICIPATING EXACTLY WHAT WILL BE STATED, AND
16 IN THIS PARTICULAR CASE I BELIEVE THAT HE HAS A FIFTH
17 AMENDMENT RIGHT TO REMAIN QUIET, AND NOT SAY ANYTHING.
18 AND OF COURSE, WE DON'T ANTICIPATE WHAT THE STATE IS
19 GOING TO PUT FORTH, AND WE CERTAINLY WANT TO INVOKE THAT
20 RIGHT AT THIS TIME. IT SIMPLY GOES ON TO STATE THAT
21 THESE STATEMENTS ARE ADMITTED, THEY'RE NOT PROBATIVE,
22 AND SIMPLY IMPROPER STATEMENTS FOR A PROSECUTOR TO MAKE
23 IN FRONT OF A JURY. CERTAINLY, IF THERE IS INFORMATION
24 THAT'S GOING TO BE USED TO PROSECUTE SOMEONE OR CROSS-
25 EXAMINE SOMEONE, WE WANT THAT INFORMATION.

1 COURT REPORTER: ARE THESE MOTIONS,
2 DO THEY NEED TO BE MARKED AS AN EXHIBIT BY YOU OR
3 ANYONE?

4 MR. WALTERS: I DON'T BELIEVE IT'S
5 ANYTHING THAT NEEDS TO BE MARKED.

6 THE COURT: JUST A MOMENT. ALRIGHT,
7 EACH ONE OF THESE MOTIONS HAVE -- EACH HAS BEEN FILED
8 WITH THE COURT. THE ONE, THE FIRST MOTION IS LABELED AS
9 MOTION NUMBER ONE. THEY ARE PART OF THE COURT'S RECORD
10 IN THE CLERK'S FILE, SO I DO NOT BELIEVE THAT YOU'LL
11 NEED TO MARK THEM AS ANY PARTICULAR EXHIBIT.

12 ALRIGHT, AS TO MOTION NUMBER ONE,
13 MR. SORRENSON.

14 SOLICITOR SORRENSON: YOUR HONOR, AS
15 I INDICATED, I DON'T THINK THIS MOTION HAS ANYTHING TO
16 DO WITH A LOT OF WHAT MR. WALTERS HAS JUST BROUGHT UP.
17 I'VE PUT ON THE RECORD THAT THERE'S NO STATEMENT, NO
18 WRITTEN STATEMENT GIVEN BY MR. MAHDI, AND NO WRITTEN
19 STATEMENT THE STATE WOULD BE SEEKING TO GET INTO DURING
20 THE GUILT PHASE OF HIS TRIAL. AS TO WHAT MOTION
21 ADDRESSES -- I MEAN, OBVIOUSLY, AT SOME POINT IN TIME
22 THERE MAY COME UP A TIME WHERE WE SEEK TO CROSS-EXAMINE
23 OR TO, TO EVEN DURING DIRECT EXAMINATION, A WITNESS MAY
24 REFER TO A STATEMENT THEY GAVE, AND I MEAN, AS SOON AS
25 THERE'S SOME OBJECTION TO THAT IT CAN BE BROUGHT UP AT

1 THAT POINT IN TIME, BUT -

2 MR. WALTERS: AND ALL WE'RE ASKING
3 IS THAT THEY PROVIDE ANY STATEMENT THAT'S GOING TO BE
4 USED IN CROSS-EXAMINATION, I BELIEVE WE HAVE -

5 SOLICITOR SORRENSON: WE HAVE
6 PROVIDED EVERY WRITTEN STATEMENT FROM ANY WITNESS THAT
7 WE HAVE, NOT ONLY IN OUR POSSESSION OR THAT WE HAVE
8 KNOWLEDGE OF OUT THERE. THAT'S DONE BEEN PROVIDED TO
9 MR. WALTERS AND THE DEFENSE.

10 THE COURT: ALRIGHT, CERTAINLY, THE
11 STATE IS REQUIRED TO COMPLY WITH RULE FIVE CONCERNING
12 ANY DISCOVERY REGARDING ANY CROSS-EXAMINATION OF A
13 WITNESS. THE COURT, TO THE EXTENT THAT THIS MOTION
14 SEEKS TO HAVE THE COURT GRANT A MOTION IN LIMINE
15 RESTRICTING THE STATE'S CROSS-EXAMINATION, THAT MOTION
16 IS DENIED. ANY AND ALL OBJECTIONS REGARDING THE MANNER
17 AND MODE OF CROSS-EXAMINATION SHOULD BE RAISED AT THE
18 TIME WHEN THE CROSS-EXAMINATION IS DONE.

19 MR. WALTERS: THANK YOU, YOUR HONOR.

20 THE COURT: ALRIGHT.

21 MR. WALTERS: YOUR HONOR, IN REGARDS
22 TO MOTION NUMBER TWO, IT'S A MOTION TO LIMIT THE TIME OF
23 TRIAL TO REGULAR COURT HOURS. AND IT ADDRESSES TWO
24 ISSUES: ONE, WE WANT TO PREVENT A FINDING OF
25 INEFFECTIVE ASSISTANCE OF COUNSEL, IF DEFENSE COUNSEL IS

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1 REQUIRED TO WORK EXTENSIVE HOURS; AND TWO, WE THINK IT
2 WOULD SUBSTANTIALLY PREJUDICE OUR CLIENT'S CASE BY
3 REQUIRING THE JURY TO STAY LATE HOURS WITH REGARDS TO
4 THE TESTIMONY. THE WITNESSES LIST THAT'S BEEN PROVIDED
5 IS EXTENSIVE, I BELIEVE IT'S OVER THIRTY WITNESSES.
6 CERTAINLY, WE DON'T WANT THE JURY TO BE SWAYED IN ANY
7 MANNER BY THE FACT THEY'VE GOT TO SIT HERE FOR UNLIMITED
8 HOURS, AND WE WOULD ASK THAT THE COURT LIMIT THE TIME
9 THAT WE'RE IN THIS ROOM AND TRYING THIS CASE IN FRONT OF
10 A JURY TO SUSTAINABLE HOURS THAT ARE ADEQUATE FOR THE
11 JURY, AND TO TRY THE CASE, BUT WE CERTAINLY DON'T WANT
12 LONG HOURS WHERE THE JURY MAY FORM AN OPINION OR MAY
13 BECOME A BIT ALSO ANXIOUS TOWARD THE DEFENDANT BECAUSE
14 OF EXTENDED HOURS.

15 THE COURT: MR. SORRENSEN.

16 SOLICITOR SORRENSEN: YOUR HONOR,
17 THIS WOULD BE, AS I INDICATED BEFORE, ONE OF THOSE
18 MOTIONS THAT WE WOULD JUST LEAVE UP TO THE COURT TO RULE
19 ON.

20 THE COURT: WELL, THE ROLE OF THE
21 COURT IS TO CONDUCT THE TRIAL AND TO AFFORD THE
22 DEFENDANT THE RIGHT TO A FAIR TRIAL, AND TO PROTECT THE
23 DEFENDANT'S CONSTITUTIONAL RIGHTS IN THAT REGARD.
24 REGARDING COURT HOURS, THE COURT WILL SCHEDULE HOURS AS,
25 AND CONDUCT THE TRIAL DURING THE HOURS THAT, THAT

1 APPEARS TO BE REASONABLE TO THE COURT UNDER THE
 2 CIRCUMSTANCES THAT EXIST DURING THE CONDUCT OF THE
 3 TRIAL. I CERTAINLY DO NOT ANTICIPATE EARLY MORNING OR
 4 LATE NIGHT HOURS DURING THE TRIAL. WHETHER OR NOT THERE
 5 MIGHT NEED TO BE A SATURDAY OR SUNDAY SESSION OF COURT
 6 WOULD DEPEND UPON THE FACTS AND CIRCUMSTANCES THAT MIGHT
 7 PRESENT THEMSELVES TO THE COURT, AND THOSE ISSUES WILL
 8 BE ADDRESSED AS NEEDED.

9 MR. WALTERS: THANK YOU, YOUR HONOR.

10 THE COURT: ALRIGHT.

11 MR. WALTERS: NOW IN REGARDS TO
 12 MOTION NUMBER THREE, I BELIEVE THE COURT HAS STATED, AND
 13 CERTAINLY THE SOLICITOR'S OFFICE, AND WE FILED THIS JUST
 14 TO PROTECT OUR CLIENT. THEY HAVE COMPLIED WITH THE RULE
 15 FIVE REQUIREMENT PRODUCING THIS INFORMATION, AND
 16 CERTAINLY, WHATEVER PHOTOS THEY INTEND TO INTRODUCE
 17 WE'LL RAISE AN OBJECTION AT THAT TIME IF WE FEEL IT
 18 APPROPRIATE.

19 THE COURT: MR. SORRENSEN.

20 SOLICITOR SORRENSEN: YOUR HONOR, AS
 21 TO NUMBER THREE, AS MR. WALTERS HAS KINDLY ALLUDED TO,
 22 I WAS UNDER THE IMPRESSION THAT THE AUTOPSY REPORT HAD
 23 BEEN PROVIDED IN PRIOR DISCOVERY THAT WOULD HAVE BEEN
 24 SENT TO MR. GRANT AND MR. WALTERS. OUT OF AN ABUNDANCE
 25 OF CAUTION I WENT AHEAD AND MADE ANOTHER COPY, ACTUALLY

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1 TWO COPIES, OF BOTH THE AUTOPSY REPORT AND THE
2 PHOTOGRAPHS, THEY'RE ON A COMPACT DISC. AS I SAID, I
3 WAS NINETY-NINE PER CENT SURE THAT STUFF HAD BEEN
4 PROVIDED IN THE PAST.

5 MR. WALTERS: MAY IT PLEASE THE
6 COURT.

7 THE COURT: YES, SIR.

8 MR. WALTERS: YOUR HONOR, WITH
9 REGARDS TO MOTION NUMBER FOUR, OF COURSE, WE'VE RETAINED
10 A JURY EXPERT, AND AS SOON AS THAT LIST IS AVAILABLE
11 WE'D CERTAINLY LIKE TO GO THROUGH IT AND CAREFULLY
12 CONDUCT OUR ANALYSIS, BECAUSE WE DO HAVE A PENDING
13 MOTION FOR A CHANGE OF VENUE ON THAT.

14 THE COURT: ALRIGHT, MR. SORRENSON.

15 SOLICITOR SORRENSON: I BELIEVE THAT
16 -- WE OBVIOUSLY WOULD LIKE A COPY OF IT AS SOON AS IT IS
17 PREPARED ALSO, BUT I GUESS THAT WOULD BE BETTER
18 ADDRESSED, I GUESS, TO MR. HASTY AS TO THE TIME FRAME ON
19 THAT.

20 THE COURT: ALRIGHT. THIS MOTION IS
21 ADDRESSED AS MUCH TO THE COURT AS IT IS TO THE STATE, OR
22 THE SOLICITOR, AND THE ORDER OF THE COURT IS THAT THE
23 DEFENSE BE PROVIDED A COPY OF A JURY LIST AS SOON AS IT
24 HAS BEEN DRAWN AND COMPILED.

25 MR. WALTERS: THANK YOU, YOUR HONOR.

1 MAY IT PLEASE THE COURT. WITH REGARDS TO MOTION NUMBER
2 FIVE, WHAT THAT MOTION ALLUDES TO IS, IS THAT IN OPENING
3 STATEMENTS, OF COURSE, THE DEFENDANT HAS A FIFTH
4 AMENDMENT RIGHT TO REMAIN SILENT. AND, CERTAINLY, WE'D
5 LIKE TO PROHIBIT THE PROSECUTION FROM ANTICIPATING ANY
6 DEFENSE BY ARGUING THE DEFENSE BEFORE THE JURY. I KNOW
7 SOLICITOR PASCOE AND SOLICITOR SORRENSON, THEY'RE
8 OFFICERS OF THE COURT AND THEY CERTAINLY WOULDN'T DO
9 THAT, BUT TO PROTECT OUR CLIENT'S RIGHTS WE CERTAINLY
10 FILED THAT MOTION WITH THE COURT TO PROHIBIT THE
11 PROSECUTION FROM ALLUDING TO ANY TYPE OF ANTICIPATED
12 DEFENSE, WHICH WOULD BE A VIOLATION OF HIS FIFTH
13 AMENDMENT RIGHT.

14 THE COURT: MR. SORRENSON.

15 SOLICITOR SORRENSON: I MEAN, I
16 DON'T ANTICIPATE ANYTHING OF THAT NATURE COMING UP, YOUR
17 HONOR, AT THIS STAGE, SOME THREE MONTHS OUT, BUT ONCE
18 AGAIN, I THINK IT'S JUST SOMETHING THAT IF MR. WALTERS
19 OP MR. KOGER FEEL SOMETHING THAT WE ARE DOING IS
20 IMPROPER WHEN WE'RE DOING OUR OPENING STATEMENT OR
21 CLOSING ARGUMENT, AN OBJECTION NEEDS TO BE MADE AT THAT
22 POINT IN TIME. SOLICITOR PASCOE AND I BOTH KNOW THE
23 RULES, AND WHAT'S PERMISSIBLE AND WHAT'S NOT DURING
24 OPENING AND CLOSING STATEMENTS.

25 THE COURT: WELL, THE ADVOCACY

1 PROCESS WOULD CERTAINLY REQUIRE OR SUGGEST THAT THE
2 STATE WOULD ANTICIPATE ANY DEFENSE THAT MIGHT BE OFFERED
3 DURING THE COURSE OF A TRIAL, AND I THINK THE SOLICITOR
4 WOULD BE, WOULD NOT BE DOING A JOB PROPERLY IF, TO SOME
5 EXTENT, THE SOLICITOR DID NOT ANTICIPATE WHAT DEFENSE
6 MIGHT BE OFFERED. THAT HAVING BEEN SAID, HOWEVER, THE,
7 THAT DOES NOT NECESSARILY MEAN THAT THE -- OR DOES NOT
8 MEAN THAT THE SOLICITOR CAN ARGUE WHAT THAT DEFENSE IS
9 IN OPENING STATEMENT, PARTICULARLY IF IT WOULD INFRINGE
10 UPON THE DEFENDANT'S FIFTH AMENDMENT RIGHTS TO THE
11 CONSTITUTION OR DUE PROCESS RIGHTS AS IT RELATES TO A
12 FAIR TRIAL. CERTAINLY, THE STATE CANNOT INTRODUCE THE
13 DEFENDANT'S CHARACTER INTO EVIDENCE. SO, TO THE EXTENT
14 THAT THE MOTION CALLS OR SEEKS THE COURT TO ORDER THAT
15 THE STATE NOT INTRODUCE EVIDENCE THAT VIOLATES THE
16 DEFENDANT'S FIFTH AMENDMENT RIGHT TO REMAIN SILENT, AND
17 HIS DUE PROCESS RIGHTS TO A FAIR AND IMPARTIAL TRIAL, AS
18 WELL AS ENGAGE IN ANY EFFORT TO SHIFT THE BURDEN OF
19 PROOF IN THE CASE TO THE DEFENDANT, THAT MOTION IS
20 GRANTED.

21 ANY OTHER MOTIONS REGARDING ANY
22 ARGUMENTS, OPENING ARGUMENTS, THE COURT WILL DEAL WITH
23 THAT AS IT BECOMES NECESSARY FOR THE COURT TO RULE ON
24 THOSE MATTERS.

25 MR. WALTERS: YOUR HONOR, I DON'T

12

1 BELIEVE THAT MOTION SIX IS APPLICABLE AT THIS TIME.
2 CERTAINLY, WHEN PANELS ARE BROUGHT FORWARD AND WE ARGUE
3 ON PEOPLE THAT ARE CONSIDERED QUALIFIED, THEN WE CAN
4 ADDRESS THAT ISSUE AT THAT TIME.

5 THE COURT: ALRIGHT.

6 MR. WALTERS: WITH REGARDS TO MOTION
7 NUMBER SEVEN, I BELIEVE THE COURT HAS ADDRESSED THAT
8 EARLIER, AND THE SOLICITOR'S OFFICE HAS COMPLIED. THAT
9 AGAIN GOES BACK TO RULE FIVE, AND CERTAINLY THEY HAVE
10 BEEN FORTHCOMING WITH ALL THE INFORMATION. I THINK
11 THERE'S ONE MORE PACKET OF INFORMATION THAT'S SUPPOSED
12 TO BE GIVEN TO US AND THAT'S SLED'S FINAL REPORT, AND I
13 THINK THEY'RE GOING TO GIVE THAT TO US TODAY.

14 THE COURT: ALRIGHT. MR. SORRENSEN.

15 SOLICITOR SORRENSEN: THAT WILL BE
16 CORRECT. AND I GUESS, WHILE WE'RE ON THAT, YOUR HONOR,
17 I WOULD -- WE HAD HANDED TO US, I GUESS IT WAS LATE LAST
18 WEEK A -- SLED TYPICALLY DOES A KIND OF A SUMMARY, A
19 FINAL REPORT. IT'S BASICALLY JUST A SUMMARY OF ALL THE
20 STUFF THAT'S ALREADY BEEN PROVIDED TO THE DEFENSE. AND
21 I AM PROVIDING AT THIS POINT IN TIME COPIES OF THAT. IT
22 DOES REFERENCE A BUNCH OF ATTACHMENTS. THE ATTACHMENTS
23 ARE ALL ITEMS THAT THEY DO HAVE. THE ONLY THING I SAW
24 ON THAT THAT I BELIEVE IS ACTUALLY THE EVIDENCE OUT AT
25 SLED, SO I THINK THEY'VE VIEWED IT, BUT MAY NOT ACTUALLY

13

1 HAVE A COPY OF IT, IS A COMPOSITE THAT WAS PREPARED, AND
2 I DID MAKE COPIES OF THAT, I BELIEVE IT'S EXHIBIT NUMBER
3 EIGHTEEN REFERENCED IN THE REPORT. BUT AS TO,
4 SPECIFICALLY AS TO THE MOTION NUMBER SEVEN THAT'S
5 DEALING WITH ANALYSES AND REPORTS DONE BY STATE LAW
6 ENFORCEMENT DIVISION, THEY HAVE BEEN PROVIDED ALL THE
7 REPORTS THAT HAVE BEEN CONDUCTED BY ANY OF THE FORENSIC
8 UNITS OUT AT THE STATE LAW ENFORCEMENT DIVISION.

9 MR. WALTERS: MAY IT PLEASE THE
10 COURT.

11 THE COURT: YES, SIR.

12 MR. WALTERS: YOUR HONOR, I'LL
13 CONTINUE WITH MOTION NUMBER NINE. THIS IS A MOTION FOR
14 DISCLOSURE OF IMPEACHING INFORMATION. THERE IS A SERIES
15 OF WITNESSES THAT THE SOLICITOR, AS HE STATED, HE WAS
16 TIMELY PROVIDING A LIST OF ALL WITNESSES THAT WOULD
17 TESTIFY IN THIS CASE, AND CERTAINLY, WE WOULD LIKE ANY
18 INFORMATION REVEALING ARRESTS OR CONVICTIONS OF ANY OF
19 THESE INDIVIDUALS, AND ANY OTHER INFORMATION WITH
20 REGARDS TO PERSONNEL THAT WOULD TESTIFY, AND CERTAINLY
21 THAT INFORMATION COULD BE USED TO IMPEACH ANY WITNESSES
22 THAT DO TESTIFY.

23 THE COURT: ALRIGHT. SO THAT THE
24 RECORD WILL BE CLEAR WITH REGARD TO MOTIONS NUMBERS
25 SEVEN AND EIGHT, THE, THOSE MOTIONS ARE GRANTED, AND IT

1 APPEARS THAT THE STATE IS IN COMPLIANCE WITH THE RULES
 2 REQUIRING DISCLOSURE, AND THAT THE STATE HAS COMPLIED
 3 AND IS COMPLYING WITH PROVIDING ANALYSES TO THE DEFENSE,
 4 AS WELL AS ALLOWING THE DEFENSE -- PERMITTING THE
 5 DEFENSE TO REVIEW PHYSICAL EVIDENCE AND SCIENTIFIC
 6 TESTS CONDUCTED, AND THOSE MOTIONS ARE GRANTED, AND ARE
 7 A CONTINUING OBLIGATION OF THE STATE.

8 SOLICITOR PASCOE: IF I COULD PUT ON
 9 THE RECORD AS TO MOTION NUMBER EIGHT, THE MOTION TO
 10 PRODUCE THAT DEALS WITH THEM BEING ABLE TO REVIEW THE
 11 PHYSICAL EVIDENCE AS A RESULT OF THEIR TESTS, THEY,
 12 BEING MR. WALTERS AND MR. GRANT AT THE TIME, HAVE BEEN
 13 OUT TO THE STATE LAW ENFORCEMENT DIVISION AND SAT DOWN
 14 AND GONE THROUGH ALL OF THE EVIDENCE WITH ONE OF THEIR
 15 EXPERTS, I BELIEVE. OBVIOUSLY, IF THEY NEEDED TO DO
 16 THAT AGAIN THEY NEED TO LET US KNOW SO THAT CAN BE
 17 COORDINATED, BECAUSE IT DOES TAKE A LITTLE BIT OF
 18 COORDINATION.

19 THE COURT: MR. WALTERS.

20 MR. WALTERS: THAT IS CORRECT, YOUR
 21 HONOR. ATTORNEY KOGER NEEDS AN OPPORTUNITY TO GO
 22 THROUGH THE EVIDENCE, AND CERTAINLY, WE WOULD LIKE TO
 23 COORDINATE THAT TODAY SO -- AND I'D LIKE TO ACCOMPANY
 24 HIM TO JUST GO THROUGH IT ONE MORE TIME.

25 THE COURT: ALRIGHT. AND REGARDING

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1 NUMBER NINE, THEN?

2 SOLICITOR SORRENSON: AS TO NUMBER
3 NINE, YOUR HONOR, AND A LITTLE BIT OF THIS IS ADDRESSED
4 IN ONE OF HIS OTHER MOTIONS, I THINK MOTION ELEVEN, THAT
5 DEALS WITH THE CRIMINAL HISTORIES, WE WILL BE -- I
6 HAVEN'T GONE ABOUT RUNNING ALL THE RAP SHEETS ON LAY
7 WITNESSES YET, THAT WILL BE DONE WELL IN ADVANCE OF
8 TRIAL, AND THOSE ITEMS WILL BE PROVIDED. I'M NOT AWARE
9 AT THIS POINT IN TIME OF ANY CONSIDERATION BEING GIVEN
10 TO ANY OF THE STATE'S WITNESSES. OBVIOUSLY, SOME OF
11 THEM MAY GET SOME ASSISTANCE WITH TRANSPORTATION AND
12 HOTEL ROOMS AND STUFF OF THAT NATURE. I'M NOT AWARE OF
13 ANY PENDING PROSECUTIONS OR INVESTIGATIONS AS TO ANY OF
14 THE WITNESSES. BUT ONE THING, YOUR HONOR, AND TYPICALLY
15 IN PROSECUTING A CASE, I MEAN, WE HAVE, I MEAN, THERE
16 ARE PROBABLY FIFTY LAW ENFORCEMENT OFFICERS ON OUR
17 WITNESS LIST, AND I HAD NOT INTENDED ON SUBPOENAING ALL
18 OF THEIR PERSONNEL FILES, AND THAT'S ONE OF THE THINGS
19 THAT THEY ARE ASKING FOR, AND THAT'S NOT TYPICALLY
20 SOMETHING THAT WE HAVE ACCESS TO. SO, IF THERE'S
21 SOMETHING SPECIFIC THAT MR. WALTERS IS REQUESTING WE CAN
22 GO ABOUT TRYING TO LOOK INTO THAT, BUT AS FAR AS A
23 BLANKET REQUEST FOR US TO GET EVERY, EVERY OFFICER'S --
24 BASICALLY, EVERY WITNESS'S PERSONNEL FILE, I MEAN,
25 THAT'S NOT TYPICALLY SOMETHING THAT WE DO. NOW,

1 OBVIOUSLY, I FEEL IF WE HAVE SOME KNOWLEDGE OF SOMETHING
2 THAT MIGHT BE IMPEACHING AT THAT POINT IN TIME WE MAY
3 HAVE THE DUTY TO TURN THAT OVER, BUT AT THIS POINT IN
4 TIME I DON'T HAVE ANY KNOWLEDGE OF THAT, AND HAVEN'T
5 INTENDED ON, AS I SAID, GETTING ALL THESE OFFICERS'
6 PERSONNEL FILES TURNED OVER TO US.

7 THE COURT: YES, SIR. AND MR.
8 WALTERS, WHAT DO YOU SAY ABOUT THAT?

9 MR. WALTERS: THANK YOU, MAY IT
10 PLEASE THE COURT, YOUR HONOR. CERTAINLY, IF THERE IS
11 INFORMATION THAT AFFECTS THE SERVICES OF A POLICE
12 OFFICER, I THINK THAT INFORMATION IS IMPORTANT. AND IT
13 WOULD BE UNREASONABLE HERE, AND UNDER THE CIRCUMSTANCES
14 TO GET EVERYONE'S PERSONNEL FILE. I THINK IT'S NOT
15 APPROPRIATE. BUT WHAT IS APPROPRIATE IS, IS THAT IF
16 THERE IS ANY INFORMATION -- POLICE OFFICERS COME AND GO,
17 AND IF YOU'VE GOT INFORMATION THAT YOU KNOW IT WHEN YOU
18 SEE IT THAT THIS PERSON MAY HAVE A PROBLEM, CERTAINLY,
19 WE'D LIKE TO HAVE THAT INFORMATION.

20 THE COURT: MR. SORRENSON.

21 SOLICITOR SORRENSON: I BEG THE
22 COURT'S INDULGENCE.

23 I THINK THAT'S REASONABLE.
24 OBVIOUSLY, IF SOMETHING COMES TO OUR ATTENTION THAT
25 DEALS WITH AN OFFICER'S MISCONDUCT OR SOMETHING LIKE

1 THAT, WE WOULD BRING THAT TO THE COURT'S ATTENTION, TO
2 MAKE AN IN CAMERA DETERMINATION OF WHETHER THAT IS
3 SOMETHING THAT NEEDS TO BE TURNED OVER TO THE DEFENSE.

4 THE COURT: ALRIGHT, IN RESPONSE TO
5 MOTION NUMBER NINE THEN, IT'S THE ORDER OF THE COURT
6 THAT THE STATE, THROUGH THE SOLICITOR, NOTIFY THE
7 EMPLOYING AGENCY OF ANY OF THE STATE'S LAW ENFORCEMENT
8 WITNESSES AND REQUEST THAT THEY PROVIDE TO THE STATE
9 NOTICE OF ANY PERSONNEL ACTION, INCLUDING
10 INVESTIGATIONS, GRIEVANCES, AND ANY CRIMINAL CHARGES
11 AGAINST ANY OFFICERS WHO MAY BE WITNESSES IN THIS CASE,
12 AND THAT THE STATE NOTIFY THE DEFENSE OF ANY INFORMATION
13 RECEIVED IN THAT REGARD, ANY ADVERSE INFORMATION
14 RECEIVED IN THAT REGARD. I THINK IT COULD IMPACT UPON
15 THE CREDIBILITY AND THE IMPEACHMENT OF A WITNESS'S
16 TESTIMONY. AND IN THAT REGARD, IF THERE IS ANYTHING IN
17 THAT REGARD THAT THE PERSONNEL, IN A PERSONNEL ACTION
18 THE DEFENSE SHOULD KNOW ABOUT IT.

19 MR. WALTERS: THANK YOU, YOUR HONOR.

20 THE COURT: ALRIGHT.

21 MR. WALTERS: IN REGARDS TO MOTION
22 NUMBER TEN, YOUR HONOR, WE'RE SIMPLY ASKING THE COURT IF
23 THE COURT WOULD PROVIDE A DAILY TRANSCRIPT OF THE
24 PROCEEDINGS. CONSIDERING THE MAGNITUDE OF THIS CASE,
25 BEING A CAPITAL CASE, CERTAINLY, EVERY LAWYER WOULD LOVE

1 TO HAVE THIS, AND IN SIMPLE TRIALS WE SIMPLY READ WHAT
2 HAPPENS ON EACH DAY ON A DAILY BASIS, BUT CONSIDERING
3 THE MAGNITUDE, AND DEATH BEING DIFFERENT, IT WOULD
4 CERTAINLY ASSIST IN THE DEFENSE IN THIS CASE IF WE COULD
5 HAVE A DAILY TRANSCRIPT OF THE PROCEEDINGS.

6 THE COURT: MR. SORRENSON.

7 SOLICITOR SORRENSON: WE HAVE NO
8 POSITION AS TO THIS ONE, YOUR HONOR, OTHER THAN THE FACT
9 THAT I'M SURE IT'S GOING TO PUT AN EXTREME BURDEN ON THE
10 COURT REPORTER.

11 THE COURT: WELL, SHE MIGHT BE HAPPY
12 WITH THAT REQUEST, IF SHE GETS PAID PER PAGE --

13 SOLICITOR SORRENSON: IF YOU'RE
14 ASKING ME, SHE'LL ACTUALLY GET PAID, I THINK IT WILL BE
15 A PRETTY LUCRATIVE COUPLE OF WEEKS, BUT --

16 THE COURT: WELL, OUR REPORTER
17 ASSIGNED TO THIS CASE, SHE'S NOT HERE TODAY, AND I THINK
18 OUR REPORTER TODAY, SHE IS WRITING IT ALL DOWN IN LONG
19 HAND. THAT WOULD REALLY PUT A BURDEN ON YOU, WOULDN'T
20 IT?

21 COURT REPORTER: YES, SIR. MAYBE --
22 DOES SHE HAVE REAL TIME?

23 THE COURT: SHE DOES.

24 COURT REPORTER: SHE MAY WANT TO DO
25 IT.

1 THE COURT: YEAH. SHE HAS REAL
2 TIME, AND HER REAL TIME IS CONNECTED WITH MY LAP TOP,
3 AND IN EFFECT, THE COURT WILL HAVE A DAILY TRANSCRIPT OF
4 THE PROCEEDINGS. I DO NOT THINK THAT IT WOULD BE, I
5 DON'T KNOW HOW BURDENSOME IT WOULD BE, BUT THE COURT
6 WILL INVESTIGATE THAT AND IF POSSIBLE CERTAINLY ORDER
7 IT.

8 MR. WALTERS: MAY IT PLEASE THE
9 COURT, YOUR HONOR, NUMBER ELEVEN HAS ALREADY BEEN
10 ADDRESSED. WITH REGARDS TO NUMBER TWELVE, IT'S SIMPLY
11 A MOTION THAT WE'RE ASKING THAT THE PROSECUTION, AND
12 CERTAINLY, WE BELIEVE THEY'VE PROVIDED THIS INFORMATION
13 UNDER RULE FIVE, BUT WE WANT TO MAKE A RECORD OF THAT
14 WITH REGARDS TO ANY EVIDENCE THAT THEY INTEND TO
15 INTRODUCE AT TRIAL, FOR A CHAIN OF CUSTODY, THEY WILL
16 HAVE THE CHAIN, AND CERTAINLY, THAT SHOULD BE PROVIDED
17 THROUGH RULE FIVE.

18 THE COURT: MR. SORRENSON.

19 SOLICITOR SORRENSON: ONCE AGAIN,
20 YOUR HONOR, WE HAVE THOSE ITEMS, AND I'M NINETY-NINE PER
21 CENT CERTAIN THAT THEY'VE BEEN PROVIDED TO MR. GRANT AND
22 MR. WALTERS. ONE THING I WAS GOING TO SUGGEST IS THAT
23 AT SOME POINT IN TIME MAYBE WE NEED TO GET TOGETHER AND
24 KIND OF GO THROUGH OUR FILE AND MAKE SURE -- ESPECIALLY,
25 SINCE THERE HAVE BEEN A COUPLE OF SPECIFIC MOTIONS

1 REQUESTING ITEMS THAT I'M PRETTY CERTAIN HAVE BEEN
2 PROVIDED. I DON'T HAVE A PROBLEM, AT SOME POINT IN TIME,
3 SITTING DOWN AND LETTING THEM GO THROUGH, THROUGH MY
4 FILES TO MAKE SURE THAT THERE'S NOT SOMETHING THAT WAS
5 INADVERTENTLY OVERLOOKED OR MISPLACED IN THE SHUFFLE OF
6 THINGS COMING FROM MR. GRANT, I MEAN, SINCE THERE HAVE
7 BEEN SEVERAL OTHER DEFENSE LAWYERS INVOLVED IN THIS CASE
8 PRIOR TO MR. WALTERS AND MR. KOGER.

9 THE COURT: THAT MOTION IS GRANTED
10 AND THE PARTIES ARE ORDERED TO CONFER AND BRING TO THE
11 COURT'S ATTENTION ANY INDICATION OF NON-COMPLIANCE WITH
12 RULE FIVE, AND WITH THIS MOTION.

13 MR. WALTERS: MAY IT PLEASE THE
14 COURT?

15 THE COURT: YES, SIR.

16 MR. WALTERS: WITH REGARDS TO MOTION
17 NUMBER THIRTEEN, YOUR HONOR, THIS MOTION WAS FILED AS A
18 PRECAUTIONARY MEASURE. CERTAINLY, WHEN WE RECEIVE THE
19 JURY LIST BOTH SIDES WILL CONDUCT AN EXTENSIVE ANALYSIS
20 OF PEOPLE WHO ARE WILLING TO SERVE, AND CERTAINLY, WE
21 WOULD ASK THAT ANY LAW ENFORCEMENT AGENCY BE PREVENTED
22 FROM INVESTIGATING THESE INDIVIDUALS OR HAVE ANY CONTACT
23 WITH THESE INDIVIDUALS. CERTAINLY, WE HAVE A JURY
24 CONSULTANT AND INDIVIDUALS ACTUALLY GO THROUGH OUR JURY
25 LIST, AND CERTAINLY, THEY HAVE BEEN TOLD THAT YOU DO NOT

1 CONTACT ANYONE ON THAT SPECIFIC LIST. BUT I BELIEVE
2 BOTH PARTIES WILL CONDUCT EXTENSIVE BACKGROUNDS WITH
3 REGARDS TO THE CHARACTERISTICS OF THIS PARTICULAR POOL.
4 WE'D ASK THAT THERE BE NO CONTACT WITH REGARDS TO LAW
5 ENFORCEMENT AND THESE INDIVIDUALS.

6 THE COURT: ALRIGHT. FIRST, LET ME
7 ASK ABOUT NUMBER TWELVE, THE CHAIN OF CUSTODY MOTION -
8 MOTION TO PRODUCE CHAIN OF CUSTODY OF ALL THE EXHIBITS.

9 SOLICITOR SORRENSON: ALL THAT
10 STUFF'S BEEN PROVIDED, YOUR HONOR.

11 MR. WALTERS: YES, SIR.

12 THE COURT: YOU'RE SATISFIED, MR.
13 WALTERS?

14 MR. WALTERS: YES, SIR, THEY'VE
15 FULLY COMPLIED WITH IT. WE CERTAINLY WANTED TO MAKE THE
16 MOTION FOR THE RECORD, AND WE'LL CERTAINLY GO BACK
17 THROUGH ANY EVIDENCE, AND I BELIEVE MR. SORRENSON HAS
18 AGREED IF THERE IS A MIX-UP OR ANYTHING OF THAT NATURE,
19 WE'LL BE ABLE TO SIT DOWN AND TRY TO RESOLVE THAT.

20 THE COURT: ALRIGHT, VERY GOOD. AS
21 TO NUMBER THIRTEEN, MR. SORRENSON.

22 SOLICITOR SORRENSON: YOUR HONOR,
23 OBVIOUSLY, WE'RE AWARE THAT IT WOULD BE IMPROPER TO HAVE
24 ANYBODY ON OUR BEHALF CONTACTING ANY PROSPECTIVE JURORS.
25 WE WOULD INTEND, YOUR HONOR, TO GET, TO HAVE RAP SHEETS

1 RUN ON THE JURORS. WE HAVE SOME WHO OBVIOUSLY -- IF
2 NOTHING ELSE, TO DETERMINE THEIR QUALIFICATION TO SERVE
3 AS A JURY, I MEAN, THAT'S SOMETHING WE DO EVERY TERM OF
4 COURT. WE HAVE HAD MEMBERS OF OUR STAFF THAT ARE
5 CERTIFIED BY THE STATE LAW ENFORCEMENT DIVISION TO RUN
6 CRIMINAL HISTORIES ON THE ENTIRE POOL. WE WOULD INTEND
7 TO DO THAT IN THIS MATTER ALSO.

8 THE COURT: WELL, THE -- THIS MOTION
9 PROBABLY TURNS ON THE DEFINITION OF THE WORD,
10 INVESTIGATE, AND --

11 SOLICITOR SORRENSON: WELL, IT
12 SPECIFICALLY, THOUGH, SAYS, ANYTHING CONSTITUTED TO BE
13 IMPROPER FOR US TO USE LAW ENFORCEMENT TO -- AS LAID OUT
14 IN PARAGRAPH NUMBER TWO, TO RUN A RECORD, OR RECORD OF
15 ARRESTS AND CONVICTIONS.

16 THE COURT: YEAH, THE MOTION GOES
17 MUCH FARTHER THAN MR. WALTERS HAS JUST ARGUED. THE
18 COURT DENIES THE MOTION TO THE EXTENT THAT THE -- I FIND
19 THAT IT WOULD NOT DEPRIVE THE DEFENDANT OF HIS
20 CONSTITUTIONAL RIGHT TO A FAIR TRIAL TO HAVE LAW
21 ENFORCEMENT DO THE ROUTINE BACKGROUND CHECKS THAT THE
22 LAW ENFORCEMENT WILL GENERALLY DO AS IT RELATES TO ANY
23 JUROR CALLED TO SERVE IN A GENERAL SESSIONS COURT, WHICH
24 WOULD INCLUDE DOING A LAW ENFORCEMENT INVESTIGATION
25 REGARDING ARRESTS AND CONVICTIONS OF JURORS AND OTHER

1 BACKGROUND INFORMATION. THE MOTION IS GRANTED, HOWEVER,
2 AS IT RELATES TO HAVING LAW ENFORCEMENT MAKE CONTACT
3 WITH PROSPECTIVE JURORS CONCERNING THEIR JURY SERVICE ON
4 THIS CASE. AND I THINK ALL OF THAT -- THERE WAS A
5 PROBLEM WITH A CASE I THINK A FEW YEARS BACK IN
6 LEXINGTON COUNTY, I BELIEVE IT WAS, WHERE LAW
7 ENFORCEMENT WENT OUT AND STARTED QUESTIONING THE JURORS
8 REGARDING THEIR COMING TO SERVE ON A DEATH PENALTY CASE,
9 AND I BELIEVE THAT CONVICTION WAS REVERSED BECAUSE OF
10 THE POSSIBLE FEAR OR APPEARANCE OF IMPROPRIETY REGARDING
11 SOME JURORS PERHAPS THINKING, FEELING PRESSURED INTO
12 FAVORING ONE SIDE OR THE OTHER, AND THE COURT WASN'T
13 PLEASED WITH THAT, AND I THINK THAT IT WOULD BE IMPROPER
14 IN THIS CASE.

15 MR. WALTERS: THANK YOU, YOUR HONOR.

16 THE COURT: ALRIGHT.

17 MR. WALTERS: YOUR HONOR, I BELIEVE
18 MOTION NUMBER FOURTEEN HAS ALREADY BEEN ADDRESSED BY THE
19 COURT.

20 THE COURT: ALRIGHT.

21 MR. WALTERS: WITH REGARDS TO MOTION
22 NUMBER FIFTEEN, IN THIS PARTICULAR CASE A POLICE OFFICER
23 HAS BEEN KILLED. AND CERTAINLY, THE VICTIM'S ADVOCATE,
24 THE INDIVIDUALS THAT WORKED WITH THE VICTIM IN THIS
25 PARTICULAR CASE, WE WOULD ASK THAT THEY NOT APPEAR IN

1 THE COURTROOM AT ANYTIME DRESSED - - A CASE WE HAD IN
2 BARNWELL THE VICTIM'S FAMILY SHOWED UP WITH LITTLE
3 BADGES THAT THEY HAD MADE OR BUTTONS THAT SHOWED THE TWO
4 VICTIMS, AND WE ASK THAT THE COURTROOM -- THE BAILIFFS
5 PROHIBIT ANYONE FROM COMING INTO THE COURTROOM WITH ANY
6 TYPE OF PARAPHERNALIA -- SHIRT, BUTTON, OR SOME TYPE OF
7 MEMORABILIA WITH REGARDS TO THIS PARTICULAR POLICE
8 OFFICER. AND I'M SURE IN THIS PARTICULAR TRIAL THERE
9 WILL BE NUMEROUS POLICE OFFICERS HERE. IF THEY'RE NOT
10 ON DUTY WE WOULD ASK THAT THEY NOT COME IN THE
11 COURTROOM WITH A UNIFORM ON -- IF THEY ARE ON DUTY,
12 THAT THEY APPEAR WITH THEIR UNIFORM ON. BUT CERTAINLY,
13 WE WANT TO MAINTAIN AN ENVIRONMENT THAT SUSTAINS THE
14 EQUITABLENESS AND FAIRNESS OF THIS PROCEEDING.

15 THE COURT: MR. SORRENSON.

16 SOLICITOR SORRENSON: I MEAN, I
17 DON'T ANTICIPATE ANY SORT OF VICTIM'S FAMILY MEMBERS
18 WITH T-SHIRTS AND THINGS OF THAT NATURE, I MEAN, I DON'T
19 ANTICIPATE THAT, BUT I MEAN, I DON'T, OBVIOUSLY, WE
20 WOULD JUST ASK THE COURT TO HOLD THAT, AND TAKE IT UP AT
21 THAT POINT IN TIME, ANY BEHAVIOR OR ANYTHING THAT
22 HAPPENS, INSTEAD OF TRYING TO ANTICIPATE WHAT MIGHT
23 HAPPEN.

24 THE COURT: WELL, I CERTAINLY
25 ANTICIPATE THAT DURING THE TRIAL OF THIS CASE THERE WILL

1 BE MASSIVE AMOUNTS OF SECURITY - - -

2 SOLICITOR SORRENSON: YES, SIR.

3 THE COURT: --- HERE IN AND AROUND
4 THIS COURT HOUSE FOR THE SAFETY OF THE COURT, FOR THE
5 SAFETY OF THE PARTICIPANTS, AND FOR THE SAFE KEEPING OF
6 THE DEFENDANT UNTIL A VERDICT IS RENDERED IN THIS TRIAL.
7 AND THE COURT WILL DO NOTHING TO LESSEN THAT SECURITY,
8 BECAUSE I BELIEVE IT IS ESSENTIAL. AND THE COURT, IN
9 ADDITION TO WHAT MIGHT APPEAR ON THE SURFACE, WILL ALSO
10 DEVELOP A SECURITY PLAN IN ADDITION, IN COOPERATION WITH
11 THE CLERK OF COURT AND OTHER NECESSARY PARTIES TO
12 DEVELOP A SECURITY PLAN TO INSURE THAT THE, THAT ALL
13 PARTIES TO THE PROCEEDINGS WILL BE IN SAFE CARE, AND
14 THAT THE DEFENDANT WILL BE, AS WELL. OF COURSE, THE
15 COURT WILL INSURE FURTHER THAT THE, THE MASSIVE AMOUNT
16 OF SECURITY THAT WILL EXIST, WHICH WILL BE APPARENT TO
17 THE VISUAL EYE AND WHICH WILL NOT BE APPARENT TO THE
18 VISUAL EYE, BECAUSE IN ADDITION TO THE NECESSITY OF THE
19 UNIFORM OFFICERS THERE WILL BE OFFICERS IN AND AROUND
20 THE COURT HOUSE AND THE COURT HOUSE GROUNDS AND THE CITY
21 OF ST. MATTHEWS AND THE COUNTY OF CALHOUN WHICH WILL NOT
22 BE IN UNIFORM AND WHO WILL, PERHAPS BE UNDERCOVER AGENTS
23 WORKING THESE GROUNDS. THAT HAVING BEEN SAID, THE
24 COURT WILL INSURE THAT IT'S NOT SO INTRUSIVE AS TO BE,
25 PRESENT A FEAR TO THE JURORS, AND ALSO TO IMPACT UPON

1 THE DEFENDANT'S RIGHT TO A FAIR AND IMPARTIAL TRIAL.
 2 YOU ALL MAY HAVE NOTED FROM TODAY'S NEWS IN COLUMBIA
 3 WHERE THE JUDGE HAS DISMISSED THE JURY PANEL BECAUSE OF
 4 THE JUROR'S PREMATURE DISCUSSION OF THERE PERHAPS BEING
 5 GANG MEMBERS IN THE COURTROOM, AND THE JUDGE'S FEELING
 6 THAT THAT CONSTITUTED A PREMATURE DELIBERATION BY THE
 7 JURORS. SO, THE COURT IS VERY MINDFUL OF THE FACT THAT
 8 WHILE SECURITY IS NECESSARY AND SHOULD AND WOULD BE
 9 MASSIVE, THAT IT SHOULD BE DONE IN A WAY AS TO NOT
 10 INTIMIDATE THOSE PARTICIPANTS, OR TO IMPACT UPON THE
 11 DEFENDANT'S FAIR -- RIGHT TO A FAIR TRIAL.

12 BUT REGARDING THE DISPLAY AND
 13 DEMONSTRATION OF PHOTOGRAPHS, POSTERS AND ALL VISUAL
 14 MATERIAL, THAT MOTION IS GRANTED. PARTIES WILL NOT BE
 15 ALLOWED TO BRING PLACARDS, BILLBOARDS, BUTTONS,
 16 PHOTOGRAPHS AND OTHER VISUAL DISPLAYS INTO THE COURTROOM
 17 SHOWING FAVORITISM TOWARD ONE SIDE OR THE OTHER.

18 REGARDING WHETHER OR NOT LAW
 19 ENFORCEMENT OFFICERS CAN WEAR LAW ENFORCEMENT UNIFORMS
 20 IN THE COURTROOM, THAT'S PERHAPS VIRTUALLY -- MAY BE
 21 VIRTUALLY IMPOSSIBLE TO POLICE THAT, SINCE WE WILL HAVE
 22 LAW ENFORCEMENT OFFICERS IN THE COURTROOM, AND TO
 23 ATTEMPT TO SCRUTINIZE WHETHER OR NOT THAT LAW
 24 ENFORCEMENT OFFICER IS ON DUTY OR OFF DUTY, THAT MUST BE
 25 DEALT WITH AS THE NEED ARISES, BUT I WILL NOT ISSUE A

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1 BLANKET ORDER THAT A LAW ENFORCEMENT OFFICER CANNOT
2 APPEAR IN COURT IN UNIFORM UNLESS THAT OFFICER IS
3 TESTIFYING, BECAUSE THAT OFFICER MAY VERY WELL BE
4 WORKING SECURITY. ALRIGHT.

5 MR. WALTERS: THANK YOU, YOUR HONOR.

6 THE COURT: YES, SIR.

7 MR. WALTERS: WE'RE GOING TO NUMBER
8 SIXTEEN, I BELIEVE THEY'VE ALREADY COMPLIED WITH THAT,
9 YOUR HONOR, SOLICITOR PASCOE, THE LAST TIME WE HAD A
10 MEETING, PRODUCED THE LIST OF ALL THE STATE'S WITNESSES,
11 AND IT HAS BEEN UPDATED AGAIN.

12 SOLICITOR PASCOE: I BELIEVE WE
13 FAXED A MORE UPDATED ONE, SO WE'VE GOT ONE OR TWO MORE
14 PEOPLE I THINK THAT WERE ON THAT ONE.

15 MR. WALTERS: YOUR HONOR, WITH ALL
16 DUE RESPECT, WITH REGARDS TO MOTION NUMBER SEVENTEEN,
17 IT'S FILED AS A MATTER OF COURSE TO PROTECT OUR CLIENT,
18 AND CERTAINLY, WITH REGARD TO THE VOIR DIRE, THE
19 PARTICULAR POTENTIAL JURORS. WE CERTAINLY WANT THE
20 PROCESS TO PROCEED FORWARD WITHOUT ANY EXPRESSED
21 SENTIMENTS WITH REGARDS TO THE PROSECUTION. SO, WE
22 FILED THAT WITH ALL DUE RESPECT, AND CERTAINLY DID IT TO
23 PROTECT OUR CLIENT.

24 THE COURT: ALRIGHT. YES, SIR, MR.
25 SORRENSON.

1 SOLICITOR SORRENSON: YOUR HONOR, AS
 2 TO NUMBER SEVENTEEN, OBVIOUSLY, AND I THINK IT -- IF THE
 3 DEFENSE FEELS THE COURT IS DOING SOMETHING IMPROPER IN
 4 THE INDIVIDUAL VOIR DIRE OF THE JURORS THEY NEED TO
 5 BRING IT TO THE COURT'S ATTENTION AT THAT POINT IN TIME.

6 THE COURT: YES, SIR. I AM
 7 UNCERTAIN -- AS TO THE DEFENSE'S MOTION THAT THE COURT
 8 SHOULD NOT ASK QUESTIONS IN SUCH A WAY TO SUGGEST A
 9 RESPONSE TO THE JUROR IN ATTEMPTING TO QUALIFY THIS
 10 JUROR, A PARTICULAR JUROR FOR OR AGAINST THE DEATH
 11 PENALTY BUT TO CONDUCT A VOIR DIRE IN SUCH A WAY AS TO
 12 GET THE HONEST SENTIMENTS OF THE JUROR AS IT RELATES TO
 13 WHETHER OR NOT THAT JUROR IS DEATH QUALIFIED -- THERE
 14 ARE ESTABLISHED QUESTIONING METHODS THAT I BELIEVE ARE
 15 EFFECTIVE IN ENGAGING IN A COLLOQUY WITH THE JUROR,
 16 RESPECTIVE JUROR REGARDING WHETHER OR NOT THAT JUROR
 17 SHOULD BE DEATH PENALTY QUALIFIED, AND THE COURT WILL
 18 TAKE PARTICULAR CARE TO ENGAGE IN THAT QUESTIONING IN
 19 SUCH A MANNER AS TO, AS TO INSURE THAT ONLY DEATH
 20 PENALTY QUALIFIED JURORS FIND THEIR WAY ONTO THE POOL IN
 21 THIS CASE.

22 MR. WALTERS: THANK YOU, YOUR HONOR.

23 THE COURT: YES, SIR.

24 MR. WALTERS: YOUR HONOR, WITH
 25 REGARDS TO MOTION EIGHTEEN, NINETEEN AND TWENTY, I

1 BELIEVE THAT THEY'VE BEEN RESOLVED, AND CERTAINLY
2 THEY'VE PROVIDED RULE FIVE REQUIREMENTS, AND THEY'VE
3 ALSO PROVIDED THE WITNESS LIST. I APOLOGIZE FOR THE
4 REPETITION.

5 THE COURT: ALRIGHT.

6 MR. WALTERS: WITH REGARD TO MOTION
7 NUMBER TWENTY-TWO, I BELIEVE THAT MOTION MAY BE
8 INAPPROPRIATE AT THIS TIME. WHEN THE PROSECUTION
9 ATTEMPTS TO ADDRESS ANY PRIOR BAD ACT THROUGH
10 IMPEACHMENT WE WILL RAISE THAT ISSUE AT THAT TIME.

11 THE COURT: MR. SORRENSON.

12 SOLICITOR SORRENSON: YOUR HONOR, I
13 AGREE WITH THAT.

14 MR. WALTERS: MAY IT PLEASE THE
15 COURT, WITH REGARDS TO MOTION NUMBER TWENTY-THREE, I
16 BELIEVE WE'VE RESOLVED THAT, AND CERTAINLY, WE'LL SET A
17 TIME WITH MR. SORRENSON TO GO OVER HIS FILE ONE MORE
18 TIME JUST TO MAKE SURE THAT WE HAVE EVERYTHING.

19 THE COURT: VERY GOOD.

20 MR. WALTERS: YOUR HONOR, AT THIS
21 TIME, MOTION NUMBER TWENTY-FOUR, WE DON'T WANT TO
22 PROCEED FORWARD, WE JUST WANT TO HOLD THAT IN ABEYANCE
23 UNTIL THE APPROPRIATE TIME TO DECIDE WHETHER WE WANT TO
24 MOVE FORWARD WITH THAT MOTION.

25 THE COURT: ALRIGHT.

1 MR. WALTERS: MOTION NUMBER TWENTY-
 2 FIVE, I BELIEVE THAT THE STATE IS REQUIRED TO PRODUCE
 3 ALL RULE FIVE INFORMATION, WHICH THEY'VE AGREED TO DO,
 4 AND CERTAINLY, PROVIDE INFORMATION WITH REGARDS TO ALL
 5 OF THE WITNESSES, AND WE CERTAINLY AGREE THAT OUR PEOPLE
 6 WILL NOT TAMPER WITH ANYONE IN THE JURY POOL. WE
 7 CERTAINLY WILL DO BACKGROUND INFORMATION ON THEM AND WE
 8 WILL HAVE THEM CONTACTED, AND I BELIEVE THAT MOTION'S
 9 BEEN RESOLVED.

10 THE COURT: ALRIGHT.

11 MR. WALTERS: NUMBER TWENTY-SIX,
 12 CERTAINLY, WE DO NOT WANT WITNESSES FOR THE STATE TO BE
 13 PRESENT IN THE COURTROOM SO THEY ARE ALLOWED TO
 14 HARMONIZED THEIR TESTIMONY. WE BELIEVE THAT THE
 15 SEQUESTRATION OF THE WITNESSES WOULD BE APPROPRIATE
 16 UNDER THE CIRCUMSTANCES.

17 THE COURT: ALRIGHT.

18 MR. WALTERS: I BELIEVE THAT THE
 19 VICTIM'S WIFE WILL BE PRESENT IN THE COURTROOM, AND
 20 CERTAINLY, THE INVESTIGATOR THAT HEADED UP THIS MATTER
 21 IN CALHOUN COUNTY.

22 THE COURT: MR. SORRENSEN.

23 SOLICITOR SORRENSEN: YOUR HONOR, I
 24 BELIEVE THAT'S WITHIN THE COURT'S DISCRETION.
 25 OBVIOUSLY, WE WOULD ASK AS TO ANY SEQUESTRATION ORDER

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1 THAT IT BE RECIPROCAL ALSO UPON THE DEFENSE AND ANY OF
2 HIS WITNESSES.

3 THE COURT: WELL, THE ISSUE OF
4 SEQUESTRATION OF WITNESSES, OF COURSE, THERE'S A
5 DIFFERENCE BETWEEN STATE RULES WHERE SEQUESTRATION IS
6 MANDATORY AND FEDERAL RULES WHERE SEQUESTRATION IS
7 MANDATORY AND MANDATED BY THE RULES, AND THE STATE RULES
8 WHERE SEQUESTRATION IS A MATTER OF DISCRETION BY THE
9 COURT, AND WHETHER OR NOT SEQUESTRATION SHOULD BE
10 ORDERED SHOULD BE REVIEWED ON A CASE BY CASE BASIS AND
11 GRANTED WHERE IT IS DEMONSTRATED -- WHERE NEED IS
12 DEMONSTRATED TO INSURE THE DEFENDANT A FAIR TRIAL. I
13 WOULD BE INTERESTED IN HEARING A PARTICULAR RISE IN NEED
14 IN THIS CASE BEFORE GRANTING A MOTION TO SEQUESTER
15 WITNESSES. AND MR. WALTERS, DO Y'ALL WANT TO DO THAT
16 NOW OR AT A LATER TIME?

17 MR. WALTERS: WE CAN DO THAT A
18 LATER TIME, YOUR HONOR, IT SERVES AS A BASIS OF A
19 MOTION, IT'S SIMILAR TO THE FEW COMMENTS THAT WERE MADE
20 TODAY.

21 THE COURT: ANYTHING FURTHER, THEN,
22 ON THIS MOTION AT THIS TIME, MR. SORRENSON?

23 SOLICITOR SORRENSON: NO, SIR.

24 THE COURT: ALRIGHT, WELL, THE COURT
25 WILL REVISIT THIS AS THE TRIAL DATE APPROACHES, OR AT

1 THE TIME OF TRIAL, WHERE WE CAN REVIEW ANY ANTICIPATED
 2 TESTIMONY THAT, WHERE ONE HEARING OR ONE TESTIMONY
 3 MIGHT AFFECT THE OTHER TESTIMONY OF ANOTHER WITNESS AND
 4 WHETHER OR NOT THAT SHOULD BE GRANTED, THE COURT WILL
 5 CONSIDER LATER ON.

6 MR. WALTERS: THANK YOU, YOUR HONOR.
 7 REGARDING MOTION NUMBER TWENTY-
 8 SEVEN, I PRACTICE IN ORANGEBURG, AND MR. KOGER PRACTICES
 9 IN NORTH. ORANGEBURG IS ONLY ABOUT FIFTEEN, MAYBE
 10 TWENTY MINUTES FROM HERE, BUT CERTAINLY, WE WOULD LIKE
 11 SOME TYPE OF SPACE WHERE WE COULD BE ABLE TO MEET WITH
 12 OUR EXPERTS AND OTHER INDIVIDUALS INVOLVED IN THE TRIAL
 13 OF THE CASE. AND CERTAINLY, WITH NUMEROUS PEOPLE BEING
 14 HERE IN THE MORNING WITHOUT SECURITY, WE WOULD ASK THE
 15 COURT TO ACCOMMODATE THE DEFENSE WITH SOME TYPE OF SPACE
 16 WHERE WE COULD PREPARE OUR CASE.

17 THE COURT: ALRIGHT. WHAT ABOUT
 18 THAT, MR. SORRENSEN?

19 SOLICITOR SORRENSEN: YOUR HONOR,
 20 THIS IS ANOTHER ONE OF THESE THAT I'M NOT SURE WE HAVE
 21 ANY SAY SO INTO. IT REALLY NEEDS TO BE ADDRESSED BY THE
 22 COURT.

23 THE COURT: ALRIGHT. MR. CLERK?

24 CLERK: WE HAVE GOT LIMITED SPACE,
 25 YOUR HONOR. THE ONLY SPACE I COULD COME UP WITH IS THE

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1 PROBATE OFFICE BACK THERE.

2 THE COURT: IS THERE AN OFFICE SPACE
3 BACK THERE?

4 CLERK: YES, SIR. THE PROBATION
5 OFFICERS USE THE SPACE BACK THERE. IT'S VERY SMALL, BUT
6 THERE IS A PHONE AND A COMPUTER IN THERE.

7 THE COURT: ALRIGHT. IS IT NEXT TO
8 CHAMBERS OR SOME PLACE ELSE?

9 CLERK: IT'S RIGHT BEHIND HIS
10 HONOR'S, BACK THERE, IN THE HALLWAY THAT CONNECTS THIS
11 HALL TO THE HALLWAY TO THE JURY ROOM.

12 THE COURT: WELL, THE MOTION FOR
13 OFFICE SPACE IS GRANTED. THE EXACT DETAILS OF THAT
14 WE'LL WORK OUT WITH THE CLERK.

15 MR. WALTERS: THANK YOU, YOUR HONOR.

16 THE COURT: ALRIGHT.

17 MR. WALTERS: YOUR HONOR, MOTION
18 TWENTY-NINE -- MOTION NUMBER TWENTY-EIGHT, MAY IT PLEASE
19 THE COURT, YOUR HONOR, WE MADE A MOTION TO PREVENT THE
20 DEFENDANT FROM APPEARING BEFORE THE JURY WITH HAND CUFFS
21 AND LEG IRONS. OF COURSE, THIS COULD HAVE AN ADVERSE
22 EFFECT WITH REGARDS TO THE PROCESS IN COURT. I BELIEVE
23 THERE'S A MATTER OF SECURING THE DEFENDANT THROUGH LEG
24 SHACKLES, BUT AT LEAST HE'D BE ABLE TO MOVE HIS HANDS
25 AND, YOU KNOW, CERTAINLY, WE WANT TO DRESS HIM PROPERLY

1 TO APPEAR BEFORE THE COURT.

2 THE COURT: MR. SORRENSEN.

3 SOLICITOR SORRENSEN: YOUR HONOR,
4 OBVIOUSLY, SECURITY IS A MAJOR CONCERN, NOT ONLY WITH
5 THE COURT, BUT ALSO, THE STATE -- I KNOW ONE THING THAT
6 I'VE HEARD ABOUT BEING USED IN OTHER COUNTIES IS SOME
7 SORT OF A SHOCK, A SHOCKING BELT OR SOMETHING OF THAT
8 NATURE, AND I'M NOT SURE IF SOMETHING ALONG THOSE LINES
9 WOULD BE SOMETHING THAT WE COULD LOOK INTO. I KNOW THEY
10 USED IT UP IN GREENVILLE ON A CASE LAST YEAR.

11 THE SOLICITOR INFORMS ME THAT HE
12 BELIEVES THAT IN LEXINGTON COUNTY THEY HAVE THEM, AND
13 ALSO THE DEPARTMENT OF CORRECTIONS MAY HAVE ACCESS TO
14 THOSE ITEMS, SOMETHING THAT WOULD BE A LITTLE LESS
15 VISIBLE BUT WOULD STILL SECURE HIM.

16 THE COURT: WELL, CERTAINLY, UNLESS
17 THE -- THERE IS A DEMONSTRATED NEED, THE DEFENDANT
18 SHOULD NOT BE BEFORE THE JURY IN HAND CUFFS OR LEG IRONS
19 THAT ARE VISIBLE TO THE JURY, NOR IN ANY PRISON CLOTHES
20 OR ANYTHING THAT WOULD PRESENT HIM AS AN INMATE TO THE
21 JURY PANEL, AND MR. MAHDI HAS BEEN MOST COOPERATIVE, AND
22 HAS SHOWN NO INDICATION THAT HE WOULD NOT BE ABLE TO OR
23 WOULD NOT PRESENT HIMSELF AS HE SHOULD IN THE COURTROOM.
24 AND I WOULD DO ALL THAT I CAN TO MAKE SURE THAT HE IS
25 PRESENTED IN COURT AS A PERSON, AS ANY OTHER PERSON WHO

1 IS IN COURT FOR A TRIAL. HE MIGHT BE AS DRESSED UP AS
2 MR. KOGER OR MR. WALTERS, BUT WHATEVER DRESSING
3 ARRANGEMENT, THAT WILL NEED TO BE DONE THROUGH
4 COOPERATION WITH COUNSEL AND WHATEVER PLANS THEY MIGHT
5 HAVE FOR THE MANNER IN WHICH HE WILL BE DRESSED. BUT WE
6 WILL INVESTIGATE AND WHATEVER THE LEAST INTRUSIVE
7 DRESSING MEANS THAT CAN BE DONE WHILE AT THE SAME TIME
8 INSURING THE SAFETY OF EVERYONE INVOLVED, INCLUDING THE
9 DEFENDANT, AND SAFEKEEPING OF THE DEFENDANT. AND I
10 THINK THAT THE, SLED WILL BE ABLE TO WORK WITH US ON
11 THAT.

12 YES, SIR.

13 MR. WALTERS: THANK YOU, YOUR HONOR.
14 YOUR HONOR, MOTIONS TWENTY-NINE THROUGH THIRTY-NINE HAVE
15 ALREADY BEEN RESOLVED, AND CERTAINLY, WE WOULD WITHDRAW
16 THOSE MOTIONS AT THIS TIME.

17 THE COURT: ALRIGHT.

18 MR. WALTERS: ON MOTION NUMBER
19 FORTY, WE CAN BOTH AGREE THAT WE WILL PRE-MARK OUR
20 EXHIBITS.

21 SOLICITOR SORRENSON: YES, SIR, I'VE
22 GOT NO PROBLEM WITH DOING THAT, I THINK MAYBE WE COULD
23 GET WITH THE COURT REPORTER AHEAD OF TIME AND EVEN GET
24 SOME, IF SHE WOULD LET US HAVE SOME EXHIBIT STICKERS,
25 THEN WE COULD TAKE CARE OF THAT. I'LL BE DOING AN AWFUL

1 LOT OF THAT IN PRE-TRIALS SO IT'S NOT TAKING UP COURT
2 TIME.

3 THE COURT: ALRIGHT.

4 MR. WALTERS: YOUR HONOR, MOTIONS
5 FORTY-ONE THROUGH FORTY-TWO, THEY'VE ALREADY BEEN
6 ADDRESSED BY THE COURT, AND YOUR HONOR, AT A LATER DATE
7 WE WILL ADDRESS MOTION NUMBER FORTY-THREE AS THE TRIAL
8 APPROACHES.

9 MAY IT PLEASE THE COURT.

10 THE COURT: YES, SIR.

11 MR. WALTERS: YOUR HONOR, I THINK
12 THAT WE HAVE ONLY ABOUT, MAYBE FIVE MOTIONS THAT WERE
13 FILED IN ADDITION TO THESE MOTIONS. THOSE MOTIONS MAY
14 ADDRESS THE JACKSON V. DENNO, MAYBE A BIGGER, AND STATE
15 V. LYLE.

16 THE COURT: WHAT DID YOU SAY ABOUT
17 NUMBER FORTY-ONE, FORTY-TWO AND FORTY-THREE?

18 MR. WALTERS: THOSE MOTIONS HAVE
19 ALREADY BEEN ADDRESSED WITH REGARDS TO ANY CONTACT WITH
20 THE POTENTIAL JURORS, INTRODUCING INFORMATION ON THE
21 JURORS.

22 THE COURT: AND THE MOTION WITH
23 REGARDS QUASHING THE INDICTMENT, NUMBER FORTY-THREE?

24 MR. WALTERS: YOUR HONOR, WE WITHDRAW
25 THAT MOTION AT THIS TIME. WE CAN CERTAINLY COME BACK IN

1 AN ATTEMPT TO ADDRESS THAT WITH THE OTHER THREE MOTIONS
2 THAT WE REFERRED TO.

3 THE COURT: ALRIGHT. REGARDING THE
4 JACKSON V. DENNO, THE LYLE AND THE -- WHAT'S THE OTHER
5 ONE?

6 MR. WALTERS: BIGGERS.

7 THE COURT: BIGGERS, MR. SORRENSEN?

8 SOLICITOR SORRENSEN: I'M NOT SURE,
9 WE'LL HAVE TO HAVE -- I'M NOT SURE THERE'S ANY -- THE
10 STATE IS INTENDING ON INTRODUCING -- THERE ARE, AS FAR
11 AS NEAL V. BIGGERS, YOUR HONOR, WE HAVE, I'M COUNTING,
12 ONE, TWO, THREE, FOUR, FIVE, SIX, SEVEN, EIGHT, NINE
13 POTENTIAL WITNESSES THAT IDENTIFIED MR. MAHDI IN A PHOTO
14 LINEUP, SO, I MEAN, AT SOME POINT IN TIME WE'LL HAVE TO
15 ADDRESS ALL OF THEM. SOME OF THOSE WITNESSES ARE OUT OF
16 STATE, SO IT MAY NOT BE SOMETHING THAT WE CAN DO PRIOR
17 TO THEIR ACTUALLY BEING CALLED TO TESTIFY. SOME OF THEM
18 WE PROBABLY COULD ATTEMPT TO DO IF WE SET IT UP
19 BEFOREHAND.

20 THE COURT: ALRIGHT. THE COURT WILL
21 CONDUCT ANY SUPPRESSION HEARINGS OR ANY OTHER HEARINGS
22 THAT THE RULES REQUIRE TO BE DONE OUTSIDE THE PRESENCE
23 OF THE JURY AND IN THE MANNER AS PROVIDED IN THE RULES
24 OF CRIMINAL PROCEDURE AND THE RULES OF EVIDENCE. RULE
25 ONE O THREE PROVIDES THAT CERTAIN MATTERS MUST BE HEARD

1 OUTSIDE THE PRESENCE OF THE JURY, AND THE COURT WILL
2 CONDUCT THOSE HEARINGS OUTSIDE THE PRESENCE OF THE JURY.

3 SOLICITOR SORRENSON: AND AS TO, THE
4 ONLY OTHER THING HE MENTIONED WOULD BE A POTENTIAL STATE
5 V. LYLE MOTION, AND THERE ARE SOME, SOME PRIOR
6 SUBSEQUENT BAD ACTS THAT WE WOULD BE SEEKING TO GET
7 INTO, SO THAT MAY BE SOMETHING THAT DOES NEED TO BE
8 ADDRESSED PRETRIAL, YOUR HONOR, AT SOME POINT IN TIME IN
9 THE FUTURE.

10 THE COURT: ALRIGHT. MR. WALTERS.

11 MR. WALTERS: YOUR HONOR, I BELIEVE
12 THAT'S ALL THE MOTIONS THAT WE HAVE FILED WITH THE
13 COURT. THERE ARE SOME EX PARTE ISSUES THAT WE'D LIKE TO
14 ADDRESS WITH THE COURT WITH REGARDS TO THE DEFENSE'S
15 CASE.

16 COURT REPORTER: WHAT CASE?

17 MR. WALTERS: THE DEFENSE'S CASE.

18 THE COURT: REGARDING THE LYLE TYPE
19 MATTERS, THOSE ARE MATTERS OF EVIDENCE THAT THE STATE
20 MAY SEEK TO OFFER DURING THE TRIAL OF THE CASE, AND THE,
21 THOSE -- A HEARING OF THAT TYPE WOULD PROBABLY BEST BE
22 DONE DURING THE TRIAL ITSELF, AND PRIOR TO THE TESTIMONY
23 BEING OFFERED AND THE EVIDENCE BEING OFFERED. SO,
24 TYPICALLY, AFTER A JURY IS SELECTED AND WE TAKE TIME TO
25 DO CERTAIN PRETRIAL MATTERS, OR MATTERS PRIOR TO THE

1 BEGINNING OF THE TESTIMONY AND THE TRIAL I'LL DO LYLE
2 TYPE MOTIONS.

3 SOLICITOR SORRENSON: SOME OF IT, I
4 GUESS, IS STUFF THAT WE FEEL THAT PROBABLY NEEDS TO BE
5 ADDRESSED AT LEAST PRIOR TO OPENING STATEMENTS BECAUSE
6 IT MAY AFFECT INFORMATION DURING OPENING STATEMENTS.

7 THE COURT: OH, YES, SIR.

8 MR. WALTERS: MAY IT PLEASE THE
9 COURT, YOUR HONOR.

10 THE COURT: YES, SIR.

11 MR. WALTERS: CERTAINLY, WE WANT TO,
12 WE'D LIKE TO HAVE IT PRIOR TO OPENING STATEMENTS BECAUSE
13 WE'D CERTAINLY LIKE TO PREPARE FOR IT, AND CERTAINLY, IF
14 WE COULD ARGUE THAT MOTION AS EARLY AS POSSIBLE, WE'D
15 LIKE THAT.

16 THE COURT: ALRIGHT. OKAY. NOW,
17 THE DEFENDANT WAS ORDERED TO, TO UNDERGO A COMPETENCY
18 EXAM TO DETERMINE HIS COMPETENCY TO STAND TRIAL, AND OF
19 COURSE, THE COURT MUST CONDUCT A HEARING TO DETERMINE
20 THE DEFENDANT'S COMPETENCY. HAVE YOU RECEIVED THE
21 REPORT OF THE DEPARTMENT IN THIS REGARD, MR. SORRENSON,
22 AND MR. WALTERS?

23 SOLICITOR SORRENSON: YES, SIR.

24 MR. WALTERS: YES, SIR.

25 THE COURT: ARE YOU PREPARED FOR THE

1 COURT TO HEAR THAT MATTER AT THIS TIME?

2 MR. WALTERS: NO, SIR, YOUR HONOR.
3 THERE'S ONE OTHER ISSUE THAT WE DISCUSSED WITH YOUR
4 HONOR EX PARTE WITH REGARDS TO ONE PARTICULAR CASE THAT
5 WE DISCOVERED, AND CERTAINLY, WE WANT TO ADDRESS THAT
6 ISSUE.

7 THE COURT: AND YOU WANT TO ADDRESS
8 THAT PRIOR TO THE COURT CONDUCTING A HEARING TO
9 DETERMINE THE DEFENDANT'S COMPETENCY TO STAND TRIAL?

10 MR. WALTERS: YES, SIR, YOUR HONOR.

11 THE COURT: ALRIGHT. MR. SORRENSON.

12 SOLICITOR SORRENSON: SINCE THAT WAS
13 SOME SORT OF EX PARTE COMMUNICATION, I HAVE NO IDEA WHAT
14 HE'S TALKING ABOUT. I MEAN, WE ARE PREPARED WHENEVER
15 HIS HONOR DECIDES TO GO FORWARD WITH THE BLAIR HEARING.
16 WE DON'T HAVE THE DOCTORS SUBPOENAED TO BE HERE TODAY,
17 BUT WHATEVER, I MEAN, -- WHENEVER YOUR HONOR WISHES TO
18 DO THAT WE'LL BE PREPARED TO GO FORWARD.

19 THE COURT: ALRIGHT, WE'RE OVER INTO
20 LUNCH TIME AT THIS TIME, AND THE RULES PROVIDE THAT
21 CERTAIN MATTERS MAY BE HEARD BY THE COURT ON AN EX PARTE
22 BASIS, PARTICULARLY REGARDING THE FUNDING AND COST OF
23 ANY EXPERTS OR SOME BUDGET TO PAY CERTAIN COSTS RELATING
24 TO INSURING THAT THE DEFENDANT MAY HAVE AN APPROPRIATE
25 DEFENSE, AND I'LL DISCUSS THOSE MATTERS WITH COUNSELOR

1 ON AN EX PARTE BASIS.

2 AND YOU SAID, MR. WALTERS, THAT YOU
3 BELIEVE THAT THOSE MATTERS MAY IMPACT UPON THE COURT'S
4 RULING REGARDING THE COMPETENCY ISSUE?

5 MR. WALTERS: YES, SIR, YOUR HONOR.

6 THE COURT: ALRIGHT. SO, THEN, THE
7 COURT WILL DEFER THE HEARING ON THAT UNTIL A LATER TIME.

8 ASIDE FROM THAT ARE THERE ANY OTHER
9 MATTERS THAT WE NEED TO ADDRESS TODAY?

10 SOLICITOR SORRENSON: NOT FROM THE
11 STATE.

12 MR. WALTERS: YOUR HONOR, THERE'S AN
13 ISSUE WITH REGARDS TO THE SOUTH CAROLINA DEPARTMENT OF
14 CORRECTIONS, AND COUNSEL HAVING ACCESS TO THE DEFENDANT,
15 AND CERTAINLY, WE CAN ADDRESS THAT WHEN WE ADDRESS THE
16 EX PARTE ISSUES.

17 THE COURT: ALRIGHT. VERY GOOD.
18 NOW, THE MATTER IS SET FOR TRIAL ON
19 -- WHEN IS THAT?

20 SOLICITOR SORRENSON: IT'S NOVEMBER
21 THE TWENTY-SEVENTH, I BELIEVE IT IS, OR ONE DAY AFTER
22 THANKSGIVING.

23 THE COURT: THE TWENTY-SEVENTH. THE
24 CLERK WILL NEED TO, TO DRAW AT LEAST TWO HUNDRED AND
25 FIFTY JURORS TO APPEAR AT THAT TERM. THE CLERK WILL

1 NEED TO DO THAT, AND THE -- AND THE COURT WILL DEVELOP
2 A JUROR QUESTIONNAIRE AND PROVIDE COUNSEL WITH COPIES OF
3 THE QUESTIONNAIRE AND PERHAPS CONFER -- WILL NEED TO
4 CONFER WITH COUNSEL PERHAPS PRIOR TO THOSE
5 QUESTIONNAIRES BEING SENT OUT. THEY WILL NEED TO BE
6 SENT OUT AND THE COURT WILL NEED TO ENTERTAIN ANY VOIR
7 DIRE QUESTIONS THAT THE STATE AND THE DEFENSE MIGHT WANT
8 TO HAVE INCLUDED IN THE COURT'S QUESTIONNAIRE. THEN AT
9 A CERTAIN PERIOD OF TIME, PROBABLY WITHIN THIRTY DAYS OF
10 THE TRIAL WE WILL NEED TO CONVENE TO REVIEW ANY JUROR
11 EXCUSAL REQUESTS, AND CERTAINLY, WE WILL NEED TO MEET TO
12 DEAL WITH ALL OF THOSE TYPE ISSUES SO THAT WE'LL SEE WHO
13 WE HAVE REGARDING THE, WHO WANTS TO BE EXCUSED FROM
14 SERVICE, AND WE CAN DEAL WITH ALL THAT PRIOR TO THE
15 TWENTY-NINTH.

16 SO, REGARDING ALL OF THOSE MATTERS,
17 ARE THERE ANY COMMENTS BY COUNSEL?

18 MR. WALTERS: NO, SIR, YOUR HONOR,
19 I'LL JUST WAIT FOR THE QUESTIONNAIRE.

20 THE COURT: MR. SORRENSON?

21 SOLICITOR SORRENSON: YES, SIR, I'D
22 AGREE WITH THAT. WE CAN GIVE SOME THOUGHT IN THE NEXT
23 COUPLE OF WEEKS AS TO ANYTHING WE MIGHT WANT INCLUDED ON
24 THE VOIR DIRE WHEN WE GET THE QUESTIONNAIRE.

25 THE COURT: ALRIGHT. VERY WELL, AND

1 KEEP THE TIME LINE IN MIND SO THAT WE WILL -- WE DON'T
2 WANT THE CLERK'S OFFICE TO ENGAGE IN ANY UNNECESSARY
3 ANXIETY OVER GETTING THOSE THINGS OUT TO THE PROSPECTIVE
4 JURORS. AND IF YOU ALL CAN BE FOCUSED ON THAT WITHIN
5 THE NEXT SEVERAL WEEKS AND BE IN TOUCH WITH THE COURT,
6 AND THE COURT WILL BE IN TOUCH WITH YOU SO THAT WE CAN
7 STAY ON TRACK WITH THAT TIME LINE.

8 ALRIGHT, AND WITH THAT WE'LL RECESS
9 THIS MATTER. I'LL TAKE UP THE EX PARTE MATTERS WITH
10 COUNSEL IN CHAMBERS REGARDING THE BUDGET, AND THEN WE'RE
11 GOING TO BREAK FOR LUNCH AND COME BACK ABOUT TWO:THIRTY,
12 TWO:FORTY-FIVE?

13 CLERK: WHATEVER SUITS YOUR HONOR.

14 THE COURT: ALRIGHT. WE'LL SAY
15 TWO:THIRTY, WE'LL JUST SAY TWO:THIRTY. ALRIGHT.

16 (RECESS)

17

CERTIFICATE

1

2 I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF

3 ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR

4 THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH

5 CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A

6 TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL

7 THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE

8 CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF

9 GENERAL SESSIONS FOR CALHOUN COUNTY, SOUTH CAROLINA, ON

10 THE THIRTIETH DAY OF AUGUST, 2006.

11 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,

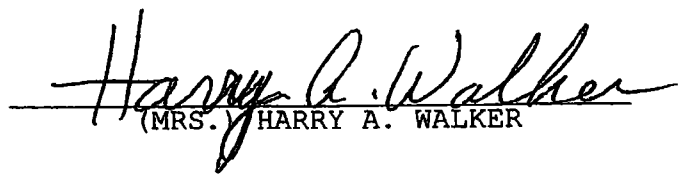
12 COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

DATE: MARCH 29, 2007

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17 (MRS.) HARRY A. WALKER

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STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

COURT OF GENERAL SESSIONS

STATE)
)
V:)
)
MIKAL DEEN MAHDI)
)
)
)
DEFENDANT.)

TRANSCRIPT OF RECORD
04-GS-09-242
04-GS-09-243
04-GS-09-244

JULY 7, 2006
NOVEMBER 20, 2006
NOVEMBER 27, 2006
SAINT MATTHEWS, SOUTH CAROLINA

B E F O R E:
THE HONORABLE CLIFTON NEWMAN, JUDGE; AND A
JURY.

A P P E A R A N C E S:
DAVID M. PASCOE, JR., SOLICITOR
DONALD N. SORENSON, ASSIST. SOLICITOR
ATTORNEYS FOR THE STATE

GLENN WALTERS, ESQUIRE
JOSHUA KOGER, JR., ESQUIRE
ATTORNEYS FOR THE DEFENDANT

STACY L. SHEPPARD
CIRCUIT COURT REPORTER

ORIGINAL

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18	Vernica W. Bonaparte				
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19	By Mr. Pascoe	391		403	
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20	Brandon B. Dewitt				
21	By The Court	416			
22	James J. Howell				
	By The Court	428			
23	By Mr. Koger	433			
24	Tami M. Huggins				
	By The Court	438			
25	By Mr. Pascoe	444			

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	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
1					
2	<u>WITNESSES</u>				
3	Annie W. Fritz				
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4	By Mr. Pascoe	473			
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5					
	Beatrice Whetstone				
6	By The Court	480			
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7	By Mr. Pascoe	491			
8					
	Richard L. Rickenbaker				
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9	By Mr. Pascoe	506		510	
	By Mr. Walters	507			
10					
	William C. Holman, III				
11	By The Court	515			
	By Mr. Koger	524			
12					
	Pearlie G. Brunson				
13	By The Court	528		553	
	By Mr. Pascoe	532			
14	By Mr. Walters	534			
15					
	Karen Pund Hutto				
	By The Court	538			
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	Avia S. Gladden				
17	By The Court	542			
	By Mr. Pascoe	546			
18	By Mr. Koger	547			
19					
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	By The Court	555			
20	By Mr. Pascoe	559			
	By Mr. Walters	560			
21					
	Joann Green-Jackson				
22	By The Court	563			
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24					
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2					
3	Charles F. Kaiser				
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4	By Mr. Sorenson	586			
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5					
	Mary B. Gunter				
6	By The Court	591, 1194			
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7	By Mr. Koger	1197			
8					
	Theresa N. Huggins				
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9	By Mr. Sorenson	603			
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10					
	Marion B. Williams				
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	Ronnie L. Bozard				
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	Nathaniel J. Gladden				
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17					
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18	By The Court	644			
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19	By Mr. Walters	653			
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21	By Mr. Koger	661			
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	Catlin D. Craven				
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24	By Mr. Walters	674			
25					

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	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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2					
3	James E. Cornelius				
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4	By Mr. Koger	685			
5	Linda I. Inabinet				
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6	By Mr. Walters	690			
7	Maxine B. Bonaparte				
	By The Court	694			
8	By Mr. Pascoe	696			
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9					
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10	By The Court	703			
	By Mr. Walters	705			
11	By Mr. Pascoe	709			
12	April A. Mills				
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13	By Mr. Pascoe	719			
	By Mr. Koger	722			
14					
	Jacqueline Culcleasure				
15	By The Court	726			
16	Monty S. Cochran				
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18	By The Court	737			
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20	By Mr. Sorenson	744			
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21					
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22	By The Court	759			
	By Mr. Sorenson	763			
23	By Mr. Koger	765			
24	Pamela M. Fogle				
	By The Court	769			
25	By Mr. Pascoe	775			
	By Mr. Koger	777			

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I N D E X cont.

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
Carroll H. Hudson, Jr.				
By The Court	780			
By Mr. Walters	784			
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Alisha M. Hampton				
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James H. Cornelius, Jr.				
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By Mr. Pascoe	866			
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Devin L. Caldwell				
By The Court	874			
By Mr. Walters	877			
By Mr. Pascoe	880			
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By The Court	886			
By Mr. Koger	890			
By Mr. Pascoe	892			

	I N D E X cont.				
	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
1					
2	<u>WITNESSES</u>				
3					
4	Irene Shuler				
5	By The Court	897		909	
6	By Mr. Sorenson	899			
7	By Mr. Walters	905			
8	Thomas Haigler				
9	By The Court	913			
10	By Mr. Sorenson	918			
11	By Mr. Koger	921			
12	Ruby R. Keller				
13	By The Court	927			
14	By Mr. Walters	932			
15	By Mr. Sorenson	935			
16	Alcojon Michael				
17	By The Court	938			
18	By Mr. Sorenson	942			
19	Alfred Mack				
20	By The Court	946			
21	By Mr. Walters	951			
22	By Mr. Sorenson	956			
23	Jessica A. McKoy				
24	By The Court	962, 1188			
25	By Mr. Sorenson	966			
26	By Mr. Koger	968			
27	By Mr. Walters	1189			
28	Candace S. Haynes				
29	By The Court	971			
30	By Mr. Walters	977			
31	By Mr. Sorenson	979			
32	Perry L. Jones				
33	By The Court	989			
34	By Mr. Koger	994			
35	By Mr. Sorenson	997			
36	Michael P. Walling				
37	By The Court	1001			
38					

	I N D E X cont.			
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2	<u>WITNESSES</u>			
3	Robert L. Greenwaldt			
	By The Court	1011		
4	By Mr. Sorenson	1015		
	By Mr. Koger	1016		
5				
	Bertha L. Fredrick			
6	By The Court	1020		
	By Mr. Walters	1023		
7	By Mr. Pascoe	1026		
8				
	Charlie R. Rucker			
	By The Court	1031		
9				
	Santana S. Favor			
10	By The Court	1035		
	By Mr. Sorenson	1039		
11	By Mr. Walters	1042		
12				
	Carolyn M. Wright			
	By The Court	1046		
13	By Mr. Sorenson	1049		
	By Mr. Koger	1052		
14				
	Patricia A. Mitchell			
15	By The Court	1057		1071
	By Mr. Walters	1062		
16	By Mr. Sorenson	1067		
17				
	Jeremiah A. Backmon			
	By The Court	1075		
18	By Mr. Koger	1078		
	By Mr. Sorenson	1080		
19				
	Debra S. Brown			
20	By The Court	1088		
21				
	Clevis D. Harrison			
	By The Court	1093		
22				
	Arthur L. Mosley			
23	By The Court	1097		1109
	By Mr. Koger	1101		
24	By Mr. Sorenson	1104		
25				

	I N D E X cont.				
	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2					
3					
4	Richard M. Boone				
5	By The Court	1112			
6	By Mr. Sorenson	1114			
7	By Mr. Walters	1116			
8	Charles E. Jeffery				
9	By The Court	1120			
10	Kathleen A. Link				
11	By The Court	1124			
12	By Mr. Koger	1126			
13	Evelyn M. Jackson				
14	By The Court	1130		1141	
15	By Mr. Sorenson	1133			
16	By Mr. Walters	1138			
17	William W. Crawford				
18	By The Court	1145			
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20	By The Court	1150			
21	Gregory M. Smith				
22	By The Court	1152			
23	By Mr. Koger	1156			
24	Mary G. Loftis				
25	By The Court	1162			
26	By Mr. Walters	1167			
27	Jacob Cheeseboro				
28	By The Court	1175			
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30	Michael Cross				
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32	By Mr. Koger	1257			
33	Guilty Plea	1259			

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1	2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>REXCROSS</u>
3		Darren Frost				
4		By Mr. Sorenson	1293			
5		Amy Tripp Myers				
6		By Mr. Pascoe	1311			
7		James R. Woodley				
8		By Mr. Pascoe	1342		1350	
9		By Mr. Koger		1347		1351
10		Linda Lee Coulson				
11		By Mr. Pascoe	1351			
12		By Mr. Walters		1358		
13		Cindy Collins				
14		By Mr. Pascoe	1369			
15		Mike Koehler				
16		By Mr. Pascoe	1373			
17		By Mr. Walters		1378		
18		Moises Rivera				
19		By Mr. Pascoe	1387		1399	
20		By Mr. Walters		1394		
21		Joseph Parson Owen				
22		By Mr. Pascoe	1399			
23		By Mr. Koger		1409		
24		Amanda Jean Weaver				
25		By Mr. Sorenson	1414			
		By Mr. Walters		1427		
		Corey T. Pitts				
		By Mr. Pascoe	1444			
		By Mr. Walters		1448		
		Stephen Curtis				
		By Mr. Sorenson	1457			
		By Mr. Koger		1479		
		Mike S. Poe				
		By Mr. Sorenson	1483			
		By Mr. Walters		1497		

	I N D E X cont.				
	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
1					
2	<u>WITNESSES</u>				
3	Phillip Seats				
	By Mr. Sorenson	1498			
4	By Mr. Koger		1505		
5	Neal Morin				
	By Mr. Sorenson	1508			
6	William Alexander Cartwright, III				
7	By Mr. Pascoe	1513			
8	Michael Anthony Adams				
	By Mr. Pascoe	1516			
9	Barbara Ann Amos				
10	By Mr. Pascoe	1527			
11	Henry Lee Johnson				
	By Mr. Sorenson	1530			
12	By Mr. Koger		1534		
13	Wickliffe McPherson				
	By Mr. Sorenson	1536			
14	By Mr. Koger		1541		
15	Terrance Prioleau				
	By Mr. Sorenson	1543			
16	By Mr. Walters		1545		
17	Janet Driggers				
	By Mr. Sorenson	1547		1558	
18	By Mr. Walters		1550		
19	Annie Sellers				
	By Mr. Sorenson	1561			
20	By Mr. Koger		1565		
21	Gary Lane				
	By Mr. Sorenson	1567		1577	
22	By Mr. Walters		1574		1578
23	Thomas S. Summers, Jr.				
	By Mr. Pascoe	1579		1586	
24	By Mr. Walters		1584		
25					

	I N D E X cont.			
	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
1				
2				
3	Wendell Davis			
	By Mr. Pascoe	1587		
4				
	Edward Myers			
5	By Mr. Pascoe	1594		
6				
	Meredith Myers Firestone			
	By Mr. Pascoe	1602		
7				
	Janice Edwards Ross			
8	By Mr. Sorenson	1609		
9				
	James Evans Akin			
	By Mr. Walters	1620		
10	By Mr. Sorenson		1643	
11				
	Marjorie Hammock			
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12				
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13	By Mr. Pascoe	1686		
	By Mr. Walters	1709		
14				
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15				
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E X H I B I T S				
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1				
2				
3	State's 1	Blowup Photograph	1232	1316
4	State's 2	Photograph	1232	1463
5	State's 3	Photograph	1232	1462
6	State's 4	Photograph	1232	1327
7	State's 5	Photograph	1232	1327
8	State's 6	Photograph	1232	1472
9	State's 7	Photograph	1232	1331
10	State's 8	Photograph	1232	
11	State's 9	Photograph	1232	1335
12	State's 10	Photograph	1232	
13	State's 11	Photograph	1232	
14	State's 12	Photograph	1232	
15	State's 13	Photograph	1250	1321
16	State's 14	Photograph	1250	
17	State's 15	Photograph	1250	1329
18	State's 16	Photograph	1250	1446
19	State's 17	Photograph	1250	
20	State's 18	Photograph	1250	
21	State's 19	Photograph	1250	
22	State's 20	Photograph	1250	1460
23	State's 21	Photograph	1250	1460
24	State's 22	Photograph	1250	
25	State's 23	Photograph	1250	

1 EXHIBITS cont.

2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	State's 24	Photograph	1250	1466
4	State's 25	Photograph	1250	1466
5	State's 26	Photograph	1250	
6	State's 27	Photograph	1250	
7	State's 28	Photograph	1250	
8	State's 29	Photograph	1250	
9	State's 30	Photograph	1250	
10	State's 31	Photograph	1250	1469
11	State's 32	Photograph	1250	
12	State's 33	Photograph	1250	1466
13	State's 34	Photograph	1250	1466
14	State's 35	Photograph	1250	
15	State's 36	Photograph	1250	
16	State's 37	Photograph	1250	
17	State's 38	Photograph	1250	
18	State's 39	Photograph	1250	1333
19	State's 40	Photograph	1250	1473
20	State's 41	Photograph	1250	1473
21	State's 42	Photograph	1250	1473
22	State's 43	Photograph	1250	1464
23	State's 44	Photograph	1250	1466
24	State's 45	Photograph	1250	
25	State's 46	Photograph	1250	

E X H I B I T S cont.				
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1				
2				
3	State's 47	Photograph	1250	
4	State's 48	Photograph	1250	1470
5	State's 49	Photograph	1250	
6	State's 50	Photograph	1250	
7	State's 51	Photograph	1250	1471
8	State's 52	Photograph	1250	1466
9	State's 53	Photograph	1250	1466
10	State's 54	Photograph	1250	1466
11	State's 55	Photograph	1250	1466
12	State's 56	Photograph	1250	1466
13	State's 57	Photograph	1250	1466
14	State's 58	Photograph	1250	1466
15	State's 59	Photograph	1250	1466
16	State's 60	Photograph	1250	1462
17	State's 61	Photograph	1250	
18	State's 62	Photograph	1250	
19	State's 63	Photograph	1250	
20	State's 64	Photograph	1250	
21	State's 65	Photograph	1250	
22	State's 66	Photograph	1250	
23	State's 67	Photograph	1288	1325
24	State's 68	Photograph	1288	1392
25	State's 69	Photograph	1288	1392

1 EXHIBITS cont.

2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	State's 70	Photograph	1288	1392
4	State's 71	Photograph	1288	1392
5	State's 72	Photograph	1288	1392
6	State's 73	Photograph	1288	1392
7	State's 74	Photograph	1288	1392
8	State's 75	Photograph	1288	1297
9	State's 76	Gun Clip	1288	1301
10	State's 77	Gun	1288	1301
11	State's 78	Photograph	1288	1339
12	State's 79	Photograph	1288	1338
13	State's 80	Photograph	1288	1338
14	State's 81	Photograph	1288	1338
15	State's 82	Photograph	1288	1338
16	State's 83	Receipt	1342	1419
17	State's 84	Photograph	1342	1420
18	State's 85	Evaluation	1353	1354
19	State's 86	Records	1371	1371
20	State's 87	Conditions of Probation	1402	1403
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23	State's 90	Photograph	1414	
24	State's 91	Photograph	1414	1496
25	State's 92	Shotgun	1477	1478

	E X H I B I T S cont.		
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EVD.</u>
1			
2			
3	State's 93	Rifle	1479
4	State's 94	DVD	1483 1495
5	State's 95	Culpeper DJJ Records	1526 1529
6	State's 96	Photograph	1526 1534
7	State's 97	Photograph	1526 1539
8	State's 98	Photograph	1526 1540
9	State's 99	Photograph	1526 1540
10	State's 100	Photograph	1526 1544
11	State's 101	Grievance Form	1526 1550
12	State's 102	Tape	1526 1563
13	State's 103	Hatchet	1526 1574
14	State's 104	Key	1578 1582
15	State's 105	Graduation Program	1593 1597
16	State's 106	Photograph	1593 1600
17	State's 107	Photograph	1593 1604
18	State's 108	Photograph	1593 1604
19	State's 109	Photograph	1593 1604
20	State's 110	Photograph	1593 1604
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22	Defendant's 1	Newspaper Article	516
23	Defendant's 2	Time Line	1664
24	Defendant's 3	School Summary	1670
25	Court's 1	Order for Competency	39

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
Court's 2	Evaluation	39	
Court's 3	Doctor's Excuse	183	
Court's 4	Doctor's Excuse	189	
Court's 5	List of Unserved Jurors	306	

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1 (The following proceedings were held on July
2 7, 2006.)

3 **THE COURT:** We're here today regarding the case
4 of the State versus Mikal Deen Mahdi. A motion has
5 been filed in this case by Richard Harpootlian on
6 behalf of Carl Grant asking that the Court order
7 that Mr. Grant be relieved as counsel in this case.
8 This same issue came up orally before me at our
9 hearing on June 21st and I did not act on the motion
10 at that time. I did inquire of Mr. Mahdi his
11 thoughts regarding it, as well as the State's
12 thoughts concerning the motion. A formal motion has
13 since been filed and I'm prepared to act on that
14 motion today.

15 Mr. Walters, what is the defense's position
16 regarding Mr. Grant's motion at this time?

17 **MR. WALTERS:** May it please the Court, Your
18 Honor. Your Honor, we would ask the Court grant
19 that motion considering Mr. Grant's condition and
20 the time that he needs to recuperate from his
21 accident. We would ask the Court to please follow
22 the recommendation of that motion.

23 **THE COURT:** Mr. Mahdi, if you would stand
24 please. What is your position concerning that?

25 **DEFENDANT MAHDI:** I feel that it would be in my

1 best interest, you know, to receive additional
2 counsel because Carl B. Grant doesn't seem like
3 he'll recover anytime soon.

4 THE COURT: All right. Thank you, sir.

5 Mr. Solicitor.

6 MR. PASCOE: Good morning, Your Honor. The
7 State would also consent to Mr. Grant being relieved
8 as counsel.

9 THE COURT: I think that given the severe
10 nature of Mr. Grant's injury, it seems apparent, at
11 this time, that he is not capable of continuing in
12 this case as counsel. I'm, therefore, granting the
13 motion to relieve Mr. Grant as counsel for the
14 defendant in this case. Mr. Grant was appointed as
15 lead counsel in this case.

16 It was mentioned -- raised by Mr. Walters at
17 the last hearing that Mr. Joshua Koger had either
18 expressed an interest or had been contacted
19 concerning possibly stepping in as lead counsel in
20 this case. And Mr. Koger is here today?

21 MR. KOGER: Yes, Your Honor.

22 THE COURT: Yes, sir, Mr. Koger. Are you
23 willing to become lead counsel in this case?

24 MR. KOGER: Your Honor, from a prior
25 conversation with Attorney Walters, I'd be willing

1 to come in as second counsel. I think it was some
2 type of, not misunderstanding, but some type of
3 question as to whether Mr. Walters could be lead
4 counsel, but from reviewing the statute 16-3-26(b)
5 subsection one, is that to be death penalty
6 certified, that both counsel -- the lead counsel
7 will need to have five years felony experience. Of
8 course, Mr. Walters definitely has that. I would
9 ask that the Court designate Mr. Walters as lead
10 counsel and I will serve as second chair.

11 **THE COURT:** All right. Mr. Walters.

12 **MR. WALTERS:** May it please the Court. Your
13 Honor, previously when we appeared before the Court,
14 Your Honor did not rule with regards to Mr. Grant
15 because you wanted a formal motion filed with the
16 Court. And, certainly, the Court has ruled on that
17 motion at this time.

18 Mr. Koger worked extensively with Mr. Grant's
19 office on various cases. And, of course, in this
20 particular case, he has expressed an interest. And,
21 certainly, I have known Mr. Koger for years and his
22 experience in the public defender's office, working
23 as a public defender for almost eight or nine years
24 within the circuit of Aiken, Bamberg and Barnwell
25 and he has extensive felony experience.

1 In addition to that, Your Honor, I practiced
2 law for 16, 17 years as of now and, of course, I
3 practiced criminal law since becoming a member of
4 the South Carolina Bar. I believe that Mr. Koger is
5 well qualified to serve and, certainly, we can
6 provide an adequate defense for Mr. Mahdi. So,
7 certainly, I would concur with Mr. Koger's
8 recommendation and his comments with regards to
9 16-3-26(b) (1). Thank you.

10 **THE COURT:** 16-23...

11 **MR. WALTERS:** 16 dash 3 dash 26(b) (1).

12 **THE COURT:** And, Mr. Walters, are you on the
13 death penalty certified list as compiled and
14 maintained by the Supreme Court?

15 **MR. WALTERS:** Yes, sir, I believe so. I'm not
16 aware of the Supreme Court's list. What I am aware
17 of is the requirements that the Clerk of Court has
18 with regards to appointments and certainly that's
19 essentially where most lawyers look when they're
20 being appointed with regards to criminal cases.
21 And, of course, they have a designated group of
22 people that are qualified to handle death penalty
23 cases. And, of course, that's where I obtained my
24 information from the Orangeburg County Clerk of
25 Court's office and, of course, 16 dash 3 dash

1 26(b) (1).

2 THE COURT: The Appellate Court rule number
3 608(f) (1) entitled Lead Counsel in Death Penalty
4 Cases says, The appointment of a lead counsel to
5 represent an indigent defendant in a death penalty
6 case shall be made from the list of members
7 specified in (c) (1) (a) above who have been death
8 penalty certified as lead counsel by the Supreme
9 Court; provided, however, that lawyers who are not
10 certified may be appointed as lead counsel in a post
11 conviction relief sentence of a -- in a matter.

12 So there is a specific rule in statute that
13 provides that the Supreme Court shall compile a list
14 of death penalty certified counsel and that that
15 list is then to be provided to the various Clerks of
16 Courts in the areas where appointments are made and
17 maintained by the various clerks of courts.

18 Now, under the -- you are on a list,
19 Mr. Walters, the death penalty certified list, you
20 are on that list as compiled by the Supreme Court
21 and Mr. Koger is on the list as well.

22 MR. WALTERS: Thank you, Your Honor.

23 THE COURT: What says the State?

24 MR. PASCOE: The State has no objection, Your
25 Honor, to appointing both of these attorneys.

1 **THE COURT:** And, Mr. Mahdi, if you'll stand
2 again. The reconfiguration of lead counsel and
3 second counsel, as represented by Mr. Walters here,
4 is that Mr. Walters would serve as your lead
5 counsel, Mr. Koger would be the co-counsel or second
6 counsel. Do you think that's a fair arrangement?

7 **DEFENDANT MAHDI:** I most definitely do, sir.

8 **THE COURT:** All right. And you're satisfied
9 that Mr. Walters can perform adequately as your lead
10 counsel and that Mr. Koger can do so as the second
11 counsel?

12 **DEFENDANT MAHDI:** Yes, sir.

13 **THE COURT:** All right. Thank you, sir.

14 I find Mr. Walters is death penalty certified
15 according to our court rules, that he has been
16 working on this case since being appointed by me
17 last year some time, that he has been integrally
18 involved in the preparation of the defense in this
19 case and I am, therefore, appointing him as lead
20 counsel in this case. I also find that based on the
21 experience and qualifications of Mr. Koger, that he
22 is suitable to serve as the second counsel in this
23 case and I'm appointing him to serve as second
24 counsel for Mr. Mahdi in this case.

25 Now, as far as the status of the matter and the

1 proceeding with the scheduled trial date in this
2 case, what says the defense, Mr. Walters?

3 MR. WALTERS: May it please the Court. Your
4 Honor, I certainly take into consideration the
5 comment to the Court with regards to this particular
6 type of case and in no way should it be trivialized
7 because I believe the saying is death is different.
8 I would ask that the Court, in exercising your
9 wisdom and discretion considering the fact that new
10 counsel has been appointed, we would adhere to any
11 date that is set by the Court.

12 THE COURT: Is the State ready to proceed on
13 the scheduled trial date? Will the State be ready
14 to proceed on the scheduled trial date?

15 MR. PASCOE: We can be, yes, sir, which is
16 August the 28th, I think, or 27th. Yes, sir, we can
17 be available.

18 THE COURT: At the last hearing, there was a
19 discovery issue that was addressed on the record.

20 MR. PASCOE: We provided the defense with all
21 of the discovery. The one thing, the witness list
22 was what we had said we would provide to Mr. Walters
23 and we did that on the day that the Court ordered us
24 to do so.

25 THE COURT: Is that right, Mr. Walters?

1 MR. WALTERS: That is correct, Your Honor. In
2 fact, I think they provided it the next day, so it
3 was well within the time period.

4 THE COURT: Will the defense be ready to
5 proceed to trial on the scheduled trial date, August
6 28th?

7 MR. WALTERS: Your Honor, there are several
8 motions that we have filed with the Court. Of
9 course, there's a Jackson v. Denno, motion for
10 change of venue, motion for change of venire,
11 considering whether the Court will rule on those
12 motions, and there are some additional motions with
13 regards to evidentiary issues that we would submit
14 to the Court.

15 THE COURT: Okay. I'm looking at the notice of
16 motion and motion for change of venue or, in the
17 alternative, for a change of venire. Is the defense
18 prepared to argue that motion today?

19 MR. WALTERS: No, sir, Your Honor.

20 THE COURT: The practicality of such a motion
21 is that certainly the case is set in this county,
22 venue is proper in this county. And if a fair and
23 impartial jury can be seated in this county, then
24 the case will proceed with a jury being selected
25 from the citizens of Calhoun County and that the

1 trial will take place in this county.

2 If a fair and impartial jury cannot be seated
3 in this county, then the Court will consider the
4 options of a change in venue or, in the alternative,
5 the change of venire. If the -- if it appears that
6 there should be a change of venire, then a venire
7 would have to be selected on a date which would not
8 cause the case to be continued. So that venire
9 would then have to be selected or some determination
10 made as to what county would be suitable to select a
11 venire from and, hopefully, in such a manner that
12 the case can still proceed on the scheduled date.

13 So, therefore, I have to entertain the motion.
14 And the motion to, probably, be entertained
15 preliminarily at least prior to the scheduled date
16 in order for decisions to be made regarding the
17 venire if it appears that that is going to be -- is
18 to be necessitated based on not being able to seat a
19 fair and impartial jury. Do you have any thoughts
20 on that, Solicitor?

21 MR. PASCOE: Yes, sir. The only problem we run
22 into with that is it's hard really to judge whether
23 we're going to be able to pick a fair and impartial
24 jury without trying to pick a jury. So I understand
25 the problem the Court's going to have, which is

1 let's say we go forward on August the 28th -- the
2 State's position is we're going to be able to pick a
3 fair and impartial jury in this case. We're very
4 confident in that, but if for some reason we weren't
5 able to do that, I don't think we're going to be
6 able to find out until we begin to pick the jury.

7 Another thing I want to bring up as far as
8 dates for trial, if the Court is inclined to grant a
9 continuance because Mr. Koger is new on the case, I
10 think we have general sessions again, I was going to
11 ask the Clerk of Court, is it October -- in
12 November?

13 We have court again on November the 27th. The
14 State would be ready to try it then. And then I
15 know we've got the new court schedule for 2007 and I
16 think we have it -- we always seem to have it in
17 February. So it would be the State's position if we
18 couldn't do it on August 28th, that we would -- if
19 we could do it on November or the very next term of
20 court.

21 **THE COURT:** All right. Mr. Walters.

22 **MR. WALTERS:** May it please the Court. Your
23 Honor, as I stated before with death being
24 different, certainly, I would like new counsel to be
25 aware of all the facts and have an opportunity to

1 adequately go through the file. And, of course, if
2 there are any additional motions that co-counsel
3 would see fit, I would like to have them also
4 submitted before the Court.

5 Out of an abundance of precaution then, we
6 would ask that the Court, in exercising its
7 discretion, take in consideration the fact that new
8 counsel is before the court and adequate time will
9 be needed to make sure that we're prepared and ready
10 to go.

11 **THE COURT:** Mr. Koger.

12 **MR. KOGER:** Your Honor, I would concur in that
13 motion by Mr. Walters. The date set forth by the
14 Solicitor's office either one would be agreeable
15 with me. I could come up to speed in that
16 particular time, Your Honor.

17 **THE COURT:** Do you think you can come up to
18 speed by August 28th?

19 **MR. KOGER:** I think that would be a challenge,
20 Your Honor. I'm just now getting into the case and
21 I would like to have the opportunity, as Attorney
22 Walters stated, to go through the file, to make any
23 suggestions as far as any additional motions that's
24 not already filed.

25 (Pause.)

1 **THE COURT:** The term of court that is set here
2 for August 28th, is that a regularly scheduled
3 general sessions term for this county?

4 **MR. PASCOE:** Yes, sir.

5 **THE COURT:** So you'll proceed with a jury
6 anyway?

7 **MR. PASCOE:** Yes, sir. Whether we have the
8 death penalty or not, we will have court for general
9 sessions August the 28th. The only thing that would
10 change, Your Honor, is we also have general sessions
11 for, as of right now, for that first week in
12 September that we took from Dorchester, that would
13 probably go back, if court administration's willing,
14 to Dorchester County. It wouldn't be here in
15 Calhoun.

16 **THE COURT:** Do you want to address, on the
17 motion regarding the change of venue and venire, do
18 you want to have that addressed on August 28th?

19 **MR. PASCOE:** I'm thinking about it. I'm trying
20 to figure out how would we be able to address it
21 then. I mean, we could make arguments with case law
22 and everything, but I still think with the Manning
23 case and other cases, we would still have to attempt
24 to pick that jury before a ruling could be made.

25 **THE COURT:** So you're saying the -- Mr. Koger

1 and Mr. Walters is saying that the case should be
2 continued until November 27th so that Mr. Koger will
3 be fully prepared to fulfill his responsibilities in
4 his representation of Mr. Mahdi. So the case should
5 be continued to November the 27th.

6 And you're saying that under the Manning case,
7 an effort should be made to seat a panel in this
8 case, but it should not be done on the 28th if the
9 case is to be continued until November 27th?

10 MR. PASCOE: Beg the Court's indulgence.

11 THE COURT: Yes, sir.

12 (Pause.)

13 MR. PASCOE: Now, that's a thought, if I'm
14 reading the Court correctly, a jury could always be
15 selected -- well, no -- I was saying select a jury
16 on August the 28th to come back on November the
17 27th, I think both sides will agree that can't be
18 done.

19 The other reason I think we need to probably
20 wait is so we can get the questionnaires back so
21 both sides can review them as part of our argument
22 as to why we can pick a jury and the defense's
23 argument as to why there needs to be a change of the
24 venire.

25 I thought about, for a minute there, yes,

1 picking it on August the 28th and having them come
2 back in November, but you can't do that in any case
3 much less a death penalty because I just realized
4 that they're going to be sequestered probably and I
5 don't think it would be practical.

6 THE COURT: Well, I'm not going to assume
7 sequestration.

8 MR. PASCOE: That's right. Yes, sir.

9 THE COURT: I'm raising the questions for a
10 number of reasons. Of course, my schedule has
11 changed from Clarendon and Horry to be here on
12 August 28th and the following week. And if the
13 motion is heard on that day, then, obviously my
14 schedule will stay the same as far as being here on
15 August 28th. It would otherwise be a one week term
16 and you have Dorchester the next week.

17 I am not -- I'm concerned of the issue of
18 change of venue and change of venire, but if change
19 -- since the motion filed is an alternative motion
20 to change venue or, in the alternative, to change
21 venire, then the great likelihood is that the case
22 will be in this county and not in another county
23 because if a venire can be -- if the jury cannot be
24 selected here and it becomes necessary to pick a
25 jury from some place else in a similarly situated

1 place like Calhoun County, if there is another place
2 in this state like Calhoun County -- is there,
3 Mr. Hasting?

4 THE CLERK: It's very unique.

5 THE COURT: It's a very unique place, so there
6 -- but efforts must be made. But the scheduling
7 consideration must, as far as if that becomes
8 necessary to get a venire from another place, then
9 advanced planning has to be done to deal with that.
10 That's the main reason I raise the issue as to
11 scheduling of the motion so that other
12 considerations can be made.

13 And so, therefore, I believe that it will be --
14 despite the fact that an effort must be first made
15 to seat a jury, I have to entertain that motion in
16 advance of actually attempting to select that jury.
17 So, thus, the question is, do you want the motion
18 heard on the 28th? We're back to that same
19 question. And will the defense be prepared to argue
20 at that time since the defense indicates that he's
21 not prepared to argue it today?

22 MR. PASCOE: Can I talk to Mr. Walters?

23 (Pause.)

24 THE COURT: Yes, sir, Mr. Walters.

25 MR. WALTERS: May it please the Court. Your

1 Honor, in considering the implications of the
2 Manning case, of course, in order for the defense to
3 adequately argue that motion, we would need the
4 questionnaires returned from all of the jurors and,
5 of course, that information, along with the other
6 empirical information, newspaper, things of that
7 nature, we would submit before the Court, I don't
8 believe that we would have adequate time to prepare
9 a proper argument before the Court on August 28th.

10 THE COURT: And what says the State?

11 MR. PASCOE: Your Honor, I would agree in that
12 I think the prudent thing would be is to attempt to
13 pick a panel before an alternate decision was made.
14 We could still have hearings the week of August the
15 28th whether it's the Denno hearings, you know, any
16 of the other motions and even some -- and entertain
17 some of at least the legal aspects of the motion to
18 change venire and motion to change venue. I think
19 we're going to have a difficult time on getting a
20 final ruling until we try to pick a jury, but I
21 think we can at least get the ball rolling.

22 THE COURT: Therefore, based on everything that
23 has been said and argued to me today, I'm going to
24 grant the defense's motion to continue the trial of
25 this case to the week of November the 27th. And the

1 Court will hear arguments on all pending motions
2 that can be heard on August -- during the week of
3 August 28th.

4 The essence of all of that is that I won't be
5 reassigned. I'll be here as your presiding Judge
6 for this and other cases the week of August 28th and
7 be in a position to deal with matters that can be
8 heard during that week so that the clerk will not
9 have to summon an excessive number of jurors for --
10 that you would otherwise need for a regular term of
11 court, you -- and I so advise now since this case is
12 continued to November the 27th and other matters
13 will be dealt with where there's no jury involved,
14 as to the death penalty aspects of it anyway of the
15 death penalty case, but you'll need the jury for
16 your regular general sessions.

17 All right. Very good. Regarding the granting
18 of Mr. Harpootlian's motion, I was thinking that a
19 proposed order was included in the papers that were
20 sent. Does anyone have an original?

21 MR. SORENSON: I believe I do, Your Honor.

22 (Pause.)

23 THE COURT: I've signed the order relieving
24 Mr. Grant as counsel. Are there any additional
25 matters that we need to address today?

1 MR. PASCOE: Yes, sir. Just with regards to
2 the scheduling, Your Honor, are you going to contact
3 Court Administration and have them switch you for
4 November the 27th?

5 THE COURT: Yes.

6 MR. PASCOE: That will be great. And then
7 really all Court Administration needs to do is
8 switch the September 3rd term of court that we have
9 here in Calhoun, when you were supposed to be here,
10 to December the 4th. Does that make sense? Because
11 we're going to need two weeks. So we'll have you
12 come on November the 27th switching with -- I can't
13 remember who that judge is.

14 THE COURT: Judge Roger Crouch.

15 MR. PASCOE: Judge Crouch. And then, of
16 course, this trial will go at least two weeks, so we
17 would need a December the 4th term of Court here in
18 Calhoun County, but, again, Court Administration all
19 they have to do is...

20 THE COURT: Do you have Dorchester set for
21 December the 4th?

22 MR. SORENSON: I believe so, Your Honor. I
23 think we have court December 4th and 11th, I
24 believe.

25 THE COURT: They have Judge Goodstein set for

1 Dorchester on December 4th. They have general
2 sessions in Dorchester with Judge Goodstein, two
3 week term beginning December the 4th. So Court
4 Administration will be notified that you need one of
5 those weeks for here, that's still within your
6 circuit.

7 Originally, I had nonjury in the 15th Circuit,
8 Conway, Georgetown. Judge Goodstein is now there.
9 So whether they'll switch that back and give me the
10 nonjury Conway, Georgetown -- I might wait until
11 September the 1st until I tell them --

12 MR. PASCOE: Do you have a preference?
13 Mr. Sorenson who runs the Dorchester -- you're more
14 than welcome to come to Saint George on September
15 the 3rd.

16 THE COURT: All right. We'll work that out
17 with your Chief, Judge Goodstein. Any additional
18 matters then?

19 MR. PASCOE: No, Your Honor.

20 MR. WALTERS: No, sir, Your Honor.

21 THE COURT: Mr. Koger?

22 MR. KOGER: No, Your Honor.

23 THE COURT: Mr. Mahdi?

24 DEFENDANT MAHDI: No, sir.

25 THE COURT: All right. Very good.

1 **MR. WALTERS:** May it please the Court. Your
2 Honor, from the previous meeting that we had in
3 Saint Matthews, I was told to prepare an order and I
4 did a formal motion. I'd like an opportunity to
5 draft an order reflecting your order today that I
6 would be lead counsel and Mr. Koger was appointed
7 and, of course, setting the new trial date. And
8 I'll submit that to the Court and make sure I show
9 it to the Solicitor.

10 **THE COURT:** Very good. The best way to submit
11 orders to me is through e-mail so that I can modify
12 and then print them. Of course, you need to --
13 because you also have to submit it to the State,
14 then you would mail the original as well, but then
15 if you'll e-mail a copy of whatever you mail to me,
16 that's the best way of sending it.

17 Okay. Very good. Court's in recess.

18 (Whereupon, the proceedings were concluded
19 for July 7, 2006.)

20 (The following proceedings were held on
21 November 20, 2006.)

22 (Court's Exhibit Numbers 1 and 2 were marked
23 for identification purposes.)

24 **THE COURT:** Good morning to everyone. Pretrial
25 matters at all, Solicitor?

1 **MR. PASCOE:** Yes, sir, very briefly. Pursuant
2 to section 17-19-80 of the South Carolina Code, at
3 this time, Your Honor, I would like to serve the
4 defendant, Mikal Deen Mahdi, with three indictments,
5 one for grand larceny more than \$5,000, which is
6 2004-0242, indictment for murder, 2004-GS-0243, and
7 an indictment for burglary in the second degree. If
8 I could just serve these on him. I'll give them to
9 his attorney, Mr. Walters.

10 Furthermore, Your Honor, although we've already
11 served the defendant at least two or three times,
12 just in abundance of caution, we will again serve
13 his lawyers and the defendant with the amended
14 notice of evidence in aggravation of punishment and
15 the amended notice of statutory aggravating
16 circumstances in this case prior to trial. Thank
17 you, Your Honor.

18 **THE COURT:** And, Mr. Walters, would the
19 defendant like to be arraigned again?

20 **MR. WALTERS:** We'd waive that, Your Honor.

21 **THE COURT:** Is that right, Mr. Mahdi? Do you
22 wish to be arraigned again or do you agree with
23 counsel that you waive that arraignment again?

24 **DEFENDANT MAHDI:** Yes, I do waive the
25 arraignment.

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1 **THE COURT:** All right. Thank you. Very good.
2 Mr. Walters, what matters do you have.

3 **MR. WALTERS:** May it please the Court, Your
4 Honor. I conferred with the Solicitor. I believe
5 there are two issues before the Court today, one is
6 with regards to a Blair hearing and the other issue
7 is with regards to the suppression of certain
8 evidence under State v. Lyle.

9 **THE COURT:** We'll do the Blair hearing first.
10 Regarding the Blair hearing, what is the State's
11 position?

12 **MR. SORENSON:** Your Honor, we have Doctor
13 Michael Cross with the South Carolina Department of
14 Mental Health present. We can call him as a witness
15 if that's what Your Honor wishes to do.

16 **THE COURT:** We'll proceed with the testimony
17 then of the doctor.

18 MICHAEL CROSS,
19 having been duly sworn, testified as follows:

20 **THE CLERK:** State your full name for the record
21 please, sir.

22 **THE WITNESS:** Michael Cross, C-r-o-s-s.

23 DIRECT EXAMINATION

24 BY MR. SORENSON:

25 Q Good morning, Doctor Cross.

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1 A Good morning.

2 Q If you would, please tell the Court where
3 you're employed.

4 A I'm employed with the South Carolina Department
5 of Mental Health.

6 Q And if you would, Doctor Cross, will you tell
7 us a little bit about your educational background?

8 A Yes. I received Bachelor's degrees in
9 psychology and history at the University of Memphis.
10 I then went to medical school at the University of
11 Tennessee at Memphis and received a medical degree
12 there. I then went to the University of North
13 Carolina School of Medicine for their psychiatry
14 residency training, completed that. And I spent a
15 year in psychiatry fellowship in forensic psychiatry
16 at the University of South Carolina in Columbia.
17 And I've been practicing with the -- or working with
18 the South Carolina Department of Mental Health for
19 the last two and a half years doing pretrial
20 evaluations for the court.

21 Q And as a result of that, have you had an
22 opportunity to examine defendants pursuant to our
23 state standards for competency?

24 A Yes, I do.

25 Q Have you had an opportunity then to come

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1 present those findings in court before?

2 A Yes.

3 Q And been qualified as an expert?

4 A Yes.

5 Q In, I guess, forensic psychiatry?

6 A Yes.

7 MR. SORENSON: Your Honor, at this time, we'd
8 offer Doctor Cross as an expert in the field of
9 forensic psychiatry.

10 MR. WALTERS: No objection, Your Honor.

11 THE COURT: He is admitted as an expert in the
12 field of forensic psychiatry.

13 MR. SORENSON: Thank you, Your Honor.

14 BY MR. SORENSON:

15 Q If I could, Doctor Cross, show you Court's
16 Exhibit Number 1. Ask you, do you recognize that
17 document?

18 A Yes, I do recognize it.

19 Q And, in fact, what is Court's Exhibit Number 1?

20 A This is an order for competency to stand trial
21 for State versus Blair for the defendant Mr. Mahdi.

22 Q And did you receive that court order?

23 A Yes, I did.

24 Q Do you recall, approximately, when that was
25 that you received that order?

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1 A The stamp is August the 9th, 2005.

2 Q So it would have been some time right around
3 that period of time?

4 A Yes.

5 Q And as a result of that court order, did you
6 have an opportunity to examine Mr. Mahdi with
7 regards to his competency to stand trial?

8 A Yes. I evaluated him on December the 8th,
9 2005.

10 Q And at that point in time when you -- prior to
11 that examination, what items did you have -- did you
12 have at your disposal to review before examining
13 Mr. Mahdi?

14 A Well, we received the court order. And we had
15 -- our social worker had the opportunity to review
16 some past social history, tried to interview
17 Mr. Mahdi's past associates, family. We had the
18 indictments, the arrest warrants and also the police
19 investigative notes, the autopsy report, other
20 records from Virginia, Florida, some statements by a
21 witness, also investigator notes from North
22 Carolina.

23 Q And you indicated that the actual evaluation
24 was performed on December 8th of 2005; is that
25 correct?

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1 A Yes, sir.

2 Q And who else was there when that examination
3 was done?

4 A I saw -- my co-examiner was Randi Pickens. She
5 is employed with the South Carolina Department of
6 Mental Health as a social worker, but she was
7 appointed the second examiner.

8 Q And how about anybody else as far as there with
9 Mr. Mahdi?

10 A Karl Grant, who is the attorney.

11 Q One of his lawyers at the time?

12 A Yes.

13 Q And where was the examination performed?

14 A This was done at Crafts-Farrow Hospital, a
15 hospital within the South Carolina Department of
16 Mental Health. That's in Columbia.

17 Q And how much time was spent that day on
18 December 8th with Mr. Mahdi evaluating him for his
19 competency?

20 A I spent an hour and 45 minutes.

21 Q At that point in time, were you asked to
22 examine him with regards to his capacity to conform
23 or criminal responsibility?

24 A No.

25 Q So it was just strictly for competency?

1 A Yes.

2 Q And you had indicated earlier that you're
3 familiar with our South Carolina standards for
4 competency; is that correct?

5 A Yes.

6 Q What did you do then, as far as examining
7 Mr. Mahdi, to determine whether he was competent to
8 stand trial?

9 A I performed a standard mental health evaluation
10 inquiring about his past history, his past -- that
11 includes his psychiatric history, medical history,
12 social history, also performed a mental status
13 examination, which is a standard examination
14 performed by mental health specialists. It's the
15 standard psychiatric assessment tool that we use.

16 Q And was Mr. Mahdi cooperative with you?

17 A Yes.

18 Q And did he appear to understand the charges
19 that he has against him?

20 A Yes.

21 Q And the potential penalties that he's facing?

22 A Yes.

23 Q Did he understand the roles of the various
24 court personnel?

25 A Yes.

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1 Q As far as his lawyers, the judge, the jury, the
2 Solicitor?

3 A Yes. He understood, yes, the Solicitor's role,
4 his attorney's role, the judge, jury, possible pleas
5 that he might have if they were offered, what pleas
6 mean basically, and discussed what the definitions
7 of evidence and witnesses are. He understood those
8 terms quite well.

9 Q Was there any evidence in your dealing -- with
10 your talking with Mr. Mahdi or viewing the
11 information that you had before you that he's
12 mentally retarded?

13 A No.

14 Q Any evidence that he has a mental illness?

15 A No.

16 Q Could you also have -- let me ask you this,
17 Doctor Cross. Back in December 8th of 2005, did you
18 reach an opinion at that point in time within a
19 reasonable degree of medical certainty as to whether
20 Mr. Mahdi was competent to stand trial back on
21 December 8th, 2005?

22 A Yes, I did.

23 Q What was your opinion back at that time?

24 A My opinion was that he understood the nature
25 and quality of the proceedings against him and also

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1 had a rational understanding of those. He could
2 also effectively communicate with myself and had the
3 ability to communicate well with counsel to prepare
4 a defense.

5 Q And did you further then, Doctor Cross, have an
6 opportunity to sit down with Mr. Mahdi for a short
7 period of time this morning?

8 A Yes.

9 Q Is there anything in your discussions with
10 Mr. Mahdi this morning or with your discussions
11 maybe with his attorneys that led you to believe
12 that anything had changed from December 8th, 2005?

13 A No. He looked essentially the same as I saw
14 him before.

15 Q So your opinion is today he is still competent
16 to stand trial?

17 A Yes, it is.

18 Q Any concerns whatsoever that you had about
19 that?

20 A I didn't have any concerns. I don't have any
21 concerns now.

22 Q And did you -- back in December of 2005, did
23 you issue a report with your findings?

24 A Yes, I did.

25 Q Showing you Court's Exhibit Number 2, do you

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1 recognize that document?

2 A Yes. This is my report that I issued December
3 the -- from my evaluation December the 8th, that I
4 signed December the 12th of 2005.

5 MR. SORENSON: Thank you, Doctor Cross. Please
6 answer any questions that Mr. Walters might have.

7 MR. WALTERS: May it please the Court.

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. WALTERS:

11 Q Doctor Cross, you stated that you reviewed
12 certain medical reports. What reports did you
13 review, sir?

14 A Yes. I reviewed what I had available at the
15 time.

16 Q What was available?

17 A Pardon me?

18 Q What was available?

19 A As I'd mentioned, the available information was
20 -- it was quite limited as far as his past medical
21 history and as far as any kind of past hospital
22 records or anything like that. I didn't have those
23 available to me at the time, but I was going by his
24 self report primarily.

25 Q All right. Well, what did you review? You

1 said it was limited, what did you look at?

2 A As far as medical history, I did not have past
3 psychiatric or hospitalizations, if any, at that
4 time. I understood later what -- we had received
5 some notes from the South Carolina Department of
6 Corrections later, that was the only medical
7 information that we received and that arrived after
8 my report was submitted to the court, but when
9 reviewing those records, it did not change my
10 opinion from my original report, so it didn't
11 require an amendment.

12 Q I would explore further the testing that you
13 performed. Specifically, what tests were performed?

14 A I did not perform any test outside of a
15 standard mental status examination, which is the
16 standard examination that psychiatrists use to
17 determine if someone has a mental illness.

18 Q So it was one particular test that was
19 conducted and as far as medical records, you had
20 none; is that correct?

21 A I didn't have any medical records available,
22 right, and I did that one mental status examination.

23 Q So you did one mental status examination and
24 other than that, there were no other medical
25 records?

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1 A Yes.

2 Q And in your evaluation of Mr. Mahdi, as far as
3 his understanding of the role for participants in
4 court, did he have a clear understanding of that?

5 A Yes.

6 Q Specifically, what did you ask him about?

7 A If I can review -- review everything. I
8 reviewed his charges. I reviewed the penalties to
9 his charges he could face. I talked about, you
10 know, what the capital punishment means, the death
11 penalty what that means. I talked about his -- what
12 a defense attorney is, what the defense attorney's
13 role is, what the Solicitor does in court, talked
14 about the adversarial nature of the courtroom
15 between the defense attorney and the Solicitor.

16 I talked about the neutral -- I talked about
17 the judge, what a judge does in the courtroom and
18 how the judge should be impartial and also talked
19 about how a jury is selected and the people on a
20 jury and what a jury does during their deliberation
21 and how they must reach a unanimous verdict. He
22 understood that well. And I talked about, you know,
23 hung jury, what the ramifications are from that.

24 And we talked about, you know, what kind of
25 biases could play or what kind of -- what, you know,

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1 essentially what makes a jury come to their
2 decision. And, you know, bias was a concept we
3 talked about, that there was nothing psychotic in
4 his thinking about a jury.

5 Q What led you to the conclusion that he had a
6 rational and factual understanding of this
7 procedure?

8 A Well, there wasn't anything that he indicated a
9 delusional process. He had a rational understanding
10 of how a jury works, how the -- what he's being
11 tried for. He didn't have any odd or bizarre
12 beliefs about the legal system. It actually looked
13 quite, you know, rational as I would say. And he
14 understood the proceedings against him quite well.
15 There wasn't any indication of a mental illness or
16 self-defeating behavior or any kind of
17 self-defeating thought that would come into play
18 that would hamper his understanding or his
19 motivation.

20 Q And, again, what is your opinion to a
21 reasonable degree of medical certainty? State that
22 again, please.

23 A I'm sorry?

24 Q You stated an opinion that's based upon a
25 reasonable degree of medical certainty, you stated

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1 that to Mr. Sorenson.

2 A Yes.

3 Q Would you state that again?

4 A Sure. It was my understanding that he had a
5 rational and factual understanding of the
6 proceedings against him and also had a sufficient
7 capacity to communicate with counsel, at this time,
8 to assist with his defense.

9 Q And this conclusion is drawn based on that one
10 particular test that you conducted?

11 A As well as my conversations with the defendant
12 over an hour and 45 minutes.

13 MR. WALTERS: Your Honor, I have no further
14 questions.

15 THE COURT: Mr. Sorenson, anything further?

16 MR. SORENSON: No, sir.

17 THE COURT: Did you say that the doctor
18 generated a report?

19 MR. SORENSON: Yes, sir.

20 THE COURT: Do you intend to offer it into
21 evidence?

22 MR. SORENSON: It's marked as a Court's
23 Exhibit, sir.

24 THE COURT: Any objection to this report being
25 admitted and reviewed by the Court?

1 MR. WALTERS: No objection, Your Honor.

2 THE COURT: Thank you, Doctor.

3 THE WITNESS: Thank you.

4 THE COURT: Next witness, Mr. Sorenson.

5 MR. SORENSON: Excuse me, Your Honor?

6 THE COURT: Do you have another witness?

7 MR. SORENSON: No, sir, that would be it as to
8 the competency.

9 THE COURT: Doctor Cross, did you state that
10 you examined Mr. Mahdi along with a second examiner?

11 THE WITNESS: Yes, sir.

12 THE COURT: And who was that examiner?

13 THE WITNESS: That was Randi Pickens, who is a
14 social worker who works for the department.

15 THE COURT: Thank you, sir.

16 Any additional questions, Mr. Walters?

17 MR. WALTERS: No, sir, Your Honor.

18 THE COURT: Thank you, sir. Any witnesses by
19 the defense?

20 MR. WALTERS: No, sir.

21 THE COURT: Any argument on this issue,
22 Mr. Sorenson?

23 MR. SORENSON: Your Honor, the State's position
24 is that we've proven by a preponderance of the
25 evidence that Mr. Mahdi is, at this point in time,

1 competent to stand trial, that he has the ability
2 not only to understand the charges against him, but
3 also the ability to adequately assist his counsel in
4 his defense.

5 THE COURT: Mr. Walters.

6 MR. WALTERS: May it please the Court. Your
7 Honor, the evidence has been presented. I believe
8 it clearly shows that he has a sufficient, present
9 ability to understand the rational and factual
10 implications of what is occurring today. That's all
11 I have to say.

12 THE COURT: Pursuant to section 44-23-410 of
13 the Code of Laws as revised, the test for
14 determining competency to stand trial is whether the
15 defendant has a sufficient, present ability to
16 consult with his lawyer or lawyers with a reasonable
17 degree of rational understanding and whether he has
18 a rational, as well as factual understanding of the
19 proceedings against him. The burden of proof as it
20 relates to whether or not the defendant is not
21 competent to stand trial is on the defense. The
22 defense must prove that by a preponderance of the
23 evidence.

24 I find that, based on the evidence presented,
25 that the defendant is competent to stand trial.

1 We'll make the reports and order of competency a
2 part of the record in this case.

3 The next issue.

4 MR. SORENSON: Your Honor, I guess the next
5 issue that needs to be taken up is we had put the
6 defense on notice that we intended on offering,
7 during our case in chief, evidence of certain prior
8 bad acts by the defendant, including, Your Honor,
9 the larceny of the .380 pistol from Lawrenceville,
10 Virginia; the larceny of two Virginia license plates
11 also from Lawrenceville, Virginia; larceny of a
12 Mercury Sable station wagon from Lawrenceville,
13 Virginia; armed robbery and a homicide that occurred
14 at an Exxon station three days prior to our homicide
15 in Winston-Salem, North Carolina; the car jacking of
16 a Ford Expedition that occurred less than 24 hours
17 prior to our homicide in Columbia, South Carolina;
18 and, also, the use of a stolen credit card and/or a
19 check card at a Hess station in Calhoun County
20 within 12 hours of our homicide.

21 The defense, Your Honor, has filed a motion to
22 exclude the introduction of these prior bad acts.
23 We did submit a memorandum that hopefully Your Honor
24 received last week. I'm not sure how we want to
25 proceed from this standpoint, but I believe that

1 would be the only other issue that we would have for
2 today.

3 THE COURT: I received and reviewed the State's
4 memorandum from the defense. I have not seen yours.
5 Did you file a response to that?

6 MR. KOGER: No, Your Honor. We received a
7 memorandum today, but we anticipated from our prior
8 meeting that they was going to try to get State v.
9 Lyle evidence and we just filed this motion that we
10 will respond to their motion.

11 THE COURT: Let me see a copy of your motion
12 that you filed in response to it.

13 MR. KOGER: May I approach?

14 THE COURT: Yes.

15 MR. KOGER: And, Your Honor, we're prepared to
16 argue today.

17 THE COURT: All right. What has been filed is
18 the defendant's motion to exclude introduction of
19 prior bad acts and the State has filed a -- a what?

20 MR. SORENSON: It's a memorandum in support of
21 the State's motion to introduce evidence of other
22 bad acts during the guilt phase of the defendant's
23 trial.

24 THE COURT: So the State has filed a motion to
25 introduce evidence of prior bad acts and the defense

1 has filed a motion to exclude it. So the State is
2 the moving party for purposes of this hearing.

3 MR. SORENSON: Yes, sir, Your Honor. As I
4 indicated, there are several prior bad acts that the
5 State is seeking to introduce during the guilt phase
6 of this trial, essentially under two theories, Your
7 Honor, one would be under the law of res gestae. In
8 our state, basically there would be, Your Honor --
9 we are arguing that these charges, and as said, we
10 tried to outline it in our memorandum, but I guess I
11 need to kind of help -- kind of put some of that on
12 the record to try to educate Your Honor a little bit
13 about how this stuff all interrelates to each other
14 also, but under the law of res gestae, it is the
15 State's position that these charges are all so
16 linked together that you really, you can't separate
17 them, that that would be -- that they essentially
18 all -- and if I could, just kind of quote some of
19 the law of res gestae.

20 They all furnish part of the context of the
21 same -- of the crime that's on trial and are
22 necessary for a full presentation of our case. They
23 are so intimately connected with and explanatory of
24 the crime charged against the defendant and is so
25 much a part of the setting of our case and its

1 environment that its proof is appropriate in order
2 to complete the story of our crime of the homicide
3 of Captain Myers.

4 If I could, Your Honor, just from a factual
5 standpoint, this all starts, this essential crime
6 spree that the State is alleging that Mr. Mahdi went
7 on, started back on Wednesday the 14th of July 2004
8 into the early morning hours of Thursday, July the
9 15th of 2004. It's during that point in time that
10 period of -- 24 hour period that a .380 pistol was
11 stolen from a young lady by the name of Amanda
12 Weaver up in Lawrenceville, Virginia, who is a
13 next-door neighbor to a relative of Mr. Mahdi, a set
14 of Virginia license plates was stolen off of a
15 vehicle located at a car rental agency up in
16 Lawrenceville, Virginia and then a Mercury Sable
17 station wagon was stolen from a car lot about a
18 tenth of a mile away from that car rental agency
19 also. All of this occurring up in Lawrenceville
20 Virginia.

21 About 7:05 that evening, Thursday, July 15th of
22 2004, all of these items are discovered, as far as
23 the car and the license plates are discovered
24 missing that morning, that Thursday morning. That
25 evening, 7:05 in the evening at a Exxon station in

1 Winston-Salem, North Carolina, the store
2 surveillance video captures an individual, who the
3 State submits pretty clearly shows to be Mr. Mahdi,
4 coming in, putting a bottle of beer up on the
5 counter, while the clerk is appearing to be looking
6 at something, possibly his I.D., pulls out what
7 appears to be a small, chrome pistol consistent with
8 that .380 pistol that was stolen from Ms. Weaver and
9 proceeds to shoot Mr. Boggs, the clerk, three times
10 killing him. As I indicated, that's all captured on
11 video.

12 We see, at one point in time, Mr. Mahdi place
13 his left hand on the counter and lean over the
14 counter and fire another shot or two while Mr. Boggs
15 is on the ground, that -- there's a cigarette ad mat
16 that is on the counter, that mat is collected. And
17 there are two fingerprints that are identified to
18 Mr. Mahdi that come off of that Camel ad.

19 Additionally, Your Honor, at that scene, they
20 collect a projectile from the scene along with
21 another projectile that was recovered during the
22 autopsy, in addition to two shell casings that are
23 found out at the scene. So that stuff is all
24 collected in Winston-Salem.

25 The following day, Friday the 16th of 2004,

1 there are several incidences that occur in Columbia,
2 South Carolina where Mr. Mahdi is identified by
3 witnesses in a Mercury Sable station wagon with
4 those Virginia license tags that were stolen also in
5 Lawrenceville, Virginia. He's observed around the
6 Washington Street area of Columbia that Friday
7 afternoon also into the following Saturday morning
8 is observed by another witness attempting to sell a
9 .380 pistol, which is the caliber of pistol that was
10 stolen from Ms. Weaver up in Lawrenceville,
11 Virginia, along with also being the same caliber of
12 pistol that was used in the homicide in
13 Winston-Salem that occurs that Friday afternoon,
14 July 16th.

15 We then have into the early morning hours of
16 July 18th, the day that our homicide occurs, about
17 3:30 that morning, right out in front of the
18 Washington Street United Methodist Church where
19 several witnesses have observed Mr. Mahdi over the
20 last day and a half essentially just loitering and
21 hanging out in that area.

22 Corey Pitts is car jacked of his 2000 Ford
23 Expedition while he is sitting at a traffic light at
24 the intersection of Bull Street and Washington
25 Street. He gives a description and does a

1 composite, which is very consistent with Mr. Mahdi,
2 describes a chrome pistol, a chrome handgun, and
3 also indicates that Mr. Mahdi was -- the suspect, at
4 that point in time, was carrying a green kind of
5 Army style duffle bag with him when he committed the
6 car jacking.

7 Within half an hour to 45 minutes later, that
8 Ford Expedition shows up at the Wilco Hess Station
9 at exit 139 of I-26 here in Calhoun County with an
10 individual also fitting the description of Mr.
11 Mahdi, at that point in time, attempting to use a
12 credit card that won't work out at the pump, also
13 coming into the gas station and attempting to get it
14 to work in there.

15 There are two clerks that are working at that
16 point in time. After seeing this individual acting
17 in a suspicious manner, I mean, he's out there for
18 45 minutes to an hour now trying to get the gas into
19 his vehicle and ultimately ended up pulling around
20 the back of the store, they ultimately ended up
21 calling the Calhoun County Sheriff's Office out
22 there at that point in time. Unfortunately,
23 Mr. Mahdi is able to get away and flees into the
24 woods behind the store, which ends up being
25 approximately half a mile or a quarter of a mile

1 from our ultimate homicide scene.

2 When he flees, he leaves behind Corey Pitts'
3 Ford Expedition. That Expedition now has the two
4 stolen Virginia license plates that were stolen up
5 in Lawrenceville, Virginia, that was seen on the
6 Mercury Sable in Columbia, they're now on the Ford
7 Expedition. State Law Enforcement Division was able
8 to lift a fingerprint off one of those license
9 plates that matches Mr. Mahdi, along with a
10 fingerprint off of one of the brackets around one of
11 the license plates.

12 Additionally, in processing the vehicle, they
13 find several other fingerprints that they're able to
14 identify as Mr. Mahdi's throughout not only on the
15 Expedition, but also on some paperwork and items
16 that are inside the Expedition.

17 I indicated, that's now about five o'clock in
18 the morning on Sunday, July 18th. It's in the early
19 evening of July 18th that our homicide occurs, about
20 a quarter of a mile from that Wilco Hess Station
21 right at the interstate.

22 Ultimately, in processing our homicide scene,
23 they end up finding a set of Ford Expedition keys
24 that they then take, they're found within a couple
25 feet of Captain Myers' body. Those Ford Expedition

1 keys come back to matching and going to Corey Pitts'
2 Ford Expedition that was car jacked in Columbia and
3 left at that Wilco Hess station.

4 Additionally, Your Honor, at that scene and
5 also at the autopsy of Mr. Myers, they find multiple
6 .22 rifle shell casings, along with seven .22
7 projectiles that are recovered during the autopsy.

8 Mr. Mahdi is captured three days later on July
9 21st, 2004 down in Satellite Beach, Florida. When
10 they capture him in Florida, he's still driving
11 Captain Myers' vehicle. He has now once again
12 switched license plates and taken the license tag
13 off of a GMC truck that was out at the crime scene,
14 taken that license tag and placed it on the city
15 issued Dodge truck that he stole from Captain Myers.

16 Additionally, in processing that truck, they
17 find clothing inside that truck that is consistent
18 with the clothing, it's a white tank -- T-shirt,
19 tank top undershirt that is found in the truck,
20 which is consistent with descriptions that are given
21 of Mr. Mahdi at the Hess station by the two clerks.
22 Additionally, on the video up in the Exxon station,
23 they also find a pair of shorts in there that are
24 consistent with the video from the Exxon station.
25 Additionally, a pair of Adidas sneakers are found,

1 which end up matching up with several footwear
2 impressions that are left at our homicide scene.

3 They also find an atlas that has been taken
4 from the shed and is inside the Dodge truck now and
5 in processing that, find several fingerprints that
6 are consistent -- are identified with Mr. Mahdi,
7 several of which are on the Jacksonville, Florida
8 page. That becomes significant several weeks later
9 when a traffic stop is conducted down in
10 Jacksonville and a .380 pistol was found that ends
11 up being the .380 pistol that was stolen from Amanda
12 Weaver up in Lawrenceville, Virginia.

13 In questioning the individual that had that
14 .380 pistol, he ends up ultimately identifying
15 Mr. Mahdi in a lineup and also identifying the
16 photograph of Captain Myers' Dodge truck and
17 indicating that -- this individual identified Mr.
18 Mahdi had come through there several weeks earlier
19 attempting to sell several guns and also the truck
20 that he was driving and that they ended up buying
21 several of those guns, including that .380 pistol
22 along with a .22 caliber rifle. That rifle they
23 still had and turned back over to the Jacksonville
24 Sheriff's Office.

25 Subsequent ballistic testing on the .380 pistol

1 found that it was identified as the weapon that was
2 used to kill Mr. Boggs in the convenience store up
3 in North Carolina. Additionally, the .22 rifle that
4 was recovered at the same time came back not only
5 belonging to Captain Myers, but also being the
6 weapon that was used to kill him in our homicide.

7 So as you can see, Your Honor, when looking at
8 all of this, I mean, all of these crimes, right from
9 the initial larcenies that occurred four or five
10 days before our homicide, all the way up until our
11 homicide, are so wrapped together that it really
12 would be unfair to attempt to try to segregate them
13 out. I mean, they're all -- there are pieces of
14 evidence from each of them that interrelate with
15 each other and really help to kind of explain the
16 whole story. That would be, I guess, our argument
17 under res gestae.

18 Additionally, Your Honor, as we put in our
19 memorandum, we would seek to introduce evidence of
20 these same prior bad acts under Rule 404(b) in State
21 versus Lyle. I believe we focus mainly in the
22 memorandum on the identity portion of State versus
23 Lyle.

24 And, Your Honor, and I'm going to turn your
25 attention specifically to the case of State versus

1 Cheeseboro, that was also a capital case that was
2 tried in Richland County several years ago. It's a
3 homicide that occurred at a barbershop where three
4 individuals were shot, two of them ended up dying,
5 where the State was allowed, in that case, to also
6 get into a homicide that occurred a month earlier
7 where a cab driver had been killed. And the whole
8 reason the State was able to get into that was to
9 show identity because the same weapon was used in
10 both of those homicides.

11 This case, Your Honor, we think that it's
12 relevant specifically to the North Carolina homicide
13 because while we don't have the same weapon being
14 used, we do have the defendant selling the weapon
15 that was used in that North Carolina homicide with
16 our weapon that was used in our homicide to the same
17 individual down in Jacksonville, Florida. So,
18 therefore, we feel that it would be extremely
19 probative as to the defendant's guilt on our charge
20 as it shows -- it helps to show the identity of who
21 the perpetrator of our crime was and the fact that
22 he not only sold our homicide weapon, but also
23 another homicide weapon from something that happened
24 only several days prior to our case.

25 Additionally, Your Honor, something from that

1 same Cheeseboro case, they found that it was
2 appropriate to also allow that prior homicide in
3 under the common scheme or plan exception. And the
4 language essentially that's cited is, Where the
5 defendant's own actions link two crimes together,
6 evidence of one crime is admissible as proof of the
7 other under the common scheme or plan exception.

8 And I submit, Your Honor, in this case, the
9 defendant's actions from switching license plates
10 from one vehicle to another, from leaving those Ford
11 Expedition keys behind at our homicide scene, from
12 ultimately ending up selling those two weapons to
13 the same -- to Donald Dickerson down in
14 Jacksonville, Florida, that his actions essentially
15 end up linking all of these crimes together and,
16 therefore, should be admissible under State versus
17 Lyle.

18 Additionally, Your Honor, I guess probably the
19 last argument under State versus Lyle is something
20 that I think has been addressed in other
21 jurisdictions also, Your Honor, but would be -- we
22 feel that evidence of these other crimes would be
23 admissible to show his motive, would be to show the
24 motive behind breaking into Captain Myers' shed out
25 in the woods, motive behind stealing the truck, the

1 grand larceny of a motor vehicle, and, ultimately,
2 the motive behind the homicide, why he was going to
3 such great lengths to find a way out of here was
4 because of the fact that he had committed a homicide
5 in North Carolina, had committed a car jacking in
6 Columbia and, therefore, it also should be
7 admissible to go to show motive.

8 And, Your Honor, just to address just briefly
9 the -- I guess looking at the standards under
10 404(b), I feel like the evidence that we're seeking
11 to present, that there's -- none of it is subject to
12 a prior conviction. It's all prior unconvicted bad
13 acts. And we feel, Your Honor, when we look at all
14 of the evidence, that we're able to prove all of
15 these prior bad acts by beyond clear and convincing,
16 I mean, to almost beyond a reasonable doubt on every
17 one of them. So that would be the one hurdle we
18 need to be over cure -- need to be able to get over.

19 Additionally, Your Honor, the other one is
20 dealing with the unfair prejudice. Your Honor, in
21 kind of, if I could, just use an analogy in
22 Cheeseboro, I mean, in that case, they allowed a
23 prior homicide into that murder trial that had
24 occurred a month earlier. It wasn't related in any
25 other way besides the same weapon being used. In

1 ours, we have a charge that only occurred several
2 days earlier that is so interrelated to this crime
3 spree that Mr. Mahdi was on, that we feel that the
4 probative nature of that clearly outweighs any
5 prejudice that may be to Mr. Mahdi by admitting any
6 of these prior bad acts. That would be all from the
7 State, Your Honor.

8 **THE COURT:** Mr. Koger...

9 **MR. KOGER:** Your Honor, may it please the
10 Court. To address initially the res gestae argument
11 from the Solicitor's office, in order to get these
12 types of prior acts under res gestae, it must be
13 largely connected to the crime charged, it must be
14 closely related in time to the crime charge and one
15 crime must grow out of the other. Of course, we
16 disagree with that.

17 Your Honor, going back to the initial
18 allegation by the Solicitor's office back on July
19 14th with the gun back in Virginia, it is our
20 contention that that has not been proven by -- clear
21 and convincing evidence does not exist. From going
22 through the file, we have a statement from Ms.
23 Weaver that this gun was allegedly stolen from her,
24 but we just have a statement from Ms. Weaver that
25 the case (sic). Also, we're talking about July 14th

1 as opposed to when Mr. Myers was killed on July
2 18th, so we have the question also of remoteness.

3 When we come to North Carolina with the murder
4 in Winston-Salem, being that Mr. Mahdi is on trial
5 for murder to allow admission of a factual link to
6 that murder would be highly prejudicial to Mr. Mahdi
7 in this particular case and would cause the jury to
8 largely deduce that if he is guilty of from what is
9 set forth -- if the video is set forth or facts
10 pertaining to the North Carolina murder, they may
11 deduce that Mr. Mahdi may be guilty of the charge
12 present here in Calhoun County. So we were saying
13 that -- we would contend that that is highly
14 prejudicial.

15 The State tried to make a -- they argued that
16 the two are so intimately connected that one tends
17 to prove the other. From our reading of the facts
18 of the reports in North Carolina, it occurred at a
19 convenience store. According to the report, it said
20 the person allegedly tried to take money out of the
21 cash register and also tried to take money from
22 Mr. Boggs, the deceased person, in that particular
23 case.

24 In the incident case here in South Carolina,
25 according to the reports we have gone through thus

1 far, Mr. Myers' wallet was still on him here, his
2 wedding ring was still on him and his credit card
3 was still in his pocket. So, therefore, that would
4 go that the two, as far as if you want to use being
5 so intimately connected or as a identity crime,
6 that's not -- those are differences between those
7 two situations right there.

8 May I beg the Court's indulgence just one
9 moment?

10 (Pause.)

11 MR. KOGER: As far as with the green Mercury
12 Sable that was allegedly taken in Virginia, it is
13 alleged that there was a grand larceny in Virginia,
14 you know, but what we have right now is just a
15 possession of a stolen vehicle. Again, there's not
16 clear and convincing evidence that that vehicle was
17 actually taken, as far as taken by Mr. Mahdi, from
18 Virginia as a grand larceny.

19 What we do have is that a vehicle is reported
20 stolen and we're here in South Carolina with it. So
21 there's not clear and convincing evidence that that,
22 in fact, is a grand larceny. And that's important.
23 Of course, you know, Your Honor, that it's not clear
24 and convincing because that is the standard by which
25 these prior acts can be admitted against Mr. Mahdi

1 in this particular trial right here.

2 As far as with the alleged car jacking, again,
3 that's another situation that, at this point, we
4 feel do not meet the burden of clear and convincing
5 evidence. Again, we have a statement by Mr. Pitts
6 on what happened on that particular night with just
7 a statement. We would say that that has not been
8 proven by clear and convincing evidence and we would
9 ask Your Honor not allow that particular incident to
10 be placed forward under the res gestae exception to
11 State v. Lyle.

12 I mean, basically, you know, this is what
13 Mr. Pitts said, but we don't know. And for it to be
14 used against Mr. Mahdi, which would be highly
15 prejudicial, we have to meet that standard of clear
16 and convincing evidence.

17 And also, too, when the State -- another
18 element of the res gestae analysis is close
19 proximity in time that -- and that cannot be too
20 remote. It is our contention that, from what was
21 stated from the Solicitor's office, that allegedly
22 someone was seen at the Wilco station around six or
23 seven o'clock in the morning. And according to what
24 we have gone through with discovery, Mr. Myers
25 became deceased between the hours of possibly 7:15

1 and when Ms. Myers found him at 9:15 in the evening.
2 It is our contention that we should not be able to
3 use the car jacking incident because of the time
4 that lapsed between seven o'clock in the morning and
5 seven o'clock that night, approximately 12 hours.

6 So, basically, we're saying that the Court
7 should not allow prior bad acts from Virginia to be
8 admitted. We contend that definitely the murder in
9 North Carolina should not be admitted because it is
10 highly prejudicial. It outweighs any probative
11 value that that could be used in this court. And if
12 that is admitted, it would tend to cause the jury to
13 convict Mr. Mahdi of this particular offense. And
14 we also ask that the Court not allow any subsequent
15 acts, which is -- which can't come under *res gestae*
16 as far as in Florida in this particular case.

17 THE COURT: Mr. Sorenson.

18 MR. SORENSON: May it please the Court. I
19 guess, if I could start off, the three items that
20 were stolen up in Virginia.

21 THE COURT: Yes, sir.

22 MR. SORENSON: The three items that were stolen
23 up in Virginia, Your Honor, the .380 pistol, the
24 Mercury Sable station wagon and the Virginia license
25 tags, essentially it would be our intention to get

1 out that those items were stolen and that the
2 defendant then possessed those stolen items, so that
3 kind of --

4 THE COURT: Say it again, sir.

5 MR. SORENSON: It would be our intention to get
6 out that those items were stolen in Virginia and the
7 approximate time that they were stolen, or date they
8 were stolen, and then that the defendant possessed
9 those stolen items. So it would be more that he was
10 in possession of stolen items as opposed to that he
11 actually stole those items.

12 THE COURT: You're not trying to prove that he
13 stole them, but that he had possession of items that
14 had been recently stolen.

15 MR. SORENSON: That would be correct. I would
16 concede that I'm not sure that we could prove that
17 he actually stole those items. I mean, we can, I
18 feel, prove well beyond clear and convincing
19 evidence that he possessed those items shortly after
20 they were stolen from his hometown in Lawrenceville,
21 Virginia.

22 Your Honor, as to the North Carolina homicide
23 of Jason Boggs, the defense is arguing essentially
24 that it's too prejudicial. Your Honor, I mean,
25 concede that any time you're trying to get into a

1 prior bad act, specifically when it's a homicide,
2 it's going to be prejudicial.

3 In Cheeseboro, they found it was not too
4 prejudicial to get into that. Essentially, the
5 standard, I believe, that they outlined there is
6 that the probative value has to be substantially
7 outweighed by the danger of unfair prejudice.

8 In this case, Your Honor, the probative value
9 is tremendous and I submit to you is not outweighed
10 by the danger of unfair prejudice. Your Honor is
11 going to charge the jury as to what reason or how
12 they can consider those prior bad acts.

13 **THE COURT:** What is the tremendous probative
14 value?

15 **MR. SORENSON:** Well, Your Honor, especially
16 when you look at it, if they're going to contest it
17 and indicate that there's no evidence or that we
18 haven't even proven that Corey Pitts was car jacked,
19 that the car jacking didn't occur, that they're
20 contesting I.D. in this case, Your Honor, I submit
21 to you the fact that we have the defendant on video
22 committing a homicide three days earlier using a
23 weapon that is then consistent with the weapon that
24 is used in a car jacking that occurs less than 12
25 hours or so or 15 or so hours before our homicide

1 and then sells that weapon, along with the weapon
2 that is used in our homicide within a day or two
3 later to an individual down in Jacksonville,
4 Florida, then that is -- I mean, if they are
5 challenging identity in this case, I mean, I feel
6 that that is extremely probative of the identity of
7 who committed our homicide.

8 I mean, the fact that those two weapons were
9 both sold to an individual who identified Mr. Mahdi
10 as being the individual that sold him those guns and
11 that that .380 pistol was stolen from Lawrenceville,
12 Virginia, we can connect it to that homicide in
13 North Carolina is then consistent with the same type
14 of weapon that is used to car jack Corey Pitts,
15 additionally as being consistent with the same type
16 of weapon that an individual identified as Mr. Mahdi
17 attempted to sell that Friday to an individual in
18 Columbia, South Carolina and he then leaves those
19 keys to that Ford Expedition at our homicide scene
20 after fleeing from that Ford Expedition a quarter of
21 a mile away from our homicide scene, I mean, once
22 again, I just don't see how you can start taking
23 them and pulling pieces out without ultimately
24 leaving that question in the jury's mind, well, how
25 did we get here.

1 I mean, it's literally one of those cases where
2 it's just a big puzzle. And when you put it all
3 together, Your Honor, I mean, there's -- that
4 there's no doubt that I feel that it's all very
5 probative.

6 And then just lastly as to the car jacking of
7 Corey Pitts, Your Honor, Mr. Koger argued that the
8 State -- that we would not, from the stuff that he's
9 reviewed, be able to meet the clear and convincing
10 burden that we have.

11 I mean, Your Honor, in that case, and this
12 stuff is all stuff that's been provided to them, I
13 mean, we have a description given by the victim in
14 that case, which I submit is consistent with
15 Mr. Mahdi, that vehicle was recovered in Calhoun
16 County here at that Wilco Hess station with the
17 Virginia license tags on it that were on the Mercury
18 Sable that Mr. Mahdi was driving two days earlier
19 with those same license tags on it. We have his
20 prints in the vehicle, on the vehicle, on the
21 license tags.

22 We have a description by the two clerks at the
23 Hess station consistent with Mr. Mahdi. We
24 ultimately have, as I indicated, the keys to that
25 Ford Expedition found within two feet of our

1 victim's body at our homicide scene. And,
2 ultimately, Your Honor, you have Mr. Mahdi
3 identified by Mr. Pitts, along with the two clerks
4 in three separate photographic lineups as being the
5 individual that car jacked Mr. Pitts and as being
6 the individual who was at that Wilco Hess Station
7 with that Ford Expedition a quarter of a mile from
8 our homicide scene.

9 And if I could, just one more thing, Your
10 Honor --

11 **THE COURT:** Just a moment.

12 (Pause.)

13 **THE COURT:** Yes, sir, Mr. Sorenson.

14 **MR. SORENSON:** And just one last thing, Your
15 Honor. Our homicide occurs on the evening of
16 Sunday, July 18th of 2004. By nine o'clock or so
17 that following morning, Monday morning, July 19th,
18 Mr. Mahdi is the suspect that they are looking for
19 because of all these other crimes, because of the
20 link to the car jacking, the link to the stolen
21 vehicle that's recovered in Columbia, because of the
22 tags that are found on the Ford Expedition, it's
23 because of all these other crimes is the sole reason
24 that they are looking for him within 12 hours of our
25 homicide because of all these other crimes.

1 **THE COURT:** And that's important in what way?

2 **MR. SORENSON:** Well, it helps explain why
3 they're looking for him. I mean, why has law
4 enforcement got, basically, a nationwide BOLO out
5 looking for Mikal Mahdi within 12 hours? Because of
6 the car jacking, because of possessing the stolen
7 vehicles --

8 **THE COURT:** How is that important in regard to
9 this motion, the Lyle issue or the res gestae issue?

10 **MR. SORENSON:** Well, it shows how probative it
11 is. I mean, it goes to how probative it is for us
12 to be able to adequately present our case, I mean,
13 the entire picture.

14 **THE COURT:** Anything further, Mr. Sorenson?

15 **MR. SORENSON:** No, sir.

16 **MR. WALTERS:** May it please the Court. Your
17 Honor, it's my understanding that under 404, if we
18 carefully go through the exceptions, and let's begin
19 with the first exception, the first exception is, is
20 that it must show a motive. The prosecution in this
21 particular case, do they have a motive or a motive
22 that they can show as to why Mikal Mahdi, they
23 allege that he committed these acts?

24 They allege that he committed many acts, but
25 they've never put forward any motive. They've never

1 put forward any motive with regards to in the case
2 of Mr. Myers. His money wasn't taken, his wallet
3 wasn't taken, his jewelry wasn't taken. But you
4 have the incident that occurred in North Carolina
5 where a robbery occurred, money was taken, a man was
6 shot and something was stolen from that particular
7 person. There's a distinction here with a great
8 difference.

9 The other exception is, in this particular
10 case, is, is that they argue that, well, we've got
11 to show identity, the particular person that
12 committed this crime. How is it relevant and how is
13 it probative that someone took some license plates
14 in Virginia to prove that there was a grand larceny
15 and a murder that occurred in Calhoun County? The
16 issue with regards to that Mercury Sable, in regards
17 to those license tags has no bearing in this case.

18 The pistol that they're referring to in this
19 particular case, the so-called .380 that this lady
20 alleges that was stolen, the .380, number one, was
21 not the murder weapon. Number two, the .380 was
22 never used with regards to any crime that was
23 committed. It's alleged that there was a chrome gun
24 in Richland County. And as far as in Calhoun
25 County, the only gun that we could confirm was that

1 a .22 was used in this particular case for the
2 murder of Officer Myers.

3 So the .380 in this particular case, does it
4 tend to prove or disprove a fact that's before the
5 jury? No. The .380 in this particular case, it's
6 alleged, was stolen, by this lady, but other than
7 that, it has no bearing on this case. And they
8 don't need the .380 in order to substantiate the
9 case for murder. They don't need the .380 to
10 substantiate a case for grand larceny. They don't
11 need the .380 to substantiate a case for robbery in
12 Calhoun County.

13 But if we move further through the exceptions,
14 let's go forward. It goes on and states, The
15 existence of a common scheme or plan. The
16 prosecution has never presented a plan. What was he
17 planning to do? That's what we're asking. Was he
18 planning to rob a bank? Was he planning to go
19 somewhere? What was he planning to do?

20 This particular kid, well, he's a grown man,
21 but he was picked up on the beach, Satellite Beach,
22 in Florida. So what plan was there from Virginia to
23 go to Florida that's being put before this Court?
24 He was in a rush to get to the sand and the water
25 and the beach and the girls? They've never

1 presented one plan before this Court to say that
2 there's some common scheme or plan that he was going
3 somewhere trying to accomplish something.

4 The other exception in this particular case, if
5 we move forward, it goes on and says, The absence of
6 mistake, accident or intent. In this particular
7 case, there's been no allegation of a mistake or an
8 accident or some form of intent.

9 If you carefully look at the case law, and, of
10 course, we're referring to the Adams case, it says,
11 It must be a close degree of similarity. Does
12 similarity exist in this case? There's a robbery
13 that occurred at a gas station, money was taken, a
14 man was robbed and he was killed. In this
15 particular case, Officer Myers was found with his
16 wallet, with his money, with his jewelry. He was
17 shot several times and then the body was burned.
18 And in this particular case, nothing was taken.
19 There was no robbery that occurred. And they have
20 no evidence tying this defendant to that particular
21 hunting shed other than the fact that they allege
22 there's some match with regards to some type of shoe
23 print.

24 Is there a connection between what went on in
25 North Carolina and what went on in Calhoun County?

1 The connection in this particular case they allege
2 is, well, we want you to engage in some type
3 gestalt, we want you to jump some form of logic, we
4 want you to jump and somehow substantiate what's
5 going on here because we believe that a gun was
6 stolen in Virginia and it had something to do with
7 something that occurred in Calhoun County. The .380
8 was not used in this particular case.

9 They go on to state that the license plates in
10 Virginia that were placed on these vehicles, it had
11 something to do with this robbery and this murder
12 that occurred. That has no bearing on this case.

13 The third issue that they refer to is that they
14 say, well, the Mercury Sable has something to do in
15 this case. How is that Mercury Sable relevant and
16 how is it probative with regards to this case? They
17 didn't even charge this man with possession of a
18 stolen vehicle and he had the vehicle of Corey Pitts
19 in Calhoun County it is alleged.

20 But then they go on to state, well, the armed
21 robbery and the homicide itself. In this particular
22 case, the .380 wasn't used in this particular case.
23 They can't even prove that, in this particular case,
24 a .22 was used to engage in some form of armed
25 robbery. We know a .22 was used, but guess what,

1 they left his wallet there, they left his money
2 there. In fact, the person, after they shot him,
3 what did they do? They burned his body. In this
4 particular case, are you telling me that that's
5 similar to what happened in North Carolina? It's
6 ridiculous.

7 But then if we move on, it says, the carjacking
8 of the Ford Explorer.

9 COURT REPORTER: Can you slow down, please?

10 MR. WALTERS: Yes, ma'am.

11 The next allegation is the car jacking of the
12 Ford Explorer, somehow that's relevant and probative
13 to this case. We've got a guy that's driving around
14 in a car at three o'clock in the morning. And we've
15 got a copy of the statement. And what does the
16 statement say?

17 At three o'clock in the morning, I took a
18 friend of mine to Vista Commons and then I was going
19 to go out to Metts Road. And this guy lives in
20 Little Mountain over near Newberry.

21 All right. At three o'clock in the morning,
22 he's down on Bull Street. And if Your Honor's
23 practiced long enough in Columbia, we know exactly
24 what goes on on Bull Street at three o'clock in the
25 morning. But, nevertheless, this guy comes forward,

1 he alleges that a chrome pistol was put in his face
2 and somehow he was robbed of his car. He goes on
3 and states that that's my vehicle and this is the
4 particular person.

5 The prosecution, in order to prove that
6 Mr. Mahdi was present there, they've got two
7 witnesses, they claim, at the Wilco Hess Station
8 right there, two ladies that identified him, I mean,
9 we've got to go through a Biggers hearing, but these
10 two people can substantiate he was there. What does
11 Virginia have to do with that? What does North
12 Carolina have to do with that? And show me the
13 similarity between North Carolina and Virginia and
14 what happened at the Wilco station.

15 You've got two ladies right there that can
16 substantiate that, well, Mikal Mahdi was here, if
17 they pass Biggers. They did an I.D. lineup. They
18 identified a particular person. They stated he was
19 there. This is their statement that he ran to the
20 back of the gas station. What information can be
21 provided by a gun, a license plate, a Mercury Sable
22 and a homicide in North Carolina that is relevant
23 with regards to this case?

24 If you're the prosecution, you simply sit down
25 and say, I've got two ladies that place you at the

1 gas station. And if they pass Biggers, then that
2 puts you there in Calhoun County.

3 In addition to that, we have also the hunting
4 shed that's less than a mile or maybe a mile behind
5 the particular gas station in this particular case.
6 The allegation is, is that, well, we found a gun in
7 Florida and that gun in Florida matches the gun that
8 was owned by Officer Myers. And in this particular
9 case, they have them on the witness list, the
10 Dickerson boys, or the Dixon boys, that are supposed
11 to testify about this particular incident where they
12 purchased a gun from someone named Mikal Mahdi that
13 they identified.

14 What they're attempting to do here is, is they
15 want to introduce prior bad behavior to say that
16 it's consistent with the behavior that's before this
17 Court and that's exactly what Lyle is designed to
18 prevent. They haven't offered one reason why it's
19 probative, why it's relevant, why it's material to
20 this case. They have offered reasons as to why it's
21 highly prejudicial.

22 And, of course, the Court inquired and said,
23 well, tell me what's the motive for Mikal Mahdi
24 doing this? They've never put a motive before this
25 Court. We ask again, what is the crime? What is

1 the scheme? What is the plan? They have never put
2 a scheme, a plan or any course of action before this
3 Court. You know, he was trying to get to Cuba or
4 something or he wanted to get out of the United
5 States because he had a problem. They have never
6 offered any scheme or plan.

7 Then they go on to state, well, the identity
8 and they refer to the Cheeseboro case. And, David,
9 I think you were in that case, I'm not sure. I was
10 reading the transcript last week and I saw your
11 name. But I believe that was the prior barbershop
12 shooting, wasn't it?

13 MR. PASCOE: The second one was, yes.

14 MR. WALTERS: That's exactly right.

15 And in this particular case, we've got two
16 different crimes that are being committed. We've
17 got a gas station -- if the Wilco was robbed, then
18 I'd say, well, you maybe got some consistency there.
19 But what we've got is a robbery of a gas station
20 where money is taken and this individual was held up
21 and then they're shot and you flee from that
22 particular station. In this particular case, you go
23 to the Wilco station, you've got two ladies there
24 and what do they say in their statements? We saw
25 him, he was trying to use the credit cards, whatever

1 else. It's a big allegation about who was present.
2 They haven't offered an exception.

3 What they've stated was -- and I carefully
4 looked at the memorandum that's been submitted
5 before the Court. And the memorandum that's been
6 submitted before this Court, what does it do? It
7 states the facts of what happened, which we all
8 agree upon. And then it goes on and states one
9 through six, a litany of exactly what went on with
10 each particular day, but it doesn't address the
11 issue of what exactly is going on here.

12 And the first issue is before you rule on
13 anything, there's legal relevancy and there's
14 logical relevancy. Logical relevancy simply says
15 that there's a course of events that logically fit
16 together. Legal relevancy says, everything doesn't
17 come in. It has to be legally relevant. Similar to
18 someone repairing an item and you can't bring in
19 subsequent repairs. It may be logically relevant,
20 but, legally, it can't come in subsequent repairs in
21 a civil case.

22 In this particular case, what they're
23 attempting to do was they're saying, well, it's
24 logically relevant that it all fits together and it
25 should just come in. But, legally, it doesn't meet

1 the burden. Number one, it has no bearing on the
2 issues in Calhoun County. It's not even probative.

3 How does it tend to prove or disprove a fact
4 that's before this Court? How does the .380 do
5 that? How does the license plate do that? How does
6 the issue with regards to the murder in North
7 Carolina, a totally different case that involves a
8 robbery, and we've got a man that's dead here, a man
9 that was respected in this community, a man that all
10 of us knew, he's shot almost seven times, his wallet
11 isn't taken, his money isn't taken, his jewelry
12 isn't taken and then someone turned around and tried
13 to burn him. We've got two totally different crimes
14 that occurred here.

15 And in this particular case, they go on and
16 they argue that there were some stolen credit cards.
17 And they can substantiate that with the people
18 working at the Wilco station.

19 But then after the -- with this memorandum,
20 they go on and state, There's evidence of other bad
21 acts that's admissible under Rule 404(b). And they
22 say you can show identity. And what they do is they
23 cite a stack of cases, same cases that we've got
24 right here. And then they go on and state the
25 Cheeseboro case and then they say it shows motive.

1 What motive? Was Officer Myers going to put
2 this man in jail and he had a motive to take him
3 out? Did Officer Myers -- did he take money from
4 Officer Myers? Did he do something? What motive is
5 there? There's no motive been put before this
6 Court. They've failed to meet the burdens of Lyle.

7 And the problem in this particular case is, is
8 that they cite each and every case under here, but I
9 don't see arguendo. I don't see where they argue
10 their case in the memorandum. It's a statement of
11 facts for the first three or four pages and then it
12 cites one sentence from each case and it goes on and
13 cites that. It cites the other cases.

14 But I don't see where their argument is. I
15 don't see where they meet the exceptions under 404.
16 And 404 requires what? Either you show motive,
17 identity, the existence of a common scheme or plan
18 or the absence of mistake or accident or intent.
19 And they haven't put anything before this Court to
20 show that.

21 **THE COURT:** Mr. Sorenson says that the case is
22 like a puzzle and the facts are interconnected and
23 that where one fact standing alone may not appear to
24 be significant, this is a crime that apparently
25 there are no eyewitnesses and that putting all of

1 these separate facts together, completes the puzzle
2 to show that the defendant is guilty of this crime,
3 which otherwise they may not be able to prove.

4 **MR. WALTERS:** Your Honor, I'll carefully
5 explore that. Let's put the pieces together.
6 They've got two people at a Wilco station that can
7 testify that they saw the defendant, if they pass
8 Biggers, and they identified him. These individuals
9 can also testify that he was driving the vehicle and
10 he attempted to use credit cards and he absconded,
11 he left through the back of the gas station, all
12 right.

13 There are people that can also testify on their
14 witness list that there is a lodge that is in the
15 back of the gas station, all right. In addition to
16 that, there are individuals that can testify that
17 the vehicle that was owned or operated by this
18 particular individual, Officer Myers, was owned by
19 the Orangeburg Department of Public Safety.

20 There are people that can testify in Satellite
21 Beach that they apprehended the defendant while
22 driving that particular vehicle. There are people
23 in Jacksonville that can testify, or it's alleged
24 that they can testify, that they found or purchased
25 a weapon from Mr. Mahdi, if they pass Biggers,

1 alleging that this particular weapon was purchased
2 from the defendant. There are witnesses that they
3 have on their particular list, their witness list,
4 that can testify that that particular weapon was the
5 weapon that was used to kill Officer Myers.

6 How is this an amazing puzzle that we can't
7 figure out? What's the mystery? What's the enigma?
8 There's no mystery here. Those are pieces that a
9 first-year Solicitor could put together.

10 What the prosecution wants to do in this
11 particular case is they simply want to introduce
12 prior bad acts to say it's consistent with the case
13 that's before the Court. If you can't put these
14 pieces of this puzzle together, based on the
15 evidence that's been presented to us, if you don't
16 walk before this Court and say, we just can't get it
17 together unless we get in Virginia and North
18 Carolina, then that speaks volumes.

19 **THE COURT:** We're going to take a short break
20 and I'm going to come back and give you -- speak
21 with you again, Mr. Sorenson and Mr. Pascoe. We'll
22 take a short break.

23 Do you have a copy of Cheeseboro? You had a
24 stack of cases there, Mr. Walters. Is Cheeseboro
25 one of them?

1 MR. WALTERS: We were given the entire
2 Cheeseboro transcript.

3 (Brief Recess.)

4 THE COURT: Mr. Sorenson, Mr. Pascoe, any
5 further argument?

6 MR. PASCOE: Very briefly, Your Honor.

7 THE COURT: Yes, sir.

8 MR. PASCOE: Your Honor, I just don't see how,
9 under the law, both res gestae and Lyle, not just
10 under one theory but under both theories, how the
11 defendant's prior acts don't come in.

12 If you look at the Cheeseboro case, which I was
13 involved in, those were two completely different
14 murders and those -- that other murder got to come
15 in only under the theory of Lyle not res gestae.
16 Those murders took place a month apart, one involved
17 a barbershop, the other involved a taxi cab driver.
18 And, in this case, the defense has really shown in
19 their last argument why and how it is so probative
20 and important to put in the defendant's prior acts.

21 If the defense is going to stand up in front of
22 this Court and yell that there's no motive, there's
23 no motive, there's no motive to kill Captain Myers,
24 there is definitely a motive linking all three of
25 these crimes, to rob, to kill and to flee. If we're

1 not allowed to put in this motive by the defense,
2 then we're going to be substantially impaired and
3 prejudiced during the presentation of our case.

4 Also, I would point out that it's certainly not
5 a coincidence that the defendant, on his way to
6 Florida, ended up driving three stolen vehicles as
7 he flees to Florida. And in all three cases, all
8 three cases involving the stolen vehicles, the
9 station wagon in Virginia, the Ford Expedition and
10 Captain Myers' truck, in all three cases, we're
11 going to prove he took the time to change the
12 license tags on these vehicles. So there's another
13 link that we didn't bring up earlier.

14 Finally, Your Honor, again, the State needs to
15 be able to make a full presentation of the evidence
16 to the jury, especially when you look at the car
17 jacking of the vehicle in Columbia, that has got to
18 come in to present a full presentation to the jury.
19 The car jacking is how the defendant got to Calhoun
20 County. The car jacking is how the defendant became
21 a suspect in the murder case before we even had a
22 fingerprint of the defendant.

23 Again, to fill in some gaps for you, when the
24 defendant gets to the Hess station at 3:30 in the
25 morning on the 18th that Sunday, the day of Captain

1 Myers' death -- murder, after being there for about
2 a half hour to an hour, he starts acting suspicious
3 and the two women that worked at the Hess station
4 called the sheriff's office and had a deputy come to
5 the Hess station. While the deputy was running a
6 check on the Expedition, the vehicle that was taken
7 from the car jacking, he ran the tag which came back
8 stolen from Virginia, the vin number which came back
9 -- the vehicle came back stolen, a car jacking in
10 Columbia, the women will testify that the defendant
11 saw the deputy, the deputy didn't see him and that's
12 when the defendant exited the store and ran through
13 the woods. Of course, then we have the murder of
14 Captain Myers.

15 What the SLED authorities then did was they had
16 that stolen tag from Virginia. By, I think it was,
17 five or six o'clock in the morning on Monday, the
18 19th, less than 12 hours after Captain Myers' death,
19 because of that stolen tag on the car jacked Ford
20 Expedition, they mail a composite that the two women
21 at the Hess station did of the suspicious person in
22 the Hess station to Virginia and that morning those
23 Virginia authorities are the ones that give the name
24 of Mikal Mahdi to the SLED agents less than 12 hours
25 after the murder of Captain Myers.

1 And sure enough, whose fingerprints are inside
2 the Expedition? The defendant's, Mikal Mahdi's.
3 Who's arrested in Florida two days later? The man
4 they've been looking for since the 19th, Mikal
5 Mahdi.

6 So, finally, again, in conclusion, in order to
7 give a full presentation of the defendant's
8 activities and to prove the murder of Captain Myers,
9 I don't see how we can't and don't get into the
10 prior acts of the defendant.

11 **THE COURT:** The point that I am at regarding
12 viewing who has the winning argument on these
13 various issues right now focuses on the murder in
14 North Carolina, whether or not that evidence is
15 necessary to a fair presentation of the State's
16 case, whether or not allowing you all to introduce
17 evidence of the Exxon robbery and murder or whether
18 or not that is more prejudicial than probative and
19 that's where my focus is. I think that, at this
20 point, you have the winning argument with regards to
21 all of the other -- everything but that, but that's
22 where I'm stuck with.

23 **MR. PASCOE:** Can I help the Court out on that
24 one? I would ask then that we just hold it in
25 abeyance because I think it all depends when you're

1 doing that 403 analysis on where the defense goes
2 during the trial.

3 I'll tell you right now, I was going to even --
4 I was never -- even if Your Honor had ruled that we
5 probably would be able to get into the North
6 Carolina murder, I probably was not going to mention
7 it in opening statements and I was going to wait and
8 see what the defense did before I even put it in
9 because I have the same issues as Your Honor. In
10 other words, I would just ask then that we just hold
11 that ruling in abeyance. The State will not mention
12 anything to the jury nor will we put up any evidence
13 of that until we've gotten a further ruling from the
14 Court and we bring it up to the Court first.

15 THE COURT: All right. Mr. Walters.

16 MR. WALTERS: May it please the Court. Your
17 Honor, we want a ruling from the Court, that will
18 determine trial strategy with regards to Mr. Mahdi
19 and we'd like a ruling with regards to that
20 particular issue on our motion today. Of course,
21 the trial starts Monday and then if there's some
22 modifications, that will have to be made based on
23 the Lyle hearing. And we're prepared to go either
24 way, but the point is, is that we would like a
25 ruling from the Court. Thanksgiving is on Thursday

1 and, of course, we're in the process of preparing
2 this case for Monday. We certainly would like a
3 ruling.

4 We don't want to get trapped into a situation
5 where we plotted out a strategy and then at a
6 particular point, the Solicitor says, well, I've
7 decided that I want to try to introduce North
8 Carolina. We believe that it would be highly
9 prejudicial. And we certainly would like a ruling
10 from the Court on our motion at this time.

11 **THE COURT:** Well, any ruling by the Court in in
12 limine is a preliminary ruling. It's virtually
13 impossible for me to come in here this morning and
14 listen to you all argue these matters for half an
15 hour and then make such a far-reaching ruling on
16 things prior to hearing testimony. And, therefore,
17 pretrial rulings on an evidentiary issue is
18 something that I do not believe that a Court should
19 be compelled to do.

20 The rulings regarding the evidence should be
21 dictated by what the evidence actually is and in
22 many instances, not even what the lawyers say that
23 the evidence is because the evidence may not be
24 that, but realizing that it is essential in many
25 instances, I have no problem in ruling where it's

1 clear what the ruling should be. And I think, in
2 this case, in order for the Court to be able to make
3 a full presentation of the evidence in this case and
4 based on the interconnectedness of the various
5 aspects of the evidence involving stolen guns,
6 stolen vehicles, car jackings and the like, that the
7 evidence of the defendant being in possession of a
8 stolen vehicle and stolen guns from Virginia, that
9 evidence is admissible. The evidence of the car
10 jacking in Columbia is admissible. The evidence of
11 what occurred at the Hess Gas Station is admissible,
12 assuming that proper identification is made as to --

13 MR. WALTERS: May it please the Court. You're
14 referring to Wilco, Your Honor?

15 THE COURT: Yes, was it Wilco Hess or Hess
16 Wilco? That that evidence is admissible.

17 The -- I find that the evidence of the murder
18 in North Carolina and the robbery of whatever
19 occurred at that convenience store in North Carolina
20 that though it may be probative in some respects,
21 and that is in regard to the State's indication that
22 the weapon used was consistent to clothing where --
23 clothing worn was consistent with the weapons -- the
24 weapons subsequently sold and the clothing
25 subsequently found, I find that that evidence is

1 more prejudicial than probative and, at this time,
2 will grant the defense motion in limine as it
3 relates to that evidence.

4 What else do I need to rule on regarding these
5 issues? Evidence subsequently retrieved in Florida,
6 is that before me at this time?

7 MR. PASCOE: Mr. Koger did bring that up, so
8 maybe if I could let them address it. We would
9 obviously ask that that would come in.

10 I need some clarification of what evidence that
11 they're trying to suppress actually from Florida,
12 but I know the defendant was arrested, Your Honor,
13 in the victim's city issued police truck.
14 Obviously, we want that to come in. And we have
15 evidence that the defendant sold the murder weapon
16 in Florida, the .22 caliber semiautomatic rifle that
17 was also stolen from the victim's shed. Of course,
18 we want to put that in as well.

19 THE COURT: All right. Mr. Koger, Mr. Walters.

20 MR. KOGER: Your Honor, May it please the
21 Court. That was placed in the motion because of
22 State v. Humphries. Of course, subsequent bad acts
23 can be considered along with prior bad acts. So
24 we'll just leave it to the Court's discretion when
25 it comes to that issue, Your Honor.

1 **THE COURT:** The circumstances surrounding the
2 defendant's arrest and the items found in the
3 defendant's possession that relates to -- possibly
4 relates to criminal offenses here in Calhoun County
5 are admissible. And I deny any motion to limit the
6 introduction of that testimony.

7 And I will repeat, regarding my ruling as it
8 relates to all of these matters, I'm treating these
9 motions as a motion in limine to exclude the
10 evidence. And the evidence and the motions can be
11 revisited based on evidence actually offered and
12 presented during the trial.

13 Anything else on Lyle, res gestae, 404 at this
14 time?

15 **MR. WALTERS:** No, sir, Your Honor.

16 **MR. PASCOE:** None from the State, Your Honor.

17 **THE COURT:** What else do we need to talk about?

18 **MR. PASCOE:** Maybe the jurors if you want to,
19 Your Honor. I see the clerks all are shaking their
20 heads yes.

21 **THE COURT:** All right. Before we get into
22 that, let's just talk about a couple other things.
23 Mr. Walters mentioned Biggers a few times during
24 your presentation. I guess that would relate to
25 identification witnesses of various ones?

1 **MR. WALTERS:** Yes, sir, Your Honor. In
2 discussing this matter with the Solicitor, with the
3 Court's permission, we wanted to address the Biggers
4 issue when that particular witness came up at that
5 time. But, of course, if the Court directs us to do
6 something else, we'll be glad to proceed forward.

7 I think that there were a number of
8 identifications made, the two witnesses that will
9 testify that were at the Wilco station, there was
10 also some identification that was done with regards
11 to individuals that worked at that day care center
12 and around the church. Corey Pitts also did an
13 identification -- performed an identification. And
14 of course, the Dickson boys that were in Florida
15 also performed an identification.

16 **THE COURT:** The day care center, where is that
17 located?

18 **MR. WALTERS:** Near the church, in fact, it's
19 over on Bull Street.

20 **THE COURT:** South Carolina?

21 **MR. WALTERS:** Yes.

22 **THE COURT:** In Columbia?

23 **MR. WALTERS:** Yes, Columbia, South Carolina,
24 Washington and Bull. It's a day care center there
25 with the church.

1 **THE COURT:** Well, practically speaking, we have
2 to wait to deal with that because they're not here
3 to testify now and I think it would be appropriate
4 to deal with them in the context of the trial
5 itself.

6 We have the jurors coming in Monday morning at
7 what time?

8 **THE CLERK:** Ten o'clock.

9 **THE COURT:** And how many do you think is going
10 to show up?

11 **THE CLERK:** Three hundred and twenty.

12 **THE COURT:** Three hundred and twenty. Okay,
13 how many seats do you have in this courtroom? What
14 is the seating capacity?

15 **THE CLERK:** I believe it's about 300.

16 **THE COURT:** So that brings in some other
17 logistical issues as to what to do with everyone
18 else if we'll have jurors on both sides of the
19 courtroom Monday morning.

20 Mr. Pascoe, realizing the type confines of
21 seating and all, I don't want to deprive anyone of
22 the opportunity of being here who really needs to be
23 here and wants to be here. What do you say? Who
24 else can you have up there with you or would you
25 like to have up there with you Monday morning or

1 what's your suggestion regarding that?

2 **MR. PASCOE:** As far as -- did you receive the
3 problem juror list from the clerk's office?

4 **THE COURT:** Yes, sir.

5 **MR. PASCOE:** I have looked through that and I
6 know the defense has. The only three that I saw on
7 here that I would not consent to is -- are three
8 people, Monty Cochran, Tonya Gates -- I'm sorry --
9 Monty Cochran, Your Honor, is number 42, Tonya Gates
10 is number 93. I think there was one other that I --
11 Henry Tindall who is 269.

12 **THE COURT:** Before we go into all of that, I'm
13 trying to deal with the issues of who we're going to
14 allow to come into the courtroom other than the
15 jurors and we know that number is a moving target as
16 to exactly how many will come, but we have to deal
17 with issues. We'll have -- perhaps we'll have --

18 **MR. PASCOE:** Family members, Your Honor.

19 **THE COURT:** You'll have that. We'll have media
20 requests perhaps.

21 And we have to deal with the fact that beyond
22 the rail, we can't -- there will only be room for
23 jurors initially. So you have some space up there
24 with you all, but it would not be enough space for
25 all family members obviously.

1 And, of course, what occurs during the initial
2 stages of jury selection is not something that
3 people will typically want to be here through that
4 entire proceeding because it's pretty long and
5 tedious and does not deal, for the most part, with
6 the case itself or the evidence in the case itself.
7 But I think that the State needs to determine what
8 one, two or three -- which one, two or three people
9 you would like to have inside of the rail and try to
10 be sure that it's someone who plans to be here for a
11 while.

12 **MR. PASCOE:** We'll do that, Your Honor. We'll
13 take care of that.

14 **THE COURT:** And on the defense side, are there
15 any similar issues?

16 **MR. WALTERS:** May it please the Court, Your
17 Honor. You're asking specifically in regards to
18 jurors?

19 **THE COURT:** Jurors coming -- not jurors yet,
20 general public and other individuals who will be
21 allowed to be in the courtroom during the initial
22 stages of jury selection where we'll have only a few
23 -- we won't have anyone beyond the rails.

24 **MR. WALTERS:** That's fine, Your Honor.

25 **THE COURT:** You don't have any -- do you have

1 any other folks on behalf of the defendant,
2 defendant's family or anyone?

3 MR. WALTERS: The defendant's family will be
4 present. We know for a fact his grandmother is
5 coming and possibly an uncle and another aunt and
6 probably another family member.

7 THE COURT: Well, during the initial stages of
8 jury selection, there will only be room probably for
9 one or two family members because beyond the rail,
10 we're going to anticipate that we can only allow
11 jurors in. That's Monday morning. Now, by Tuesday,
12 then things are going to thin out.

13 MR. WALTERS: I've instructed the family that
14 some of them will have to take off from their jobs.
15 And I said, look, if we're going to select a jury --
16 bring a jury in to qualify them and determine
17 exemptions on the 27th, more than likely I would
18 like for them to come when we start the trial. So
19 when we break it up into panels and I've got an idea
20 of how fast we're moving, then I'll contact them so
21 they don't have to take off for three weeks.

22 THE COURT: So by the time they get here, we
23 won't have a space problem.

24 MR. WALTERS: Yes, sir. The grandmother may
25 appear earlier because she's not -- she's retired,

1 but other than that, I think the other family
2 members are employed.

3 THE COURT: If she does, then we can find space
4 for one person I'm sure.

5 All right. Problem jury list. The total
6 number of jurors summoned for this term of court --
7 we summoned how many? Mr. Clerk, how many jurors
8 did we summon?

9 THE CLERK: Four hundred.

10 THE COURT: And we have now received a problem
11 list of 164 jurors who have indicated that they have
12 problems with for various reasons and we're going to
13 view that juror problem list at this time. Do you
14 have a copy of the juror problem list containing
15 164, being the total number of jurors; do you have
16 that, Mr. Solicitor?

17 MR. PASCOE: Yes, sir.

18 THE COURT: Do you have that also, Mr. Walters?

19 MR. WALTERS: Yes, sir.

20 THE COURT: And from that 164 list, Solicitor,
21 you've indicated that you agree that all of the
22 jurors should be dismissed from that list except for
23 juror number 42, 93 -- jurors number 42, 93 and
24 number 269.

25 MR. PASCOE: From what I reviewed, Your Honor,

1 those are the three. Everybody else I would
2 probably have no objection to.

3 THE COURT: The clerk was giving me some more
4 names here. The clerk has just handed me four other
5 problem jurors being number 82 -- juror number 82,
6 Fogle is a teacher who says he or she -- he is
7 reviewing for exams. Number 92, Gray, says she has
8 diabetes. And 111 -- did she say something else
9 other than that?

10 THE CLERK: She wants to serve, but she has a
11 real problem with her -- diabetes up and down, so I
12 told her she needed to make a decision about that
13 and send a medical excuse.

14 THE COURT: Gray says she has diabetes, number
15 92. Number 111, Gunter, has moved to Florida and is
16 also over 65. And juror number 158, Jones, who
17 lives in Orangeburg County, he says. So the four
18 additional ones that we received this morning are
19 Number 82, Fogle, a teacher says he is reviewing for
20 exams; number 92, Gray, who has a problem with
21 diabetes; number 111, Gunter, who lives in Florida
22 and is also over 65; and number 158, Jones, who
23 lives in Orangeburg County. And the deputy clerk
24 will make a copy of these additional four and
25 recirculate a last page for you all and for me.

1 All right. What says the State regarding all
2 of them, including those last four?

3 MR. PASCOE: Again, just the three that I
4 mentioned, Your Honor. As far as the last four,
5 I've got no objections -- is it a Mr. Fogle or a Ms.
6 Fogle?

7 THE COURT: Thomas Fogle.

8 MR. PASCOE: He's going to have plenty of time
9 to study for his exams if he wants to serve on a
10 jury.

11 THE CLERK: He's an instructor at tech and he's
12 reviewing with his class.

13 MR. PASCOE: He should be excused anyway. I
14 have no objections to these four either.

15 THE COURT: If he's a teacher, he may be
16 entitled to an exemption for service based on his
17 employment. What says the defense?

18 MR. WALTERS: Your Honor, anybody that doesn't
19 want to be here, I don't want to force them to be
20 here. So our position is he can have a good
21 Christmas.

22 THE COURT: So with regard to the total number
23 of problem jurors, being 168, and from the juror
24 problem list, does the defendant agree that all of
25 these jurors should be discharged from service next

1 week?

2 MR. WALTERS: May it please the Court. Your
3 Honor, I believe that the teacher could exercise the
4 exemption as allowed by law. And, of course, the
5 individual with the serious diabetes, I believe they
6 probably provided a medical excuse. The other
7 individual lives in Florida is over 65 and certainly
8 she can exercise the exemption. And, of course,
9 number 158 does not live in the county. So I think
10 that they're all in a position to get out of
11 service.

12 THE COURT: How about the first 164?

13 MR. WALTERS: Your Honor, we've reviewed the
14 list and it appears to be correct and those are
15 exemptions that are allowed by law.

16 THE COURT: I would imagine that from this
17 list, some of these jurors will probably appear.
18 For example, juror number 67, Edmond, does not live
19 at the address that the county had for her, but that
20 juror may somehow or another find out that she was
21 summoned. Is that list published in any newspapers
22 around here?

23 THE CLERK: No, sir.

24 (Pause.)

25 THE COURT: All right. With regard to the

1 juror with diabetes, number 92, a medical excuse
2 will be required from that juror. And with a
3 medical excuse, that juror will be excused.
4 Regarding the three that the State has problems
5 with, number 42, what says the State?

6 MR. PASCOE: We'd ask that that juror come and
7 explain their problems, Your Honor, as well as 93,
8 Tonya Gates, and 269, Mr. Tindall.

9 THE COURT: Juror number 269 states that he is
10 not a resident of this county.

11 MR. PASCOE: And, Your Honor, my information is
12 he lives less than a mile from this courthouse,
13 that's why I wanted him to come up here and maybe be
14 put under oath about that.

15 THE COURT: Those three jurors will be required
16 to appear. And the ones who state that they have a
17 conflict at work, they have problems with their job,
18 their employer doesn't want them to be here, they
19 must appear, because most of the folks here are
20 employed, have some related problems, may not be to
21 the same degree as theirs, but they will be required
22 to appear. And we'll talk with them after they get
23 here, and may or may not let them go, but they will
24 be required to be here.

25 With regard to all of the other jurors with the

1 exception of 42, 93, 269 and 92, all of those jurors
2 are excused from service based on the agreement of
3 both sides to this case. And I will make this
4 problem list a Court's Exhibit to be made a part of
5 the record in this case. What says the State about
6 that?

7 MR. PASCOE: That sounds good, Your Honor.

8 THE COURT: And the defense?

9 MR. WALTERS: We're fine with that, Your Honor.

10 THE COURT: All right. Very good.

11 Now, with regard to the people on this list
12 that we have -- that I have just excused from
13 service in this case, some of them will be required
14 to be transferred to another term of court. For
15 example, if they are students or teachers or have --
16 or if they have some other conflict that gets them
17 by this term of court, it does not excuse them from
18 their obligation to serve on jury duty. I will go
19 through the list and indicate to the clerk which of
20 those jurors should be transferred to serve at
21 another term of -- the next term of court.

22 Other juror related issues?

23 MR. WALTERS: May it please the Court.

24 THE COURT: Yes, sir.

25 MR. WALTERS: Your Honor, I want some

1 clarification from the Clerk of Court. We've got a
2 number of people that are from Swansea. And I
3 discussed this matter with the Solicitor. It's my
4 understanding a portion of Swansea is in Calhoun
5 County; is that correct?

6 **THE CLERK:** And also Elloree.

7 **MR. WALTERS:** And also Elloree. And the reason
8 that you're pulling those people is because they pay
9 taxes in Calhoun County or --

10 **THE CLERK:** Just the mailing addresses are
11 listed in Swansea or Elloree. They actually live in
12 Calhoun County.

13 **MR. WALTERS:** Your Honor, I want some
14 clarification from the Court because what we've got
15 is we've got people living in Swansea and some of
16 them have a Lexington County address and some of
17 them live -- and their actual property is located in
18 Calhoun County, they're paying Calhoun County taxes.
19 And I think the proper procedure is, is that where
20 you pay taxes is deemed to be your geographical
21 location as opposed to a mailing address because the
22 U.S. Postal Service does a number of things with
23 regard to that line and how they're going to deliver
24 packages, but what they're doing they're creating a
25 legal fiction.

1 I think the actual reflection of where you live
2 is based on where you pay your taxes. And I believe
3 you've got a number of people within this pool that
4 have addresses in Calhoun County, but they don't
5 actually live in Calhoun County.

6 **THE COURT:** Obviously, in order to serve on
7 jury duty in Calhoun County, you must be a resident
8 of Calhoun County. And it occurs every place I go,
9 almost every place I go, where a person might have
10 an address that is commonly thought of as being an
11 address from another county, but that's not the
12 county that they live in.

13 You have people in -- who are called to serve
14 on jury duty in Richland County who may have a
15 Lexington -- their postal address may say Lexington,
16 South Carolina, but they live in Richland County.
17 It occurs all the time in Williamsburg County where
18 people may have an Andrews address, which is
19 Georgetown County, but they live in Williamsburg
20 County. So that is something that happens all the
21 time.

22 But one of the primary, qualifying questions
23 for the jurors is are they a citizen of the United
24 States, are they a citizen and resident of Calhoun
25 County. I will emphasize to them, based on the

1 question that has been raised concerning that, do
2 they live in Calhoun County. They should know what
3 county they live in.

4 Now, if there's a question based on the juror's
5 responses, if you think they live in Lexington or
6 some other county, Lexington, Orangeburg, wherever,
7 and I ask them the question and they don't stand up
8 and say, I do not live in Calhoun County, then that
9 should be brought to the Court's attention if
10 there's any need for any further inquiry regarding
11 any resident of a particular juror. But I certainly
12 understand that in this area, you may have folks
13 whose address might say Route 5 Orangeburg and they
14 live in Calhoun County, but that's something that
15 happens all the time every place I go.

16 MR. WALTERS: May it please the Court. Your
17 Honor, then we'll submit the appropriate voir dire
18 for the individuals living in Swansea. We'd ask
19 that the Court inquire as to --

20 THE COURT: All right. And I will be happy to
21 specifically question any juror that you have any
22 question or concern regarding whether or not they
23 live in this county. But if they pay property taxes
24 on their residence where they live and it's paid in
25 Calhoun County, then they live in Calhoun County in

1 all likelihood.

2 All right. Other juror related issues
3 regarding the entire pool of folks summoned?

4 MR. WALTERS: None from the defense, Your
5 Honor.

6 THE COURT: Mr. Walters, how about the juror
7 questionnaire issue that you -- the motion you
8 filed? Juror voir dire, a questionnaire issue of
9 the jurors -- the motion that you filed, do you want
10 to be heard regarding that?

11 MR. WALTERS: Your Honor, specifically, which
12 motion are you referring to?

13 THE COURT: You filed a motion asking the Court
14 to -- asked to do more questioning of the jurors
15 regarding voir dire or certain other things over and
16 above the questionnaire that was sent to them with
17 the juror summons.

18 MR. WALTERS: Yes, sir. What we determined
19 was, is that, I don't want to beat a dead horse, but
20 what they asked in the questionnaire that came from
21 the clerk's office, I believe it said what civic
22 organizations. And if we compared the two, and we
23 took one from the book by Clary, and if you compare
24 it with the one that was submitted by the State,
25 there was a variance of two or three questions. And

1 I think that if the Court would permit us during the
2 paneling of those jurors, we could get into those
3 issues further, like what civic organizations are
4 you a part of.

5 There were other questions with regards to
6 whether you or your family had been the victim of a
7 violent crime, murder or a homicide. And, of
8 course, when the jury is broken into panels and we
9 engage the Witherspoon Morgan drill, certainly we
10 would ask the Court to allow us to ask those further
11 questions, I think there's two or three others,
12 because the difference between the clerk's
13 questionnaire was with regards to any member of
14 their family been involved in a violent crime or
15 anything of that nature. And it was more specific
16 about civic organizations that they had served in in
17 organizations. So very generic questions that could
18 be asked during the paneling process.

19 **THE COURT:** Well, during the paneling process
20 and after they're broken into panels, the purpose of
21 the questioning at that point will focus on whether
22 or not they are death penalty qualified.

23 Prior to that in the general questioning of all
24 the jurors who appear, and maybe the general voir
25 dire for this case might be an appropriate time, but

1 when we get into the paneling, the Court's going to
2 closely monitor the questioning to be certain that
3 the -- that we don't get far afield and beyond the
4 scope of what is permitted as to lawyer voir dire in
5 South Carolina by questioning the jurors on issues
6 other than whether or not they are death penalty
7 qualified.

8 MR. WALTERS: Yes, sir. I understand. And
9 certainly -- and I'll follow the Court's direction.

10 It's been my experience that we simply pull out
11 the response that had been given along with the
12 questionnaire that's been answered. And, of course,
13 if Your Honor will allow, we go through that, we ask
14 where did you go to school, whatever else, I see you
15 in here, I went to school there, and one additional
16 question about -- one or two questions about the
17 issues that were not put on the questionnaire.

18 And, certainly, I'll follow the Court's
19 direction and I will not belabor the point and drag
20 it out. I certainly would just want to ask one or
21 two questions in that process.

22 THE COURT: What do you say, Mr. Solicitor?

23 MR. PASCOE: I agree with the Court, Your
24 Honor, that those are the types of questions that
25 Your Honor's going to ask to the whole panel and

1 that -- I just concur with the Court. And we can
2 take up the voir dire, it will take us, what, five
3 or ten minutes in chambers to look through the
4 defense attorneys -- the defendant's questions and
5 give you our opinion in chambers.

6 **THE COURT:** I think the time to ask about more
7 specific questions that we might not have wanted to
8 ask or include on the general questionnaire for fear
9 of people trying to predetermine why they were
10 coming down here and maybe using some answers to
11 avoid jury service, once they are here and they are
12 given some orientation as to the case that we'll be
13 hearing this week, then we can go through a general
14 voir dire process specific to this case and,
15 therefore, I would need sort of -- like in a civil
16 case where you would submit to the Court voir dire,
17 then that would be a time that that should be done.
18 But after breaking them into panels, we would need
19 to focus on death penalty qualifications to serve as
20 opposed to too many other type questions.

21 **MR. WALTERS:** Yes, sir. Your Honor, I could
22 submit to the Court then a -- if I wanted to submit
23 voir dire with regards to Swansea and Ellore, I
24 could also submit those questions with regards --
25 that I think were missing from the clerk's

1 questionnaire.

2 THE COURT: All right. That will be fine.

3 Regarding a blind person or a child drawing the
4 jury in this case, is that something that the
5 parties will require per the statute?

6 MR. PASCOE: We'd waive that, Your Honor.

7 MR. WALTERS: Your Honor, may it please the
8 Court. We will waive that requirement, also.

9 THE COURT: All right. And then the clerk will
10 draw the jury as he or she would typically do in
11 this county. Of course, that rule has been modified
12 to some extent by the law that permits the computer
13 drawing of the jury panels, but y'all have not
14 gotten up to that yet, most places haven't, so no
15 problem.

16 All right. Regarding the juror questionnaires,
17 did all of the jurors who I have not excused, did
18 they fully complete the questionnaires?

19 MR. WALTERS: Not all of them, Your Honor.

20 THE CLERK: No, sir.

21 THE COURT: Well, any juror who did not fully
22 complete the questionnaire, we'll need them to do
23 so. And I think by Monday, we'll identify those
24 jurors and I will address them on that issue.

25 I don't think it will be necessary for the

1 clerk to address the jurors seeking information,
2 I'll do it, but I'll do it, hopefully, in a way that
3 that will not intimidate them. We'll make sure that
4 they fully complete the questionnaires, then after
5 they have done so, then to be sure to copy them for
6 the benefit of counsel.

7 Are there any other outstanding motions?

8 MR. PASCOE: None from the State, Your Honor.

9 MR. WALTERS: None from the defense, Your
10 Honor.

11 THE COURT: Are there any other matters that we
12 need to talk about today?

13 MR. WALTERS: No, sir, Your Honor.

14 MR. PASCOE: Unless Your Honor wanted to
15 discuss security, that's the only thing I can think
16 of.

17 THE COURT: We'll talk about that in chambers
18 and then we'll recess and then also decide whether
19 we need to place anything else on the record. So we
20 will be in recess then.

21 (Whereupon, a hearing was held in chambers.)

22 (Whereupon, the proceedings were concluded
23 for November 20, 2006.)

24 *****

25 *****

1 (The following proceedings were held on
2 November 27, 2006.)

3 (The following proceedings were reported in
4 chambers.)

5 **THE COURT:** Hi, Madame Juror.

6 DEBORAH DRAKE,

7 having been duly sworn, testified as follows:

8 **THE COURT:** And you are juror number -- what's
9 your name?

10 **JUROR:** Deborah Drake.

11 **THE COURT:** Deborah Drake?

12 **JUROR:** Yes, sir.

13 **MR. SORENSON:** 64.

14 **THE COURT:** Juror number 64. And, Ms. Drake,
15 you've received a summons to appear for jury duty
16 for this term of court; is that correct?

17 **JUROR:** Yes, sir.

18 **THE COURT:** And do you have a problem with
19 serving on jury duty this week?

20 **JUROR:** Yes, sir. My daughter is sick at home
21 and there's nobody else to care for her. My husband
22 has gone out of town on business today. And I don't
23 know what she's got. She's got a sore throat and an
24 upset stomach and there has been strep throat going
25 around the school. And she as an appointment at

1 11:30 with her local doctor, Doctor Stone.

2 THE COURT: Does it seem to you to be something
3 that's going to have you tied up for more than just
4 a day?

5 JUROR: It could be. I don't know what she's
6 got, I mean -- and then tomorrow my husband's having
7 a -- I don't know how to say it -- gas...

8 THE COURT: A gastroscopy?

9 JUROR: Yes, sir. And this was scheduled by
10 the doctor. And, again, there's nobody else to take
11 him. He will be sedated. He cannot drive home and
12 there's nobody else.

13 THE COURT: So you'll have to tend to him?

14 JUROR: Yes, sir.

15 THE COURT: Is he expected to be laid up for a
16 few days?

17 JUROR: The doctor said give him a day to
18 recover and then after that, he should be fine.

19 THE COURT: And for those reasons, you want to
20 be transferred to serve on jury duty at another
21 time?

22 JUROR: Yes, sir, if I could, please.

23 THE COURT: Any questions by the State?

24 MR. PASCOE: No, Your Honor. No objection to
25 transfer.

1 **THE COURT:** Any questions by the defense?

2 **MR. WALTERS:** No, sir, Your Honor.

3 **THE COURT:** Okay. Ma'am, say your name one
4 more time.

5 **JUROR:** Deborah Drake.

6 **THE COURT:** All right. Ms. Drake, we will
7 transfer you to serve on jury duty at another time
8 and you'll get another notice from the clerk as to
9 when you should come back.

10 **JUROR:** Okay.

11 **THE COURT:** Thank you very much. You're free
12 to go.

13 (The juror was excused.)

14 **THE COURT:** Any objection to her being excused?

15 **MR. WALTERS:** No, sir, no objection.

16 **MR. PASCOE:** None from the State, Your Honor.

17 **THE COURT:** Very good.

18 (Juror enters chambers.)

19 **THE COURT:** Clifton Newman. What's your name?

20 **JUROR:** Richard Brown.

21 **THE COURT:** Mr. Brown, if you will raise your
22 right hand, we'll swear you in.

23 **RICHARD BROWN,**

24 having been duly sworn, testified as follows:

25 **THE COURT:** Mr. Brown, do you know your juror

1 number?

2 JUROR: 26.

3 MR. PASCOE: 28.

4 JUROR: I was close.

5 THE COURT: And you've been summoned to appear
6 for jury duty this week?

7 JUROR: Yes, sir.

8 THE COURT: And do you have any problems with
9 serving on jury duty this week?

10 JUROR: Yes, sir. Being the fact that my
11 unit's -- we're on-call right now to go to Iraq.
12 And, in fact, next week, which is the week of, I
13 believe, the 4th or the 3rd, something like that,
14 we're on a two week mission to Mississippi in
15 preparation for going to Iraq in June.

16 THE COURT: And, therefore, you'll have to
17 leave Calhoun County when?

18 JUROR: Sunday.

19 THE COURT: You're leaving out Sunday?

20 JUROR: Well, I'll actually leave Saturday
21 because I have to be there at 4:00 a.m. on the
22 morning of Monday.

23 THE COURT: And you're actually going to Iraq.

24 JUROR: We're on the list right now. We're in
25 preparations.

1 **THE COURT:** And what are you in? What division
2 of the --

3 **JUROR:** I'm Army.

4 **THE COURT:** Army Reserves?

5 **JUROR:** National Guard, Your Honor. I spent
6 eight years active all in Hawaii. While I was
7 there, I went to Kosovo and I went to Somalia. And
8 I'm in the process of going to Iraq.

9 **THE COURT:** Mogadishu, is that in Somalia?

10 **JUROR:** Yes, sir.

11 **THE COURT:** Did you go there?

12 **JUROR:** No, sir.

13 **THE COURT:** You were on a ship?

14 **JUROR:** No, sir.

15 **THE COURT:** Any questions?

16 **MR. PASCOE:** No questions, Your Honor.

17 **MR. WALTERS:** No questions, Your Honor.

18 **THE COURT:** Any objection to Mr. Brown being
19 excused from jury duty based on his military
20 obligation?

21 **MR. PASCOE:** None from the State, Your Honor.

22 **MR. WALTERS:** No, sir, Your Honor.

23 **THE COURT:** Okay. Mr. Brown, thank you very
24 much and we'll excuse you. I wish we could keep you
25 here instead of going there and maybe you wish the

1 same, but who knows.

2 JUROR: We all wish for that.

3 THE COURT: But duty calls and you must
4 respond. So thank you very much for your service
5 for the Country. And I hope things will go well for
6 you.

7 (The juror was excused.)

8 (Juror enters chambers.)

9 THE COURT: And what's your name, ma'am?

10 JUROR: Lea Clark.

11 THE COURT: Okay. Ms. Clark, when you get your
12 right hand free, we're going to have you raise it
13 and swear you in.

14 LEA CLARK,

15 having been duly sworn, testified as follows:

16 THE COURT: I see, Ms. Clark, you'll be juror
17 number --

18 MR. SORENSON: She is 317, Judge.

19 THE COURT: Juror number 317. I see you're
20 here and have some babies and children with you.
21 Those children are --

22 JUROR: This is actually my nephew, Richard.
23 And this is my daughter, Elizabeth.

24 THE COURT: And do you work?

25 JUROR: Yes, sir, I do.

1 **THE COURT:** Where do you work?

2 **JUROR:** Advanced Auto.

3 **THE COURT:** And what hours do you work there?

4 **JUROR:** It varies. Usually, I work at night.

5 Lately, they've been putting me during the day, but
6 today is my day off.

7 **THE COURT:** And when you work during this week,
8 next week, when are you scheduled to work at
9 Advanced Auto?

10 **JUROR:** Tomorrow I go in at 7:00 in the morning
11 and Wednesday at three o'clock in the afternoon.

12 **THE COURT:** And while you're at work, who takes
13 care of the children for you?

14 **JUROR:** Usually, I have a lady and her name is
15 Donna, I'm not sure of her last name, but she
16 usually watches them. But this week she had
17 radiation done because she has a thyroid problem.
18 So usually my sister, she'll change her work
19 schedule. She works at Advanced Auto also and today
20 she couldn't -- she wasn't able to get off.

21 **THE COURT:** Are you available to serve on jury
22 duty this week and possibly next week?

23 **JUROR:** Yes, sir.

24 **THE COURT:** Are you available to serve on jury
25 duty this week?

1 JUROR: Yes, sir.

2 THE COURT: You can serve on jury duty this
3 week?

4 JUROR: Yes, sir.

5 THE COURT: And what are you planning to do
6 with the children?

7 JUROR: I actually was planning on going today
8 this afternoon and putting them in day care because
9 I do have a day care available because the lady that
10 watches them is not very dependable.

11 THE COURT: Now, of course, jury duty starts --
12 it started at ten o'clock this morning and you have
13 the children with you now. Do you have someone who
14 can take care of them while you go through the juror
15 qualifications process this morning?

16 JUROR: Not today. I tried to find someone
17 this morning and my mom works and my sister's at
18 work and that's all the family I have around here.

19 THE COURT: Your family is not from this
20 county?

21 JUROR: No. My mom is. My sister lives in
22 Ridgeway.

23 THE COURT: And what are you asking for
24 regarding serving on jury duty this week or not
25 serving? What are you trying to do?

1 **JUROR:** Well, I mean, it's not that I'm not
2 trying to serve. It's just that today I was unable
3 to because I have no one to watch the children. As
4 far as serving the rest of the week, we'll be fine
5 because I would have someone available to watch
6 them.

7 **THE COURT:** Questions?

8 **MR. PASCOE:** Yes, Your Honor.

9 My name is David Pascoe. I'm the Solicitor,
10 Ms. Clark. Who takes care of your daughter in the
11 evenings?

12 **JUROR:** In the evenings, my sister if I'm not
13 home.

14 **MR. PASCOE:** If you could serve as a juror in
15 this case, would you be able to stay at a hotel room
16 for a week to two weeks and be sequestered?

17 **JUROR:** Yes, sir.

18 **MR. PASCOE:** What time do you think you could
19 have your daughter and nephew watched at day care?

20 **JUROR:** If I go -- because if I go today, I can
21 have them in there this afternoon because right now
22 my sister lives in Ridgeway, so she would want them
23 in, you know, one down there in Ridgeway. And,
24 actually, she was calling them this morning and she
25 hasn't left me a message or anything.

1 MR. PASCOE: That's all I have right now.

2 THE COURT: This day care arrangement that you
3 would make, is that someone who could take care of
4 your children for a week?

5 JUROR: Yes, sir. It would be a full-time day
6 care.

7 THE COURT: A full-time day care, is that a day
8 care where, at some point in time, you're going to
9 get your children or is it a day care where you can
10 arrange to leave them there for two weeks?

11 JUROR: Well, it's a day care that I would take
12 them to everyday until either myself or my sister
13 could pick them up in the afternoon and take them
14 home. You know, so it would be more than two weeks
15 that they would be there.

16 THE COURT: And you would be available to serve
17 on jury duty even if the jury service might take up
18 to two weeks and you would -- understanding that you
19 would have to stay in a hotel for that entire period
20 of time, you understand that? Do you think you
21 would be available?

22 JUROR: Yes, sir.

23 THE COURT: All right. Mr. Walters.

24 MR. WALTERS: How are you doing, ma'am? My
25 name is Glenn Walters. The Saturdays -- is the day

1 care open on Saturday?

2 JUROR: No, sir.

3 MR. WALTERS: Who would take care of the
4 children on Saturday if you were sequestered for two
5 weeks straight?

6 JUROR: It would be either my sister or my
7 mother.

8 MR. WALTERS: They're off on Saturdays?

9 JUROR: My mother is.

10 MR. WALTERS: I have no further questions, Your
11 Honor.

12 THE COURT: Ma'am, if you'll stand right
13 outside the door for a few moments and let me talk
14 to the lawyers and then have you come back in.

15 (Juror leaves chambers.)

16 THE COURT: All right. What says the State?

17 MR. PASCOE: The only problem with this juror
18 is I don't know -- how much of the voir dire is she
19 going to miss and can that be made up at a later
20 time if she's on the panel? One thing about her
21 is --

22 MR. SORENSON: Would you be able to kind of --
23 I mean, if she got put on a panel, then kind of
24 generally qualify her when she comes back?

25 MR. PASCOE: She obviously wants to serve. I

1 was surprised. I mean, she's got a way out. She
2 seems like she wants to serve.

3 THE COURT: Mr. Walters.

4 MR. WALTERS: Your Honor, I have problems with
5 her. Number one, we asked her, we said, Who keeps
6 the kids? She said, A woman named Donna. And my
7 reaction then when you said what's her last name and
8 she didn't know, this lady is sort of Harry Carry.
9 The kids are being shuffled around different places.
10 I don't want somebody sitting on that jury that's
11 angry or upset because they're worried about the
12 fact that they shuffled those kids off on someone.

13 When she walks in this room and says, I can't
14 remember the person that keeps the kids and what
15 their name is, and then she goes on to state, Well,
16 that person is sort of unreliable, and then she
17 says, On Saturdays somebody can do it, but the day
18 care is closed, it looks like the day care right now
19 is going to be her saving grace. And she's saying
20 my mother, usually my sister, but then she says her
21 sister lives in Ridgeway.

22 I get the feeling that this lady's -- she's in
23 over her head and she's trying to do the right
24 thing, but the problem is, is that even in her
25 candor in answering the questions, my reaction is,

1 is that you're not really sure how you're going to
2 make it these next two weeks when you sit down and
3 tell me, I work during the night and then sometimes
4 I work during the day and I can't remember the
5 person's name that keeps my kids...

6 THE COURT: Well, the juror came in, or the
7 clerk had the juror to come in because she had two
8 small children with her. And my thinking was she
9 was coming in to ask to be relieved from jury duty
10 and she has -- apparently has a basis, particularly
11 considering that the jury would be sequestered, she
12 would have a basis to be relieved from jury service,
13 but she answered all of the questions right to make
14 herself available for jury service.

15 So the only basis that I would have to relieve
16 her from jury duty at this point would be to relieve
17 her for cause, if there is sufficient cause to
18 relieve her from jury service. And at this
19 preliminary point of the inquiry, I do not have a
20 basis to relieve her for cause and she will need to
21 go through the regular voir dire and then perhaps
22 the panels and see whether she makes it through
23 those unless she shows up with those kids again, if
24 she makes it through the voir dire in the panels.

25 The other concern, however, is the fact that

1 she has two children here now, including one child
2 who's not her child and I'm concerned about that
3 being disruptive to the process when we get going in
4 the courtroom because we really do not need any
5 children in there. So if she has someone to -- or
6 if there is some court personnel who can take those
7 children while we're going through the voir dire,
8 then she can participate in the voir dire and juror
9 qualification as opposed to voir dire, but I do not
10 believe it would be prudent to have two kids in
11 there.

12 MR. PASCOE: I agree.

13 THE COURT: So let's see if, among the
14 personnel that the clerk has amassed for this court
15 term, Martha Jo, whether or not they have someone
16 that can do some temporary baby-sitting, whether
17 they have someone that can handle those kids and see
18 how unruly the kids might be and all that.

19 (Pause.)

20 THE COURT: She has appeared with those two
21 kids today, one is hers and one is her nephew. She
22 says that she is arranging a day care this afternoon
23 that can take care of them and she has some
24 arrangement where they can be passed from person to
25 person during the term of court if she is selected

1 and sequestered. The question is whether we can get
2 someone to tend to those babies while we are --

3 THE CLERK: My wife.

4 THE COURT: -- going through the jury
5 qualification process.

6 THE CLERK: I have quite a few that are
7 bringing in their questionnaire and summons that are
8 standing out there. Should I go ahead and take them
9 and copy them?

10 THE COURT: Yes. If they're bringing them in
11 and you can get them and copy them now and copy them
12 for all of us.

13 (Pause.)

14 THE CLERK: About 20 minutes, Your Honor.

15 THE COURT: That's good.

16 THE CLERK: She'll be here in about 20 minutes
17 or so.

18 (Juror enters chambers.)

19 THE COURT: Okay. Ms. Clark, you have
20 indicated that you're available to stay with us
21 today, so we're going to have you go out and -- you
22 have a place for her to sit with other jurors that
23 -- it might not be in the courtroom, but yet not
24 distracting to the -- why don't you have her sit --

25 THE CLERK: In the conference room? Do you

1 want her to sit in the courtroom or outside the
2 courtroom?

3 THE COURT: Well, she needs to be in to hear.

4 THE CLERK: I'll have a place for my wife. She
5 can sit with the kids in the conference room.

6 THE COURT: Okay. We're ready to get started
7 with her in the courtroom with the other jurors.

8 THE CLERK: We'll get them to the conference
9 room and then the bailiff will summon for her to
10 come in, okay.

11 (Juror leaves chambers.)

12 THE COURT: During our meeting last week, the
13 parties agreed with certain jurors being released.
14 Those names and juror numbers were made a part of
15 the record in the case. Section 16 dash 3 dash 20
16 provides, however, that the parties shall have the
17 right to examine jurors called in death penalty
18 cases. I want to have stated on the record whether
19 the State and the defense waive examination of those
20 jurors. What says the State?

21 MR. PASCOE: State waives it, Your Honor.

22 THE COURT: And the defense?

23 MR. WALTERS: The defense waives, Your Honor.

24 (The hearing was concluded in chambers.)

25 (The following proceedings occurred in open

1 court.)

2 THE COURT: Ladies and gentlemen, I see we have
3 very tight quarters here today. We'll try to move
4 along to facilitate things. My name is Clifton
5 Newman and I have been assigned to preside over this
6 week's term of -- or this term of court here in
7 Calhoun County. And you all have been asked to come
8 here this morning to serve as potential jurors
9 during this term of court.

10 I think I'm going to ask the jurors who are
11 standing in front of people on the front row to fill
12 up these seats over here.

13 (Pause.)

14 THE COURT: I want to also ensure if anyone has
15 a beeper or a cell phone, that you turn it off at
16 this time and please do not bring it back into the
17 courtroom in an on position. If you'll do that at
18 this time please, be sure that any beepers or cell
19 phone that you might have are off.

20 In just a moment, we're going to go through the
21 roll call and get this process underway. I will
22 introduce the court personnel to you as we go
23 through the process of this jury qualification and
24 let me tell you briefly how -- what this process is
25 all about and how we will do it.

1 When I finish talking to you, the clerk,
2 Mr. Hasty, or Assistant Clerk Claudia Pauling will
3 call the roll to see who is here. When your name is
4 called, if you would, please stand and in a loud
5 clear voice, report to us that you are present,
6 that's the only thing we need to know at this time.
7 We will get other information from you during the
8 course of further questions that I will ask you and
9 I will explain that process to you as well in just a
10 few moments. For now, please acknowledge your
11 presence when your name is called. The clerk will
12 proceed with that.

13 (The Clerk calls roll.)

14 **THE COURT:** All right. Ladies and gentlemen,
15 in order to give everyone a break, we're going to
16 recess for 15 minutes, 15 minutes. It's 12:05,
17 please be back in the courtroom in 15 minutes, that
18 will be 12:20. Court's in recess for 15 minutes.
19 Please do not go outside of the building.

20 (Brief recess.)

21 (The following proceedings were reported in
22 chambers.)

23 **THE COURT:** How are you, sir?

24 **JUROR:** I'm doing good. How about you?

25 **THE COURT:** All right. Clifton Newman.

1 JUROR: Clevis Harrison.

2 THE COURT: And you're part of the jury panel,
3 juror number...

4 JUROR: 119.

5 THE COURT: Do you have a problem serving on
6 jury duty this week?

7 JUROR: No, sir. I just have a senior exam
8 today at Claflin.

9 THE COURT: At what time?

10 JUROR: One o'clock.

11 THE COURT: At one o'clock. It's 12:10 now.
12 Well, this process that we will go through, as far
13 as qualifying the jury panel, will probably take
14 another hour or so for the general panel and then
15 we'll break down into smaller groups. And you'll be
16 tied up with that for...

17 JUROR: It's a three hour exam.

18 THE COURT: And then beyond that, you will be
19 available?

20 JUROR: Yeah, that will be it.

21 THE COURT: What says the State?

22 MR. PASCOE: Mr. Harrison, is that your only
23 exam?

24 JUROR: Yes. Yeah, that's the only one I got,
25 just two classes.

1 MR. PASCOE: You'd be able to serve for maybe
2 the next two weeks, two to two and a half weeks, if
3 need be, on a jury?

4 JUROR: Yeah. We finish school -- this week is
5 the exam week for seniors and then next week we're
6 out until January or something.

7 MR. PASCOE: But you'd have to leave here today
8 at what time to get to class?

9 JUROR: About 12:30 and set up my exhibit.

10 MR. PASCOE: That's all I have, Your Honor.

11 THE COURT: What says the defense?

12 MR. WALPERS: Your Honor, I have no problem
13 with him going to class and coming back.

14 THE COURT: All right, sir. Let me then just
15 ask you some general juror qualifying questions.
16 You are a U.S. citizen?

17 JUROR: Yes, sir.

18 THE COURT: A resident of --

19 JUROR: South Carolina.

20 THE COURT: -- of Calhoun County?

21 JUROR: Calhoun County.

22 THE COURT: And do you have a driver's license?

23 JUROR: Yes, sir.

24 THE COURT: And have you ever been convicted of
25 a crime punishable by more than a year imprisonment?

1 JUROR: No, sir.

2 THE COURT: You're able to read, write, speak
3 and understand the English language?

4 JUROR: Yes, sir.

5 THE COURT: And you graduated from which high
6 school?

7 JUROR: Calhoun County.

8 THE COURT: And what type of work do you do?

9 JUROR: I'm a photographer.

10 THE COURT: Have you previously served on jury
11 duty?

12 JUROR: No, sir.

13 THE COURT: Are you a commissioned law
14 enforcement officer? Do you have a law enforcement
15 commission? Do you work in any courthouse?

16 JUROR: No, sir.

17 THE COURT: And you've never served on jury
18 duty here in Calhoun County?

19 JUROR: No, sir.

20 THE COURT: Do you have any children under the
21 age of seven?

22 JUROR: No, sir.

23 THE COURT: Do you have any -- know of any
24 reason whatsoever why you cannot serve on jury duty
25 this week?

1 JUROR: None whatsoever.

2 THE COURT: After doing the overall juror
3 qualifications, we're going to place the jury in
4 jury panels and have them come back at a certain
5 designated time. Do you have a cell phone number?

6 JUROR: Yes, sir.

7 THE COURT: What's your phone number?

8 JUROR: Redacted

9 THE COURT: And do you have a home number as
10 well?

11 JUROR: That's my main number or either my work
12 number is Redacted . Do you need the name of
13 my job? Cecil Williams Photography.

14 THE COURT: Now, is it Middleton Street or has
15 he moved?

16 JUROR: He moved. It's a house studio now.

17 THE COURT: You received a juror orientation
18 letter and you know the type of case that this is.

19 JUROR: I saw the letter, but when I received
20 the letter about being a juror, I was out of town.

21 THE COURT: I'm referring to this orientation.

22 JUROR: Yeah, I read over it.

23 THE COURT: And do you know any of the people
24 involved in this case?

25 JUROR: I don't know anything about this case.

1 **THE COURT:** And has anyone spoken with you or
2 attempted to discuss this case with you in any form
3 or fashion?

4 **JUROR:** No, sir.

5 **THE COURT:** You've noticed on the letter, I've
6 indicated that you're not to talk with anyone about
7 it from this point on or allow anyone to speak with
8 you about it?

9 **JUROR:** Yes, sir.

10 **THE COURT:** And do you have any bumper stickers
11 on your car?

12 **JUROR:** No, sir.

13 **THE COURT:** Have you or any member of your
14 immediate family ever been the victim of a violent
15 crime?

16 **JUROR:** No, sir.

17 **THE COURT:** Have you or any member of your
18 immediate family ever been accused of committing a
19 violent crime?

20 **JUROR:** No, sir.

21 **THE COURT:** Any other general voir dire
22 questions that you might want to pose to him?

23 **MR. PASCOE:** No, Your Honor.

24 **MR. WALTERS:** No, sir.

25 **THE COURT:** All right. Mr. Harrison, we're

1 going to place you in the -- in a jury panel and
2 we'll call you and tell you when you need to come
3 back for further questioning. Any objection to
4 that?

5 MR. PASCOE: None, Your Honor.

6 MR. WALTERS: No, sir.

7 MR. KOGER: No objections.

8 THE COURT: So you can leave now and we'll call
9 you and tell you when you're to come back. It may
10 be later this afternoon or at some point tomorrow.
11 It won't be this afternoon because you'll be tied
12 up.

13 JUROR: That should be no problem.

14 THE COURT: It will be either late, late this
15 afternoon or some time tomorrow most likely. Until
16 then, don't discuss the case with anyone you talk to
17 today.

18 JUROR: Yes, sir. Thank you.

19 (The juror was excused for the day.)

20 THE COURT: Any objection to that procedure
21 with him?

22 MR. PASCOE: No, Your Honor.

23 MR. WALTERS: No, sir, Your Honor.

24 MR. KOGER: No objection.

25 THE COURT: Let's get the next one.

1 (Juror enters chambers.)

2 THE COURT: Come on in. Yes, ma'am, we're
3 going to put you under oath. If you'll raise your
4 right hand.

5 SUSIE HUGHES,
6 having been duly sworn, testified as follows:

7 THE COURT: What is your juror number?

8 JUROR: I think it was 349.

9 THE COURT: You didn't forget already, did you?
10 What's your name?

11 JUROR: Susie Hughes.

12 THE COURT: All right. Ms. Hughes, you wanted
13 to come back and tell us something about something
14 you've got.

15 JUROR: Yeah. I have a doctor's appointment
16 and what it is is for my condition. My disability
17 is that they won't like give me the statement unless
18 I come in because the last time I been there was
19 like April and now I just have to come in today to
20 be seen for them to give me the statement.

21 THE COURT: What kind of statement are you
22 trying to get?

23 JUROR: I guess, a doctor's statement of a
24 disability that I have -- I have certain type of
25 things going on with me.

1 **THE COURT:** Like what?

2 **JUROR:** Sleep apnea. I had like a mild stroke.

3 **THE COURT:** When did you have the mild stroke?

4 **JUROR:** About three years.

5 **THE COURT:** Do you believe that you have a
6 physical disability that would prevent you from
7 serving on jury duty?

8 **JUROR:** Yes, because I have a problem with my
9 back and my leg, my feet, my hands. Just like I
10 say, I have different type of illness going on,
11 sleep apnea, I can't like sit in a place a long time
12 without going to sleep.

13 **THE COURT:** Did you go to sleep this morning
14 already?

15 **JUROR:** Well, I waked (sic) up this morning.
16 I'm saying once it's quiet -- I can't even look at a
17 movie, fully look at a movie, you know, without
18 going to sleep.

19 **THE COURT:** And you're under the care of what
20 doctor?

21 **JUROR:** It's Doctor Augustin.

22 **THE COURT:** Where is he located?

23 **JUROR:** Orangeburg.

24 **THE COURT:** And when are you supposed to see
25 him?

1 JUROR: I'm supposed to see him today at 2:00.

2 THE COURT: For what reason?

3 JUROR: For the statement because they won't
4 like give me one without coming in.

5 THE COURT: What kind of statement are you
6 trying to get from him?

7 JUROR: It's a statement that I'm supposed to
8 bring back for the court.

9 THE COURT: For what reason?

10 JUROR: That I have a condition, you know, that
11 I cannot even really so much function right because
12 the oxygen level that it's like going to the brain
13 when I'm sleeping, it causes like lapse, some time
14 for thinking -- not thinking clearly.

15 THE COURT: Any questions by the State?

16 MR. PASCOE: No, Your Honor.

17 THE COURT: By the defense?

18 MR. WALTERS: No questions, Your Honor.

19 THE COURT: All right. If you'll stand right
20 outside the door for a second.

21 (Juror leaves chambers.)

22 THE COURT: Any objection to her being excused
23 from the State?

24 MR. PASCOE: None, Your Honor.

25 MR. WALTERS: No objection, Your Honor.

1 (Juror enters chambers.)

2 THE COURT: All right. Ms. Hughes, we're going
3 to excuse you from jury duty. You won't have to
4 come back. Thank you very much for coming. If you
5 will get that doctor's excuse and drop it off at the
6 clerk's office.

7 JUROR: All right. Thank you.

8 (Juror was excused.)

9 (Juror enters chambers.)

10 THE COURT: Let me swear you in. Raise your
11 right hand.

12 AMY AUSTIN,
13 having been duly sworn, testified as follows:

14 THE COURT: What's your juror number?

15 JUROR: Number two.

16 THE COURT: What's your name?

17 JUROR: Amy Austin.

18 THE COURT: And, Ms. Austin, why did you come
19 back here?

20 JUROR: Well, I leave my young'uns in the car,
21 so I didn't have nobody to keep him.

22 THE COURT: How old is your baby?

23 JUROR: Eleven months.

24 THE COURT: Do you work?

25 JUROR: Huh-huh.

1 **THE COURT:** Do you take care of your baby all
2 the time?

3 **JUROR:** Huh-huh.

4 **THE COURT:** That's your full-time job?

5 **JUROR:** Yeah, right now.

6 **THE COURT:** Do you want to be exempted from
7 jury service based on you having a small child?

8 **JUROR:** Yes.

9 **THE COURT:** He's 11 months old?

10 **JUROR:** Yes, sir.

11 **THE COURT:** Any questions by the State?

12 **MR. PASCOE:** No questions, Your Honor.

13 **THE COURT:** By the defense?

14 **MR. WALTERS:** No, sir.

15 **THE COURT:** Okay. Ms. Austin, did you say?

16 **JUROR:** Yeah, Austin.

17 **THE COURT:** All right. Ms. Austin, we're going
18 to cut you loose. You can go. Thank you for
19 coming. Hope everything is fine with your mom and
20 baby out there.

21 (Juror was excused.)

22 **THE COURT:** Any objection to her being cut
23 loose based on her statutory exemption?

24 **MR. PASCOE:** No, Your Honor, from the State.

25 **MR. WALTERS:** No, sir, Your Honor.

1 **THE COURT:** All right.

2 (Juror enters the courtroom.)

3 **THE COURT:** This is...

4 **JUROR:** Lea.

5 **THE COURT:** What's your juror number?

6 **JUROR:** 317.

7 **THE COURT:** Lea Clark. And why have you come
8 back to see us again?

9 **JUROR:** Because I was asking to see if there
10 was any way I could be excused because I am not
11 feeling very well. I have been sick and out there
12 it's just my head's pounding and I feel like I'm
13 going to pass out at any minute.

14 **THE COURT:** What kind of sickness do you have?

15 **JUROR:** I don't know what it is. I've got
16 actually a doctor's appointment for tomorrow.

17 **THE COURT:** Why didn't you tell us about that
18 earlier?

19 **JUROR:** Because it really wasn't that bad
20 earlier. It's just my head -- standing up in the
21 back.

22 **THE COURT:** When did you make your appointment?

23 **JUROR:** I made it early this morning.

24 **THE COURT:** Before you came back here?

25 **JUROR:** No, before I left the house this

1 morning.

2 THE COURT: All right. And based on that, in
3 addition to the other things that you told us this
4 morning, you want to be exempted from jury service?

5 JUROR: If I could, yes, sir.

6 THE COURT: Anything from the State?

7 MR. PASCOE: Nothing from the State, Your
8 Honor.

9 THE COURT: From the defense?

10 MR. WALTERS: No, sir.

11 THE COURT: Where are your babies at this
12 point?

13 JUROR: They're in the conference room.

14 THE COURT: How are they doing back there?

15 JUROR: As far as I know, they're fine.

16 THE COURT: Stand right there for just a
17 second.

18 (Juror leaves chambers.)

19 THE COURT: What says the State?

20 MR. PASCOE: No position. I think that coupled
21 with the child problem, the State would have no
22 problems excusing her -- transferring her.

23 MR. WALTERS: No problem with excusing her,
24 Your Honor.

25 THE COURT: Since she has a small child, I'm

1 just going to exempt her from service.

2 (Juror enters chambers.)

3 **THE COURT:** Okay. Ms. Clark, you have a small
4 child, you're entitled to be exempted from jury
5 service. We certainly appreciate your trying to
6 work with us and wanting to serve this morning, but
7 with the additional information of your sickness,
8 you're entitled to be exempted and we're going to
9 exempt you from service.

10 **JUROR:** Thank you and I do apologize.

11 **THE COURT:** That's all right. No problem.
12 Thank you for bringing it to our attention and thank
13 you for your willingness to serve on the jury.

14 **JUROR:** I just didn't want it to get too bad.

15 **THE COURT:** I understand. Thank you, ma'am.

16 (Juror was excused.)

17 **THE COURT:** Do we have anymore?

18 **LAW CLERK:** That's it.

19 (The hearing was concluded in chambers.)

20 (The following proceedings occurred in open
21 court.)

22 **THE COURT:** Ladies and gentlemen, now in order
23 to determine your qualifications to serve as jurors
24 this term, I've got to ask you some additional
25 questions. And I do not ask these questions trying

1 to evade your privacy or pry into your personal or
2 business lives anymore than I need to, but each of
3 these questions which I have to ask you has a direct
4 bearing on a constitutional or a statutory
5 requirement that affects your ability to serve as a
6 juror. So there is a reason for each of these
7 questions that you may be asked and, therefore, it's
8 real important that you answer these questions
9 accurately and completely and candidly with us.

10 In order to ensure that process, we are going
11 to put you under oath at this time, then I will ask
12 you some additional questions regarding your
13 qualifications to serve as a juror in this court
14 during this term. Therefore, I need all jurors --
15 prospective jurors to stand at this time and raise
16 your right hands to accept this oath.

17 (The jury panel was duly sworn by the Court
18 at 12:30 p.m.)

19 **THE COURT:** Did any of you not complete and
20 return the questionnaire that was sent to you along
21 with your juror summons? If you did not fill out
22 this questionnaire and return it, please stand and
23 let me know at this time.

24 (Jurors stand.)

25 **THE COURT:** Yes, ma'am, what is your juror

1 number, please?

2 **JUROR:** I think it's 86.

3 **THE COURT:** What is your name?

4 **JUROR:** Bertha Frederick.

5 **THE COURT:** And, Ms. Frederick, you did not
6 receive the questionnaire?

7 **JUROR:** I received it, but it got misplaced
8 somehow.

9 **THE COURT:** We'll give Ms. Frederick another
10 questionnaire, juror number 86.

11 **THE CLERK:** She's 84.

12 **THE COURT:** Number 84, Ms. Frederick.
13 Yes, ma'am, what is your juror number?

14 **JUROR:** Number 52.

15 **THE COURT:** And what is your name?

16 **JUROR:** Aleysha Culler.

17 **THE COURT:** Ms. Culler, did you receive a
18 questionnaire?

19 **JUROR:** Y'all sent it to another address, my
20 aunt's address not my address.

21 **THE COURT:** You did not receive it?

22 **JUROR:** No.

23 **THE COURT:** We will give you one to complete at
24 this time along with a pen for her to write with.
25 Yes, sir?

1 JUROR: Devin Caldwell.

2 THE COURT: And your juror number, please.

3 JUROR: 35.

4 THE COURT: Mr. Caldwell, did you receive the
5 questionnaire?

6 JUROR: No, sir.

7 THE COURT: If you'll give Mr. Caldwell the
8 questionnaire as well.

9 Anyone else? Yes, ma'am?

10 JUROR: Sheena Cheeseboro. They sent it to my
11 old address.

12 THE COURT: 42?

13 JUROR: 40.

14 THE COURT: 40, Ms. Cheeseboro. And did you
15 say another name?

16 JUROR: Yes, that's my maiden name.

17 THE COURT: Your name now is?

18 JUROR: Staley.

19 THE COURT: Okay. We'll give Ms. Staley a
20 questionnaire, too.

21 Ladies and gentlemen, in order to serve as a
22 juror in the courts of our state, a person must
23 possess at least one of the following three items.
24 It is not necessary that you possess all of them or
25 even that you have them in your possession today.

1 Is there any member of the jury panel who does
2 not have either a South Carolina driver's license,
3 that is a valid South Carolina driver's license, or
4 a highway department identification card or a valid
5 voter registration certificate? If you do not
6 possess at least one of those three items, please
7 stand and let me know that at this time.

8 (Juror stands.)

9 THE COURT: Yes, ma'am, you are....

10 JUROR: Theresa Huggins.

11 THE COURT: And your juror number, please?

12 JUROR: 139.

13 THE COURT: And which one --

14 JUROR: South Carolina I.D.

15 THE COURT: Do you have one of those?

16 JUROR: No, sir.

17 THE COURT: You do not. And you do not have a
18 valid driver's license?

19 JUROR: No, sir.

20 THE COURT: And you're not a registered voter?

21 JUROR: Yes, sir.

22 THE COURT: You are a registered voter?

23 JUROR: Yes, sir.

24 THE COURT: Well, that brings you into the
25 fold, that registered voter certificate that brings

1 you in. Thank you very much.

2 Has any member of the jury panel not reached
3 his or her 18th birthday? If you're not 18 years of
4 age or older, please stand and let me know that at
5 this time.

6 (There was no response.)

7 **THE COURT:** Is there any member of the jury
8 panel a clerk, a deputy clerk, a constable, a
9 sheriff, a probate judge, a county commissioner, a
10 magistrate or if you are any other county officer or
11 if you are employed within the walls of any
12 courthouse, please stand and let me know that?

13 (Juror stands.)

14 **JUROR:** I have a question.

15 **THE COURT:** Okay.

16 **JUROR:** Juror 125. My boss, I don't work in
17 the courthouse, but my boss in Orangeburg is the
18 city judge.

19 **THE COURT:** The question pertains to you and
20 where you work.

21 **JUROR:** I work in his real estate storage
22 rental.

23 **THE COURT:** Thank you very much. That would
24 not disqualify you. We may ask you some additional
25 questions later. Tell me your juror number again,

1 please.

2 JUROR: 125.

3 THE COURT: Thank you very much.

4 Does any member of the jury panel hold a law
5 enforcement commission with or without pay, such as
6 a constable, a conservation officer, a game warden
7 or a deputy sheriff; if so, please stand and let me
8 know that at this time?

9 (There was no response.)

10 THE COURT: Has any member of the jury panel
11 been convicted or pled guilty in a state or federal
12 court of a crime punishable by more than one year
13 imprisonment and whose civil rights have not been
14 restored by being granted a pardon or amnesty?

15 Now, that does not mean that you actually
16 served more than a year, just that the crime that
17 you are convicted of or pled guilty to carried a
18 possible sentence of more than one year. If so,
19 please come forward at this time so that I may
20 discuss that situation with you privately here at
21 the bench. Please come forward at this time.

22 And, ladies and gentlemen, let me tell you that
23 this is a mandatory requirement if you have a
24 criminal record, it must be brought to my attention
25 because you are not qualified to serve on jury duty.

1 If you think that this may apply to you, and this
2 question applies to a record at any point in time
3 during your lifetime in any state of the United
4 States, this must be brought to my attention at this
5 time.

6 (Jurors stand.)

7 THE COURT: Tell us your full name please and
8 juror number.

9 JUROR: Juror number 310, John Cornelius
10 Brimfield, Junior.

11 (Whereupon, the following bench conferences
12 were held on the record.)

13 THE COURT: Mr. Cornelius, what have you been
14 convicted of?

15 JUROR: Possession of crack cocaine, burglary
16 third, burglary second, possession of a firearm.

17 THE COURT: That's enough. And you got some
18 time or probation for that?

19 JUROR: Both.

20 THE COURT: Any question by the' --

21 JUROR: The reason why I never did write it
22 down on the paper because I never did more than a
23 year.

24 THE COURT: Any question by the State or
25 defense?

1 MR. PASCOE: No, Your Honor.
2 MR. WALTERS: No, sir.
3 THE COURT: You're disqualified from service.
4 I appreciate you mentioning that to us.
5 Mr. Cornelius is disqualified.
6 Yes, sir.
7 THE CLERK: State your name for the Court
8 please, sir.
9 JUROR: Alphonso C. Whetstone.
10 THE COURT: Mr. Whetstone, come on up,
11 Mr. Whetstone. Yes, sir, you have a record?
12 JUROR: Yeah, I have a record.
13 THE COURT: For what?
14 JUROR: Selling liquor several years ago.
15 THE COURT: What were you convicted of years
16 ago?
17 JUROR: Huh?
18 THE COURT: For what crime?
19 JUROR: I don't know what crime.
20 THE COURT: You did time for it.
21 JUROR: Huh?
22 THE COURT: You went to prison?
23 JUROR: No, I didn't, but I spent a little time
24 in jail.
25 THE COURT: You spent some time in jail?

1 JUROR: Uh-huh.

2 THE COURT: Mr. Solicitor, do you have anything
3 on -- say your name.

4 JUROR: Alphonso C. Whetstone.

5 MR. PASCOE: No, Your Honor.

6 THE COURT: What did you go to jail for? What
7 crime were you convicted of?

8 JUROR: Liquor still.

9 THE COURT: Liquor still. Did you have to pay
10 a fine or you went to jail?

11 JUROR: Yeah, I went to jail.

12 THE COURT: For how long?

13 JUROR: I stayed in about two or three weeks.

14 THE COURT: Now how old are you?

15 JUROR: Seventy.

16 THE COURT: I think you might have checked on
17 there that you wanted to be excused based on being
18 over 65; is that right? Do you want to serve on
19 jury duty this week or do you want to be excused
20 from serving on jury duty?

21 JUROR: Well, I'd rather be excused.

22 THE COURT: Well, it's up to you. Once you're
23 over 65, you have the right to stay or a right to
24 go.

25 JUROR: I'd rather be excused.

1 **THE COURT:** Any question by the State?

2 **MR. PASCOE:** No, Your Honor.

3 **THE COURT:** By the defense?

4 **MR. WALTERS:** No, sir.

5 **THE COURT:** He's entitled to an exemption, so
6 he's excused based on his exercising his exemption.
7 All right, you can go.

8 Mr. Whetstone is over 65 and he's exempted.
9 The crime that he's talking about did not disqualify
10 him from service, but he is going to go anyway
11 because he's over 65.

12 Yes, ma'am.

13 **JUROR:** I went to jail for disorderly conduct.

14 **THE COURT:** Disorderly conduct, that carries 30
15 days, that's not over a year.

16 **JUROR:** Okay. I'm straight?

17 **THE COURT:** You're straight. That's only 30
18 days. What's your name? You didn't go to jail for
19 that, did you?

20 **JUROR:** Yeah.

21 **THE COURT:** How long did you stay in there?

22 **JUROR:** Three days.

23 **THE COURT:** That would not disqualify you, Ms.
24 Caldwell -- say your full name, please.

25 **JUROR:** Aleysha Culler.

1 **THE COURT:** Aleysha Culler, 52. She is
2 qualified to serve.

3 Yes, sir.

4 **JUROR:** Dana Gardner.

5 **THE COURT:** Mr. Gardner, if you'll come around
6 here, please.

7 **JUROR:** I had a second DUI about ten years ago.

8 **THE COURT:** A DUI second usually carries up to
9 six months. It does not carry more than a year.
10 DUI third carries more than a year. Solicitor, do
11 you have anything on Mr. Gardner?

12 **MR. PASCOE:** That's what his rap sheet
13 indicated is a second, Your Honor.

14 **THE COURT:** And the parties agree that that
15 does not carry more than a year, a DUI second?

16 **MR. PASCOE:** It does not carry over a year.

17 **THE COURT:** It's generally up to six months, a
18 DUI second. Any question by the defense?

19 **MR. WALTERS:** No, sir.

20 **THE COURT:** By the State?

21 **MR. PASCOE:** No, sir.

22 **THE COURT:** That does not disqualify you.
23 Thank you for bringing it to out attention.

24 This juror is qualified to serve.

25 **JUROR:** Bobby Jean Hicks.

1 THE COURT: All right. Ms. Hicks.

2 JUROR: It's been about six years ago, but this
3 girl came into my house and she slapped me and I cut
4 her in her face, but I've been in jail for one day,
5 but I didn't have to go to court.

6 THE COURT: You didn't come to big court for
7 that?

8 JUROR: No.

9 THE COURT: Was that here in Calhoun?

10 JUROR: It was in Saint Matthews.

11 THE COURT: And you didn't plead guilty to
12 that?

13 JUROR: No.

14 THE COURT: The charges were dropped?

15 JUROR: Yes.

16 THE COURT: You didn't get on probation for it?

17 JUROR: No.

18 THE COURT: And Ms. Hickson is your name?

19 JUROR: Hicks.

20 THE COURT: Anything, Solicitor?

21 MR. PASCOE: No, Your Honor.

22 THE COURT: Anything from the defense?

23 MR. WALTERS: No, sir.

24 THE COURT: Ms. Hicks, that does not disqualify
25 you. Thank you for bringing that to our attention.

1 The juror is qualified to serve.

2 JUROR: Wardlaw Fulmer.

3 THE COURT: All right. Mr. Fulmer.

4 Do you have Mr. Fulmer's number?

5 JUROR: It's 332.

6 THE COURT: Yes, sir.

7 JUROR: I've got multiple DUI's.

8 THE COURT: What is the highest -- have you

9 ever been convicted of DUI third?

10 JUROR: Yes, sir.

11 THE COURT: And what do you have, Solicitor?

12 MR. PASCOE: Your Honor, I was looking at his

13 rap last night. It was hard for me to tell because

14 a couple of them was a DUI more than first and I

15 know he's had two or three DUI's.

16 THE COURT: And what was the sentence for that?

17 JUROR: I don't remember.

18 THE COURT: Did you get placed on probation or

19 did some time?

20 JUROR: Yes, probation.

21 THE COURT: How long were you on probation?

22 MR. PASCOE: Over a year, Your Honor, on

23 probation.

24 JUROR: I think it was 18 months.

25 THE COURT: And so the original sentence was

1 more than a year?

2 JUROR: Yes, sir, I believe so.

3 THE COURT: Any questions by the State?

4 MR. PASCOE: No, Your Honor.

5 THE COURT: By the defense.

6 MR. WALTERS: No, sir.

7 THE COURT: All right. So Mr. Fulmer is
8 disqualified from service. Thank you, Mr. Fulmer.
9 You may go.

10 JUROR: Earl Huggins, Junior, juror number 138.

11 THE COURT: Number 138, yes, sir.

12 JUROR: I had a little problem a couple years
13 ago. The guy been on my property and I tried to get
14 him off. I shot in the ground. And I came to court
15 and everything, but he dropped the charges so
16 everything was clear.

17 THE COURT: He dropped the charges. You were
18 not found guilty of that?

19 JUROR: No.

20 THE COURT: You were never found guilty of
21 anything?

22 JUROR: Nothing. And I'm over 65, but I didn't
23 see that on there.

24 THE COURT: That's one of my next questions, if
25 you've over 65 and would like to be excused, now we

1 would love to have you stay, but if you're 65 or
2 over and you're wanting to go --

3 JUROR: I'm 66 now.

4 THE COURT: Do you want to stay or do you want
5 to go?

6 JUROR: I would prefer to leave.

7 THE COURT: You want to leave?

8 JUROR: Yes.

9 THE COURT: Now, we would love to have you
10 stay?

11 JUROR: I know.

12 THE COURT: But we can't make you stay. It's
13 up to you. You've earned the right to decide.

14 JUROR: I'd rather leave.

15 THE COURT: You would rather leave.

16 All right. Anything from the State?

17 MR. PASCOE: No, Your Honor.

18 THE COURT: From the defense?

19 MR. WALTERS: No, sir.

20 THE COURT: All right. Say that name one more
21 time.

22 JUROR: Earl Huggins, Junior.

23 THE COURT: He's exempted from service. He's
24 leaving.

25 (The bench conferences were concluded.)

1 **THE COURT:** Solicitor, do you have any other
2 information on any other juror that I need to call
3 forward?

4 **MR. PASCOE:** No, Your Honor. The only ones I
5 had were the ones that came forward, but I'd reserve
6 the right, of course, if I see some later, I'll
7 bring it to the Court's attention.

8 **THE COURT:** Is any member of the jury panel
9 unable to read, write, speak and understand the
10 English language? If you cannot read, write, speak
11 and understand the English language, please stand.

12 (There was no response.)

13 **THE COURT:** If you do not live in Calhoun
14 County, if you are not a citizen and resident of
15 Calhoun County, please stand.

16 (Jurors stand.)

17 **THE COURT:** I need to know your juror numbers
18 and your names. We'll start right up here.

19 **JUROR:** Number 38, Amber Cavnar.

20 **THE COURT:** And where do you live?

21 **JUROR:** Lexington County, Swansea.

22 **THE COURT:** Swansea in Lexington County. And
23 how long have you lived in Lexington County?

24 **JUROR:** About a year and a half.

25 **THE COURT:** And before that, did you live in

1 Calhoun County?

2 JUROR: Yes, sir.

3 THE COURT: Have you changed your voter
4 registration yet to Lexington County?

5 JUROR: No. I changed my license.

6 THE COURT: You changed your license to
7 Lexington County. And do you intend to continue
8 living in Lexington County for the foreseeable
9 future?

10 JUROR: Yes, sir.

11 THE COURT: All right. Well, you must be a
12 resident of this county to serve on jury duty in
13 this county and I thank you for bringing that to our
14 attention. You may go. Juror number...

15 JUROR: 38.

16 THE COURT: 38. Any questions by the State or
17 the defense before she leaves?

18 MR. WALTERS: No, sir, Your Honor.

19 MR. PASCOE: No, Your Honor.

20 THE COURT: All right. Thank you, ma'am. You
21 may go.

22 Yes, ma'am.

23 JUROR: Orangeburg County.

24 THE COURT: You live in Orangeburg County?

25 JUROR: Yes. My voter registration is

1 Orangeburg County.

2 THE COURT: And how long have you lived over in
3 Orangeburg County?

4 JUROR: Eight years.

5 THE COURT: And say your name again for us.

6 JUROR: Aleysha Monique Culler.

7 THE COURT: Aleysha Monique Culler says she
8 lives in Orangeburg County. Any questions by the
9 State or the defense?

10 MR. PASCOE: No, Your Honor.

11 MR. WALTERS: No, sir, Your Honor.

12 THE COURT: All right. Ma'am, you may go.
13 Yes, you are?

14 JUROR: Anton Scott.

15 THE COURT: Mr. Anton Scott, what's your juror
16 number?

17 JUROR: 241.

18 THE COURT: 241, Anton Scott. Mr. Scott, where
19 do you live?

20 JUROR: North, South Carolina.

21 THE COURT: North, South Carolina. What county
22 is that?

23 JUROR: Orangeburg.

24 THE COURT: And do you plan to continue living
25 there for the foreseeable future?

1 JUROR: Yes, sir.

2 THE COURT: We'll excuse you from serving in
3 this county unless the State or the defense has a
4 question.

5 MR. PASCOE: No, sir.

6 MR. WALTERS: No objection, Your Honor.

7 THE COURT: Thank you, sir. You may go.

8 Yes, ma'am.

9 JUROR: Juror 22, Michelle Brimfield.

10 THE COURT: Where do you live?

11 JUROR: Swansea.

12 THE COURT: You live in Swansea. And do you
13 live in the Calhoun County section of Swansea or
14 some other county section of Swansea?

15 JUROR: I stay like in the middle.

16 THE COURT: In the middle. So do you live on
17 this side of the line or the other side of the line?

18 JUROR: The other side of the line.

19 THE COURT: You live on the other side of the
20 line. And you live in which county?

21 JUROR: It says Lexington really because I get
22 some of my mail from Swansea and I get some of it
23 from Calhoun County. I mean, I'm registered here.

24 THE COURT: Do you pay taxes on anything?

25 JUROR: Yeah.

1 **THE COURT:** What do you pay taxes on?
2 **JUROR:** Calhoun County.
3 **THE COURT:** All right. Any questions by the
4 State?
5 **MR. PASCOE:** No, sir.
6 **THE COURT:** By the defense?
7 **MR. WALTERS:** No, sir, Your Honor.
8 **THE COURT:** Okay. Ma'am, if you pay taxes in
9 this county, I feel fairly safe in saying you're a
10 resident of this county, but we will investigate
11 that further and talk with you further.
12 **JUROR:** Okay.
13 **THE COURT:** Yes, sir.
14 **JUROR:** William Stoudemire, 262.
15 **THE COURT:** Yes, sir, Mr. Stoudemire.
16 **JUROR:** I live in Richland County.
17 **THE COURT:** You live in Richland County. How
18 long have you been there?
19 **JUROR:** About four years.
20 **THE COURT:** And do you plan to continue living
21 in Richland?
22 **JUROR:** Yes, sir.
23 **THE COURT:** Any questions by the State or the
24 defense?
25 **MR. WALTERS:** No, sir, Your Honor.

1 MR. PASCOE: No, Your Honor.

2 THE COURT: All right. Thank you, sir. You
3 may go, Mr. Stoudemire. Thanks for coming.

4 Yes, ma'am, in the blue.

5 JUROR: Juror 41, Rebecca Chilcutt. I live in
6 Orangeburg County now.

7 THE COURT: And how long have you lived in
8 Orangeburg County?

9 JUROR: Since April of this year.

10 THE COURT: And do you plan to continue living
11 in Orangeburg County?

12 JUROR: Yes, sir.

13 THE COURT: Any questions by the State or the
14 defense?

15 MR. PASCOE: No, sir.

16 MR. WALTERS: No, sir, Your Honor.

17 THE COURT: Ms. Chilcutt is excused based on
18 not being a resident of this county.

19 And next to Ms. Chilcutt, yes, sir.

20 JUROR: Juror 297, John Wolfe.

21 THE COURT: Mr. Wolfe, where do you live?

22 JUROR: In Cordova.

23 THE COURT: And what county is that located in?

24 JUROR: Orangeburg.

25 THE COURT: And how long have you lived there?

1 JUROR: Twelve years.

2 THE COURT: And do you plan to continue living
3 in Orangeburg County?

4 JUROR: Yes, sir.

5 THE COURT: Any questions by the State or the
6 defense?

7 MR. PASCOE: No, Your Honor.

8 MR. WALTERS: No, sir, Your Honor.

9 THE COURT: All right, sir, you may go. Thank
10 you very much.

11 At the end there, yes, sir.

12 JUROR: 269, Henry Tindall. I live in Colleton
13 County. I've voted there in the last two elections,
14 so it's probably been about two years.

15 THE COURT: And you plan to continue living
16 over there?

17 JUROR: As long as I live.

18 THE COURT: Thank you very much for coming and
19 we'll excuse you. Thank you very much.

20 Yes, sir, in the back there, you are?

21 JUROR: Jeremain Williams.

22 THE COURT: And your juror number, please?

23 JUROR: I don't have it.

24 THE COURT: You don't have a juror number?

25 JUROR: I can't remember it.

1 THE COURT: Say your name again loudly.

2 JUROR: Jeremain Williams.

3 THE COURT: All right. Mr. Williams, where do
4 you live?

5 JUROR: Columbia, Richland.

6 THE COURT: You live in Richland County. Juror
7 number 290. And how long have you been living in
8 Columbia?

9 JUROR: March will be a year.

10 THE COURT: And do you plan to continue living
11 in Richland County?

12 JUROR: Yes, sir.

13 THE COURT: Thank you, sir. You may go unless
14 there's a question by the State or the defense. Any
15 questions?

16 MR. PASCOE: No, sir.

17 MR. WALTERS: No, sir, Your Honor.

18 THE COURT: All right. Thank you for coming,
19 sir.

20 Yes, ma'am.

21 JUROR: Juror 120, Carol Haygood. And I live
22 in North, South Carolina.

23 THE COURT: And that's Orangeburg County?

24 JUROR: Yes, sir.

25 THE COURT: And do you plan to continue living

1 over there?

2 JUROR: Yes, sir.

3 THE COURT: Any questions by the State or the
4 defense?

5 MR. PASCOE: No, sir.

6 MR. WALTERS: No, sir, Your Honor.

7 THE COURT: You're excused. Thanks for coming.
8 And right behind you, yes, sir.

9 JUROR: Edward E. Hutto, juror number 350.
10 I've been living in Lexington County now for three
11 weeks.

12 THE COURT: In Lexington for three weeks. Did
13 you move after you got your summons? Do you plan to
14 continue living in Lexington County?

15 JUROR: Yes, sir.

16 THE COURT: Any questions by the State or the
17 defense?

18 MR. PASCOE: None, Your Honor.

19 MR. WALTERS: No, sir, Your Honor.

20 THE COURT: All right. Your residency is
21 determined as of the time of service and if you now
22 live in Lexington, you cannot serve in this county.
23 Thank you for coming and bringing that to our
24 attention. You are excused.

25 Over on this side, yes, ma'am.

1 JUROR: Tonia R. Mack, juror number 184.
2 THE COURT: Ms. Mack, where do you live?
3 JUROR: Irmo, South Carolina.
4 THE COURT: In Lexington County?
5 JUROR: Actually, it's Richland.
6 THE COURT: And how long have you lived there?
7 JUROR: Approximately, three and a half years.
8 THE COURT: And do you intend to continue
9 living over in Richland, Lexington County?
10 JUROR: Yes.
11 THE COURT: Any questions by the State or the
12 defense?
13 MR. PASCOE: No, sir.
14 MR. WALTERS: No, sir, Your Honor.
15 THE COURT: All right. Thank you. You are
16 excused or disqualified based on your residency.
17 And behind her, yes, sir.
18 JUROR: North, South Carolina, Ridgefield Road.
19 THE COURT: In Orangeburg County?
20 JUROR: Yes, sir.
21 THE COURT: And tell us your juror number.
22 JUROR: My number? Ridgefield Road -- oh, 46.
23 THE COURT: Your name, please?
24 JUROR: Roy Coulter.
25 THE COURT: Any questions for this juror?

1 MR. PASCOE: No, Your Honor.

2 MR. WALTERS: No, sir, Your Honor.

3 THE COURT: All right. Mr. Coulter, thank you.
4 You are disqualified based on your residency. You
5 may go. Thanks for coming.

6 And next to him, yes, sir.

7 JUROR: I don't know my juror number because it
8 came at first somewhere, should be between 6 and 10.
9 My name is Lynnwood Bennett.

10 THE COURT: We'll look you up, Mr. Bennett.

11 And, Mr. Bennett, where do you live?

12 JUROR: Richland County.

13 THE COURT: And how long have you lived over
14 there?

15 JUROR: Approximately, two and a half years.

16 THE COURT: Juror number 9, Mr. Bennett.

17 Any questions for Mr. Bennett by the State or
18 the defense?

19 MR. PASCOE: No, Your Honor.

20 MR. WALTERS: No, sir, Your Honor.

21 THE COURT: Thank you, Mr. Bennett. You are
22 disqualified based on not being a resident of this
23 county.

24 There are a few additional seats that have
25 opened up as a result of these jurors leaving. If

1 any others would like to sit, please have a seat.
2 There are three seats up here up front and there are
3 some there.

4 (Pause.)

5 THE COURT: If you are not a citizen of the
6 United States, if you're not a U.S. citizen, please
7 stand.

8 (There was no response.)

9 THE COURT: And juror number 173, Ms. -- what's
10 your name, ma'am?

11 JUROR: Ruby Knight.

12 THE COURT: Ms. Knight, are you a U.S. citizen?

13 JUROR: Yes, I am.

14 THE COURT: And did you ask to be excused based
15 on --

16 JUROR: No, sir, I just sent the papers in.
17 This is the first I heard that I was excused.

18 THE COURT: You made an error on your form.
19 The form you sent in stated that you're not a U.S.
20 citizen. You just checked the wrong box. All
21 right, thank you very much. That's why you were --
22 that's why it was indicated that you were excused.
23 You are not excused. Thank you for being here. The
24 form has been corrected.

25 Is any member of the jury panel incapable by

1 reason of any physical or mental infirmity to render
2 efficient jury service? If you have any physical or
3 mental condition that you think would prevent you
4 from serving on jury duty and rendering efficient
5 jury service, please come forward at this time and I
6 will discuss that with you up here.

7 (Jurors stand.)

8 (Whereupon, the following bench conferences
9 were held on the record.)

10 JUROR: Juror 386, Robert Shirer.

11 THE COURT: All right, sir.

12 JUROR: I have two doctor statements. Also, my
13 son has been in law enforcement for 17 years and...

14 THE COURT: Order in the court, please. No
15 talking in court, please.

16 Go ahead, sir.

17 JUROR: I have to go to the restroom a lot
18 about every 30 minutes due to enlarged prostate.

19 THE COURT: Any questions by the State or the
20 defense?

21 MR. WALTERS: No, sir, Your Honor.

22 MR. KOGER: No question by the defense.

23 MR. PASCOE: None, Your Honor.

24 THE COURT: All right. This juror is excused
25 based on his medical condition. Thank you very

1 much. We'll make this a part of the record in this
2 case.

3 (Court's Exhibit Number 3, doctor's excuse,
4 was marked for identification purposes.)

5 JUROR: William Smoak.

6 THE COURT: All right. Mr. Smoak, if you'll
7 come around here and if you'll simply -- you can
8 just stand next to her, that will be fine.

9 JUROR: I've had five strokes and two
10 pacemakers put in and I've got the verification
11 right here. I'm disabled.

12 THE COURT: Any questions by the State or the
13 defense?

14 MR. PASCOE: No, Your Honor.

15 MR. WALTERS: None from the defense, Your
16 Honor.

17 THE COURT: All right. He's had five strokes,
18 a pacemaker and he's unable to serve. Thank you
19 very much for coming. You're excused. Juror number
20 253.

21 JUROR: Hercules Seawright, number 385.

22 THE COURT: All right. Mr. Seawright, if
23 you'll stand right here next to this young lady and
24 tell me what's your trouble.

25 JUROR: I have a problem with nose bleeding and

1 I have to go to the -- go to the restroom when we're
2 supposed to be doing something else.

3 THE COURT: And you're under a doctor's care
4 for that?

5 JUROR: I went there for blood pressure and I
6 got an appointment to go to...

7 THE COURT: And do you believe that would keep
8 you from serving on jury duty this week?

9 JUROR: Well, I would think if I have to get up
10 and charge the jury and go to the restroom.

11 THE COURT: We'll take breaks rather
12 frequently, probably every hour or so. Do you think
13 you can make it or you don't believe you can?

14 JUROR: I don't believe I can make it.

15 THE COURT: Any questions by the State or the
16 defense?

17 MR. PASCOE: No, Your Honor.

18 MR. WALTERS: No questions, Your Honor.

19 THE COURT: Any objection to this juror being
20 excused based on his condition by the State or the
21 defense?

22 MR. PASCOE: No, sir.

23 MR. WALTERS: No, sir, Your Honor.

24 THE COURT: Thank you, sir. You're excused.

25 JUROR: 378.

1 **THE COURT:** Yes, sir, juror number 378. If
2 you'll come around here, stand next to the court
3 reporter.

4 **JUROR:** I need to have frequent access to a
5 restroom because I have a bladder problem.

6 **THE COURT:** And you're getting medical
7 treatment for that?

8 **JUROR:** Yes, I'm under a doctor's care,
9 prostate problems.

10 **THE COURT:** Did you get a medical excuse?

11 **JUROR:** No, I didn't, but I thought maybe I
12 could do it. I don't know for sure. I didn't want
13 to say no. I do have that problem, so.

14 **THE COURT:** And do you believe that problem
15 would prevent you from serving on jury duty?

16 **JUROR:** I may have to get up and leave during
17 certain times. It may be inappropriate maybe.

18 **THE COURT:** We take breaks every hour and we
19 will take a break at any time any juror needs a
20 break. Do you believe that will work for you?

21 **JUROR:** That will work for me.

22 **THE COURT:** If you got to go, you got to go.
23 Any question by the State or the defense?

24 **MR. PASCOE:** No, Your Honor.

25 **THE COURT:** Do you need a break now?

1 JUROR: No, I'm fine.

2 THE COURT: Any questions?

3 MR. WALTERS: No, sir.

4 THE COURT: This juror is qualified to serve.

5 All right, thank you.

6 JUROR: Number 57. I have a very severe case
7 of arthritis in my knee and that's coming up the
8 stairs out there. And my doctor is supposed to be
9 calling me to see about setting me up for surgery.

10 THE COURT: You're going to have to have
11 surgery for it?

12 JUROR: No, not in my knee. It's about my
13 breast for the surgery.

14 THE COURT: And do you believe that these
15 conditions would prevent you from serving on jury
16 duty?

17 JUROR: Yeah, coming up the stairs. I want to
18 get to the surgeon, the doctor, as quick as I can.

19 THE COURT: And you need to have surgery?

20 JUROR: Yeah.

21 THE COURT: Any question by the State?

22 MR. PASCOE: No, Your Honor.

23 THE COURT: By the defense?

24 MR. WALTERS: No, sir, Your Honor.

25 THE COURT: And any objection to this juror

1 being excused, the State or defense?

2 MR. PASCOE: No, Your Honor.

3 MR. WALTERS: No, sir.

4 THE COURT: All right. Thank you. You are
5 excused. 57 is excused.

6 Tell us your name.

7 JUROR: My name is Berthrion Holman.

8 THE COURT: What's your juror number?

9 JUROR: My juror number is 131.

10 THE COURT: Yes, sir, what's your trouble?

11 JUROR: I'm under a doctor's care. I'm being
12 attended by four doctors. I have arthritis and all
13 kind of different things. I'll be unable to serve.

14 THE COURT: Any question by the State or the
15 defense?

16 MR. PASCOE: No, sir.

17 THE COURT: You said under four doctors, can't
18 serve, arthritis and what other kind of trouble do
19 you have?

20 JUROR: What's --

21 THE COURT: Other than the arthritis, what's
22 your other trouble, other problems other than
23 arthritis?

24 JUROR: I'm old, too.

25 THE COURT: How old are you?

1 **JUROR:** Seventy-nine.

2 **THE COURT:** Based on your age and your
3 condition, you would like to be excused, based on
4 the age and condition?

5 **JUROR:** Yes.

6 **THE COURT:** We'd love to have you if you want
7 to stay, but you have a right to go.

8 **JUROR:** No, I don't want to stay.

9 **THE COURT:** All right. Any question by the
10 State or the defense?

11 **MR. PASCOE:** No, sir.

12 **MR. WALTERS:** No, sir, Your Honor.

13 **THE COURT:** Thank you, sir. You may go.

14 **JUROR:** My name is Elaine B. Montgomery. I'm
15 juror number 203.

16 **THE COURT:** All right, Ms. Montgomery.

17 **JUROR:** My doctor faxed a note over here on
18 Wednesday, but it got here too late.

19 **THE COURT:** Number 203, do you have her on your
20 list?

21 You said that you're unable to serve?

22 **JUROR:** Yes, sir.

23 (Pause.)

24 **THE COURT:** Any questions by the State or the
25 defense?

1 MR. PASCOE: None, Your Honor.

2 MR. WALTERS: No, sir, Your Honor.

3 THE COURT: Any objection to her being excused?

4 MR. PASCOE: No, sir.

5 MR. WALTERS: No, sir.

6 THE COURT: You're excused. Thank you for
7 coming.

8 This will be made part of the record in this
9 case.

10 (Court's Exhibit Number 4, doctor's excuse,
11 was marked for identification purposes.)

12 JUROR: My name is Marie Bodrick and my number
13 is 13.

14 THE COURT: Yes, ma'am.

15 JUROR: Your Honor, I'm over 65 and I really
16 don't feel up to serving right now.

17 THE COURT: You would like to be excused based
18 -- how old are you, ma'am?

19 JUROR: Seventy-two.

20 THE COURT: Goodness, you don't look it.

21 JUROR: Thank you.

22 THE COURT: You would like to be excused from
23 service?

24 JUROR: Yes.

25 THE COURT: Any questions about her exemption

1 from service?

2 MR. WALTERS: No, sir, Your Honor.

3 THE COURT: Thank you very much. You may go.

4 Thank you for coming.

5 She's exempted from service.

6 (The bench conferences were concluded.)

7 THE COURT: Does any member of the jury panel
8 have less than a 6th grade education or its
9 equivalent; if so, please stand if you have less
10 than a 6th grade education or the equivalent of a
11 6th grade education?

12 (Juror stands.)

13 THE COURT: Yes, sir.

14 JUROR: James Cornelius.

15 THE COURT: How far did you go in school?

16 JUROR: Sixth grade.

17 THE COURT: And what kind of work have you done
18 over the years?

19 JUROR: Well drilling.

20 THE COURT: And do you believe -- have you had
21 a driver's license?

22 JUROR: Yes, sir.

23 THE COURT: And you know how to keep track of
24 your money?

25 JUROR: Oh, yeah.

1 **THE COURT:** I believe that would be the
2 equivalent -- more than the equivalent of a 6th
3 grade education, so that would not disqualify you
4 from jury service, but thank you for bringing it to
5 our attention. Juror number 44.

6 Has any member of the jury panel served on jury
7 duty within this past calendar year in this
8 courtroom, in circuit court? If you've already
9 served on jury duty within this past calendar year
10 being 2005 through 2006, if so, please stand.

11 (There was no response.)

12 **THE COURT:** In addition to the previous
13 questions, there are certain people who are exempted
14 from service -- are exempt from service; however, it
15 has been held that such an exemption is personal and
16 the juror must exercise his or her exemption if they
17 would like to not serve. I will ask if any of the
18 exemptions apply to you and if you wish to claim the
19 exemption.

20 The first exemption is for those of you who
21 have reached the age of 65 and wishes to be exempted
22 from service. Of course, based on your age and
23 experience, we would love to have you serve, but if
24 you are 65 years of age or older and you would like
25 to be exempted from jury service, please let me know

1 at this time by standing.

2 (Jurors stand.)

3 THE COURT: Yes, sir, Mr...

4 JUROR: Templeton.

5 THE COURT: Mr. Templeton, what's your age?

6 JUROR: Sixty-seven.

7 THE COURT: Mr. Templeton, your juror number

8 is?

9 JUROR: 266.

10 THE COURT: Thank you for coming. You're

11 exempted from service.

12 And behind Mr. Templeton is Mr...

13 JUROR: Brasher, number 21, age 72.

14 THE COURT: And, Mr. Brasher, you would like to

15 be exempted?

16 JUROR: Yes, sir.

17 THE COURT: Thank you for coming. You are

18 exempted from service.

19 Yes, sir, Mr...

20 JUROR: 378, 68.

21 THE COURT: Okay. Mr. Reid, thank you very

22 much. You're exempted from service and may go.

23 Behind Mr. Reid, yes, sir.

24 JUROR: 141, 66.

25 THE COURT: Your name, sir?

1 JUROR: Hutto.

2 THE COURT: Mr. Hutto, thank you very much.
3 You're exempted from service. Thank you for coming.

4 Yes, sir.

5 JUROR: Mr. Walter, 278.

6 THE COURT: You're what age?

7 JUROR: Sixty-six.

8 THE COURT: Thank you very much. You are
9 exempted from service.

10 Is any member of the jury panel an officer or
11 employee of the State Department of Corrections and
12 wishes to claim his or her exemption; if so, please
13 stand?

14 (Juror stands.)

15 THE COURT: Yes, sir.

16 JUROR: Your Honor, I have a question about
17 that. I have been in the last two years.

18 THE COURT: A person who is currently employed
19 at the State Department of Corrections.

20 JUROR: Not now.

21 THE COURT: Thank you for bringing it to our
22 attention. What is your name, sir?

23 JUROR: James Mack.

24 THE COURT: All right. Mr. Mack, it applies to
25 current employees. Thank you for bringing that to

1 our attention.

2 Is there any member of the jury panel, a woman
3 or a man, who has a child under the age of seven and
4 you do not work, but stay home and care for the
5 child and you have legal custody of that child and
6 the duty to care for that child or children and you
7 wish to be exempted for that reason; if so, please
8 stand?

9 (Jurors stand.)

10 **THE COURT:** Starting up here, yes, ma'am.

11 **JUROR:** She is six and I have to pick her up
12 from school. I have to be to work at three o'clock,
13 but I have custody of her and I don't have anybody
14 to keep her until I take her to my mom.

15 **THE COURT:** And what is your name, please?

16 **JUROR:** Yoronica Benjamin, juror number 8.

17 **THE COURT:** And, Ms. Benjamin, would you like
18 to be exempted from service for that reason?

19 **JUROR:** Yes.

20 **THE COURT:** Any questions by the State or the
21 defense?

22 **MR. PASCOE:** No, Your Honor.

23 **MR. WALTERS:** No, sir, Your Honor.

24 **THE COURT:** Thank you. You're exempted from
25 service, Ms. Benjamin.

1 Yes, ma'am.

2 JUROR: My name is Amber Bryant and my number
3 is either 313 or 314. I have a seven year old and I
4 have to pick him up from school at 2:15.

5 THE COURT: And you have no one else to do
6 that --

7 JUROR: No.

8 THE COURT: -- if you had to serve on jury
9 duty. And the child is over seven or under seven?

10 JUROR: He's seven.

11 THE COURT: Any questions by the State or the
12 defense?

13 MR. PASCOE: No, Your Honor.

14 MR. WALTERS: No, sir, Your Honor.

15 THE COURT: Any objection to her being relieved
16 of jury duty?

17 MR. PASCOE: No, Your Honor.

18 MR. WALTERS: No, sir, Your Honor.

19 THE COURT: All right. Ma'am, you are free to
20 go.

21 Behind her, yes, ma'am.

22 JUROR: Juror 280. I am the only parent at
23 home to take care of my child. My husband works out
24 of town.

25 THE COURT: And how old are your children?

1 JUROR: Seven.

2 THE COURT: Do you work?

3 JUROR: Yes.

4 THE COURT: And what hours do you work?

5 JUROR: From 8:00 to 2:00.

6 THE COURT: And what is your name, please?

7 JUROR: Patricia Wannamaker.

8 THE COURT: Any questions by the State or the
9 defense?

10 MR. PASCOE: No, sir, Your Honor.

11 MR. WALTERS: No, sir, Your Honor.

12 THE COURT: Any objection to her being excused
13 from jury duty?

14 MR. PASCOE: No, sir.

15 MR. WALTERS: No, sir, Your Honor.

16 THE COURT: All right. Ms. Wannamaker, you're
17 excused.

18 In the back, yes, ma'am.

19 JUROR: Juror 190. I have twins that are six
20 years old and I have no one to be home when they get
21 off the bus.

22 THE COURT: Juror 190. And your name is?

23 JUROR: Shreeaund McFadden.

24 THE COURT: Any questions by the State or the
25 defense or any objection to her being exempted?

1 MR. PASCOE: No objection, Your Honor.

2 MR. WALTERS: No, sir, Your Honor.

3 THE COURT: Thank you, ma'am. You are exempted
4 from service.

5 Yes, ma'am.

6 JUROR: Yes. My name is -- my number is 173,
7 Ruby Knight. And I have a two year old and a six
8 year old and my nephew. And I'm in mediation trying
9 to get custody of them through Calhoun County and
10 one is in school and one is at the nursery.

11 THE COURT: Are they your nieces and nephews?

12 JUROR: Yes, sir.

13 THE COURT: We'll speak with you further in a
14 moment,, ma'am.

15 Yes, ma'am.

16 JUROR: My number is 207. My name is Elizabeth
17 Morgan. I have a five year old and a three year
18 old. They're both at home sick and I'm a single
19 parent.

20 THE COURT: Any questions by the State or the
21 defense?

22 MR. PASCOE: Beg the Court's indulgence. No
23 questions, Your Honor.

24 MR. WALTERS: No objection, Your Honor.

25 THE COURT: All right. You are exempted from

1 service. Thank you for coming.

2 Yes, ma'am.

3 JUROR: My name is Latoya Benjamin. My number
4 is 6. And I have twins that are four months old and
5 are at home with my disabled mother.

6 THE COURT: And you will need to be there to
7 care for them, ma'am?

8 JUROR: Yes, sir.

9 THE COURT: Any questions by the State or the
10 defense?

11 MR. PASCOE: No objection, Your Honor.

12 MR. WALTERS: No objection, Your Honor.

13 THE COURT: You're exempted from service.

14 Yes, ma'am.

15 JUROR: Hope Haigler, juror number 114. I have
16 a six year old and a three year old at home. I'm a
17 stay-at-home mom.

18 THE COURT: Any questions by the State or the
19 defense?

20 MR. PASCOE: No questions and no objection,
21 Your Honor.

22 MR. WALTERS: No objection, Your Honor.

23 THE COURT: Thank you. You are exempted from
24 service.

25 And, Ms. Knight, if you would come forward,

1 please.

2 Yes, ma'am.

3 JUROR: 175, Janice Lake. I have a five year
4 old and I'm a homemaker, stay-at-home mom.

5 THE COURT: Any questions of this witness?

6 MR. PASCOE: No questions or objections.

7 MR. WALTERS: No objection, Your Honor.

8 THE COURT: All right. Ma'am, you're exempted
9 from service. Thank you very much.

10 If you all would come forward.

11 (The following bench conference was held on
12 the record.)

13 THE COURT: Do y'all want to ask her any
14 questions? She said she has grandchildren she's
15 trying --

16 JUROR: No, nieces and --

17 THE COURT: -- nieces and nephews she's trying
18 to get custody of?

19 MR. PASCOE: Could the Court also inquire about
20 Ms. McKnight's (sic) address. I've got her down as
21 living in North, South Carolina.

22 JUROR: 35 Saylor Court, North, but it's -- the
23 way the line runs, but I stay in Calhoun County.
24 It's just that the line is running North. I have a
25 light bill from North, but I pay my taxes, tags and

1 everything in Calhoun County.

2 THE COURT: And what's your trouble as far as
3 serving on jury duty this week?

4 JUROR: I have a six year old and a two year
5 old which I'm trying to get custody of, my niece and
6 my nephew. And I'm going through mediation from --
7 back and forth to Charlotte.

8 THE COURT: Are the children with you or
9 someone else?

10 JUROR: They stay with me. They're at nursery
11 now. One is at school, one is at nursery.

12 THE COURT: What time do they get out?

13 JUROR: Well, I don't get off from work until
14 five o'clock, so I don't have to pick them up until
15 6:00.

16 THE COURT: Do they spend the night with you
17 every night?

18 JUROR: Yeah, everyday.

19 THE COURT: Any question by the State?

20 MR. PASCOE: No, sir.

21 THE COURT: Any objection to her being
22 released?

23 MR. PASCOE: No, sir.

24 MR. WALTERS: No, sir, Your Honor.

25 THE COURT: All right. Ms. Knight, we're going

1 to cut you lose. You can go.

2 Ms. Knight is excused.

3 (The bench conference was concluded.)

4 THE COURT: Anyone else?

5 (There was no response.)

6 THE COURT: Is any member of the jury panel a
7 student or teacher or employee of a school or a
8 technical college and whose school related
9 responsibility has conflicted with this court
10 schedule for this week? If so, you may be
11 transferred to serve at another time. Student,
12 teacher, school employees who would like to be
13 transferred to serve at another time.

14 (Jurors stand.)

15 THE COURT: Yes, ma'am.

16 JUROR: I am currently in school. I'm taking
17 classes on line and on campus.

18 THE COURT: And your name and juror number,
19 please?

20 JUROR: Juror number 3, Janice Barton.

21 THE COURT: And what school and what --

22 JUROR: I'm at the University of Phoenix and
23 I'm working on a masters, but it's online in the
24 afternoons.

25 THE COURT: What times during the afternoons

1 are you online, in school online?

2 JUROR: Being a flick student -- well, you can
3 go online basically any time, but since I work
4 during the day, it's after 5:00.

5 THE COURT: Questions from the State or the
6 defense?

7 MR. PASCOE: No, Your Honor.

8 MR. WALTERS: Beg the Court's indulgence, Your
9 Honor.

10 (Pause.)

11 MR. WALTERS: We have no questions, Your Honor.

12 THE COURT: Any objection to this juror being
13 relieved of the responsibility to serve this week?

14 MR. PASCOE: No objection, Your Honor.

15 MR. WALTERS: No objection, Your Honor.

16 THE COURT: Ma'am, you'll be transferred to
17 serve at another time and you'll receive a notice.
18 When did you get out of school? What month of the
19 year?

20 JUROR: Excuse me?

21 THE COURT: What month are you free to serve on
22 jury duty?

23 JUROR: I'm not sure of my schedule.

24 THE COURT: All right. We will randomly send
25 you a notice in about six or eight months to come

1 back again.

2 Yes, sir.

3 JUROR: Orangeburg/Calhoun Technical College.
4 Juror number 77, Patrick Floyd.

5 THE COURT: When did you attend school there?

6 JUROR: In the mornings from 8:00 to 12:00.
7 This is my last week, finals. My last final is
8 Monday.

9 THE COURT: Next Monday?

10 JUROR: Yeah, Monday coming up.

11 THE COURT: Any questions by the State or the
12 defense?

13 MR. PASCOE: No, Your Honor.

14 MR. WALTERS: No, sir, Your Honor.

15 THE COURT: When will you be available to serve
16 on jury duty in the year 2007?

17 JUROR: Either in the summer time because next
18 semester starts in January.

19 THE COURT: He'll be transferred to a summer
20 term, Mr. Clerk, if you will send a notice at that
21 time. And you're free to go.

22 Yes, ma'am.

23 JUROR: Can I come up?

24 THE COURT: Yes, ma'am.

25 This juror is going to come up and speak. She

1 appears to have a voice problem.

2 JUROR: Juror number 218, Arah Pinson. I teach
3 English at South Carolina State University and we're
4 just getting ready to go into final exams and finish
5 up on the 15th of December. And I will be through
6 with classes in May.

7 THE COURT: Juror number 218 teaches at SC
8 State. She's getting into final exam week and
9 she'll be available after May. Any question by the
10 State or the defense? Any objection to her being
11 transferred to that time?

12 MR. PASCOE: No objection, Your Honor.

13 MR. WALTERS: No objection, Your Honor.

14 THE COURT: Thank you. We'll see you then.

15 Yes, ma'am.

16 JUROR: I'm Somer Haigler, 339. I teach third
17 grade and have nine children that are already behind
18 the rest of the third grade and it's just imperative
19 that I be there with them.

20 THE COURT: And when will you be available to
21 serve?

22 JUROR: June.

23 THE COURT: Any questions by the State or the
24 defense? Any objection to her being --

25 MR. PASCOE: No objection, Your Honor.

1 **MR. WALTERS:** No objection, Your Honor.

2 **THE COURT:** Ms. Haigler, thank you very much.

3 You'll be sent a notice to come after June.

4 Yes, ma'am.

5 **JUROR:** Juror number 167, Gearline Kennerly. I

6 am a hair professional at Orangeburg School District

7 Five, child development program. I'm also a

8 full-time student at South Carolina State

9 University.

10 **THE COURT:** When will you be available to
11 serve?

12 **JUROR:** June.

13 **THE COURT:** Any questions or objections to her
14 being transferred?

15 **MR. WALTERS:** No objection, Your Honor.

16 **MR. PASCOE:** None, Your Honor.

17 **THE COURT:** All right. Thank you. We'll send
18 you notice to come back at that time.

19 Yes, ma'am.

20 **JUROR:** Juror 143. I teach here in town at the
21 middle school.

22 **THE COURT:** When will you be available to
23 serve?

24 **JUROR:** In the summer.

25 **THE COURT:** Any questions or objections?

1 **MR. PASCOE:** No, Your Honor.

2 **MR. WALTERS:** No, sir, Your Honor.

3 **THE COURT:** All right. She'll be transferred
4 to a summer term.

5 Yes, ma'am, in the red.

6 **JUROR:** Sheena Staley, juror number 40. I just
7 started a medical assistant, medical care...

8 **THE COURT:** Tell me what school or college you
9 attend or work at.

10 **JUROR:** I work with Blue Cross Blue Shield.

11 **THE COURT:** Okay. This question does not apply
12 to employment related problems. School related
13 problems, that's the question before us.

14 Yes, ma'am.

15 **JUROR:** I'm number 347. I'm a student at OC
16 Tech. I have afternoon classes, but I'm a student
17 at OC Tech.

18 **THE COURT:** When will you be available to
19 serve?

20 **JUROR:** The summer.

21 **THE COURT:** Any questions or objections to this
22 juror being transferred to summer time?

23 **MR. PASCOE:** No objection, Your Honor.

24 **MR. WALTERS:** None, Your Honor.

25 **THE COURT:** Thank you. You'll be sent a notice

1 to come back during that time.

2 Yes, ma'am.

3 JUROR: Juror 281, Delores Wassam. I'm a high
4 school teacher.

5 THE COURT: And when will you be available to
6 serve, ma'am?

7 JUROR: In the summer.

8 THE COURT: Any questions or objections?

9 MR. PASCOE: None, Your Honor.

10 MR. WALTERS: No, sir, Your Honor.

11 THE COURT: She'll be transferred to come at
12 that time. Thank you, ma'am.

13 Yes, ma'am, in the pink.

14 JUROR: My name is Thea Williams. My number is
15 293. And I attend classes at the university and
16 this week and next week will be the finals.

17 THE COURT: And when will you be available?

18 JUROR: The summer, 2007.

19 THE COURT: Any questions or objections?

20 MR. WALTERS: No objections, Your Honor.

21 MR. PASCOE: No, sir.

22 THE COURT: Thank you. You'll be transferred
23 to come back at that time.

24 And next to her, yes, ma'am.

25 JUROR: Juror number 389, my name is Anisa

1 Staley. I'm a student at Orangeburg Tech in the
2 evenings, but this is the week of finals.

3 THE COURT: Any questions or objections?

4 MR. PASCOE: No objection, Your Honor.

5 MR. WALTERS: None, Your Honor.

6 THE COURT: Thank you, ma'am. You'll be
7 transferred -- when will you be available?

8 JUROR: I don't get no breaks because I attend
9 school in the summer.

10 THE COURT: Okay. Ma'am, we'll send a notice
11 to you.

12 Yes, ma'am.

13 JUROR: I'm juror number 267, Kelly Thompson.

14 And I'm employed at Calhoun County Schools and I
15 work all year long. I do summer school, feeding
16 lunch. I drive a school bus. You name it, I do it.

17 THE COURT: Any questions or objection to her
18 being transferred to a time that we will find that
19 she is not driving a bus or teaching school or
20 taking a class? Any questions or objections?

21 MR. PASCOE: No objection.

22 MR. WALTERS: No objection, Your Honor.

23 THE COURT: Okay. Ma'am, you'll be transferred
24 to another time. Thank you for coming.

25 Yes, ma'am.

1 **JUROR:** I'm a student at OC Technical College.
2 My number is 220. And I'll be available in the
3 summer.

4 **THE COURT:** Any questions or objections?

5 **MR. PASCOE:** No objection.

6 **MR. WALTERS:** No objection, Your Honor.

7 **MR. PASCOE:** None from the State, Your Honor.

8 **THE COURT:** You'll be transferred, ma'am.

9 Thank you very much.

10 Anyone else?

11 (There was no response.)

12 **THE COURT:** Has any member of the jury panel
13 previously served as a member of the grand jury of
14 Calhoun County within the last five years and wishes
15 to be exempted for that reason; if so, please stand?

16 (There was no response.)

17 **THE COURT:** Is any member of the jury panel a
18 caretaker of a handicapped, severely handicapped or
19 disabled person or an elderly person and you need to
20 be there caring for them as opposed to service on
21 jury duty; if so, please stand?

22 (Jurors stand.)

23 **THE COURT:** Yes, ma'am, in the back.

24 **JUROR:** Elizabeth Staley, juror 259. I take
25 care of a lady that's 96 years old.

1 **THE COURT:** Any questions or objections as to
2 her statutory eligibility for exemption?

3 **MR. PASCOE:** None from the State, Your Honor.
4 That's number 259?

5 **JUROR:** Yes.

6 **MR. PASCOE:** Thank you.

7 **MR. WALTERS:** No objection, Your Honor.

8 **THE COURT:** All right. Ma'am, you're exempted
9 based on the statute. You may go.

10 **JUROR:** Number 341. I'm not a full-time, but
11 I'm a part-time caretaker of my 85 year old -- soon
12 to be 85-year-old dad.

13 **THE COURT:** Any questions or objections?

14 **MR. PASCOE:** No objection, Your Honor.

15 **MR. WALTERS:** No objection, Your Honor.

16 **THE COURT:** The juror is exempted from service
17 based on the statute. Thank you.

18 Yes, ma'am.

19 **JUROR:** 276, Yvonne Venable. I'm responsible
20 for my mother who's 84. I do work at night, but my
21 teenage children are there at night so I sleep in
22 the day. She's there, she's got dementia and she's
23 on oxygen. She needs somebody there with her.

24 **THE COURT:** Any questions or objections?

25 **MR. PASCOE:** None, Your Honor.

1 MR. WALTERS: No objection.

2 THE COURT: All right. Ma'am, you're exempted
3 from service. Thank you for coming and you may go.

4 Yes, sir.

5 JUROR: Dana Gardner, juror 333. I take care
6 of my 90-year-old father. I give him medication,
7 feed him, wash him and everything. Nobody takes
8 care of him.

9 THE COURT: Any questions or objections?

10 MR. PASCOE: None, Your Honor.

11 MR. WALTERS: No objection, Your Honor.

12 THE COURT: You're exempted from service.
13 Thank you very much for coming.

14 Yes, ma'am.

15 JUROR: Yes, sir. I take care of my mother in
16 the afternoons after 3:00 p.m.

17 THE COURT: And she is what age?

18 JUROR: She is 76.

19 THE COURT: And what's your name, ma'am?

20 JUROR: Kimberly Mizell. It's 202.

21 THE COURT: Any questions or objections?

22 MR. PASCOE: None, Your Honor.

23 MR. WALTERS: No objection, Your Honor.

24 THE COURT: You're exempted from service based
25 on the statute. You may go.

1 Yes, sir.

2 JUROR: Juror number 76, Ishmiel Floyd. I care
3 for my son, Daniel Floyd, who has spina bifida.

4 THE COURT: Any questions or objections?

5 MR. PASCOE: None, Your Honor.

6 MR. WALTERS: No, sir, Your Honor.

7 THE COURT: You're exempted from service.

8 Thank you, sir.

9 Anyone else?

10 (Juror stands.)

11 THE COURT: Yes, ma'am.

12 JUROR: I'm juror 86 and I'm taking care of my
13 brother that's 70 years old. He's hearing impaired
14 and legally blind.

15 THE COURT: Any questions or objections?

16 MR. PASCOE: That's 86, Ms. Fuller, Your Honor?

17 No objections.

18 MR. WALTERS: No objection, Your Honor.

19 THE COURT: Thank you. You're exempted from
20 service.

21 Is there any juror who performs services for a
22 business, commercial or agricultural enterprise and
23 your services are so essential to the operation of
24 the enterprise that if you were required to perform
25 jury duty, the enterprise would have to close or

1 stop functioning; if so, please stand if you would
2 like to be exempted for that reason?

3 (Jurors stand.)

4 THE COURT: Yes, sir.

5 JUROR: Paul Sanders, 238. I own a steel
6 construction company and I'm the sole enterprise --
7 I do all of the day-to-day operations, estimate,
8 project manager.

9 THE COURT: Any questions or exceptions?

10 MR. PASCOE: No questions, Your Honor.

11 MR. WALTERS: No questions, Your Honor.

12 THE COURT: Any objections to his release?

13 MR. WALTERS: No objection, Your Honor.

14 MR. PASCOE: No, sir.

15 THE COURT: All right. Thank you. You may go.

16 Yes, ma'am.

17 JUROR: 246, Tara Shepherd. I own a gardening
18 and landscaping business. I'm it. I do all of the
19 work myself. I don't have any employees. I'm
20 self-employed. If I don't show up, my business
21 could really hurt.

22 THE COURT: Any questions or objections?

23 MR. PASCOE: None, Your Honor.

24 MR. WALTERS: No objection, Your Honor.

25 THE COURT: All right. The juror is exempted

1 from service based on the statute. You may go.

2 Yes, sir.

3 JUROR: Number 99, Earl Glover. I have a body
4 shop in Orangeburg.

5 THE COURT: And it would have to close or stop
6 functioning if you were required to be here?

7 JUROR: Yes, sir.

8 THE COURT: Any objections or questions by the
9 State or the defense?

10 MR. PASCOE: None, Your Honor.

11 MR. WALTERS: No, sir, Your Honor.

12 THE COURT: All right. You're exempted from
13 service.

14 Yes, sir.

15 JUROR: Richard Nickel, juror 212. I work for
16 a highway contractor out of Orangeburg and I do all
17 of the day-to-day operations and estimating.

18 THE COURT: And you work for what company?

19 JUROR: Carolina Bridge.

20 THE COURT: And what size company is that?

21 JUROR: We work in three states, do about ten
22 million dollars worth of work a year. I've got two
23 bids due tomorrow.

24 THE COURT: And would the business stop
25 functioning if you were required to serve on jury

1 duty?

2 JUROR: If we don't get work, we'll be laying
3 off people.

4 THE COURT: Would the business -- your employer
5 would have to close its operation?

6 JUROR: We won't be bidding work this week.

7 THE COURT: Any questions from the State or the
8 defense?

9 MR. PASCOE: No questions, Your Honor.

10 MR. WALTERS: No objection, Your Honor.

11 THE COURT: I find that this employment does
12 not meet the statutory provisions for release from
13 jury service. We'll talk with you further as it
14 relates to some other matters. The juror is
15 qualified.

16 Yes, sir.

17 JUROR: Juror 66. I've got a trucking company
18 that won't operate without me there.

19 THE COURT: Any questions or objections?

20 MR. PASCOE: None from the State, Your Honor.

21 MR. WALTERS: No objection, Your Honor.

22 THE COURT: All right, sir, you're excused.

23 Yes, ma'am.

24 JUROR: My name is Millie Howle and I'm juror
25 number 135. I have a consulting business. I'm

1 self-employed and if I'm not working, I don't make
2 money.

3 THE COURT: Any questions or objections?

4 MR. PASCOE: None from the State, Your Honor.

5 MR. WALTERS: No objection, Your Honor.

6 THE COURT: The juror is excused.

7 Yes, sir.

8 JUROR: I'm a contractor for Time Warner and
9 without me being there, my employees don't work.

10 THE COURT: And what's your name, sir?

11 JUROR: My name is James Mack.

12 THE COURT: All right. Mr. Mack, we'll speak
13 with you further on that as it relates to that type
14 of employment.

15 Yes, ma'am.

16 JUROR: Karen Lanier, juror number 361. I
17 manage, with my 87-year-old father, our family
18 business of 54 years. And he really can't manage it
19 by himself or take care of it if I'm not there.

20 THE COURT: Any questions or objections?

21 MR. PASCOE: None from the State.

22 MR. WALTERS: No objection, Your Honor.

23 THE COURT: The juror is exempted.

24 Yes, ma'am.

25 JUROR: Velma Herrington, juror 125. I'm the

1 only one in the office and when I'm not there, it's
2 closed.

3 THE COURT: Where do you work, ma'am?

4 JUROR: Houser and Company in Orangeburg. It's
5 a storage rental, real estate business.

6 THE COURT: That employment does not meet the
7 statutory definition that entitles you to an
8 exemption. We'll speak with you further regarding
9 any other problems regarding service this week.

10 Any questions or objections from any side?

11 MR. WALTERS: No objection, Your Honor.

12 MR. PASCOE: None, Your Honor.

13 THE COURT: Yes, sir.

14 JUROR: My name is Ronald Hilderbrand. I
15 operate a UPS freight and I'm the only one in my
16 household that's working.

17 THE COURT: Hardships regarding employment and
18 all, we'll discuss later. All right, thank you.

19 Yes, sir.

20 JUROR: I run a barbershop, self-employed. I
21 have no income if I'm not working.

22 THE COURT: And your name and juror number,
23 please?

24 JUROR: Wayne Polin, 221.

25 THE COURT: Any questions or exceptions to his

1 release?

2 MR. PASCOE: None from the State, Your Honor.

3 MR. WALTERS: No objection, Your Honor.

4 THE COURT: All right, sir. You're exempted
5 from service. Thank you for coming.

6 Does any juror know of any reason why he or she
7 is not duly qualified? And the word at this point
8 is if you know of any reason why you're not
9 qualified to serve as a juror in this court, if so,
10 please stand.

11 (Jurors stand.)

12 THE COURT: Yes, ma'am, if you'll come forward.

13 (The following bench conferences were held
14 on the record.)

15 JUROR: My ex-husband works for Orangeburg
16 Public Safety. We were married at the time. And we
17 were the first notified and we notified the
18 department.

19 THE COURT: Any questions for her?

20 MR. PASCOE: No, sir.

21 MR. WALTERS: No, sir.

22 THE COURT: Any reason why she should not be
23 excused based on her employment and familiarity with
24 the case itself?

25 MR. WALTERS: Your Honor, we agree she should

1 be excused.

2 MR. PASCOE: She can be excused.

3 THE COURT: All right. Thank you. She's
4 excused. What's your juror number?

5 JUROR: Lorraine Pancoast. I don't know my
6 number.

7 THE CLERK: 216.

8 THE COURT: Juror number 216 is excused.
9 Yes, sir, your name, please.

10 JUROR: Charlie R. Rucker.

11 THE COURT: Your juror number?

12 JUROR: 232.

13 THE COURT: Come on up.

14 JUROR: My wife is a probation officer, Susan
15 Rucker. So I didn't know if that would have an
16 affect in it.

17 THE COURT: It does not disqualify you from
18 service.

19 Any questions from either side to ask him?

20 It does not disqualify you. Thank you for
21 bringing it to our attention. It may be -- be asked
22 some additional questions later on based on that,
23 but as to being qualified to serve on jury duty, it
24 does not disqualify you. Thank you.

25 Any objection or exceptions?

1 MR. WALTERS: No, sir.

2 MR. PASCOE: No, Your Honor.

3 THE COURT: Yes, sir.

4 JUROR: My name is James Cornelius. I don't
5 know my juror number.

6 THE COURT: All right. Mr. Cornelius, I think
7 we know. Yes, sir.

8 JUROR: I don't believe in the death penalty.

9 THE COURT: We'll get into all of that another
10 time regarding your philosophy and all that.

11 (The bench conferences were concluded.)

12 THE COURT: Ladies and gentlemen, the question
13 that I'm posing to you at this point relates to your
14 qualifications to serve not regarding your
15 philosophy about anything of that nature or your
16 philosophy about guilt or innocence or punishment,
17 but simply your qualifications to serve on jury duty
18 this week. Those are the questions we are posing at
19 this time.

20 (The following bench conferences were held
21 on the record.)

22 THE COURT: Yes, ma'am.

23 JUROR: Juror number 395, Dann Thomas. This
24 may not be the appropriate time, however, there's a
25 hearing on Thursday and the attorney told me last

1 Friday that I was going to be subpoenaed as a
2 witness. Do you need that now or --

3 THE COURT: Is that a civil case or a criminal
4 case?

5 JUROR: It's a civil case. It's an estate.
6 The attorney himself is the claimant in the estate
7 and his claim has been denied. I was the last
8 person to speak with the deceased.

9 THE COURT: Any questions or --

10 MR. WALTERS: No, sir, Your Honor.

11 THE COURT: That may not be relevant, but it
12 does not pertain to your qualifications to serve.
13 Thank you for bringing that to our attention.

14 JUROR: So should I wait?

15 THE COURT: You must stay. Thank you.

16 JUROR: Perry Weeks, 283.

17 THE COURT: All right. Mr. Weeks.

18 JUROR: I'm under a doctor's care for a biopsy
19 from my prostate. I've got more testing this week
20 and I'm on dialysis next week for treatment. And I
21 would like to be delayed until next time.

22 THE COURT: You've got doctor's appointments
23 related to --

24 JUROR: Yes, sir, I turned in an excuse.

25 THE COURT: You've got an excuse from a doctor?

1 JUROR: Yes.

2 THE COURT: Do you have Mr. Week's doctor's
3 note?

4 Any questions he has doctor's appointments
5 regarding a prostate --

6 MR. PASCOE: No questions, Your Honor, just
7 wait to see the doctor's note.

8 THE COURT: Any objection to his being
9 released?

10 MR. WALTERS: No objection, Your Honor.

11 THE COURT: Any objection by the State?

12 MR. PASCOE: None.

13 THE COURT: All right. Mr. Weeks, you're
14 released. Thank you very much.

15 Yes, ma'am.

16 JUROR: Terri Davis, 322. My husband is a
17 plant manager in Orangeburg and has to travel. In
18 fact, he has to go to Tennessee tomorrow morning.
19 And my mother-in-law, who is 68, was able to watch
20 one child, but she is not in good health, so I would
21 not have anybody to watch my children.

22 THE COURT: How old are the children?

23 JUROR: One is 16. He works in the afternoons
24 and the other one is ten.

25 THE COURT: Any questions by the State or

1 defense?

2 MR. PASCOE: No, Your Honor.

3 THE COURT: Any objection to her being
4 released?

5 MR. PASCOE: No, sir.

6 MR. WALTERS: No objection.

7 THE COURT: The juror is released from service.

8 (The bench conferences were concluded.)

9 THE COURT: Ladies and gentlemen, I know we've
10 got to hurry on and let y'all get something to eat.
11 As you can see, this is a very difficult and time
12 consuming process and we still have some other
13 things to do.

14 Regarding the orientation letter that I
15 prepared and had distributed to you all, if you did
16 not receive one of those letters, please stand so we
17 can be sure that you did.

18 (There was no response.)

19 THE COURT: It appears that everyone has
20 received them.

21 Does anyone want to add or modify anything that
22 you put on your questionnaire? If you want to add
23 or modify anything, please let me know.

24 (Juror stands.)

25 THE COURT: Yes, ma'am.

1 JUROR: Well, it was dealing with just the
2 qualification. My father has lung cancer in
3 Mississippi and I take him to radiation.

4 THE COURT: How often do you do that?

5 JUROR: He go to radiation everyday.

6 THE COURT: And you must be available to take
7 him there?

8 JUROR: Uh-huh.

9 THE COURT: Any questions by the State or
10 defense?

11 MR. PASCOE: What was her number and her name,
12 Your Honor?

13 THE COURT: Your name, please?

14 JUROR: Michelle Brimfield, 22.

15 MR. PASCOE: No questions or objection, Your
16 Honor.

17 MR. WALTERS: No objection, Your Honor.

18 THE COURT: Ms. Brimfield will be excused based
19 on her responsibility of caring for her
20 incapacitated father.

21 Ladies and gentlemen, the case that will be
22 heard this week is the case of the State versus
23 Mikal Mahdi. This is a case in which the State has
24 served notice on the defendant of the State's intent
25 to seek the death penalty.

1 The defendant has pled not guilty to these
2 charges and he's presumed to be not guilty of these
3 charges. Therefore, we're going to impanel a jury
4 in this case.

5 In order to be qualified to serve as a juror in
6 this case, you must be capable of listening to the
7 testimony and the evidence to be presented, capable
8 of deciding what is believable testimony and
9 evidence and capable of applying to that testimony
10 the evidence and the law as I will tell you and you
11 then must be able to and capable of returning a fair
12 verdict. And if the defendant is found guilty, then
13 during the second phase of the trial, you must be
14 capable of recommending a sentence.

15 A qualified juror is one who will
16 conscientiously apply the law and find the facts of
17 the case. A qualified juror is one who is capable
18 of returning a verdict and a recommendation of
19 sentence based on the evidence and the law. A
20 qualified juror is one who is capable of setting
21 aside his or her opinions in deciding a matter based
22 upon the law and the evidence.

23 A juror is not qualified if the juror's views
24 would prevent or substantially impair the
25 performance of his or her duties as a juror in

1 accordance with the oath of a juror and the
2 instructions of the Court.

3 Now, if there is any member of the jury panel
4 who is related by blood or marriage or who enjoys
5 any personal or other relationship with the
6 defendant or with any member of his family,
7 Mr. Mahdi, if you'll stand please, if that question
8 applies to any of you -- you may be seated -- if
9 that question applies to any of you, please stand.

10 (There was no response.)

11 **THE COURT:** Mr. Mahdi was indicted by the grand
12 jury of this county charging him with the offense of
13 murder of James E. Myers, also burglary in the
14 second degree of a building belonging to James E.
15 Myers and Amy Tripp, and, also, grand larceny of
16 property owned by the City of Orangeburg.

17 If any juror -- any member of the jury panel,
18 that is, if you are related by blood or marriage or
19 if you have a personal or other relationship with
20 the alleged victim or victims or with any member of
21 the alleged victim or victim's family -- and,
22 Mr. Pascoe, if you will identify or have stand
23 victim or victim's family members.

24 **MR. PASCOE:** Yes, Your Honor. We have two
25 members today, Amy Tripp Myers, the victim's wife,

1 and Mr. Ed Myers, the victim's father.

2 THE COURT: If you're related by blood or
3 marriage or if you have a personal or other
4 relationship with the alleged victim or with any
5 members of his or her family, please stand.

6 (Juror stands.)

7 THE COURT: Ma'am, if you'll identify yourself,
8 please.

9 JUROR: Mary McCoy, juror 189.

10 THE COURT: And what is that relationship?

11 JUROR: Mr. Myers is a cousin of mine.

12 THE COURT: Based on that relationship, would
13 that affect your ability to be a fair and impartial
14 juror in the trial of this case?

15 JUROR: It would.

16 THE COURT: Any objection or questioning from
17 the State or the defense?

18 MR. PASCOE: No objection, Your Honor, or
19 questions.

20 MR. WALTERS: No questions, no objection, Your
21 Honor.

22 THE COURT: All right. This juror will not be
23 called to serve in this case. Thank you for
24 bringing that to our attention and you are free to
25 go at this time.

1 Now, the attorneys in this case will stand and
2 introduce themselves at this time, first, from the
3 State.

4 MR. PASCOE: Good afternoon. My name is
5 Solicitor David Pascoe.

6 MR. SORENSON: I'm Don Sorenson. I'm the
7 Deputy Solicitor.

8 MR. WALTERS: Good afternoon. My name is Glenn
9 Walters.

10 MR. KOGER: Joshua Koger, Junior.

11 THE COURT: Is there any member of the jury
12 panel who is related by blood or marriage or who
13 enjoys a personal relationship with any of the
14 lawyers in this case; if so, please stand?

15 (Jurors stand.)

16 JUROR: Juror number 75, Michael Flinton. I
17 enjoy a personal friendship with the Solicitor,
18 David Pascoe.

19 THE COURT: And, sir, do you believe that fact
20 will affect your ability to sit as a fair and
21 impartial juror in the trial of this case?

22 JUROR: I do not.

23 THE COURT: Would you be able to set aside that
24 relationship and decide this case solely based on
25 the evidence and on the law?

1 JUROR: Yes, sir.

2 THE COURT: Thank you for bringing that to our
3 attention.

4 Any questions by the State or the defense in
5 that regard?

6 MR. PASCOE: None, Your Honor.

7 MR. WALTERS: No, sir, Your Honor.

8 THE COURT: All right. The juror's qualified
9 to serve.

10 Yes, ma'am.

11 JUROR: Juror 291, Marion Williams. I know
12 Mr. Pascoe, though, we don't enjoy a personal
13 relationship. I know his wife and his children. I
14 don't think it would affect, in any way, my
15 decision.

16 THE COURT: Thank you.

17 Any questions or objections by either party?

18 MR. PASCOE: No, Your Honor.

19 MR. WALTERS: No, sir, Your Honor.

20 THE COURT: Yes, sir.

21 JUROR: Juror number 388, Gregory Smith.

22 Friends with Mr. Pascoe.

23 THE COURT: And would that affect your ability
24 to be a fair and impartial juror?

25 JUROR: No, sir.

1 **THE COURT:** Thank you for bringing that to our
2 attention.

3 Any objections or questions by either side?

4 **MR. PASCOE:** No, Your Honor.

5 **MR. WALTERS:** No, sir, Your Honor.

6 **THE COURT:** Yes, ma'am.

7 **JUROR:** Juror 394, Mims Taylor. I enjoy a
8 relationship with his wife, friends with his wife.

9 **THE COURT:** And would that affect your ability
10 to be fair and impartial in the trial of this case?

11 **JUROR:** No, sir.

12 **THE COURT:** All right. Thank you for bringing
13 that to our attention.

14 Any questions or objections?

15 **MR. PASCOE:** No, Your Honor.

16 **MR. WALTERS:** No, sir, Your Honor.

17 **THE COURT:** Yes, ma'am.

18 **JUROR:** I'm juror 179, Kathy Link. I teach Mr.
19 Pascoe's son, Michael. And I'm a friend of his
20 wife.

21 **THE COURT:** Would that fact affect your ability
22 to be a fair and impartial juror in the trial of
23 this case?

24 **JUROR:** No, sir.

25 **THE COURT:** Thank you very much for bringing

1 that to our attention.

2 Ladies and gentlemen, I'll tell you how we're
3 going to proceed with this matter. When you come
4 back, I will give you some additional or pose some
5 additional voir dire questions to you to determine
6 your qualifications to serve as a juror in this
7 case.

8 We will also, when you come back, we will break
9 you down in panels. We'll draw probably ten panels
10 of eight jurors. And as we draw these panels, we
11 will give you an assigned time to come back for
12 further individual questioning of you. And so I
13 believe that we'll be through with selecting these
14 panels by about four o'clock or so, but I know that
15 we just must quit now to give everyone a chance to
16 get something to eat and the like, but I wanted to
17 just give you an idea of where we're going with
18 respect to this.

19 There were a couple of jurors who stood to try
20 to give me various reasons why they should be
21 disqualified or not serve in this case. I'm going
22 to give those jurors an opportunity to come forward
23 who believe that based on personal hardship, family
24 hardship, business hardship or any other reason that
25 you think justifies your being relieved from service

1 on jury duty this week, aside from your opinions or
2 views concerning guilt or innocence or punishment,
3 we will delve into all of those particular things
4 later on, so this is not the time for you to tell me
5 about what you believe about this or that regarding
6 guilt or innocence or penalty, if, in fact, the
7 defendant, who is presumed to be not guilty, is
8 found guilty, but he is presumed to be not guilty of
9 this offense and so in order to have any view
10 expressed or penalty, obviously he must first be
11 found guilty, if he's not found guilty, the trial
12 ends at that point in time, but if you have some
13 other reason for -- that you want to tell me about
14 as to why you should not be required to serve on
15 jury duty, including the financial issue, the new
16 job issue and the key man issue or any other reason
17 that you all may have as to why you should not be
18 required to serve on jury duty this week, I'll have
19 you to stay.

20 The others of you are going to take a lunch
21 break finally. I need you back at 3:15. We'll be
22 in recess until 3:15. Those other folks who want to
23 raise those questions, if you'll stay behind as the
24 others go. An hour and 15 minutes for lunch, please
25 be back at that time.

1 (The jury panel was excused for lunch.)

2 (The following bench conferences were held
3 on the record.)

4 THE COURT: Mr. Summers, if you'll come first.
5 I understand you think you should not be required to
6 stay.

7 JUROR: Yes, sir.

8 THE COURT: State your reason.

9 JUROR: My brother is the sheriff in the
10 county.

11 MR. WALTERS: No objection, Your Honor.

12 THE COURT: Sheriff Summers' brother, he wants
13 to be released based on his being the sheriff's
14 brother. Any objections or question?

15 MR. PASCOE: No objection, Your Honor.

16 THE COURT: He's excused.

17 THE CLERK: 391.

18 THE COURT: Yes, sir.

19 JUROR: I just started a job with UPS Freight.
20 And if I miss this week, you know, it will take me
21 two weeks to gain back. I've got a young wife and
22 she's in school and I'm the only one providing for
23 her.

24 THE COURT: What's your name?

25 JUROR: Ronald Hilderbrand. I think it's 130.

1 **THE CLERK:** 128.

2 **THE COURT:** Any questions or objections?

3 **MR. WALTERS:** No objection, Your Honor.

4 **THE COURT:** Anything by the State?

5 **MR. PASCOE:** None, Your Honor.

6 **THE COURT:** Mr. Hilderbrand, we'll send you --
7 give you a chance to get some time in.

8 He'll be transferred to come back after he gets
9 a chance to make some money.

10 Yes, sir.

11 **JUROR:** Yes, sir, Your Honor, the company that
12 I worked for for 12 years went out of business in
13 May. I've been looking for a job since then. I
14 have a real lead. They know I've got jury this
15 week, but they don't, you know, want me to get out
16 of the way, but I would need to work if I can. I
17 also take care of my mother, who stays in Camden, as
18 far as her medication and stuff.

19 **THE COURT:** And tell me about this lead about a
20 job. What are you telling me about the job?

21 **JUROR:** I've got to go back for a second
22 interview with these people.

23 **THE COURT:** Don McKenzie with --

24 **JUROR:** Tarheel Carriers.

25 **THE COURT:** Trucking company?

1 JUROR: Yeah.

2 THE COURT: And when are you supposed to see
3 him?

4 JUROR: He told me to call when I got a chance
5 when it gets worked out.

6 THE COURT: Any question by the State?

7 MR. PASCOE: What was his name, Your Honor?

8 JUROR: Debruhl.

9 THE CLERK: Number 60.

10 JUROR: Number 60.

11 MR. PASCOE: No questions, Your Honor.

12 MR. WALTERS: No questions, Your Honor.

13 THE COURT: Any objection to his being released
14 based on his employment problem?

15 MR. WALTERS: No objection, Your Honor.

16 MR. PASCOE: None, Your Honor.

17 THE COURT: All right. You're free to go.

18 JUROR: Thank you, sir.

19 THE COURT: Yes, sir.

20 JUROR: My name is Samuel Fogle, number 81.
21 I'm an agricultural lender. I have three loans
22 scheduled to close this week. It's an end of the
23 month, 700,000, 130,000 and 75,000. It's real
24 estate purchase and personal property purchase.

25 THE COURT: Any questions?

1 MR. PASCOE: No questions.

2 THE COURT: Objections?

3 MR. WALTERS: No objection, Your Honor.

4 THE COURT: Any objections?

5 MR. PASCOE: No position.

6 THE COURT: He will suffer some financial
7 hardship?

8 JUROR: Well, it's a real estate purchase that
9 has been set up and personal property purchase. I
10 mean I'm the one that does the loan. I close the
11 loans, do all of the paperwork.

12 THE COURT: So your customers will suffer
13 financially?

14 JUROR: Yes, sir, they will.

15 THE COURT: We'll excuse you due to that
16 circumstance.

17 Transfer him to another term.

18 JUROR: Thank you, sir.

19 THE COURT: Yes, sir, Mr...

20 JUROR: 212.

21 THE COURT: Not the site manager, but the --

22 JUROR: Yeah, whatever, it's a little bit of
23 everything.

24 THE COURT: What company do you work for?

25 JUROR: Carolina Bridge.

1 **THE COURT:** And why do you want to be off of
2 jury duty?

3 **JUROR:** I run all of the day-to-day operations
4 for the most part, all of the crews report directly
5 to me. And I do estimate and we've got bids due
6 this week.

7 **THE COURT:** Questions by the State?

8 **MR. PASCOE:** No questions.

9 **THE COURT:** By the defense?

10 **MR. WALTERS:** No questions, Your Honor.

11 **THE COURT:** Any objection to his being
12 transferred?

13 **MR. PASCOE:** No position from the State, Your
14 Honor.

15 **MR. WALTERS:** No objection, Your Honor.

16 **THE COURT:** You'll be transferred to serve at
17 another time.

18 **JUROR:** Number 40. I just got a job and I'm in
19 training. They'll excuse me for jury duty, but I
20 have to have documentation to show that I'm on jury
21 duty. I didn't know how it would work.

22 **THE COURT:** You want to serve, but you want an
23 excuse to send to them?

24 **JUROR:** Yeah, I want to keep my job.

25 **THE COURT:** Where's that job?

1 JUROR: It's at Palmetto -- in Columbia.
2 THE COURT: Blue Cross?
3 JUROR: Yeah.
4 THE COURT: When did you start work for them?
5 JUROR: I just started in the later part of
6 October.
7 THE COURT: So we'll send them a notice saying
8 that we kept you here for jury duty.
9 Any question by the State?
10 MR. PASCOE: No questions, Your Honor.
11 THE COURT: By the defense?
12 MR. WALTERS: No questions, Your Honor.
13 THE COURT: We'll need you to stay with us.
14 Come back at 3:15.
15 She'll stay with us. Who's next?
16 JUROR: My name is Theresa Huggins. I'm 139.
17 I want to know, okay, I have my boyfriend, he has
18 glaucoma, right. And I go back and forth from
19 taking care of my daughter, looking after him. And
20 he has an appointment on the 8th, but I --
21 THE COURT: The 8th? When is that?
22 JUROR: Yeah, the 8th of next month he has a
23 dentist appointment.
24 THE COURT: Next Thursday or Friday?
25 JUROR: Yes.

1 **THE COURT:** Your boyfriend has glaucoma and you
2 have a dentist appointment next month.

3 **JUROR:** Yes, and I take care of him.

4 **THE COURT:** You take care of him. He can't
5 see?

6 **JUROR:** He's in the stage of his glaucoma.

7 **THE COURT:** He's going blind?

8 **JUROR:** Yes. He's going for his laser surgery.
9 They're going to try to correct it.

10 **THE COURT:** When is he supposed to have that?

11 **JUROR:** On the 8th.

12 **THE COURT:** That's next Friday. You'll be able
13 to stay with us up to that point?

14 **JUROR:** Yes, sir.

15 **THE COURT:** Do you have any other reasons you
16 want to tell me about?

17 **JUROR:** No, sir.

18 **THE COURT:** Any questions by the State?

19 **MR. PASCOE:** Yes, Your Honor. Is there anybody
20 else that can take care of your boyfriend from now
21 until the 8th?

22 **JUROR:** No, sir.

23 **THE COURT:** Well, what kind of taking care of
24 him do you do?

25 **JUROR:** Like I cook and I clean. I cook and

1 stuff so he don't have to go to the store and I buy
2 -- like make sure he go -- because he got a
3 microwave.

4 **THE COURT:** So if you were gone for a week and
5 having to stay in a hotel, you won't be able to do
6 that?

7 **JUROR:** I don't think so.

8 **THE COURT:** You don't have anyone else to tend
9 to him?

10 **JUROR:** No, sir. Okay, he's got this medicine
11 it's partially helping him see, but he can't see all
12 that good. I think he'll be good till he have the
13 laser surgery.

14 **THE COURT:** You think he'll be good until you
15 get back?

16 **JUROR:** I'm not so sure.

17 **THE COURT:** Any questions by the State?

18 **MR. PASCOE:** No, sir.

19 **THE COURT:** Anything further by the defense?

20 **MR. WALTERS:** No, sir.

21 **THE COURT:** I think you're qualified to serve.
22 He's your boyfriend, but he's not a mama, a daddy or
23 a child, so you're qualified. You're going to have
24 to come back at 3:15. Try to work something out.

25 The juror will stay with us.

1 **JUROR:** I'm juror number 213, Katherine Nolte.
2 And I have requested a transfer to another session
3 of court. I have had scheduled vacation plans for
4 over a year for this week. I have a house on the
5 coast. My husband and I have a house on the coast
6 that we have a timeshare in and we've got three
7 other couples from out of town who are coming to
8 that house this week.

9 **THE COURT:** Questions by the State?

10 **MR. PASCOE:** No, sir.

11 **THE COURT:** Defense?

12 **MR. WALTERS:** No, sir.

13 **THE COURT:** Any objection?

14 **MR. PASCOE:** No, sir.

15 **MR. WALTERS:** No, sir.

16 **THE COURT:** You can go to your vacation.

17 Yes, ma'am.

18 **JUROR:** My name is Cheryl Hughes. I'm 140. My
19 daughter is having a baby within -- well, I don't
20 know when she'll have it, but we've already got the
21 ticket bought for the 6th. And I wouldn't mind to
22 serve at all, but we already have --

23 **THE COURT:** A ticket to go some place?

24 **JUROR:** Into Phoenix, Arizona.

25 **THE COURT:** She may deliver before then or

1 around that time.

2 JUROR: Right.

3 THE COURT: But your mind is on the baby right
4 now.

5 JUROR: Yeah.

6 THE COURT: Questions by the State?

7 MR. PASCOE: No, Your Honor.

8 THE COURT: Defense?

9 MR. WALTERS: No, Your Honor.

10 THE COURT: Any objection to her being
11 transferred?

12 MR. PASCOE: No, sir.

13 MR. WALTERS: No objection.

14 THE COURT: Transfer her to another time.

15 JUROR: I'm Linda Taylor, 393. My employer
16 doesn't compensate my wages if I serve on a jury.
17 And I am the sole -- I don't have anybody to help me
18 pay my bills. I'm not married. I don't have
19 anybody to help me pay my bills, so if I don't work
20 and get paid, I don't --

21 THE COURT: Well, you will get a little jury
22 pay.

23 JUROR: Yeah.

24 THE COURT: That won't be enough?

25 JUROR: I don't think so. I mean, I would love

1 to serve, I really would, but if I don't work, I
2 can't pay my bills.

3 THE COURT: You want to be transferred based on
4 financial hardship?

5 JUROR: Yes, please.

6 THE COURT: What says the State?

7 MR. PASCOE: No questions. No position.

8 THE COURT: What says the defense?

9 MR. WALTERS: No objection, Your Honor.

10 THE COURT: All right. She'll be transferred
11 to come back after she's in a better financial
12 situation in nine months or so.

13 JUROR: Thank y'all very much.

14 THE COURT: Yes, ma'am.

15 JUROR: Juror 395, Dann Thomas. There is a
16 hearing this Thursday that I'm going to be
17 subpoenaed for as a witness on a civil action.

18 THE COURT: You mentioned that to us earlier.
19 And, of course, cases are often continued for
20 various reasons and if a key witness is not
21 available, then the hearing may have to be
22 postponed.

23 JUROR: I'm one of two witnesses.

24 THE COURT: So they may have to postpone the
25 hearing until another time, but it would not take

1 precedence over this type of matter.

2 Any questions or objection?

3 MR. WALTERS: No, sir, Your Honor.

4 MR. PASCOE: No, Your Honor.

5 THE COURT: You'll need to stay with us and
6 come back at 3:15.

7 What's your name?

8 JUROR: Shirley Simmons. I'm juror number 250.
9 I have a financial...

10 COURT REPORTER: I can't hear what she's
11 saying.

12 JUROR: I live out in the country.

13 THE COURT: You live out in the country, you
14 have trouble getting here.

15 JUROR: Yeah. I don't have nobody to get here.

16 THE COURT: How far in the country do you live?

17 JUROR: Way down there, Lone Star. I don't
18 drive.

19 THE COURT: Is that where y'all are trying to
20 put the bridge down there?

21 JUROR: Yeah. It's a financial, you know, I
22 would have no way to get here.

23 THE COURT: Well, if you're on jury duty, we'll
24 give you a ride. In fact, if you're on jury duty,
25 you'll be staying closer to town. You'll be given a

1 ride to wherever you need to go, including here.

2 Transportation will not be a problem.

3 JUROR: It won't?

4 THE COURT: No. Do you have any other problem

5 other than transportation?

6 JUROR: No, just getting here.

7 THE COURT: Getting here? Well, we'll get you

8 here.

9 JUROR: Okay.

10 THE COURT: Just be sure and let us know so

11 that we can tell the sheriff and different people to

12 make sure you get a ride here.

13 Any question by the State or defense?

14 MR. PASCOE: No, sir.

15 THE COURT: You'll need to come back at 3:15.

16 She'll need to stay. We'll have to give her a

17 ride to the hotel.

18 Yes, ma'am.

19 JUROR: Number 93, Tonya Gates. I have a five

20 month old at home. I mean, she's fine during the

21 day, she's at day care, but she spend the night

22 thing...

23 THE COURT: You can't stay in a hotel with us

24 for ten days?

25 JUROR: Could she stay, too?

1 **THE COURT:** No, she can't stay. You can't
2 leave her?

3 **JUROR:** I haven't left her.

4 **THE COURT:** She's five months?

5 **JUROR:** Yeah. And her daddy's parents, he's
6 real sick and he's having surgery today on his
7 heart. And my parents are two hours away.

8 **THE COURT:** What says the State?

9 **MR. PASCOE:** No objection.

10 **THE COURT:** Defense?

11 **MR. WALTERS:** No objection.

12 **THE COURT:** All right. Ma'am, you're not
13 available under the circumstances. We certainly
14 understand. Thank you.

15 **JUROR:** Marty Williams. I think my juror
16 number is 293 or 294. And I've got a family
17 hardship. My wife was diagnosed with breast cancer
18 and right now she's going through chemo. And I've
19 got a four-year-old son. So I work straight nights,
20 so I would like to be home with her while she rests
21 so I could watch my son.

22 **THE COURT:** Any questions or objections?

23 **MR. PASCOE:** I'm sorry, Your Honor, what was
24 his number?

25 **THE CLERK:** 292.

1 MR. PASCOE: No objection, Your Honor.

2 MR. WALTERS: No objection, Your Honor.

3 THE COURT: All right. Mr. Williams, we'll let
4 you go. Thank you for coming.

5 Juror is excused based on his family hardship.

6 Yes, sir.

7 JUROR: My name is Alfred Mack, 364. I work
8 for U.S. Group. I'm a supervisor of a seven man
9 crew. And I think my employer had sent a letter in.
10 And it will be kind of hard for me to get away.

11 THE COURT: Kind of hard for you to get away.
12 How long have you been working there?

13 JUROR: Fourteen years.

14 THE COURT: Don't you have an assistant manager
15 or assistant --

16 JUROR: Not on my crew. Like I said, I'm a
17 field supervisor.

18 THE COURT: You're a field supervisor. Well,
19 who is tending to your job today?

20 JUROR: I guess some of the big guys out of the
21 office. I called in today about my time and I
22 really didn't get an answer.

23 THE COURT: He was on the list of requesting
24 excuses that we met concerning a week ago, but since
25 it was an employer based request, I had him to come

1 in today. Questions by the --

2 MR. PASCOE: No questions, Your Honor.

3 MR. WALTERS: No objection.

4 THE COURT: Any objection to his...

5 MR. PASCOE: The State takes no position.

6 THE COURT: Why do you need to be there rather
7 than here?

8 JUROR: That's my responsibility. I think -- I
9 feel like it is. I got a bunch of young guys that I
10 just hired -- the company just hired and I think I
11 need to be there with them.

12 THE COURT: Don't you take vacation some time?

13 JUROR: Once a year.

14 THE COURT: Have you had it already?

15 JUROR: No, sir.

16 THE COURT: And you said you believe it's your
17 responsibility to be there. Of course, jury duty is
18 a responsibility as well. You understand this is a
19 very important case.

20 JUROR: That's true.

21 THE COURT: I'm going to have you stay with us
22 I think.

23 JUROR: Sir?

24 THE COURT: We're going to need to have you
25 stay with us, come back at 3:15.

1 Any objection by the State or the defense --

2 MR. PASCOE: No, Your Honor.

3 THE COURT: -- to this juror being kept to come
4 back at 3:15?

5 MR. WALTERS: No objection.

6 JUROR: Hi, my name is Santana Favor. I'm
7 juror number 73. Well, right now I'm living -- it's
8 just me and my grandmother. And I'm the only one
9 providing for the family. Well, as of this week,
10 the job that I started, I'm working first shift, but
11 as of next week, I'll be on third shift so I
12 wouldn't be able to come serve on jury duty this
13 week.

14 THE COURT: Well, people who serve on jury duty
15 usually don't go to work, particularly in this case
16 because a juror will be unable to go to work this
17 week or next week because the jurors will be
18 sequestered in a hotel. So you won't be able to go
19 to work, period, while on this case.

20 JUROR: Okay.

21 THE COURT: And how old is your grandmother?

22 JUROR: She's 71.

23 THE COURT: She's okay without you?

24 JUROR: She should be.

25 THE COURT: Any questions or objections?

1 MR. PASCOE: No, Your Honor.

2 MR. KOGER: None from the defense.

3 THE COURT: You'll need to stay with us. We'll
4 hopefully work through your hardship.

5 Yes, sir.

6 JUROR: My name is James. My juror number is
7 182. If I am not at work, I have seven employees
8 whose families do not get no money coming in.

9 THE COURT: So when you don't go to work, they
10 can't work.

11 JUROR: If I'm not there to ride with Time
12 Warner rep to inspect these jobs, they don't work.

13 THE COURT: And you used to work at the
14 department of corrections?

15 JUROR: Yes, sir. I worked in Broad River
16 Correctional facility at that specific department.
17 I'm just, you know --

18 THE COURT: I understand.
19 Questions by the State?

20 MR. PASCOE: And is this Mr. Mack, 182?

21 THE COURT: Mr. Mack.

22 MR. PASCOE: No questions, Your Honor.

23 MR. KOGER: No questions Your Honor.

24 THE COURT: Any objection to this juror being
25 released?

1 MR. PASCOE: No, Your Honor.

2 MR. KOGER: No objection, Your Honor.

3 THE COURT: We'll let you go.

4 Yes, sir.

5 JUROR: I'm Leslie Gardner, juror number 89.

6 I've got three odd circumstances at the moment. My
7 dad's a retired peace officer from the City of
8 Columbia. He's 83 years old and he had a blood
9 vessel break in his eye. He's had two surgeries.
10 He's going back for another one. And my other
11 siblings both live in North Carolina. So I've got a
12 little situation there.

13 Secondly, my daughter is eight months pregnant.
14 She's expecting January the 2nd and going through
15 some minor complications. She owns the Cayce
16 Miniwarehouse Complex. So I'm trying to help her in
17 the miniwarehouse complex because she can't go up
18 there very often.

19 And, thirdly, I'm also the manager of Trident
20 Investments which does real estate. So now we're at
21 the end of the year where I'm getting all of the tax
22 notices from Lexington, Calhoun County and I have to
23 turn around and mail them out to the newer buyers,
24 which has a time sake and they've got to be received
25 by them and then paid by January.

1 So all of a sudden, I've got three things
2 falling on me. I would like to serve. I consider
3 it an honor and privilege and I would love to come
4 back in February or any time when I think everything
5 will be cleared by then.

6 **THE COURT:** Anything from the State?

7 **MR. PASCOE:** No questions.

8 **THE COURT:** Defense?

9 **MR. KOGER:** No questions.

10 **THE COURT:** Any objection to his being
11 transferred to another term?

12 **MR. PASCOE:** The State takes no position.

13 **MR. KOGER:** No objection, Your Honor.

14 **THE COURT:** You'll be transferred to another
15 term. You'll get another notice. Thank you, sir.

16 **JUROR:** Willie B. Brown. I think it's 313.

17 **THE COURT:** All right. We'll find you.

18 **JUROR:** I'm a truck driver and my company is
19 going to be laying off at the first of the year in
20 January. And I just want to keep working here now
21 up to January because I noticed in the letter that
22 this was going to be up to two weeks, maybe more and
23 two weeks will put me in a bind right now.

24 **THE COURT:** You can't stand it?

25 **JUROR:** (Juror shook head.)

1 THE COURT: Solicitor, any questions?

2 MR. PASCOE: No questions, Your Honor.

3 MR. KOGER: No questions.

4 THE COURT: Any objection to his being
5 transferred?

6 MR. PASCOE: No, Your Honor.

7 MR. KOGER: No, Your Honor.

8 THE COURT: We'll transfer you to springtime.
9 Mr. Brown is transferred.

10 THE CLERK: It's juror number 311.

11 THE COURT: Yes, ma'am.

12 JUROR: April Mills, 197.

13 THE COURT: Ms. Mills, what's up?

14 JUROR: I'm driving somebody else's vehicle
15 today and she has to pick her kids up at three
16 o'clock.

17 THE COURT: You didn't have a ride up here?

18 JUROR: Huh-huh.

19 THE COURT: Do you have time to take it and
20 come back?

21 JUROR: Her kids go to Pine Ridge.

22 THE COURT: How far do you have to take the
23 car?

24 JUROR: Lexington, 321, in Lexington County.

25 THE COURT: So you're available, you just have

1 someone's car.

2 JUROR: Yes.

3 THE COURT: Well, we want you to take that car
4 and then come back. What time are you going to be
5 back?

6 JUROR: It will take about 35 minutes to get
7 over there.

8 THE COURT: And she needs her car by what time?

9 JUROR: Three o'clock.

10 THE COURT: Why did you drive it today?

11 JUROR: I didn't know it was going to take that
12 long.

13 THE COURT: Well, this is jury duty.

14 Any questions by the State?

15 MR. PASCOE: None, Your Honor.

16 THE COURT: By the defense?

17 MR. KOGER: None, Your Honor.

18 THE COURT: Do you know of any other reason why
19 you cannot serve as a juror in this case?

20 JUROR: Huh-huh.

21 THE COURT: You don't have any other problems
22 other than having someone else's car today?

23 JUROR: No.

24 THE COURT: Have you or any member of your
25 family been the victim of a violent crime?

1 JUROR: Not me. I don't think nobody in my
2 family.

3 THE COURT: Has anyone ever been accused of any
4 violent crimes in your family?

5 JUROR: I don't know.

6 THE COURT: Have you formed any opinion as to
7 the guilt or innocence of the defendant in this
8 case?

9 JUROR: No.

10 THE COURT: We want you to come back when you
11 can get back. And we'll tell you when you need to
12 come back after that. When you come back, we'll
13 just basically tell you when you'll need to come
14 back again. So whoever you pick up, they need to
15 bring you back so you'll have a ride back to where
16 you're going unless you're going to need -- how are
17 you going to get back here?

18 JUROR: That's a good question. Hopefully, my
19 mom is home.

20 THE COURT: Let me know when you get back.
21 Just come straight on in here. What's your name
22 again?

23 JUROR: April Mills.

24 THE COURT: Ms. Mills is going to stay with us.
25 Thank you, Ms. Mills.

1 Any questions or objections?

2 MR. PASCOE: No, Your Honor.

3 MR. KOGER: No, Your Honor.

4 JUROR: I'm juror 255. I have a question. How
5 long is this trial going to last?

6 THE COURT: About two weeks probably.

7 JUROR: Oh, I have a problem. You see, I go to
8 my mother's, all her doctors appointments and
9 there's no way I'll be able to be here and there.

10 THE COURT: When do you have to take her?

11 JUROR: She's got an appointment next week like
12 on Thursday to Doctor Augustine.

13 THE COURT: We might be through by then.

14 JUROR: Are you sure?

15 THE COURT: I don't know. It's hard to tell.
16 Why is she going to see Doctor Augustine next week?

17 JUROR: She has esophageus (ph) of the lung.
18 She's on oxygen.

19 THE COURT: You don't have anyone else that can
20 take her?

21 JUROR: No.

22 THE COURT: Would you be able to -- if you're
23 selected on this jury and the jury is put up in a
24 hotel from now until the end of the case, would you
25 be able to stay away from your mom?

1 JUROR: Yeah, I'll be able to get somebody to
2 stay with her.

3 THE COURT: That same person can't take her to
4 the doctor that day?

5 JUROR: She goes on this transportation bus and
6 I go with her to all her appointments. It's just me
7 and her, nobody else.

8 THE COURT: Well, stay with us and we'll see
9 what happens.

10 JUROR: Okay.

11 THE COURT: Come back at 3:15.
12 Any questions of her?

13 MR. PASCOE: No, Your Honor.

14 THE COURT: Any objections?

15 MR. WALTERS: No, sir, no objections.

16 THE COURT: All right. She'll stay with us.

17 JUROR: My number is number 29. My name is
18 Donna Bruch. And it will be a financial hardship
19 for me to be here with you and everything because I
20 support myself down here. My husband lives in
21 Pennsylvania.

22 THE COURT: And when you say financial
23 hardship, what's your situation?

24 JUROR: I just support myself. I pay all of my
25 bills in South Carolina myself. He doesn't pay

1 nothing here.

2 THE COURT: Where do you work?

3 JUROR: I work at Cracker Barrel in Santee.

4 THE COURT: Any questions from the State?

5 MR. PASCOE: No questions.

6 THE COURT: From the defense?

7 MR. WALTERS: No, sir, Your Honor.

8 THE COURT: Any objection to her being
9 transferred to another term?

10 MR. PASCOE: No position, Your Honor.

11 MR. WALTERS: No, sir.

12 THE COURT: We'll transfer her based on her
13 financial hardship.

14 Yes, ma'am.

15 JUROR: Number 244, Mary Shealy. I'm a
16 self-employed medical transcriptionist. If we have
17 to be sequestered, I can't afford to do it. I can't
18 go without pay for a week, but if I could go home
19 and type at night, I could do it.

20 THE COURT: Why don't we let you bring your
21 typewriter with you?

22 JUROR: It will be my computer and transcriber.
23 I could do that.

24 THE COURT: Do you have the same thing that she
25 has there?

1 **JUROR:** No. But I'm self-employed, single, I
2 don't have any other income coming in and it would
3 kill me if I go a week or two without pay. So do we
4 have to be sequestered at a motel or can we go home
5 and promise not to speak to anybody?

6 **THE COURT:** You can't go home.

7 **JUROR:** I would love to do it. I can't afford
8 it.

9 **THE COURT:** What says the State?

10 **MR. PASCOE:** No questions, Your Honor.

11 **THE COURT:** Defense?

12 **MR. WALTERS:** No questions, Judge.

13 **THE COURT:** She qualifies to be exempted based
14 on her employment status as a self-employed
15 transcriptionist. You're exempt from service. Your
16 name again, please?

17 **JUROR:** Mary Shealy, 244.

18 **THE COURT:** From Lexington?

19 **JUROR:** Lexington, Swansea.

20 **THE COURT:** All of the Shealys are from over
21 there.

22 **JUROR:** I'm divorced from a Shealy.

23 **THE COURT:** All right. Anything anyone wanted
24 to place on the record regarding these jurors?

25 **MR. PASCOE:** Nothing from the State, Your

1 Honor.

2 MR. WALTERS: Nothing from the defense, Your
3 Honor.

4 THE COURT: All right. 3:15.

5 (Whereupon, the bench conferences were
6 concluded and there was a luncheon recess.)

7 THE COURT: Welcome back, ladies and gentlemen.
8 I think we want everyone to have a seat at this
9 point unless you have a back problem or something
10 that causes you not to be able to sit.

11 You have met your Clerk, Mr. Hasty, and deputy
12 clerk, Ms. Pauling, who called the roll this
13 morning. I also wanted to introduce the court
14 reporter, Stacy Sheppard. And she has a very
15 important job, perhaps the most important job in
16 that she has to maintain a verbatim transcript, word
17 for word of everything that ever happens in the
18 courtroom as far as verbal communication.

19 I also want to introduce Martha Jo Smith, who
20 is seated next to me. She is my law clerk for this
21 trial to assist me with my duties, legal research
22 and other administrative related matters as it
23 relates to this case.

24 We certainly appreciate your cooperation this
25 morning -- I thought we had all of the jurors in,

1 but they seem to be continuing to come in. Let's
2 hold for a moment, make sure that we have everyone
3 here before I proceed.

4 (Pause.)

5 THE COURT: As far as arraignment procedure is
6 concerned, do you wish to have that or is that
7 waived? As far as further arraignment, would you
8 like the Court to do that or would you like to waive
9 that?

10 MR. WALTERS: We'd waive it, Your Honor.

11 THE COURT: Sheriff, do we have everyone?

12 SHERIFF: Yes, sir.

13 THE COURT: All right. Thank you.

14 I have some additional questions to ask the
15 entire panel. Is there any member of the jury panel
16 who is currently being represented by the
17 Solicitor's office of this circuit or who has
18 previously been represented or is currently being
19 represented by any of the lawyers involved in this
20 case; if so, please stand?

21 (Jurors stand.)

22 THE COURT: Yes, ma'am.

23 JUROR: Mr. Walters represented our church in a
24 matter.

25 THE COURT: Tell us your name and juror number,

1 please.

2 JUROR: My number is 105. I'm Joann Green
3 Jackson.

4 THE COURT: And, ma'am, would that fact affect
5 your ability to sit as a fair and impartial juror in
6 this case?

7 JUROR: Not at all.

8 THE COURT: Thank you for bringing that to our
9 attention.

10 Yes, ma'am.

11 JUROR: Number 14, Maxine Bonaparte. I was
12 once represented by Mr. Walters.

13 THE COURT: And, ma'am, would that fact affect
14 your ability to sit as a fair and impartial juror in
15 this case?

16 JUROR: No, sir.

17 THE COURT: Thank you, Ms. Bonaparte.

18 Yes, sir.

19 JUROR: James Cornelius, juror number 45. I
20 have...

21 COURT REPORTER: I can't hear him.

22 THE COURT: The court reporter couldn't hear
23 you. Speak louder, please.

24 JUROR: I said one of the attorneys for the
25 prosecution was representing my wife...

1 **THE COURT:** One of the prosecutors or defense
2 lawyers?

3 **JUROR:** Prosecutors -- I mean, defense lawyers.
4 I can't think of the gentleman's name.

5 **THE COURT:** Which one is it?

6 **MR. KOGER:** That's me.

7 **THE COURT:** Mr. Koger.

8 **MR. KOGER:** Yes, Your Honor.

9 **THE COURT:** He's currently handling that case?

10 **JUROR:** Yes, sir.

11 **THE COURT:** A divorce case?

12 **JUROR:** He's the attorney for my daughter's
13 husband.

14 **THE COURT:** Would that fact affect your ability
15 to sit as a fair and impartial juror in the trial of
16 this case?

17 **JUROR:** No.

18 **THE COURT:** He's not representing you and he's
19 not suing you?

20 **JUROR:** No.

21 **THE COURT:** And your name again please, sir?

22 **JUROR:** James H. Cornelius.

23 **THE COURT:** James H. Cornelius, juror number?

24 **JUROR:** 45.

25 **THE COURT:** 45. Thank you, sir. The juror is

1 qualified.

2 The indictment in this case alleges that on or
3 about July 18th, 2004, willfully and unlawfully with
4 malice aforethought, it alleges that the defendant
5 killed James E. Myers. And that offense allegedly
6 occurred in what area of this county, Mr. Solicitor?

7 MR. PASCOE: It's off of Exit 139, Your Honor,
8 where Road 22 and Highway 21 is, near the Hess
9 Station and the Arby's in Calhoun County.

10 THE COURT: Has any member of the jury panel
11 formed or expressed an opinion concerning this case?
12 If you have formed or expressed an opinion
13 concerning this case, if so, please stand.

14 (There was no response.)

15 THE COURT: If you are aware of any bias or
16 prejudice in this case either for or against the
17 State or the defendant, please stand.

18 (There was no response.)

19 THE COURT: If you have any preconceived
20 notions as to young African-American males and the
21 occurrence of violent crimes or propensity for
22 violent crimes, please stand.

23 (There was no response.)

24 THE COURT: If you have seen, heard or read any
25 accounts of this matter, newspaper, television,

1 Internet or otherwise, if you have seen, heard or
2 read any accounts regarding this matter, please
3 stand.

4 (Jurors stand.)

5 THE COURT: And what I want to do is not ask
6 you what you have seen, read or heard, but simply
7 record your juror number. And we'll start here with
8 you, sir.

9 JUROR: 20.

10 THE COURT: Juror number 20.

11 JUROR: Four.

12 THE COURT: And you may be seated as you give
13 me that information.

14 JUROR: 379.

15 JUROR: 75.

16 JUROR: 30.

17 JUROR: 358.

18 JUROR: 369.

19 THE COURT: Behind her.

20 JUROR: 42.

21 JUROR: 80.

22 JUROR: 291.

23 JUROR: I forgot my number.

24 THE COURT: Your name, sir?

25 JUROR: Walling, Michael.

1 THE CLERK: 279.
2 JUROR: 346.
3 JUROR: 112, I think.
4 JUROR: 323.
5 JUROR: 299.
6 JUROR: 388.
7 JUROR: 159.
8 JUROR: 49.
9 JUROR: 142.
10 JUROR: 105.
11 JUROR: 130.
12 JUROR: James J. Howell, don't know the number.
13 THE CLERK: 134.
14 THE COURT: 134, Mr. Howell.
15 JUROR: 180.
16 JUROR: 95.
17 JUROR: 351.
18 JUROR: 174.
19 JUROR: 397.
20 JUROR: 348.
21 JUROR: 164.
22 JUROR: 316.
23 JUROR: 223.
24 JUROR: 92.
25 THE COURT: If, based on those accounts, you

1 have formed an opinion concerning this matter,
2 please stand of those of you who stood. If, based
3 on those accounts, you have formed or expressed an
4 opinion of this matter, if so, please stand.

5 (Jurors stand.)

6 THE COURT: Yes, ma'am.

7 JUROR: 397.

8 JUROR: 279.

9 JUROR: 4.

10 JUROR: 42.

11 THE COURT: If you know of any reason
12 whatsoever why you could not give a fair trial to
13 both the State and the defendant, if any juror knows
14 of any reason why you could not give a fair trial to
15 both the State and the defendant, if you know of any
16 such reason, please stand.

17 (Juror stands.)

18 JUROR: In a trial phase and penalty phase?

19 THE COURT: Yes, ma'am, trial phase and penalty
20 phase, if it should reach the penalty phase. If you
21 know of any reason why you cannot give a fair trial
22 to both the State and the defendant, please stand.
23 And without asking me any questions about it, if you
24 know of any reason why you cannot give both the
25 State and the defense a fair trial, please stand.

1 (Jurors stand.)

2 THE COURT: Yes, ma'am, your number only.

3 JUROR: 395.

4 JUROR: If I'm not mistaken, it's 387, Rodney
5 Robinson.

6 THE COURT: We'll confirm your number.

7 THE CLERK: 380.

8 THE COURT: 380, Mr. Robinson.

9 JUROR: 226.

10 JUROR: 371.

11 JUROR: 397.

12 THE COURT: The defendant has pled not guilty
13 to the charges against him. That plea requires that
14 the State prove that he is guilty. The defendant is
15 not required to prove his innocence. The law
16 considers that he is innocent.

17 The State must prove his guilt beyond a
18 reasonable doubt. If, after hearing and considering
19 the testimony and evidence in this case, if you have
20 a reasonable doubt as to the defendant's guilt, you
21 must resolve that doubt in his favor and must acquit
22 him. If, after hearing and considering the
23 testimony and the evidence in this case, you have no
24 reasonable doubt of his guilt, then you may find him
25 guilty. If there is a juror who could not follow

1 that principle of law, please stand.

2 (There was no response.)

3 **THE COURT:** If you or any member of your
4 immediate family have been the victim or victims of
5 a crime of violence, please stand. If you or any
6 member of your immediate family have been a victim
7 or victims of the crime of violence, please stand.

8 (Jurors stand.)

9 **THE COURT:** You are juror number?

10 **JUROR:** 291, Marion Williams.

11 **THE COURT:** And, Ms. Williams, would that
12 occurrence affect your ability to be a fair and
13 impartial juror in this case?

14 **JUROR:** No, sir.

15 **THE COURT:** Thank you for bringing that to our
16 attention.

17 Yes, ma'am.

18 **JUROR:** 125.

19 **THE COURT:** And would that fact affect your
20 ability to be a fair and impartial juror in this
21 case?

22 **JUROR:** No, sir.

23 **THE COURT:** Ladies and gentlemen, as I
24 mentioned to you briefly this morning, in this case,
25 the State is seeking the death penalty against the

1 defendant. These trials are what's known as a
2 bifurcated trial, meaning a trial that is broken
3 into two parts. The first part is what is referred
4 to as the guilt phase. And during this phase of the
5 trial, the jury will decide whether the defendant is
6 guilty of the crimes charged.

7 If the defendant is found guilty of murder, the
8 guilt phase would then move into the second part,
9 that is, the penalty phase. If the defendant is
10 found guilty of murder, plus another criminal
11 offense, which the law defines as being an
12 aggravated circumstance, it would then move to the
13 second part, which is referred to as the penalty
14 phase. If the defendant is found not guilty in the
15 guilt phase, the case would end at that point.

16 If he is found guilty of murder and another
17 offense, which the law defines as an aggravating
18 circumstance, we would move to the second part, the
19 penalty phase. And in that part of the trial, a
20 jury would decide whether the aggravated
21 circumstances exist and if so, the defendant --
22 whether the defendant should receive a penalty of
23 life imprisonment or a penalty of death by
24 electrocution or lethal injection.

25 Let me rephrase that because I might have

1 mumbled or jumbled a couple of terms. If, in the
2 penalty phase, a defendant is found guilty of
3 murder, then the case moves from the guilt phase to
4 the penalty phase. If he's found not guilty of
5 murder, the case would end at that point or the
6 trial would end at that point.

7 If he's found guilty of murder, then we move to
8 the second phase. And in that part of the trial, a
9 jury would decide whether the aggravating
10 circumstances alleged by the State exist and if so,
11 whether the defendant should receive a penalty of
12 life imprisonment or a penalty of death by
13 electrocution or lethal injection.

14 Now, the fact that I must mention penalty to
15 you in this discussion with you indicates nothing
16 about the guilt of the defendant because as I stated
17 earlier, he's presumed to be innocent. We simply
18 must discuss penalty now as a convenient means of
19 explaining the process to you.

20 Now, as far as the jury selection process in
21 this case, we will talk with each of you until a
22 panel of 37 qualified jurors has been selected. And
23 from that panel, 16 of you will be sworn to hear the
24 case. And we certainly ask for your patience as we
25 go through this process. It will not take nearly as

1 long as it took this morning, but it will take some
2 time to draw these panels.

3 I caution you as I did in the orientation
4 letter that I gave you to read and that is that you
5 cannot read any account, view any account or listen
6 to any account of these proceedings from this point
7 on by way of television, radio, newspaper or
8 Internet. You cannot discuss the matter with
9 anyone, including your fellow jurors until I
10 instruct you to do so.

11 It would be a violation of your oath of office
12 as a juror to engage in any form of premature
13 discussions about this case because those
14 discussions are legally considered to be
15 deliberations. In this state and in most states of
16 the Union, jurors cannot deliberate until after
17 listening to all of the evidence and the judge's
18 instructions of law.

19 And you cannot discuss this matter with your
20 fellow jurors or anyone at your household, friends
21 or anyone else that you may come into contact with,
22 including anyone else who may be employed here at
23 the courthouse or anyone else. You cannot discuss
24 the matter with anyone. And if anyone tries to
25 discuss this matter with you, please advise that

1 person that you are a prospective juror and that it
2 is improper for you to have any discussion and you
3 are to report any such instances to a bailiff or to
4 me.

5 If counsel will approach before we begin our
6 panel drawing.

7 (Whereupon, the following bench conference
8 was held on the record, in the presence of the jury
9 panel, but out of the hearing of the jury panel.)

10 **THE COURT:** We're discussing panels. We're
11 going to have the clerk randomly draw panels of
12 eight and set them at intervals of an hour and a
13 half.

14 **MR. SORENSON:** Is that going to be the same
15 order that we pick the jury, also?

16 **THE COURT:** Well, we haven't discussed that
17 yet. I know there are two schools of thought, so I
18 don't know about that one yet. We need to just talk
19 about that as to whether it would ultimately be the
20 same order of drawing. Anything else regarding this
21 orientation?

22 **MR. PASCOE:** No, sir.

23 **MR. WALTERS:** We'll begin the process of
24 bringing the panels in and we'll alternate on who
25 goes first.

1 **THE COURT:** As far as questioning?

2 **MR. WALTERS:** Yes.

3 **MR. PASCOE:** I'll leave that up to the Court.

4 **THE COURT:** Generally, if he goes first the
5 first time and you go first the second time. We'll
6 have some time to talk about all of that.

7 **MR. PASCOE:** We're going to start doing the
8 panels today?

9 **THE COURT:** Yes. - We'll do the first one today
10 and then start again at nine o'clock tomorrow
11 morning.

12 **MR. PASCOE:** Yes, sir.

13 **THE COURT:** All right.

14 (The bench conference was concluded.)

15 **THE COURT:** I would like to have the clerk
16 begin drawing the panels. We'll draw them randomly,
17 panels of eight. And as your names are called, if
18 you would come and sit in the jury box here.

19 (Whereupon, a bench conference was held off
20 the record, in the presence of the jury panel, but
21 out of the hearing of the jury panel.)

22 **THE COURT:** Ladies and gentlemen, we're going
23 to give the clerks a chance to prepare for the
24 panel. So let's just stand and be at ease for a
25 moment or two.