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**NO. 20-12**

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

**RECEIVED****Dec 31 2024****MARION BOWMAN****S.C. SUPREME COURT***Petitioner-Appellant,*

v.

**BRYAN P. STIRLING, Commissioner of the South Carolina Department of Corrections;  
MICHAEL STEPHAN, Warden of the Broad River Correctional Institution**

*Respondent-Appellees.*

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**ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

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| REPLY TO RESPONDENTS’ RESPONSE IN OPPOSITION TO PETITIONER’S RULE 59 (e) MOTION TO ALTER OR AMEND (June 30, 2020) ..... | JA4246 |
| ORDER DENYING PETITIONER’S MOTION TO ALTER OR AMEND JUDGMENT (August 7, 2020) .....                                     | JA4252 |

## Jury Charge

1       you will continue your deliberations until you  
2       have reached your verdict, at which time you  
3       will knock at the door and advise the bailiff  
4       and then we will bring you out to receive your  
5       verdict. During the course of your deliberation  
6       should you have any questions that you would  
7       like for us to try to answer, you have to write  
8       those questions down first and send them out to  
9       us in written form for us to take them up and  
10      discuss them here before we can bring you back  
11      out to deal with those questions in your  
12      presence, we would take that down and sign them  
13      as the madam foreperson.

14               Now, all 12 of you must be present for  
15      you to deliberate. If for whatever reason you  
16      need to take a break, take -- stop your  
17      deliberations, take your break, and then  
18      reconvene your deliberations when all 12 of you  
19      are together again. All 12 of you must be  
20      together for you to deliberate.

21               Now, I want to conclude with this last  
22      reminder. The word "verdict" comes from the  
23      Latin words meaning to speak the truth and that  
24      now is your task. Please step to your jury  
25      room. Do not discuss this matter and do not

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1 allow anyone to discuss it with you.

2 (Whereupon, the jury retires to the jury room at  
3 3:33 p.m.)

4 THE COURT: All right. Ms. McDougall,  
5 Ms. Query, Ms. Kiner, Ms. Torrance, I'm going to  
6 for the moment ask you to step to another space  
7 and then we most probably will be sending you on  
8 to the motel. I need you to remain with us  
9 throughout the deliberations if you would be so  
10 kind. If you will just stay, we've got another  
11 room for you back there.

12 Are there any exceptions or additions  
13 from the State?

14 MR. BAILEY: None from the State, Your  
15 Honor.

16 THE COURT: From the defense?

17 MS. HARDEE-THOMAS: Nothing in the defense.

18 MR. CUMMINGS: Nothing from the defense,  
19 Judge.

20 THE COURT: Counsel, I will ask you to do  
21 this for me, please. If all of you will go  
22 through the evidence item by item. It would be  
23 my intention, unless I hear otherwise from you,  
24 to go ahead and send the alternates to the motel  
25 so they can relax there, but I did want you all

Jury Charge

1 to review again the verdict form as well as the  
2 exhibits and then we will be at ease until we  
3 hear from our jury.

4 (Pause in proceedings.)

5 MR. BAILEY: Okay. The State agrees that  
6 everything that should be going into evidence is  
7 in this box or stacked up against the lectern.

8 MR. CUMMINGS: As we were standing here we  
9 watched everything be put in there, going down  
10 through what madam court reporter has and what  
11 has been excluded by agreement and by rules of  
12 evidence I agree that everything else is  
13 remaining in this one box, all those charts goes  
14 back to the jury.

15 (Whereupon, the jury retires to the jury room  
16 to commence deliberation at 4:00 p.m.)

17 (Marked for purposes of the record was Court's  
18 Exhibit 34, *Summerville Journal Scene* article.)

19 THE COURT: All right, yes, ma'am. Yes,  
20 sir.

21 MR. CUMMINGS: May it please the Court,  
22 Judge, as part of the our investigation in the  
23 case something has come to light most recently  
24 through great reluctance of his family that we  
25 learned that there had been some investigations

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1 of the family children in this case by DSS.  
2 Some out of Orangeburg was transferred to  
3 Dorchester. We have served a subpoena of  
4 Ms. Marilyn LeMatty for the attorney of the DSS  
5 here in attorney {sic}. We believe, Your Honor,  
6 if and when this jury were to ever vote, find my  
7 client guilty of murder we may find something in  
8 the penal --

9 THE COURT: Mr. Bowman is not here.

10 MR. CUMMINGS: I don't think he needs to be  
11 here for paperwork. Again, I would put that on  
12 the record, Judge, I'm doing that without him.  
13 All we want is the records of the Department of  
14 Social Services at this time so we can have our  
15 mitigation team, if necessary, Judge, be  
16 prepared to testify about certain things that  
17 were in their file.

18 THE COURT: I understand.

19 Any objection?

20 MR. BAILEY: Your Honor, no objection from  
21 the State. Although I have not subpoenaed her  
22 or anything I would ask the Court orders it  
23 produced to the defense, the State be given a  
24 copy also. If they get it.

25 MR. CUMMINGS: If we get it.

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1 THE COURT: Yeah, if you get anything. I  
2 would order the Department of Social Services to  
3 provide you with any and all records they have  
4 potentially concerning Mr. Marion Bowman, Jr.

5 MR. CUMMINGS: In order to have this so we  
6 have a constant change going on now, we would  
7 ask again, and I don't ever mean to tie up this  
8 poor lawyer, but either to have them provide the  
9 keeper of the records along with the documents  
10 or we will try to go to Mr. Bailey and get some  
11 stipulation for timing factor to allow the  
12 records to come in through the proper  
13 evidentiary channel.

14 THE COURT: Yes. Very well. So ordered.

15 MS. LeMATTY: Thank you, Your Honor. The  
16 subpoenas does request records on some other  
17 individuals, a Dorothy Bowman, Marion Bowman,  
18 Sr., Kendra Bowman, Yolanda Bowman, they were  
19 covered by this Court's order, correct?

20 THE COURT: Yes, all of them. I thought it  
21 was just Mr. Marion Bowman, Jr., but for all of  
22 them, yes, correct, so ordered.

23 MR. CUMMINGS: Thank you, Your Honor.

24 (Marked for purposes of the record was Court's  
25 Exhibit 35, jury note.)

JA 904

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1 THE COURT: We have a communication to the  
2 following: Number one, the jury needs a  
3 transcript, please; number two, the jury also  
4 requests an easel; number three, also needs a  
5 hand drawing of a -- the road map. What I  
6 propose to tell them is that if they need any of  
7 the testimony played back for them we certainly  
8 can accomplish that; however, we do not have the  
9 means to give them a transcript of the trial.  
10 However, again, if they need any particular  
11 testimony played back we can certainly do that.

12 With regards to easel, that's easy,  
13 they can have an easel. With regards to the  
14 hand drawing of the road map I'm going to tell  
15 them that they have all the items placed into  
16 evidence and I would be unable to give them  
17 anything beyond what has been admitted into  
18 evidence.

19 Yes, sir.

20 MR. BAILEY: Your Honor, if I might be  
21 heard with regard to the third request.

22 THE COURT: Yes, sir.

23 MR. BAILEY: Which as I construe it, I  
24 could be wrong, since they have everything else  
25 I believe they're referring to State's 71 for

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1 identification which is Eddie Porter's not to  
2 scale drawing of the crime scene. And, Your  
3 Honor, my recollection is that particular item  
4 was probably referred to more than any other  
5 piece of paper or document there. According to  
6 my notes obviously Mr. Porter testified to it,  
7 he drafted it, Agent Helms testified about what  
8 he had found there, Mr. Judy testified on it,  
9 Taiwan Gadson referred to it about what he had  
10 done at that location, as well as Travis Felder.

11 My notes also reflect that the defense  
12 referred to this on at least five occasions. I  
13 think they asked David Collins about the  
14 location of the shell casings, they asked  
15 Sergeant Van Doran, Allyson Greer, Earl Asbell,  
16 and I believe Perry Chinnners about it with  
17 reference to where they had parked.

18 Almost every item on there, and  
19 certainly all of the items listed at the top,  
20 the bullets, the shell casings, the various  
21 items with blood, were photographed. The wooded  
22 area is photographed from both sides and of  
23 course the burned automobile was photographed.  
24 And, Your Honor, I would just call the Court's  
25 attention to Rule 1001 of the Rules of Evidence.

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1 THE COURT: All right.

2 MR. BAILEY: Which if I may quote that, the  
3 contents of the voluminous writings, recordings,  
4 or photographs which cannot conveniently be  
5 examined in court may be presented in the form  
6 of a chart, et cetera.

7 Your Honor, what this is, is a chart  
8 which compiles the locations of photographs.  
9 And the photographs, of course, accurately  
10 depict what is represented, but due to the scale  
11 of the photographs they can't show the  
12 relationship between one photograph and the  
13 other.

14 And that goes on to state may be  
15 presented in the form of a chart, summary, or  
16 calculation provided the underlying data are  
17 admissible into evidence. And, Your Honor, of  
18 course, the underlying data, the photographs has  
19 been admitted into evidence. And I would ask,  
20 Your Honor, in view of the fact that this is  
21 something that the jury wants to see and the  
22 only objection I heard the defense raise was  
23 that it was not to scale. Of course it didn't  
24 purport to be to scale, that in view of that in  
25 the rule that Your Honor reconsider allow them

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1 to view it.

2 MR. CUMMINGS: Judge, I think the golden  
3 rule for me is -- and this sounds like a  
4 complicated case, as you know Rule 1001 where  
5 they come up with a chart or agree on a chart or  
6 you found a chart would be helpful to the jury  
7 during the trial, a synopsis of the evidence. I  
8 know, Your Honor, the admission of the evidence  
9 is in your sound discretion, but this jury now  
10 we've agreed on the evidence, we've closed the  
11 case, both State and defense in chief, Your  
12 Honor, I'm not trying to be a hard person on  
13 this issue, but I think to just go back later on  
14 and try to conveniently acquiesce to the jury  
15 about things after we've had evidentiary issues  
16 and rulings by you, ma'am, would possibly cause,  
17 A, confusion; and B, an evidentiary issue for  
18 another court at another time, Your Honor, I  
19 would ask that it not be sent back.

20 THE COURT: All right. Of course, this is  
21 one of those circumstances that unfortunately  
22 they want something and it very well may be that  
23 chart. However, I've already indicated that my  
24 concerns about the chart is, number one, I think  
25 it's cumulative of testimony that's already

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1 given. I'm concerned about some of the  
2 notations on the top of it as being in the form  
3 of testimony and, therefore, that certainly  
4 makes it cumulative, it's not to scale. And I  
5 do think it's appropriate for demonstrative  
6 purposes, I don't think it's appropriate for an  
7 exhibit. And as we told them initially, that  
8 they've got to listen very carefully and rely  
9 upon their collective memories. Note your  
10 exception for the record.

11 We also have another note that says  
12 the jury requests a witness list as well.  
13 That's interesting because they have seen the  
14 witness list, but unless the two of you agree  
15 I'm not inclined to give them anything other  
16 than what has been admitted into evidence in  
17 this case.

18 MR. BAILEY: Your Honor, of course they  
19 have a witness list, but we didn't call every  
20 witness on that list, we added people, and I do  
21 not really have a witness list.

22 THE COURT: That urges them to speculate on  
23 why other people were not called.

24 MR. BAILEY: Yes, ma'am.

25 THE COURT: So I'm not inclined to give

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1       them -- A, I wouldn't give them the witness list  
2       that they saw when they were being interviewed  
3       in individual voir dire, so I would not give  
4       them that one. That means we would have to  
5       generate a document which does not exist.  
6       Unless you all for some reason would agree to  
7       that I certainly would not order that.

8               MR. BAILEY: Your Honor, I would agree with  
9       that.

10              Your Honor, certainly not arguing with  
11       the Court on the other issue in regard to the  
12       drawing, if I might test your patience a little  
13       bit longer.

14              THE COURT: Sure.

15              MR. BAILEY: Inasmuch as Your Honor has  
16       ruled that this could be used for demonstrative  
17       purposes only and the jury has viewed this in  
18       the presence of at least ten different witnesses  
19       as well as during closing arguments, and they're  
20       going to be back out here anyway to get the  
21       instructions from the judge, would it be  
22       appropriate to have that displayed here but with  
23       the clear instruction this is demonstrative and  
24       not evidence? Apparently there's something that  
25       has triggered somebody's concern about it and to

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1 show it to them ten times and 11 times and put  
2 up the argument, then saying you can't see it  
3 anymore really doesn't --

4 THE COURT: Doesn't seem quite right?

5 MR. BAILEY: Yeah.

6 THE COURT: I guess I hear what you're  
7 saying, but that -- it's not a part of -- it's  
8 not an exhibit in the case and I don't think it  
9 would be appropriate.

10 MR. BAILEY: Thank you, ma'am.

11 THE COURT: Thank you. All right. Okay.  
12 Yes, sir.

13 MR. CUMMINGS: I wanted to make sure,  
14 Judge, because the defense has rested that they  
15 not get any witness list because they'll count  
16 the number of the people from the State and not  
17 have anything that might have been left over and  
18 I would just say thank you.

19 MR. BAILEY: If I can go hide this before  
20 they come out, Judge.

21 THE COURT: Hide it.

22 MR. BAILEY: Yes, ma'am.

23 THE COURT: We're now hiding the board.  
24 Thank you. Great.

25 MR. BAILEY: This back here too just in

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1 case, because there's other stuff they may want  
2 to see.

3 THE COURT: Sure. Let's have our jury.  
4 (Marked for purposes of the record was  
5 Court's Exhibit jury note.)  
6 (Whereupon, the jury returns to the courtroom at  
7 4:35 p.m.)

8 THE COURT: Ladies and gentlemen, I have  
9 your notes and would address them for you now.  
10 I'm so used to seeing all the chairs filled, it  
11 threw me for just a little bit. All right.  
12 With regard -- and I will just take them from  
13 the top as I have received them. With regards  
14 to transcripts, it says the jury needs a  
15 transcript, please. We do not have transcripts,  
16 our technology is such that we cannot produce an  
17 actual transcript that quickly. However, if you  
18 need to have testimony, all of it replayed for  
19 you, some of the witnesses replayed for you, let  
20 us know and we are prepared and can replay the  
21 testimony for you of whatever witness or  
22 witnesses you may need. So I would share that  
23 with you first.

24 We can get you an easel. You may  
25 already have your easel. And this would really

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1 go to -- it says also needs a hand drawing of  
2 the road map and the witness list. You have all  
3 of the exhibits in your jury room.

4 A JUROR: No, ma'am.

5 THE COURT: Trust me, you have all of the  
6 exhibits in your jury room. You have all of the  
7 items which were introduced in your jury room.  
8 And there are sometimes matters that are called  
9 demonstrative evidence and they may be used  
10 during a witness's testimony to help illustrate  
11 certain things, but you have all of the exhibits  
12 with you in your jury room that you will have  
13 for your deliberations. There is no witness  
14 list, and, again, you have all the exhibits  
15 which you need for your deliberations.

16 If you don't want to have -- this is  
17 not audience participation time, I need you if  
18 you'll be so kind as to just write that down for  
19 me, and we certainly will attempt to answer your  
20 questions, I think that would be more  
21 appropriate if you will do that for me. But  
22 again, if you need any part of the testimony  
23 played back for you we would be happy to do  
24 that. If you will please retire to your jury  
25 room and continue your deliberations.

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1 (Whereupon, the jury retires to the jury room at  
2 4:39 p.m.)

3 THE COURT: Thank you. All right. We will  
4 continue in recess until we hear from the jury  
5 which we may hear quickly, so don't go anywhere.  
6 Y'all sort of kind of stay close by.  
7 (5:14 p.m.)

8 THE COURT: All right. As I understand it  
9 there was, Ms. Keil went back and checked her  
10 listing of the matters that were in evidence and  
11 appeared that 71 was in evidence. Apparently  
12 there was some indication on someone's documents  
13 that it wasn't in evidence and then I understand  
14 that Ms. Keil went back and checked the  
15 recording and I asked her to do that, to check  
16 the actual recording, and the recording was  
17 checked and as I understand it that Exhibit 71  
18 has been admitted into evidence and was admitted  
19 into the evidence and all counsel agree with  
20 that. Do I understand that correctly?

21 MR. BAILEY: Yes, ma'am.

22 MR. CUMMINGS: After hearing the tape and  
23 everything else, yes, ma'am.

24 THE COURT: All right. What I would  
25 propose to do, and I will just get your feeling

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1 about it, is call, ask the jury to come back out  
2 and tell her -- after they shook their heads,  
3 quite frankly, we got concerned and went back  
4 and double checked and listened to the tape and  
5 praise them for doing exactly what we asked them  
6 to do which was to listen very closely to the  
7 evidence and they were exactly correct. And  
8 then let them have that.

9 What says the State about that?

10 MR. BAILEY: That's fine, Your Honor. I  
11 think it's the best way to handle it.

12 MR. CUMMINGS: Absolutely, Judge.

13 THE COURT: In other words, I'll praise  
14 them. And let me have the jury, then.

15 (Whereupon, the jury returns to the courtroom at  
16 5:16 p.m.)

17 THE COURT: Ladies and gentlemen, you will  
18 recall when we started this trial several days  
19 ago in my instruction I talked numerous times  
20 about the need for you to listen very carefully,  
21 y'all remember that? Everybody remembers that?  
22 Well, I am happy to report to you that you have  
23 done exactly that. And, quite frankly, when we  
24 had all this going on when we were talking about  
25 the exhibits, we don't have the exhibits, quite

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1 frankly, it troubled us. So we have gone back  
2 and we have double checked our records and I am  
3 happy to report to you that you have done  
4 marvelously what we asked you to do which was  
5 pay attention and listen very carefully and we  
6 do have another exhibit to send in to you, so  
7 congratulations on listening very, very  
8 carefully and for doing exactly what I asked you  
9 to do.

10 So if you will do this for me, if you  
11 will just hold your deliberations, there is  
12 another exhibit, we have checked and hopefully  
13 this will be the last of it. Quite frankly, I  
14 don't know that I've ever seen a jury do like  
15 this and this is certainly my first time that  
16 this has occurred. However, I'm grateful and  
17 let me praise you for doing exactly what we  
18 asked you to do. So when you return to your  
19 jury room in just a moment, if you would just  
20 stop for a few seconds there is another exhibit  
21 coming to you. Thank you so much. And you may,  
22 of course, continue your deliberations.  
23 (Whereupon, the jury retires to the jury room at  
24 5:18 p.m.)

25 THE COURT: Any objections to my comments

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1 to the jury?

2 MR. BAILEY: Nothing from the State, Your  
3 Honor.

4 THE COURT: From the defense?

5 MR. CUMMINGS: No, ma'am. Not as you  
6 corrected it.

7 THE COURT: Thank you very much. We will  
8 send that back immediately and we will continue  
9 in recess.

10 (6:28 p.m.)

11 THE COURT: All right. Those of you who  
12 are out in our audience let me remind you that  
13 this obviously is an emotional time. The  
14 returning of any verdict is an emotional time,  
15 but particularly in a case such as this. So,  
16 ladies and gentlemen, let me remind and admonish  
17 you that there must not be any outburst of any  
18 kind. If you are concerned about your ability  
19 irrespective what the verdict may be, if you are  
20 concerned about your ability to maintain your  
21 composure you may wish to step out and have a  
22 friend or family member tell you what the  
23 verdict is because we must, must maintain  
24 decorum within the courtroom.

25 If anyone wishes to step out at this

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1 time that's fine, you can certainly step back in  
2 as soon as the verdict is received if that would  
3 be of help to you, otherwise I will just know  
4 that you all certainly understand that you must  
5 maintain your composure in the courtroom. Thank  
6 you so much for that.

7 All right. Anything before we bring  
8 the jury out from the State?

9 MR. BAILEY: Nothing from the State, Your  
10 Honor.

11 THE COURT: From the defense?

12 MR. CUMMINGS: Nothing else from the  
13 defendant, judge, right now.

14 THE COURT: Very well. Let us have our  
15 jury.

16 (Whereupon, the jury returns to open court to  
17 report its verdict at 6:29 p.m.)

18 THE COURT: All right. Ms. Luisi, the  
19 presiding juror, forelady, foreperson of the  
20 jury, has the jury returned its verdict?

21 THE PRESIDING JUROR: Yes, ma'am.

22 THE COURT: All right. If you'll please  
23 pass it to Ms. Graham.

24 THE CLERK: Thank you.

25 THE COURT: All right. I find that the

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1 verdict is in due form. If you will publish the  
2 verdict, Ms. Graham.

3 THE CLERK: Indictment number  
4 2001-GS-18-348 and indictment number GS-18-349,  
5 the State of South Carolina vs. Marion Bowman,  
6 Jr. Verdict as to murder, guilty. And to the  
7 charge of arson third, verdict guilty. Signed  
8 by Lianne Luisi. If this is your verdict, will  
9 you all please raise your right hand?

10 THE COURT: Allow me to observe that all  
11 right hands are raised. If you'll please poll  
12 the jury.

13 THE CLERK: As I call your name -- you can  
14 put your hands down. As I call your name,  
15 please stand.

16 BY THE CLERK:

17 Q. George Young, Jr. Is this your verdict?

18 A. Yes, ma'am.

19 Q. Is it still your verdict?

20 A. Yes, ma'am.

21 Q. Leo Sullivan, Jr. Is this your verdict?

22 A. Yes, ma'am.

23 Q. Is it still your verdict?

24 A. Yes, ma'am.

25 Q. Gene Davis. Is this your verdict?

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1 A. Yes, ma'am.

2 Q. And is it still your verdict?

3 A. Yes, ma'am.

4 Q. Lorraine Pringle. Is this your verdict?

5 A. Yes, ma'am.

6 Q. And is still your verdict?

7 A. Yes, ma'am.

8 Q. Richard Perez. Is this your verdict?

9 A. Yes, ma'am.

10 Q. And is it still your verdict?

11 A. Yes, ma'am. It is.

12 Q. Andre Porcher. Is this your verdict?

13 A. Yes, ma'am.

14 Q. And is it still your verdict?

15 A. Yes, ma'am.

16 Q. Eric Lowery. Is this your verdict?

17 A. Yes, ma'am.

18 Q. And is it still your verdict?

19 A. Yes, ma'am.

20 Q. Kathleen McPartlin. Is this your verdict?

21 A. Yes, ma'am.

22 Q. And is it still your verdict?

23 A. Yes, ma'am.

24 Q. Tamra Tyndell. Is this your verdict?

25 A. Yes, ma'am.

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1 Q. And is it still your verdict?

2 A. Yes, ma'am.

3 Q. Margaret Washington. Is this your verdict?

4 A. Yes, ma'am.

5 Q. And is it still your verdict?

6 A. Yes, ma'am.

7 Q. Raymond Dejong. Is this your verdict?

8 A. Yes, ma'am.

9 Q. And is it still your verdict?

10 A. Yes, ma'am.

11 Q. Lianne Luisi. Is this your verdict?

12 A. Yes, ma'am.

13 Q. And is it still your verdict?

14 A. Yes, ma'am.

15 THE COURT: All right. All the jurors have  
16 been polled. And thank you for that, Madam  
17 Clerk.

18 Ladies and gentlemen, you have been  
19 working hard and I certainly appreciate that, we  
20 all do. And you have now reached the end of the  
21 first phase of this case. As you know there is  
22 still another phase of the case to go.

23 I must discuss some matters with the  
24 attorneys for a few moments outside your  
25 presence at this point in time, so I will send

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1 you back briefly to your jury room for just a  
2 few moments. I will get you back out here in  
3 just a few minutes and advise you as to how we  
4 are going to proceed in this regard. If you  
5 will, please, step to your jury room for just a  
6 few minutes.

7 (Whereupon, the jury retires to the jury room at  
8 6:32 p.m.)

9 THE COURT: Mr. Cummings, Ms.  
10 Hardee-Thomas, I'm glad to hear any motions.

11 MR. CUMMINGS: May it please the Court,  
12 Judge. As Your Honor well knows by law the only  
13 motions we can make posttrial now are a motion  
14 for a new trial. Your Honor, based on the  
15 evidence that we respectfully would submit to  
16 the Court that Mr. Bowman could not and should  
17 not have been found guilty by a reasonable jury  
18 of his peers as to the crime of murder, that the  
19 State had failed to prove the elements of  
20 murder, ma'am, beyond a reasonable doubt and  
21 that, Your Honor, in seeking a new trial based  
22 on the fact that the jury could not have reached  
23 that verdict, respectfully, as to murder.

24 As to arson in the third degree,  
25 ma'am, again we are asking for a new trial be

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1 granted on that, that any reasonable jury could  
2 not have found Mr. Bowman guilty beyond a  
3 reasonable doubt as to the issue of arson third  
4 degree, Your Honor.

5 THE COURT: Thank you very much. The same  
6 point, of course, when there was a motion for  
7 directed verdict, Mr. Cummings, I mentioned then  
8 and I mention to you now that I find then as I  
9 find now that there was certainly ample evidence  
10 to go to this jury both as to the charge of  
11 murder and as to the charge of arson third  
12 degree and would respectfully deny your motions.

13 MR. CUMMINGS: Thank you, Judge.

14 THE COURT: Now, let's move on to the next  
15 stage because we need to do that. I know that  
16 it's -- everyone's had a very long and difficult  
17 day, but we do need to talk about the fact that  
18 the verdict was received at approximately 6:30,  
19 that would make the 24-hour period run at 6:30  
20 tomorrow evening. I certainly think that it is  
21 unreasonable to begin at 6:30 tomorrow evening  
22 and certainly would propose that we begin at  
23 nine o'clock on Wednesday morning. Would there  
24 be any objection to that?

25 MR. BAILEY: None from the State, Your

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1 Honor.

2 MR. CUMMINGS: Judge, I was going to ask  
3 you politely, just trying to call people after  
4 the five o'clock hour and dealing with  
5 professionals and other people, ma'am, it would  
6 almost be impossible and we would ask you to  
7 please, based on what you just stated a moment  
8 ago, ma'am, it would be reasonable and prudent  
9 and we would ask that particularly in light of  
10 working on Mr. Bowman's half, ma'am.

11 THE COURT: Very well. We will begin the  
12 next phase of the trial at nine o'clock on  
13 Wednesday morning.

14 Now, I must inquire of Mr. Bowman  
15 whether he wishes to waive the 24-hour period in  
16 whole or in part. He wishes to invoke the  
17 24-hour period, right?

18 MR. CUMMINGS: Absolutely, please.

19 THE COURT: Very well.

20 MR. CUMMINGS: Thank you, Judge. I was  
21 just sitting here for a moment looking startled  
22 again to Mr. Bowman. If he didn't understand  
23 that question I would stand up and say, please,  
24 do not waive any right to that.

25 THE COURT: All right. Very well. It

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1 certainly is his right, happy to do that in  
2 accordance with the statute.

3 Very well. Now, we have -- as you  
4 know we have some matters to attend to as to the  
5 establishment of the aggravating circumstances  
6 and I would just inquire as to that. Because  
7 the defense indicated before the beginning of  
8 the trial that the defense had received written  
9 notice in excess of 30 days of the State's  
10 aggravating circumstances. Do I remember that  
11 correctly?

12 MR. CUMMINGS: That is absolutely correct,  
13 ma'am.

14 THE COURT: All right. And we will need to  
15 finalize those statutory aggravating  
16 circumstances. And, Mr. Bailey, tell me what  
17 they would be.

18 MR. BAILEY: Your Honor, indulge me a  
19 second, please.

20 THE COURT: All right.  
21 (Pause in proceedings.)

22 MR. BAILEY: Your Honor, the notice of  
23 evidence in aggravation is dated July 13th, 2001  
24 and was served on the defendant shortly after  
25 that. The four aggravating circumstances

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1       alleged were murder in the commission of  
2       kidnapping, murder in the commission of criminal  
3       sexual conduct, the murder was committed during  
4       the commission of robbery while armed with a  
5       deadly weapon, the murder was committed while in  
6       the commission of larceny while use with a  
7       deadly weapon.

8               MR. CUMMINGS: Just for the record right  
9       now, and, again, it may be improper and may not  
10      be timely right now, but, Your Honor, we would  
11      move respectfully that even though despite the  
12      jury's verdict and we say so be it, as to other  
13      than our posttrial motions that, Your Honor, at  
14      this time to move that this would not be a  
15      capital case and that the defendant should be  
16      sentenced for the crime of murder, respectfully,  
17      and we would make that motion, Your Honor, at  
18      this time for your consideration and leave  
19      sentencing to Her Honor, please. That we  
20      believe that the State could not even at this  
21      stage, Your Honor, before we anticipate taking  
22      any testimony there, that none of those four  
23      things as stated in aggravation could or should  
24      be used against Mr. Bowman, nor that it could  
25      not be proven against Mr. Bowman as to these

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1 four alleged statutory aggravating factors.

2 THE COURT: Very well. I would prefer to  
3 hear that argument I think Wednesday morning.

4 MR. CUMMINGS: Yes, ma'am.

5 THE COURT: So I appreciate you stating it  
6 on the record, but I would rather handle that  
7 maybe Wednesday morning at 8:30 before the jury  
8 comes in. I think we can probably handle the  
9 motion at that time.

10 MR. CUMMINGS: Yes, ma'am.

11 THE COURT: Has the defense revealed or  
12 disclosed its mitigating circumstances which it  
13 intends to proceed under at this time?

14 MR. CUMMINGS: No, we have not yet, Your  
15 Honor. We will do that on Wednesday morning  
16 when we come in also, Judge. And, of course,  
17 being the last factor, that any mitigating  
18 factor will be considered by the jury clearly,  
19 Judge. And, again, based on what's happened in  
20 the facts of the evidence and in light of other  
21 issues that have come up we will give you a list  
22 that we would propose to present in mitigation  
23 at that point, ma'am.

24 THE COURT: Very well. All right.  
25 Anything further before I bring the jury out to

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1 excuse them for the evening?

2 MR. BAILEY: Your Honor, nothing in regard  
3 to the jury. I do have one other matter I would  
4 like to raise very briefly either now or after  
5 the jury comes out.

6 THE COURT: Why don't we dismiss them and  
7 then whatever work we need to do, we will do  
8 that.

9 MR. BAILEY: All right. Thank you.

10 THE COURT: All right. Bring us the jury  
11 back out.

12 (Whereupon, the jury returns to the courtroom at  
13 6:39 p.m.)

14 THE COURT: Ladies and gentlemen, it was  
15 necessary that I go over some matters of law in  
16 this regard and in a moment I'm going to let you  
17 go for the balance of the evening and you have  
18 had a long day. And it's been a long and  
19 grueling day for all of you I am sure  
20 emotionally as well as physically, as it has  
21 been for all of us.

22 Ladies and gentlemen, I want to thank  
23 you, obviously, for your -- I want to comment on  
24 the quality of service that you have given and  
25 the attention that you have given and, of

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1 course, the time which you have taken to come to  
2 this stage.

3 Now, ladies and gentlemen, our laws  
4 provide that when the State seeks the death  
5 penalty, upon conviction or adjudication of  
6 guilt of a defendant of murder the Court shall  
7 conduct a separate sentencing proceeding. We  
8 have now met the first stage. The State is  
9 seeking the death penalty. The defendant in  
10 this case has been found guilty of the crime of  
11 murder.

12 The law provides and requires that the  
13 proceedings must be conducted by the trial judge  
14 before the jury as soon as practicable after the  
15 lapse of 24 hours. There has to be a 24-hour  
16 waiting period before we begin the next phase of  
17 the trial, so we will not be able to begin the  
18 next phase of the trial technically until 6:30  
19 tomorrow evening. We don't intend to start any  
20 phase of the trial at 6:30 in the evening, that  
21 wouldn't be fair to you, nor to the process.

22 So we will begin the next phase of  
23 this trial on Wednesday morning at nine o'clock.  
24 Wednesday morning at 9:00. And your detail,  
25 your custodians, if you will, I understand have

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1 made plans for you tomorrow. I am certain that  
2 you would like to get your mind off of what you  
3 have been listening to so intently for the last  
4 few days.

5 I'm urging you to, please, take  
6 advantage of tomorrow's day to do that, to free  
7 your mind of the thoughts and the worries and  
8 the constraints and the responsibilities which  
9 have been imposed upon you during these past few  
10 days, and enjoy as best as you can the time  
11 which you have free of your courtroom activity.

12 Please do not discuss any issues that  
13 may be involved in this case. Do not try to  
14 anticipate how you may respond to the second  
15 phase of the proceeding. You are not to discuss  
16 these matters for the same reason that I did not  
17 allow you to discuss the other matter until  
18 those matters were placed in your hands for your  
19 consideration. I am certain that you have been  
20 discussing this case long enough today and you  
21 probably don't want to talk about it tomorrow.  
22 However, I instruct you not to talk about this  
23 case. To the extent that you can I truly want  
24 you to enjoy a day away from our courtroom.

25 Now, I know that it will be a day away

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1 from your homes and away from your families. It  
2 may seem like a wasted day, but use this day to  
3 rest up, to clear your minds, to refresh your  
4 bodies, to recharge batteries as it were for the  
5 task, very important task that is still before  
6 us.

7 Now, ladies and gentlemen, I am going  
8 to excuse you for the evening, you can retire.  
9 Your custodians will take good care of you and I  
10 will see you on Wednesday morning at nine  
11 o'clock. Be mindful, ladies and gentlemen, not  
12 to discuss this matter or allow anyone to  
13 discuss it with you. All right. You are free  
14 to go.

15 (Whereupon, the jury is excused at 6:45 p.m.)

16 THE COURT: Yes, sir. Mr. Bailey, you had  
17 a further matter?

18 MR. BAILEY: Yes, ma'am. Your Honor, I'd  
19 mentioned this earlier in the process and that  
20 was the reciprocal Rule 5 discovery. As we go  
21 into the penalty phase that's generally the time  
22 in which there are experts of different types,  
23 and Mr. Cummings has provided a list that  
24 includes a psychiatrist, Dr. Morgan, Donald  
25 Morgan. And I had thought at one time that

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1 Harold Morgan may have also been on the list.

2 Is it Donald Morgan, Mr. Cummings?

3 MS. HARDEE-THOMAS: That is correct.

4 MR. CUMMINGS: Judge, there are no written  
5 reports from this expert at all. And, again, if  
6 I had had any written reports I would share  
7 them. As to Dr. West, there are no written  
8 reports, he's our psychologist. As to Mr.  
9 Youngman, no written reports. He's a social  
10 worker, licensed clinical social worker, does  
11 mitigation cases. We have Mr. Aiken who is a  
12 gentleman that's done prison, prison adaptation,  
13 there is no written reports, Judge.

14 MR. BAILEY: I had previously made a motion  
15 in the event there were no written reports that  
16 these experts bring their notes with them so  
17 that I could -- if they do tender an expert  
18 opinion I could under the Rule 702, 703, I  
19 forget what the rule number is, but I could  
20 ascertain the basis of that underlying opinion  
21 which I can't do with no report, no notes.

22 My concern at this point is that if  
23 they've got a bunch of scribbled notes that I  
24 have to decipher, I don't get that until these  
25 people actually testify, it's not going to give

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1 me time to reflect on it, to react to it  
2 properly and prepare cross-examination.

3 So I would ask the Court to consider  
4 requesting that the defense experts provide  
5 those notes at some point in time prior to the  
6 time they testify early enough to give me a  
7 chance to go over it and be prepared to meet  
8 whatever test -- I have -- right now, Your  
9 Honor, I have no idea what any of these people  
10 may say and it's going to put me in pretty much  
11 of a bind in being able to respond to it and I  
12 just express those concerns.

13 THE COURT: Yes, sir, Mr. Cummings.

14 MR. CUMMINGS: May it please the Court,  
15 Judge. We all know anything that is work  
16 product is not disclosable. If they use their  
17 notes to form their opinions I would advise my  
18 experts to bring whatever notes they may have to  
19 do this. There are probably going to be  
20 clinical interviews, probably some interviews  
21 that they've done with people and family, but as  
22 far as raising any issues of their expert  
23 opinions based on the factors, Your Honor, I  
24 don't see it. And if there is anything at all  
25 if Mr. Bailey wants as you order us to give over

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1 my objection, then I understand that you can do  
2 it over my objection, Your Honor.

3 THE COURT: I'm going to order that they  
4 bring their notes, whatever their notes are with  
5 them, and once they're here and testifying then  
6 you can see the notes.

7 MR. BAILEY: Thank you, Your Honor.

8 THE COURT: At that point. Very well. All  
9 right.

10 MR. CUMMINGS: Thank you, ma'am.

11 THE COURT: Anything further for this  
12 evening?

13 MR. CUMMINGS: No, Judge. Now that the  
14 jury has spoken as to that my client would be  
15 treated a lot differently as to mannerism in the  
16 courtroom and his appearance, as far as being  
17 brought in the courtroom there's a lot more law  
18 enforcement personnel around at the sentencing  
19 stage, and I would ask the Court in the highest  
20 respect and caution that it would look like to  
21 not create an overbearing presence, for lack of  
22 better words, as we start proceedings on  
23 Wednesday morning.

24 They've taken great strides in their  
25 professionalism and their kindness towards Ms.

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1 Thomas and our work staff to allow access to Mr.  
2 Bowman, they have been nothing but ladies and  
3 gentlemen to us, but I know when we start  
4 Wednesday morning the appearance will be  
5 changing around us. And I know Your Honor  
6 usually asks that the ladies and gentlemen of  
7 the jury be -- the ladies and gentlemen of the  
8 law enforcement be mindful of that.

9 And then tomorrow, Judge, that we have  
10 access to the jail again as long as we need it  
11 for as long as we need it and to make sure we  
12 continue with the access to our client like  
13 we've been doing in the back, Judge. I know  
14 that's just a housekeeping matter and I really  
15 appreciate the fact that --

16 THE COURT: Let me say to you that it would  
17 be my intention that you have all the contact  
18 that you need with your client throughout this  
19 trial. And it has not been impeded to this  
20 moment and it would be my intention that it not  
21 be impeded to this moment. I'm going to be  
22 around tomorrow.

23 MR. CUMMINGS: Yes, ma'am.

24 THE COURT: And if it becomes impeded you  
25 all just let me know, let Mr. Bailey know

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1       there's a problem and then you all contact me  
2       and I'm happy to be sure that it continues  
3       unimpeded, but I don't think that will be a  
4       problem and I will be mindful Wednesday morning.  
5       I would think that the security will be very  
6       close to what it is now, I would anticipate that  
7       it would be, but I'll certainly inquire. And if  
8       there's going to be a dramatic change, certainly  
9       let you know in advance so that we can address  
10      any concerns that you have in that regard.

11           MR. CUMMINGS: Yes, ma'am. I just think  
12      there was one more thing Mr. Bowman asked me  
13      tonight, Judge.

14           THE COURT: Yes.

15           MR. CUMMINGS: Before he's taken back over  
16      if I could just implore of these good ladies and  
17      gentlemen, again, to give us about five or ten  
18      minutes with his mother in the backroom just  
19      tonight and then I'll make sure he gets back  
20      over across the street with Major or Captain  
21      Pastor shortly, ma'am.

22           THE COURT: Let me talk to security and see  
23      if that can be accommodated, I will certainly  
24      check with them. Was there somebody in the back  
25      to screen the family? I don't even know at this

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1 late hour if they were back there.

2 MR. TAYLOR: Yes, ma'am. They were  
3 screened.

4 THE COURT: All right. Let me talk to  
5 security about that.

6 MR. CUMMINGS: Yes, ma'am.

7 THE COURT: And, counsel, let me just see  
8 you for just a moment.

9 (Whereupon, a bench conference was held off the  
10 record.)

11 MR. CUMMINGS: For the record, may it  
12 please the Court.

13 THE COURT: Yes.

14 MR. CUMMINGS: Both Ms. Thomas and I have  
15 spoken to Mr. Bowman, we have both presented  
16 different views as to this issue. We've turned  
17 to Mr. Bowman and he has stated that he would  
18 have no objection under the close supervision  
19 and the strict instructions from Her Honor about  
20 the jurors not speaking about the case, that he  
21 would have no objection to the jurors having  
22 contact with their immediate family. Is that  
23 correct, sir?

24 MR. BOWMAN: Yes, ma'am.

25 THE COURT: Very well. Let's bring them

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1 back out. Let me caution them. Very well.

2 (Whereupon, the jury returns to the courtroom at  
3 6:54 p.m.)

4 THE COURT: Ladies and gentlemen, there has  
5 been a request really by your detail to be  
6 mindful of the fact that you all might like to  
7 see your family tomorrow and that will be  
8 allowed. And your detail has discussed a time  
9 and they'll give you all of those details. Of  
10 course you understand that that visitation, that  
11 contact has to be supervised to be sure that  
12 this matter is not discussed because of the  
13 very, very serious nature of it that you are  
14 well aware of at this point. They have the  
15 details of that, I just wanted to bring you back  
16 to tell you that you will have some contact with  
17 your families, have an opportunity to spend some  
18 time with them tomorrow.

19 I just wanted to be mindful that it is  
20 imperative that you not discuss this case or  
21 allow them to discuss it with you. And it would  
22 be normal human reaction to want to talk about  
23 it. And you must be vigilant and they will be  
24 there certainly to assist you. You must be  
25 vigilant not to talk about this matter or allow

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1 anyone to talk about it with you. So I wanted  
2 to admonish you and remind you that you must not  
3 talk about it when you have fun and visit with  
4 your families tomorrow.

5 And, again, have a very pleasant time  
6 tomorrow as much as you possibly can and I look  
7 forward to seeing you on Wednesday morning. I  
8 think I'll say 9:30. I know we said nine  
9 o'clock earlier, but let's say 9:30 Wednesday  
10 morning, we'll get right up then. Thank you so  
11 much, everyone.

12 (Whereupon, the jury is excused at 6:56 p.m.)

13 THE COURT: Any objection to my comments to  
14 the jury?

15 MR. BAILEY: None from the State, Your  
16 Honor.

17 MS. HARDEE-THOMAS: None from the defense.

18 THE COURT: Very well then. Anything  
19 before we break?

20 MR. BAILEY: Nothing from the State, Your  
21 Honor.

22 MR. CUMMINGS: Nothing further tonight  
23 then, Judge, as I believe by the rules of  
24 evidence until we start the next proceeding.

25 THE COURT: Very well. We will be in

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1 recess until -- do you believe nine o'clock  
2 would be early enough for us to hear the motions  
3 that we may need to hear? Should we say 8:30?  
4 Why don't we say 8:30, then I know we will have  
5 concluded our work before 9:30. So why don't we  
6 say 8:30 Wednesday morning and we will be in  
7 recess until then when we begin, proceed in the  
8 second phase of the trial. Thank you.

9 Counsel, let me just see you for  
10 another moment just -- I can see you in  
11 chambers.

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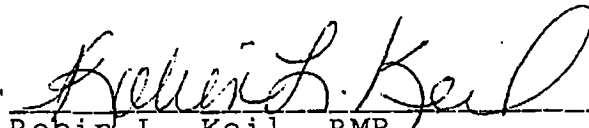
STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER ) : C E R T I F I C A T E

I, Robin L. Keil, Registered Merit Reporter and First Judicial Circuit Court Reporter, certify that the preceding pages are a true and correct transcript of the proceedings had at the aforesaid time and place.

I certify that the same was reduced to typewritten form from my original stenograph notes by computer-aided transcription.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand this the 17th day of September 2003.

  
Robin L. Keil, RMR  
Resident Court Reporter  
First Judicial Circuit

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STATE OF SOUTH CAROLINA ) COURT OF GENERAL SESSIONS  
COUNTY OF DORCHESTER ) CASE NO. 01-GS-18-0348, 0349

**ORIGINAL**

STATE OF SOUTH CAROLINA, ) VOLUME XXIII Pages 4587 - 4893  
Plaintiff, ) TRANSCRIPT OF RECORD  
-versus- ) SENTENCING PHASE  
MARION BOWMAN, JR., ) May 22, 2003  
Defendant. ) St. George, South Carolina

B E F O R E:

The Honorable Diane S. Goodstein

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| S-077      | Conviction             |            | 4651       |
| S-078      | Conviction             |            | 4652       |
| S-079      | Conviction             |            | 4652       |
| S-080      | Conviction             |            | 4652       |
| S-081      | Photograph             |            | 4662       |
| S-082      | Photograph             |            | 4662       |
| S-083      | Photograph             |            | 4696       |
| S-084      | Photograph             |            | 4696       |
| S-085      | Photograph             |            | 4697       |

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1 (May 22, 2002.)

2 THE COURT: All right. Counsel, I received  
3 some motions yesterday and wanted to go over  
4 those this morning so that we'll be ready to go  
5 when our jury arrives at 9:30. All right. I  
6 believe that the ones that I received yesterday,  
7 Mr. Cummings and Ms. Hardee-Thomas, were filed  
8 by the defense.

9 MR. CUMMINGS: Yes, ma'am.

10 THE COURT: So let me hear from you.

11 MR. CUMMINGS: May it please Court, Judge.

12 THE COURT: Yes, sir. |

13 MR. CUMMINGS: Let me start by saying Mr.  
14 Bowman wants to speak to you this morning also,  
15 but I would ask you if I could just argue my  
16 motions first this morning and then I know the  
17 Court will grant us sufficient time to listen to  
18 Mr. Bowman.

19 THE COURT: Certainly.

20 MR. CUMMINGS: May it please Court, Your  
21 Honor, the first motion, of course, Judge, deals  
22 with, as Your Honor well knows, there's an  
23 indictment for a burglary and a larceny charge  
24 against my client that has nothing to do with  
25 this case whatsoever. During the preparation of

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1 this case, Your Honor, Mr. Bailey through his  
2 office indicted the defendant through the Grand  
3 Jury of Dorchester County in January of 2002.  
4 We had an argument before the Court about if it  
5 caught us off guard, caught us by surprise, it's  
6 kind of like a here we are getting ready for the  
7 trial, we got moved back a month until May, the  
8 Court issued an order ruling, stating that you  
9 were not going to let us stop working on this  
10 case until you get prepared for the burglary.  
11 But you authorized us to investigate that  
12 burglary because pursuant to our case law, Your  
13 Honor, and I state this as an officer of the  
14 Court to you, Your Honor, State vs. Howard, 295  
15 S.E. 462, 369 S.E.2d, 132, talks about evidence  
16 of other crimes. Your Honor, even if you cannot  
17 prove the corpus delicti that that could come in  
18 to attack a defendant in a sentencing phase of  
19 the trial.

20 Your Honor, since that time, of  
21 course, and you are well familiar with and I  
22 know we talked about this both on the record and  
23 in pretrial matters and other trial matters  
24 preparing for Mr. Bowman's defense under  
25 Apprendi vs. New Jersey. I have a complete

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1 92-page copy of the report, plus the short site  
2 of the law com.

3 And you are the sole judge of the  
4 evidence that the jury gets to hear before this  
5 case, Your Honor. And, again, obviously it's  
6 good warning on the State's part that a month  
7 before we get ready to pick this capital trial  
8 to go here my client is indicted and they set it  
9 for trial.

10 If they indict this man on the  
11 crime -- I know it's no statute of limitations  
12 over a year and a half later from the alleged  
13 incident, we have no time to prove or try that  
14 case to prove whether or not he would have been  
15 tried at that case and acquitted, whether or not  
16 he would have been tried and convicted, but the  
17 mere fact that there's an indictment now is  
18 going to be used against my client to challenge  
19 character, or show characteristic traits in the  
20 penalty phase as I understand it, and as  
21 understanding from Your Honor's earlier ruling  
22 that the State would probably get to use that if  
23 they so choose as character impeachment or  
24 presentation to the jury as to my client's  
25 character.

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1           Your Honor, again, arguing based on  
2           the issues of Apprendi that here, again, a  
3           citizen is going to be placed in some jeopardy  
4           particularly on a sentencing phase here on a  
5           case that he has not been convicted by any judge  
6           or any jury, ma'am, and we would ask Your Honor,  
7           respectfully, that would be unconstitutional to  
8           deny him due process.

9           Further, Judge, the prejudicial effect  
10          of that unconvicted indictment clearly outweighs  
11          the probative value of just a mere attack on his  
12          character. My client had not testified in the  
13          guilt phase of this trial. And if he so chooses  
14          not to testify in this case or if he does choose  
15          to testify his character is going to be put into  
16          evidence, his character will be attacked as part  
17          of the reasons for this jury to give the  
18          ultimate penalty, ma'am.

19          Judge, respectfully, we're asking that  
20          that indictment be excluded from the part of  
21          this case, respectfully, and we would move to  
22          protect the record on that and protect  
23          Mr. Bowman, Your Honor, against this unconvicted  
24          indictment. That would be our first motion.

25          THE COURT: Thank you.

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1 Mr. Bailey, good morning.

2 MR. BAILEY: Good morning. May it please  
3 the Court, Your Honor. I do not intend to  
4 introduce the indictment itself or to make any  
5 reference to the indictment. Your Honor, if I  
6 could first address Mr. Cummings' contention  
7 that he was caught off guard. During the course  
8 of the investigation of this case we had about  
9 eight days of testimony in regard -- in the  
10 Jackson v. Denno hearing off and on, not eight  
11 full days. But the events of February 17th were  
12 gone into great detail as far as the Miranda and  
13 Your Honor ruled that whatever happened on that,  
14 as I recall whatever happened on that date, went  
15 into the 18th, was a different story.

16 But Sergeant Coker and Sergeant Van  
17 Doran had given Mr. Bowman Miranda rights in  
18 writing and verbally and Your Honor ruled that  
19 Miranda was not an issue. Subsequent to that  
20 Miranda warning being given Marion Bowman  
21 confessed to a burglary. And that is in  
22 Mr. Coker's notes that were given to the defense  
23 in discovery very, very early on, I think they  
24 probably had this in excess of a year.

25 And if I can quote, Your Honor, for

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1 the record in view of the fact they're saying  
2 they're caught off guard, I'm referring to  
3 Mr. Coker's notes that are dated February 27th,  
4 2001 and it states, and I quote, "Marion had  
5 mentioned a burglary during the previous  
6 interview wherein some guns and a sword had been  
7 taken. He told reporting officer and Sergeant  
8 Van Doran that he had been the lookout and the  
9 driver while Jasper Simpson and Duval Johnson  
10 entered the residence of a single wide mobile  
11 home somewhere near the Wire Road area of  
12 Reevesville. He stated they took two or three  
13 shotguns and a rifle along with a sword. He  
14 described the interior of the residence. And  
15 when they entered the front door the wall to the  
16 right was full of videotapes, the wall to the  
17 left was full of audiotapes and CD's. Duval and  
18 Johnson traded or sold the sword to a man in  
19 Orangeburg."

20 Then it goes on to say something with  
21 respect to Duval. And it says, "Note this is an  
22 unsolved burglary that occurred in Dorchester  
23 County."

24 Your Honor, so with respect to notice,  
25 they've had notice of that confession by

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1 Mr. Bowman since they've gotten the file. With  
2 regard to the fact that this is an unindicted  
3 case, I had submitted a memorandum in regard to  
4 the admissibility of evidence of prior crime  
5 during the penalty phase previously. And one  
6 section of that memorandum, which was II, is  
7 entitled "Introduction of Prior Crimes Which Did  
8 Not Result In Convictions."

9 And, Your Honor, I cited several cases  
10 there. First of all, State vs. Howard, 369  
11 S.E.2d 132, a 1988 South Carolina death penalty  
12 case in which the Court allowed the defendant's  
13 confession to 70 armed robberies and a murder,  
14 none of which had resulted in convictions.  
15 State vs. Cone there was testimony in the  
16 penalty phase, but these are all penalty phase  
17 issues, of a prior attempted crime which did not  
18 result in a conviction because it indicated the  
19 characteristics of the defendant. State vs.  
20 Wilmer, 299 S.E.2d, 317, 1982 South Carolina  
21 death penalty case allowed penalty phase  
22 testimony of a prior prison escape and other  
23 crimes committed the same day the murder was  
24 committed and these did not -- had not resulted  
25 in prosecutions or convictions.

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1           State vs. Green, 392 S.E.2d 157, a  
2           1990 South Carolina death penalty case that held  
3           that introduction of breaking and entering an  
4           automobile and theft of a checkbook and credit  
5           cards and the theft of another woman's purse at  
6           gunpoint and shooting another victim which did  
7           not result in death. They allowed that in  
8           penalty phase to show characteristics of the  
9           defendant.

10           State vs. Stewart, the Court  
11           considered the issue of the admission of crimes  
12           committed by the defendant both before and after  
13           the murder for which he was being sentenced and  
14           the Court found no error there.

15           Your Honor, in State vs. Stewart,  
16           State vs. Arthur, the only limitation that our  
17           Supreme Court has put on introducing prior  
18           crimes in the penalty phase is the introduction  
19           of evidence of criminal acts, or the  
20           introduction of arrest warrants that were either  
21           not probed or pled down to other charges or  
22           indictments or pled down to a lesser offense.

23           Your Honor, the --

24           THE COURT: It's clear to me, Mr. Bailey,  
25           that under South Carolina law the type of

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1 evidence which I understand that you propose is  
2 admissible. The only question I think that's  
3 the question that's raised by Mr. Cummings is,  
4 is there any application of Apprendi in this  
5 kind of case.

6 MR. BAILEY: If I could address this, Your  
7 Honor. As I read Apprendi, and, of course, it's  
8 a long decision that says a lot of things, but  
9 to kind of boil it down what I gather from that  
10 is that if you're going to exceed the statutory  
11 maximum for a sentence the jury has to pass on  
12 that issue beyond a reasonable doubt. And, of  
13 course, this unconvicted crime would be  
14 submitted to the jury and they would pass on  
15 whether or not that is proven to their  
16 satisfaction.

17 Your Honor, we're not trying to  
18 increase any maximum sentence because the  
19 maximum sentence in this case is the death  
20 penalty, so I don't think Apprendi applies at  
21 all in this context.

22 THE COURT: Well, they talk about  
23 enhancement of penalty. And I guess the  
24 argument is that the death penalty is the  
25 enhancement. But let me ask you this question,

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1 Mr. Bailey, because as I understand the evidence  
2 that you would propose, that does not and is not  
3 and would not be proposed as an aggravating  
4 circumstance.

5 MR. BAILEY: No, that's correct, Your  
6 Honor. We would ask for limited instruction on  
7 that to make sure the record was clean on that,  
8 was strictly to go to the characteristics of the  
9 defendant. Which is, of course, every single  
10 case on the death penalty says that's what this  
11 whole phase of the trial's about.

12 THE COURT: So the question is I think, A,  
13 what is the application of Apprendi in a case  
14 such as this. And as you know there's a  
15 tremendous amount of debate that is ongoing  
16 about that among the Court itself as I  
17 understand it. So that's the first question.  
18 And the second question is, is this type of  
19 testimony, the type of testimony that would --  
20 assuming that the death penalty is an  
21 enhancement penalty, assuming that, does  
22 Apprendi apply when, if you will, bad acts, or  
23 unconvicted prior criminal acts, are they -- are  
24 they used to enhance? When our instructions  
25 indicate that they go to character and there is

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1 a limiting instruction they do not go, they are  
2 not and the jury is told that they are not  
3 aggravating circumstances.

4 MR. BAILEY: They are told -- as I recall  
5 the general instructions that were only given to  
6 the jury in the penalty phase, that they're  
7 clearly told that other crimes are not  
8 aggravating circumstances, they're restricted to  
9 show the characteristics of the defendant and  
10 the circumstances, the characteristics of the  
11 defendant, that is the purpose they come in.

12 So they're not in there specifically  
13 to trigger the death penalty. The trigger of  
14 the death penalty is the proving of an  
15 aggravating circumstances is of course a  
16 different matter. The jury would be instructed  
17 to consider everything, guilt phase, penalty  
18 phase, I incorporate both phases.

19 But, again, if we assume Apprendi  
20 applies, as I read Apprendi what it says is that  
21 the jury has to pass on that. And pursuant to  
22 instructions, and as I recall Apprendi was a  
23 drug case and the quantity of drugs created an  
24 enhancement and the judge made that decision  
25 after the jury had already decided the guilt of

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1 the basic crime and there was no opportunity for  
2 the jury to pass on that.

3 But in this particular case, Your  
4 Honor, the jury sentences the defendant, they  
5 are the sentencer. I don't know how --

6 THE COURT: And find aggravating  
7 circumstances beyond a reasonable doubt.

8 MR. BAILEY: Yes, ma'am. And I do not know  
9 how we could change our death penalty structure  
10 in any way to make it comply with Apprendi if it  
11 doesn't already apply. What more could the  
12 legislature do to change our death penalty  
13 structure to make it comply with Apprendi? I  
14 mean, the jury makes that decision, the  
15 decision's got to be made beyond a reasonable  
16 doubt and they're given clear instructions on  
17 it, so I don't know -- if we're not in  
18 compliance there's no way I could imagine we  
19 could get into compliance, so I would maintain  
20 that we have to be in compliance.

21 THE COURT: Yes, sir.

22 MR. CUMMINGS: Your Honor, State vs. Lyle  
23 is basically -- and if I may be -- I know I'm  
24 going to say this on the record and I'll  
25 probably get a letter from somebody, is

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1 basically out the window. In January every year  
2 we always see each other. I didn't get to see  
3 my colleague this year, but I did see a lot of  
4 representatives of the office, Marva and I  
5 sitting there and getting ready in anticipation  
6 of this case. And every guest lecturer, every  
7 criminal defense professor, every judge that  
8 State vs. Lyles is one of those areas that  
9 scares the heck out of any trial judge, an  
10 appellant record judge because of the nature of  
11 the beast, and that is to attack somebody's  
12 character, to bring in these that are not  
13 normally issues that this jury would hear.

14 How does a citizen, any citizen defend  
15 themselves against something they have not been  
16 convicted of? It's just a mere allegation.  
17 Your Honor has told this jury, and this would be  
18 my -- and I racked my brains the last couple  
19 days and I apologize, Your Honor, if I'm  
20 redundant, how do you tell the jury that  
21 indictments are not evidence, they are not to be  
22 considered as evidence.

23 And then, again, I understand Mr.  
24 Bailey's not going to put the paper in, that he  
25 knows better, he's a good trial lawyer. Judge,

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1 Your Honor, respectfully you're telling them on  
2 one hand he's indicted for burglary, that  
3 indictment is going to carry an issue to charge  
4 him. Your Honor, it just seems fundamentally  
5 unfair and that's why I'm arguing that basis to  
6 preserve and protect my client on the record  
7 here.

8 And I'm not trying to throw a big rock  
9 in this mud puddle that Your Honor is wading  
10 through this morning legally for us, but I'm  
11 trying to save my clients' life I am trying to  
12 give him the fairest trial before this jury and  
13 let them deal with the facts and only the facts  
14 that are presented in this case.

15 Character evidence, Judge, for lack of  
16 better words is one of those areas that is  
17 influx right now and I present that to the bench  
18 at my strongest argument that you tell them it's  
19 not evidence. Your Honor's ruled on certain  
20 statements, but I want to submit to Her Honor I  
21 would proffer the Court the following evidence.  
22 The entire Jackson v. Denno record. If I'm in  
23 error I apologize to you and apologize to  
24 Ms. Keil again, she's worked very hard and we've  
25 read and reread, but I don't believe that

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1 Mr. Coker said in any of the Jackson v. Denno  
2 hearing what he would say now in this case.

3 You made certain rulings in the  
4 Jackson v. Denno, but I did not hear from  
5 Mr. Coker any admissions by my client in the  
6 Jackson v. Denno hearing ruling, Your Honor, of  
7 what my client has said about the burglary. We  
8 have been fighting for six, seven days,  
9 respectfully, Judge, I don't believe that's in  
10 there. And to allow that into this case you  
11 have not ruled on that evidence that you should  
12 have and must have heard upon and I would ask  
13 that be excluded.

14 And that is the total, I mean with the  
15 highest respect to Your Honor.

16 THE COURT: I understand.

17 MR. CUMMINGS: That is solely for your  
18 interpretation before you even let it get to a  
19 jury.

20 THE COURT: I understand.

21 What about that, Mr. Bailey?

22 MR. BAILEY: Your Honor, he is correct that  
23 I did not elicit any testimony in regard to that  
24 particular statement. Our focus at that point  
25 and time as I understood it was on the guilt

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1 phase and that was the focus. But it was given  
2 on the 17th. And the Miranda was given two  
3 times and we went all through the Miranda in  
4 excruciating detail and the circumstances  
5 surrounding what had occurred there. The only  
6 thing left is for Mr. Coker to utter those words  
7 and I would think that could be solved in five  
8 minutes by me putting him up at this point in  
9 time prior to starting the penalty phase to say  
10 that's what occurred.

11 Your Honor, in regard to the Lyle  
12 issue, Lyle and Rule 404 is to show motive and  
13 so forth, it does not apply to the penalty phase  
14 which is to show characteristics of the  
15 defendant, I mean it's two different animals.

16 THE COURT: I agree it's two different  
17 animals. Also that the burglary confession was  
18 not raised in the Jackson v. Denno hearing.

19 MR. BAILEY: I may have misspoken when I  
20 said it wasn't. Can I confer with Mr. --

21 THE COURT: Indeed.

22 MR. BAILEY: Your Honor, Mr. Coker  
23 corrected me and said that in cross-examination  
24 Mr. Cummings had asked him whether or not he  
25 said anything about any other crimes and that he

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1 did mention that he confessed to a burglary in  
2 Dorchester County.

3 MR. CUMMINGS: I don't think so. Humbly, I  
4 don't believe so. Again, the record would show  
5 it. I've been wrong already once, I've made a  
6 mistake, I apologize to the bench and the bar  
7 about that item Number 71, I really --

8 MR. BAILEY: Your Honor, of course --

9 THE COURT: I don't remember it. I do not  
10 recall it. Do you have -- if you can show me  
11 something.

12 MR. BAILEY: Yes, ma'am. We've got the  
13 rough transcripts here.

14 THE COURT: I know you do.

15 MR. BAILEY: If we could check. But I'm  
16 not sure if we can get the transcript from the  
17 17th.

18 (Pause in proceedings.)

19 THE COURT: Is there someone that can look?

20 MR. BAILEY: Your Honor, I may have it  
21 here.

22 THE COURT: Oh, all right.

23 MR. BAILEY: April 5th, if that was when  
24 Ms. LeFebure was here.

25 THE COURT: Yes.

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1 MR. BAILEY: I might have that right here.

2 THE COURT: All right.

3 (Pause in proceedings.)

4 THE COURT: I was going to suggest let  
5 someone else look and let us move on and then we  
6 can come back to that issue.

7 MR. BAILEY: All right.

8 THE COURT: All right.

9 MR. CUMMINGS: Thank you, Judge.

10 MR. BAILEY: In looking real rapidly  
11 through that first one, as you recall I was  
12 trying to keep a chronological order and these  
13 people we were called different times. It may  
14 have been the first day when Ms. Keil was a  
15 reporter, but if it becomes a significant issue,  
16 Your Honor, I don't want to hold anything up,  
17 but I would like to make an effort to kind of  
18 look at it.

19 THE COURT: Certainly. That's what I'm  
20 saying. I see Mr. Lafond busily looking and we  
21 can certainly address that issue, I just  
22 wouldn't want you to attempt to offer until  
23 we've had an opportunity to address it. But I  
24 want you all have some time to look through the  
25 transcript, I know it's voluminous.

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1 But with regards to the character  
2 evidence, even being mindful of Apprendi, I'm  
3 going to deny the motion. Let me say, I think  
4 that given the application of what I think  
5 Apprendi is, I do not think that it would effect  
6 the kind of character evidence which has been  
7 admissible. And Howard I think is the Seminole  
8 case in South Carolina and I think that it would  
9 be admissible. And I think that largely many of  
10 the arguments that you all have set out this  
11 morning certainly to include that the evidence  
12 of bad acts, other crimes, even unconvicted,  
13 where there's no conviction, clearly has been  
14 admissible under our law. And particularly with  
15 a limiting instruction it is not -- that conduct  
16 is not considered an aggravating circumstance,  
17 but goes to the characteristics of the  
18 defendant, and even in light of Apprendi I think  
19 it would yet be admissible.

20 I do not think that the evidence of  
21 other crimes or bad acts are -- that go to the  
22 characteristics, they do not go to -- there are  
23 not aggravating circumstances and the jury is  
24 told that they are not to be considered as  
25 aggravating circumstances and that our jury's

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1 instructed that before the course that they  
2 could recommend a death sentence that they have  
3 to find aggravating circumstance or  
4 circumstances beyond a reasonable doubt.

5 So I think we probably do comply with  
6 Apprendi, but, however, I suppose we'll know in  
7 the months to come. But I'm -- that's certainly  
8 my -- my read on it based on my research and  
9 analysis and I would respectfully deny your  
10 motion and note your exception for the record.

11 MR. CUMMINGS: Thank you, ma'am. I know  
12 Your Honor has the supplemental issue about  
13 whether or not you've ruled on Jackson v. Denno  
14 that you'll take up --

15 THE COURT: I don't want that coming in  
16 until I've had an opportunity to know whether or  
17 not that issue was dealt with in the Jackson v.  
18 Denno.

19 MR. CUMMINGS: Thank you, Judge. As far as  
20 the next written motion, and I will be brief on  
21 this.

22 THE COURT: All right.

23 MR. CUMMINGS: We're asking that you direct  
24 a sentence of life imprisonment. This jury has  
25 ruled, so be it, they found him guilty of murder

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1 and arson, ma'am, we know that two possible  
2 sentences here are life imprisonment and of  
3 course the jury's option to sentence him to  
4 death.

5 Your Honor, pursuant to the United  
6 States constitution of Eighth Amendment, the  
7 United States Constitution of the Fourth  
8 Amendment and our applicable South Carolina  
9 statutes we would ask you to direct a sentence  
10 of life imprisonment without the possibility of  
11 parole on Mr. Bowman, Your Honor, that we  
12 believe the death penalty is cruel and unusual  
13 punishment and constitutes a violation of my  
14 client's Fifth Amendment rights as to protection  
15 of the life, liberty, and our applicable South  
16 Carolina statutes, respectfully, ma'am.

17 THE COURT: Thank you so much. I'm going  
18 to deny your motion based upon rulings of both  
19 the South Carolina and the United States Supreme  
20 Court. So on that basis I will respectfully  
21 deny your motion and note your exception for the  
22 record.

23 MR. CUMMINGS: Yes, ma'am. And earlier,  
24 Judge, we had talked at the end of the day that  
25 Mr. Bowman had been convicted and I raised some

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1 issues about, Judge, looking at this case and  
2 looking at the totality of the circumstances and  
3 the notice of aggravation filed by the State,  
4 Your Honor, that the murder of Miss Martin was  
5 committed while in the commission of kidnapping,  
6 that the murder of Miss Martin was committed  
7 while in the commission of criminal sexual  
8 conduct in any degree, that the murder of Miss  
9 Martin was committed while in the commission of  
10 robbery while armed with a deadly weapon, or  
11 that the murder of Miss Martin was committed  
12 while use of larceny with the use of a deadly  
13 weapon.

14 Your Honor, respectfully, and, again,  
15 you may state that I may be premature but, Your  
16 Honor, to protect the record here it's almost  
17 like in the equivocation of a motion for  
18 directed verdict, again, on behalf of my client.  
19 And based on all the evidence presented in the  
20 case and chief and the guilt phase here there  
21 has been no evidence at all as to any of these  
22 aggravating factors that were at all raised.

23 My client's been indicted and charged  
24 and convicted of two crimes, murder and arson,  
25 ma'am. Arson is not an aggravating factor by

JA 966

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1 the statute and I submit that respectfully to  
2 the Court. My client has not been charged with  
3 kidnapping, he has not been indicted, nor has he  
4 been convicted of kidnapping, nor has there been  
5 any evidentiary issues presented as to  
6 kidnapping.

7 The murder of Miss Martin as to  
8 criminal sexual conduct, Judge, there's been no  
9 evidence, no testimony at all as to any criminal  
10 sexual conduct activity. To imply that would be  
11 prejudicial and unfair as well as the kidnapping  
12 issue, ma'am, that there be prejudicial effects  
13 now to my client that are beyond any realm of  
14 repairing here even with any limited charges, or  
15 Your Honor charging the fact that he has not  
16 been indicted or convicted of these charges.  
17 These are issues for you to consider in a  
18 penalty phase. But there has proof beyond a  
19 reasonable doubt.

20 Your Honor, respectfully, or robbery  
21 along with a deadly weapon. There's been no  
22 testimony at all in the guilt phase as to any  
23 issues of robbery from any witness,  
24 respectfully, Judge, and I would ask that that  
25 aggravating factor not be submitted to the jury.

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1 I know I get another chance again at the end of  
2 the State's case, but by that time, Judge,  
3 respectfully, any evidence might come out that  
4 would cause my client irreparable harm.

5 And last, Judge, again, the murder of  
6 Miss Martin was committed while in the  
7 commission of larceny, use of a deadly weapon.  
8 Your Honor, at best I submit to you the only  
9 evidence of anything there was the fact that  
10 Mr. Hiram Johnson stated that he said he stole  
11 the car. To submit that to the jury, Your  
12 Honor, clearly would commit reversible and  
13 irreparable harm to my client. There's been no  
14 testimony at all about any other personal  
15 property being taken, the crime of larceny, the  
16 trespassatory taken with the criminal intent to  
17 take at all presented in this case Your Honor,  
18 respectfully.

19 And I would ask you to quash the  
20 anticipated presentation of aggravating factors  
21 to the jury, ma'am, respectfully, as there is no  
22 issues, no bases of evidence, and could clearly  
23 place my client in jeopardy of the death penalty  
24 when there's been no evidence to prove said  
25 aggravating factors, ma'am.

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1 THE COURT: All right. It seems to me it  
2 is premature. I mean, I understand your  
3 concern, but it seems to me that that comes --  
4 it's like a directed verdict before the case  
5 begins. And I -- you know, I have -- I don't  
6 know what the State's case is so I don't know  
7 how to rule on the -- I think it is in the  
8 nature of a directed verdict and I think it's  
9 premature. I certainly don't want to keep you  
10 from raising the motion at an appropriate time,  
11 but at this juncture I have not heard the  
12 State's case. And at this time I don't know of  
13 any vehicle that causes the State -- for the  
14 State to make a proffer of the -- its proof to  
15 the Court before it goes to the jury, I'm not  
16 aware of that.

17 MR. CUMMINGS: Absolutely, ma'am. That's  
18 why I raised that and pointed out to you that  
19 you may find it premature, Your Honor, but I  
20 don't know how to protect my client any other  
21 legal way from talking to every legal aspect and  
22 look at every legal thing we've ever read  
23 following the guidance of the Court as far as  
24 the rules of evidence. That once it's heard we  
25 can object, move to strike and do everything

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1 else in the world, it's heard.

2 Your Honor, respectfully, we're trying  
3 to prevent evidence or potential evidence ever  
4 getting to this jury that would not or should  
5 not be presented. And there's nothing been  
6 proven in the case in chief, or the guilt phase  
7 as I call it now. And, Your Honor,  
8 respectfully, we would ask -- and, Judge, I  
9 don't want to offend this jury by now standing  
10 up and objecting every time which I know I have  
11 to do or Ms. Thomas does, and the fact that both  
12 of us are at the table and both of us have to  
13 watch every legal issue, respectfully, in this  
14 case.

15 THE COURT: I understand.

16 MR. CUMMINGS: Your Honor, that may happen.

17 THE COURT: I understand.

18 MR. CUMMINGS: I just wanted to let the  
19 Court know that it's not to delay or not to  
20 cause insult or any --

21 THE COURT: I certainly know that. I  
22 certainly know that, Mr. Cummings. All right.

23 MR. CUMMINGS: Thank you, ma'am.

24 THE COURT: I would respectfully deny your  
25 motion. All right. And -- or find it's

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1 premature. At this point I find that it's  
2 premature. And you will raise it at the  
3 appropriate time.

4 MR. CUMMINGS: Yes, ma'am.

5 THE COURT: And I believe that that -- of  
6 course, I have your notice of evidence in  
7 mitigation.

8 You received that, Mr. Bailey?

9 MR. BAILEY: Yes, ma'am.

10 THE COURT: All right. And certainly have  
11 that at this time. And I believe that is now  
12 all the motions?

13 MR. CUMMINGS: Yes, ma'am. Except, Judge,  
14 as you well know by case law statute if  
15 something else arises that a defendant has a  
16 right to add or request an additional one. And  
17 these are basically to give Your Honor the road  
18 map where we, and Mr. Bailey, where we may go  
19 and I thank Your Honor.

20 THE COURT: That's correct, Mr. Cummings.  
21 If anything arises in the course of this  
22 sentencing we will add to it, indeed.

23 MR. BAILEY: Yes, ma'am. Your Honor, just  
24 two things if I might bring up.

25 THE COURT: Yes.

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1 MR. BAILEY: One of them is sort of a  
2 housekeeping matter. Mr. Bowman was evaluated  
3 at the Hall Institute. I do not believe that we  
4 have made the evaluation a part of the record at  
5 this point and I think that should be done.

6 MR. CUMMINGS: Judge, my client was deemed  
7 competent, we've served notice that he is not  
8 going to raise any insanity defense. As I  
9 understand the purpose of competency, Judge --  
10 and I would really like to be heard on this --  
11 the purpose of competency is there to determine  
12 competency in whether or not he can comply with  
13 the assistance of his lawyer, whether he should,  
14 Your Honor, be accountable for his actions. And  
15 that is the only reason pursuant to the statute  
16 of competency. Not to obtain evidence, your  
17 Honor, respectfully, not to submit any issues of  
18 statements from my client.

19 There is specific reason why this  
20 competency and only competency. Your Honor,  
21 and, again, this is an anticipatory thing, I  
22 apologize ahead of time. My client was sent to  
23 the state hospital without the benefit of  
24 counsel. There was nobody there, Ms. Thomas  
25 was, again, under an order of the family court

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1 to appear out of the -- well, out of the  
2 contiguous 48 states. My client was sent up  
3 there for an evaluation. We are not raising  
4 insanity, we are not raising any issues, Your  
5 Honor ruled that everything was hearsay when we  
6 started to talk about that issue up there. The  
7 purpose of competency in that testing is to  
8 determine competency and his ability to render  
9 and aid his defense in the trial and that's it  
10 as I read it.

11 And I would ask that any mention of  
12 that in this penalty phase, Your Honor, would be  
13 prohibited, that it is irrelevant, that it is  
14 more prejudicial than probative and it has no  
15 basis in this case.

16 THE COURT: I understand.

17 MR. BAILEY: I, of course, was not  
18 purporting to put that into evidence, give it to  
19 the jury. I wanted to make it a Court's Exhibit  
20 in case there was any issue on appeal as to  
21 whether or not he had been evaluated. I think  
22 since this all occurred before the evaluation it  
23 may create some issues later on down if there is  
24 nothing in the record to show that, in fact, he  
25 was evaluated.

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1 THE COURT: Let us mark it as a Court's  
2 Exhibit. Do you understand this, Mr. Cummings,  
3 there will be no mention of it, there is no  
4 issue before this jury regarding competency, the  
5 ability to effectively assist counsel, none of  
6 those, none of those issues as I understand by  
7 the defense are raised. This is merely for as a  
8 Court's Exhibit to make the evaluation part of  
9 the record because it was ordered by the Court  
10 and for no other reason.

11 MR. CUMMINGS: Thank you, Judge. Again,  
12 Your Honor, as you well see this morning, my  
13 apprehension this morning.

14 THE COURT: Oh, I would call it vigilance.

15 MR. CUMMINGS: Yes, ma'am.

16 THE COURT: Very well.

17 (Marked for purposes of the record was Court's  
18 Exhibit 37, competency evaluation.)

19 MR. BAILEY: Your Honor, the other matter,  
20 this is also premature, but just to put this out  
21 in the open here. I got a call yesterday, I  
22 believe it was from Ms. Hardee-Thomas, asking me  
23 if I would stipulate to the chain of custody for  
24 the toxicologist at SLED, they sent the victim's  
25 blood to SLED. And I told her that I would

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1 stipulate to the chain of custody. However, I  
2 would object to the toxicologist report coming  
3 in.

4 As I recall the toxicologist report it  
5 found cocaine metabolites in the victim's blood  
6 and I sense the thrust of the penalty phase is  
7 to show aggravation, mitigation, and things of  
8 that nature that relate to the character of the  
9 defendant, that I don't think that there's any  
10 probative value whatsoever of the fact the  
11 victim did have cocaine in her bloodstream,  
12 unless it was tied in in some manner to  
13 something that they may introduce in the penalty  
14 phase. Because certainly we made a great effort  
15 to avoid any reference to cocaine and to  
16 instruct witnesses not to get into that.

17 So to leave that out in the guilt  
18 phase and then to bring it out at this stage  
19 unless it's tied up in some manner to something  
20 that's relevant, then I'm going to have an  
21 objection to that coming in. Although I'm not  
22 going to raise any chain of custody issue on  
23 that.

24 THE COURT: You understand that no chain of  
25 custody before it comes out. If you all would

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1 just give me an opportunity to rule on it since  
2 Mr. Bailey's told me that that might be a matter  
3 that we're going to need to discuss. Don't let  
4 it come out without us having an opportunity to  
5 address it.

6 MR. CUMMINGS: If I could be heard on that  
7 for one moment.

8 THE COURT: Sure.

9 MR. CUMMINGS: That is nobody wanted to  
10 attack Miss Martin. And we've been trying to be  
11 as polite and gentlemanly and lady-like as  
12 possible in any approach to Miss Martin. And,  
13 Your Honor, respectfully, as the case presented  
14 itself and as it went along and from all  
15 discovery, Judge, that's there. And it may tie  
16 into something and it also may tie into some  
17 issues in mitigation, ma'am. That's the only  
18 reason why we double checked about wanting to go  
19 back and talk about that if we so desire.

20 THE COURT: All right. Not a problem with  
21 chain of custody and you all understand that?

22 MR. CUMMINGS: Yes, ma'am.

23 THE COURT: All right. Anything further at  
24 this time?

25 MS. HARDEE-THOMAS: One more matter, Your

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1 Honor.

2 THE COURT: All right.

3 MR. BOWMAN: Ma'am, I was going through  
4 some of my paperwork, right, I noticed that in  
5 some of my information I had wrote down that I  
6 would like the jury to see the videotape that  
7 Detective Coker and Agent Helms took from the  
8 gas station showing that Travis Felder after he  
9 dropped me off home went to the gas station and  
10 bought a dollar worth of gasoline.

11 MR. CUMMINGS: Your Honor, we would ask,  
12 respectfully, on behalf of Mr. Bowman. The tape  
13 is in evidence, Mr. Bailey and I and through  
14 Marva talked about the girl who actually  
15 unloaded the tape from the machine, passed it  
16 down to the police, is living in Florida or on  
17 vacation in Florida and we do not believe there  
18 will be a fungible chain item as Your Honor has  
19 ruled throughout this case, respectfully, that  
20 my client is asking us to show a portion of the  
21 tape in his mitigation case as to giving the  
22 jury something to consider along the lines of  
23 mitigation, also about possible issue of  
24 testimony. I'll leave it at that.

25 MR. BAILEY: Your Honor, if they're asking

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1 to stipulate to the chain of custody on the tape  
2 I would do that. If that's what they're -- I'm  
3 not sure what --

4 MR. CUMMINGS: I know Mr. Bailey would do  
5 that. My client wanted to address Your Honor  
6 this morning about stating that he wants the  
7 tape shown and the tape shown in part of his  
8 mitigation case today. And I told him that he  
9 was going to stand up in front of Her Honor and  
10 say what he wanted to say. And I would not  
11 prohibit that to make sure the record knows that  
12 we are not at odds with Mr. Bowman or that we  
13 are not prohibiting him from presenting any  
14 mitigation facts that would be presented to the  
15 jury, ma'am.

16 THE COURT: All right. Very well. I don't  
17 think you all are requesting a ruling from me.  
18 As I understand it you just --

19 MR. CUMMINGS: Not a ruling.

20 THE COURT: All right.

21 MR. CUMMINGS: I think what Mr. Bowman just  
22 wanted to -- and, Judge, we would need some time  
23 to set it up, get the machine in there if and  
24 when the State --

25 THE COURT: That's not a problem. That

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1 will not be a problem.

2 MR. CUMMINGS: Thank you, Judge.

3 MR. BAILEY: Before the jury comes in, I  
4 would hate to hold them there, this may save  
5 some time in the long run. I believe we've gone  
6 over the photographs that your Honor has  
7 previously ruled on. And what I would like to  
8 do is to make the photographs that Your Honor  
9 had reviewed and excluded a Court's Exhibit, of  
10 course not to go to the jury. And the reason  
11 for that, Your Honor, would be to protect the  
12 record and show an appellate court that she did  
13 exercise some discretion. And you referred to  
14 these pictures on the record, so I think they  
15 should be --

16 THE COURT: I think they should, too. I  
17 thought they were at the time that we -- that I  
18 heard the motion, but you did have some more  
19 work to do so we'll make those, the photos which  
20 I have ruled are inadmissible Court's Exhibits.

21 MR. CUMMINGS: Yes, ma'am. I would ask,  
22 Judge, just for the abundance of caution,  
23 respectfully, that they be put in the envelope  
24 and sealed with a big thing not to go to the  
25 jury.

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1 THE COURT: I think that's a good idea.

2 MR. CUMMINGS: Further, Judge, as Mr.

3 Bailey is walking up to you to know that I

4 objected to any and all photographs being

5 presented here, ma'am, respectfully, and would

6 renew my motions and my objections again this

7 morning about any of those photographs being

8 presented to the jurors, Your Honor,

9 respectfully. I know you've ruled, I would just

10 renew my objection and respectfully sit down.

11 THE COURT: Thank you. Thank you, Mr.

12 Cummings.

13 Did you just pass them up?

14 MR. BAILEY: Yes, ma'am.

15 THE COURT: All right. And let us do that.

16 Let's mark those as a Court's Exhibit. And,

17 Ms. Keil, would you put a piece of tape and note

18 photos do not go to jury?

19 THE COURT REPORTER: Yes, ma'am.

20 THE COURT: Thank you.

21 (Marked for purposes of the record was Court's

22 Exhibit 38, photographs of victim.)

23 THE COURT: Anyone need to take a quick

24 comfort break?

25 MR. CUMMINGS: Could we, please, Judge?

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1 THE COURT: Yes.

2 (Pause in proceedings.)

3 MR. BAILEY: I have located what I wanted  
4 to address in regard to the burglary second.

5 THE COURT: All right. I am listening.

6 MR. BAILEY: Your Honor, this first came up  
7 when we had discussion with the Court on record.  
8 This was back on the March the 5th transcript.  
9 And I won't read the whole thing, but there was  
10 extensive discussion about whether or not the  
11 State would be allowed to go ahead, and since  
12 that case has been indicted, try that case prior  
13 to this case.

14 Mr. Cummings objected to that, and  
15 there was some talk at that point in time about  
16 if I was going to actually try that case  
17 pertaining to the death penalty case. It had  
18 been set by Court Administration, we didn't want  
19 to do that, so I agreed to go ahead and not try  
20 that case as a separate case.

21 And I did -- this is on page 29 of the  
22 transcript, I am quoting myself here, "If the  
23 case was not tried prior to the death penalty  
24 case, it would be my intention to prove the  
25 burglary in the penalty phase of this case

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1 because it bears some characteristics of the  
2 defendant and I think it is clearly admissible."  
3 And later on I say, quote, "I just want to  
4 direct Mr. Cummings the statement they gave to  
5 the deputies has been with them since our  
6 initial discovery was provided."

7 Your Honor, there was discussion  
8 during the Jackson v. Denno hearing. And this  
9 is on page -- this is a rough draft, page 209.  
10 I believe Mr. Coker is being questioned by me.  
11 And I am on 209, it says, quote, "Again, he came  
12 up..." he referring to the defendant, "...he  
13 came up with this Dalo as possibly involved in  
14 that case as well and gave us information on a  
15 burglary that I had been working."

16 Your Honor, so the -- prior to the  
17 Jackson v. Denno hearing the defense was aware  
18 of this statement that had been given. And the  
19 defense -- as I understand the Jackson v. Denno  
20 hearing it is not an automatic thing, if the  
21 defense desires to have the Court rule on the  
22 admissibility of and voluntariness of a  
23 statement, it's their prerogative to go ahead  
24 and request a Jackson v. Denno hearing, which  
25 they did.

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1 And the State's position would be that  
2 they knew about the statement given to them, it  
3 was discussed prior to the Jackson v. Denno  
4 hearing, it was mentioned during the hearing,  
5 and if they desired to question Mr. Coker about  
6 that, they had a full opportunity to do so.

7 And I would -- and I don't want to  
8 hold things up, but if Your Honor thinks it's  
9 necessary I can go ahead, and I don't know of  
10 any rules saying when you have to do a Jackson  
11 v. Denno hearing. I can call them up for just a  
12 brief -- and you have already on the Miranda and  
13 the -- all the other statements that were made  
14 and I would offer that as -- if you think that's  
15 needed. I don't think it is. I think the  
16 defense had a full opportunity to question him.  
17 And there's nothing untoward about the Miranda  
18 and the statements given on the 17th.

19 MR. CUMMINGS: May it please the Court,  
20 Judge.

21 THE COURT: Yes, sir.

22 MR. CUMMINGS: There was nothing testified  
23 to at all by Mr. Coker about this case, Judge.  
24 Anything, respectfully, that was brought up  
25 about that in March was by the solicitor, which

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1 our statements are not sworn testimony.

2 Your Honor, you have to rule on the  
3 admissibility, you have to rule on it, on the  
4 testimony and the officers' credibility, bias,  
5 prejudice, opportunity, et cetera, ma'am. And  
6 we have had a week of Jackson v. Denno because  
7 of the problems that you judicially and  
8 evidentiary-wise ruled on and found. One of --  
9 the main issue, Judge, is we are getting ready  
10 for the penalty phase here. The evidence is  
11 presented, clearly, by -- the guilt phase is  
12 over.

13 Respectfully, Your Honor, I would move  
14 to prohibit or request to prohibit any other  
15 further testimony for a Jackson v. Denno as to  
16 that alleged statement now. Because the sole  
17 purpose here is for character. And, again, if  
18 it comes in without Your Honor having the  
19 evidentiary ruling I -- respectfully, Judge, I  
20 don't think today is the proper time for a  
21 Jackson v. Denno, we did those, your Honor, we  
22 have heard all the testimony. The testimony was  
23 such influx, some people heard this, some people  
24 heard that, some didn't do this, some didn't do  
25 that. I would just beseech, Your Honor, if they

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1 did not testify to, the evidentiary ruling that  
2 you have made is the evidentiary ruling, it was  
3 not presented to you, respectfully, Judge, and  
4 we would ask that it be excluded from this part  
5 of the sentencing here, the sentencing phase  
6 excluded from this trial, Judge.

7 THE COURT: All right. All right, Mr.  
8 Cummings.

9 MR. CUMMINGS: If I forgot something,  
10 Judge, I want to ask co-counsel this morning.

11 MS. HARDEE-THOMAS: I believe that there  
12 was a mentioning, but it was a brush over and I  
13 am trying to find out where it was. The State  
14 was actually bringing up information regarding  
15 that particular matter, but they just brushed  
16 over it. Yes, we were here to actually hear the  
17 arguments, but that we were specifically waiting  
18 on that one during the Jackson v. Denno and we  
19 didn't hear anything.

20 THE COURT: All right.

21 MR. BAILEY: If I may, they had the entire  
22 text of what Mr. Bowman said to Sergeant Coker,  
23 they were aware of it ahead of time, there was  
24 extensive discussion, it was mentioned during  
25 the course of the Jackson v. Denno hearing.

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1 Again, on page 209, "...gave us information on a  
2 burglary I had been working." Clearly that  
3 referred to this burglary, it was the only one  
4 that was mentioned.

5 And it's kind of like if the defense  
6 asks for an identity hearing and they do photo  
7 lineups and they'll elect to only ask about one  
8 of them. As long as I -- it's their request to  
9 have a Jackson v. Denno hearing, that they filed  
10 a motion for that, a pretrial motion for a  
11 Jackson v. Denno hearing, it excludes  
12 statements. And I can't control -- you know, if  
13 they were interested in that, they knew about  
14 it, they could have asked him, he was available.  
15 And I think the State has fully complied with  
16 what we have to comply with.

17 MR. CUMMINGS: That would be burden  
18 shifting, Judge. The State has the burden of  
19 proving statements. I am sorry, Judge.

20 THE COURT: I am going to exclude -- I'm  
21 going to exclude the statement. I believe that  
22 the Jackson v. Denno hearing was held. And I  
23 think that it is the position of the defendant  
24 in the Jackson v. Denno hearing that the  
25 statements of the defendant weren't freely and

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1 voluntarily given and put the State to the  
2 burden of showing that the defendant was  
3 Mirandised and that the statements were given  
4 freely and voluntarily and that covers all the  
5 statements. And that clearly that statement  
6 wasn't offered, it wasn't ruled on by the Court.

7 We are now to the sentencing phase and  
8 at this time I am going to exclude it because I  
9 don't think that it is fair at this time to  
10 reopen it and cause the defense at this juncture  
11 to have to deal with an addition -- additional  
12 admission at this point. You know, they have  
13 shifted gears, I certainly have shifted gears, I  
14 think that causes them to be at a disadvantage  
15 to be able to defend at this time, so I will  
16 exclude that particular admission. Now, with  
17 regards to the other testimony I have already  
18 ruled on.

19 Anything further before we bring the  
20 jury out?

21 MR. BAILEY: Your Honor, if I could have a  
22 minute to sort of restructure my order of  
23 witnesses.

24 THE COURT: Sure. Certainly.

25 MR. BAILEY: If I could have a few minutes

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1 and we could go ahead and release some of these  
2 people that were here for that.

3 THE COURT: Surely. Very vell.

4 (Pause in proceedings.)

5 (Whereupon, the jury returns to the courtroom at  
6 9:37 a.m.)

7 THE COURT: Good morning, ladies and  
8 gentlemen. Again, I appreciate your patience  
9 this morning, there were a few matters that I  
10 needed to conclude this morning, so I apologize  
11 for keeping you in your jury room. And, again,  
12 thank you for your patience as I concluded the  
13 things that I needed to do before you came out  
14 this morning to join us.

15 I hope that you took advantage of  
16 yesterday's off day to slightly recharge your  
17 batteries in this regard physically and  
18 emotionally, and to get your mind away from  
19 these matters and to refresh yourself and not  
20 to -- to set about the very serious business  
21 that is remaining before us in this regard.

22 I would note that I understand from  
23 your new companions and friends, your detail,  
24 you all did have a good time. At least they had  
25 a good time, so I am delighted about that.

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1 Now, ladies and gentlemen, to the  
2 business at hand. As you know the defendant,  
3 Marion Bowman, Jr. was convicted on Monday, May  
4 the 20th at 6:29 p.m. of the offenses of murder  
5 and third degree arson. It now becomes  
6 necessary for us to engage, as you all know, in  
7 an additional proceeding which relates to the  
8 punishment that the Court is going to impose  
9 upon Mr. Bowman.

10 Our Code of Laws say that a person who  
11 is convicted of murder shall be punished by  
12 death or by imprisonment for life. The Code of  
13 Laws further says that upon conviction of a  
14 defendant of murder, the Court shall conduct a  
15 separate sentencing proceeding to determine  
16 whether the defendant should be sentenced to  
17 death or life imprisonment without the  
18 possibility of parole.

19 So our purpose in conducting the  
20 proceeding in which we are now engaged is to  
21 determine whether the defendant, Marion Bowman,  
22 Jr. should be sentenced by the Court to death or  
23 life imprisonment without parole.

24 Now, with respect to your particular  
25 role in this proceeding, ladies and gentlemen,

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1       you will be asked to recommend to the Court  
2       whether it should sentence the defendant, Mr.  
3       Bowman, to death or life imprisonment without  
4       parole. During the sentencing proceeding both  
5       the State and the defendant will have the  
6       opportunity to introduce additional evidence in  
7       an extenuation, or mitigation, or aggravation.  
8       And they will have the opportunity to present  
9       arguments for or against the penalty.

10               The only issue that is left for you to  
11       determine in this case is what sentence should  
12       the Court impose upon the defendant. Should you  
13       recommend a sentence of life imprisonment, or  
14       should you recommend a sentence of death, that  
15       is the only issue involved here. I tell you,  
16       ladies and gentlemen, that your sentencing  
17       recommendation, whatever it is, will be followed  
18       by the Court.

19               Now, you will hear opening statements  
20       very briefly in this regard, you will hear  
21       additional evidence and testimony. You will  
22       then hear closing arguments. And following the  
23       closing arguments I will give you specific  
24       instructions concerning your decision in this  
25       regard. These instructions will not tell you

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1        what your decision should be. Those  
2        instructions will simply be designed to give you  
3        the law as it applies to this most important  
4        part of this case.

5                Now, ladies and gentlemen, I'm sure  
6        that you understand that this has weighed  
7        heavily on you since you were selected as jurors  
8        in this case. Ladies and gentlemen, I ask that  
9        you give the same attention over the balance of  
10       this trial, which you have given over the  
11       balance of this trial, to the additional  
12       evidence and testimony that you will hear. I  
13       will get a chance to talk with you again before  
14       you have to make this most important decision.  
15       Thank you, ladies and gentlemen.

16               Mr. Bailey.

17               MR. BAILEY: May it please the Court.

18               THE COURT: Yes, sir.

19               MR. BAILEY: Ladies and gentlemen, of all  
20       of the people in this courtroom there's one of  
21       us here who does not share our values, that  
22       person is a murderer. That person is seated  
23       over here, Marion Bowman, Jr. Y'all have found  
24       him guilty of murder with malice aforethought of  
25       Kandee Martin, you've also convicted him of

## Opening Statement by Mr. Bailey

1 arson. Your job as, you know, is not over yet.  
2 You're going to hear testimony relating to the  
3 appropriate punishment. As Judge Goodstein said  
4 that punishment will be either life without the  
5 possibility of parole or the death penalty.

6 I'm going to talk to you all about  
7 aggravating circumstances and I'm going to --  
8 the judge will instruct you in greater detail as  
9 she did at the close of the first phase of this  
10 trial, but an aggravating circumstance is  
11 something that the legislature says makes a  
12 murderer or the murder worse. It aggravates the  
13 murder to the point where the death penalty can  
14 be considered by the jury. And the significance  
15 of an aggravating circumstance is that you must  
16 find at least one aggravating circumstance or  
17 you cannot impose the death penalty. It would  
18 have to be a life sentence.

19 Now, we have alleged four aggravating  
20 circumstances in this case. The first one I'm  
21 going to talk to you all about is the  
22 aggravating circumstance that the murder of  
23 Kandee Martin was committed while in the  
24 commission of kidnapping. And the judge, again,  
25 will define kidnapping to you.

## Opening Statement by Mr. Bailey

1           Most people think of kidnapping, you  
2           grab somebody, you hold them somewhere for  
3           ransom or something like that. And that is  
4           kidnapping. That is a form of kidnapping, but  
5           the definition the judge will instruct you on in  
6           kidnapping is much broader than that.

7           Kidnapping means the unlawful seizure,  
8           confining, or carrying away a person. Basically  
9           it's restricting a person's freedom of movement,  
10          making them go where they don't want to go and  
11          holding them when they want to leave. It can be  
12          accomplished by force or it can be accomplished  
13          with trickery or deceit. In the kidnapping  
14          statute the judge will instruct you on -- uses  
15          the words inveigle and decoy as part of the  
16          definition of kidnapping. It's a continuing  
17          offense that starts when a person is deprived of  
18          their liberty and ends when their liberty is  
19          restored or their life is ended.

20          And you've heard some testimony in  
21          this case of the clearest possible example of  
22          kidnapping where a woman is fatally shot and is  
23          then chased down at gunpoint and shot again  
24          before she died. Clearly she was where she  
25          didn't want to be between those two shots.

## Opening Statement by Mr. Bailey

1           And with respect to the inveigle and  
2           decoy portion of the kidnap statute, when you  
3           hear that instruction from the Judge, you know,  
4           ask yourselves would somebody intentionally get  
5           in a car with somebody driving them to their  
6           death if they knew that's where they were going.  
7           I would ask you to consider from the previous  
8           portion of this trial the testimony of James  
9           Gadson.

10           The second aggravating circumstance  
11           the State has alleged is that the murder of  
12           Kandee Martin was committed while in the  
13           commission of criminal sexual conduct. And  
14           Judge Goodstein will instruct you on the law of  
15           the criminal sexual conduct, and it consists of  
16           a sexual battery that she will define to you  
17           which would include sexual intercourse.

18           And it becomes first degree. One of  
19           the ways that criminal sexual conduct becomes  
20           first degree criminal sexual conduct is when  
21           aggravated force is applied, or the victim is  
22           the victim of forceable confinement or  
23           kidnapping or several other factors that she  
24           will instruct you about. And in my opening  
25           statement here I'm not going to get into any

## Opening Statement by Mr. Bailey

1 great detail on these, you heard a lot of  
2 testimony already in regard to some of this  
3 stuff.

4 The next one, the next aggravating  
5 circumstance out of the four I want to talk to  
6 you about is that the murder of Kandee Martin  
7 was committed while in the commission of robbery  
8 while armed with a deadly weapon. And Judge  
9 Goodstein will define robbery to you and armed  
10 robbery.

11 Armed robbery is the stealing of  
12 property or money from somebody through the use  
13 of force or intimidation. And it becomes armed  
14 robbery when a deadly weapon is used to  
15 accomplish that robbery. Now, we all know that  
16 a gun is a deadly weapon. You've seen the gun,  
17 you found Marion Bowman, Jr. guilty of murder  
18 beyond a reasonable doubt and that is the murder  
19 weapon.

20 In regard to the armed robbery you've  
21 got the gun, you've got the use of the gun, you  
22 have got a murder committed with the gun, you've  
23 got Kandee Martin's watch found in Marion  
24 Bowman's pants that came from her person, her  
25 watch.

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## Opening Statement by Mr. Bailey

1           The fourth aggravating circumstance is  
2           the murder of Kandee Martin was committed while  
3           in the commission of larceny with the use of a  
4           deadly weapon. That's similar to the armed  
5           robbery. Larceny is stealing. I would ask you  
6           to recall Hiram Johnson's testimony as he was in  
7           the car, in Kandee Martin's car going to the  
8           beer joint in Bowman, he quoted Marion Bowman as  
9           saying "I stole the car." And, of course, it  
10          could also refer to the theft of her gun.  
11          You've heard from James Gadson, Hiram Johnson,  
12          Travis Felder that Bowman was in Kandee Martin's  
13          car after her death. So that is the fourth  
14          aggravating circumstance.

15                 In addition to the aggravating  
16                 circumstances, I'm going to talk about and  
17                 introduce some evidence about the  
18                 characteristics of Marion Bowman, Jr. Not as  
19                 aggravating circumstances, but just as part of  
20                 what you all -- the State is asking you to  
21                 consider when you consider the punishment. The  
22                 characteristics. Characteristics, the kind of  
23                 person he is, the way he's conducted himself.  
24                 It's important for all to consider that.

25                 And you're also going to hear what's

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## Opening Statement by Mr. Bailey

1 call victim impact testimony. Up until this  
2 point in time Kandee Martin has been nothing but  
3 a name to you. You know nothing about her. And  
4 during this portion of the trial I'm going to  
5 attempt to humanize her to show you that she was  
6 a living, breathing human being with feelings  
7 and family and aspirations. And the only way I  
8 know how to do that is through testimony of  
9 family members, photographs of her, because  
10 that's all that's left.

11 Now, the way this crime or these  
12 crimes occurred, the way it unfolded, of  
13 necessity a lot of the evidence of the  
14 aggravating circumstances has already come out.  
15 When the crime unfolded the two charges, murder  
16 and arson, but the series of events, the  
17 commission of those the murder and the arson  
18 included these other aggravating circumstances.  
19 And it would be obviously absurd for me to get  
20 up here and repeat all this other stuff you've  
21 already heard in an attempt to prove these  
22 aggravating circumstance.

23 The first thing I'm going to do when I  
24 sit down here or when the opening statements are  
25 over, I'm going to move to incorporate the guilt

## Opening Statement by Mr. Bailey

1 phase testimony and the evidence into the  
2 penalty phase, that way y'all can lawfully  
3 consider everything, all the evidence in the  
4 first part of the trial, all the testimony, and  
5 all the evidence in this portion of the trial.

6 For that reason, since you've already  
7 heard a lot -- or potentially all of the  
8 statutory aggravating circumstances, this phase  
9 of the trial will be much shorter. The State's  
10 case will be much shorter than the guilt phase.  
11 I fully intend to finish this morning as far as  
12 the State's case. It will be shorter, but more  
13 important.

14 After you've heard all of the  
15 testimony that you're going to hear, I'll get to  
16 speak to you a final time. At that time I will  
17 ask you ladies and gentlemen to bring back a  
18 verdict of the death penalty. Judge Goodstein  
19 will charge you on the law, you'll go back and  
20 deliberate and bring back one of those two  
21 verdicts: Life in prison or the death penalty.  
22 And I simply ask that you use -- continue to use  
23 your good common sense and pay close attention  
24 in this portion of the trial as you did in the  
25 first part of the trial and bring back a verdict

Opening Statement by Mr. Bailey

1 that speaks justice in the case. Because that's  
2 what the whole court system is about, is  
3 justice. And I'll ask you, ladies and  
4 gentlemen, when I finish my closing statement  
5 later on in this proceeding simply for justice.  
6 Thank you.

7 THE COURT: Thank you, Mr. Bailey.

8 Mr. Cummings.

9 MR. CUMMINGS: Thank you, Your Honor, Mr.  
10 Bailey.

11 Madam Forelady, ladies and gentlemen  
12 of the jury, first let me start by saying,  
13 again, good morning to you. And it's the  
14 hardest job that I ever have to do or any lawyer  
15 has to do, Ms. Thomas, is help a human being now  
16 remain alive.

17 Justice is tempered with mercy and  
18 it's easy for any of us not to have mercy. It  
19 is so easy to put our anger or to put our  
20 frustration before us and it's so easy to say,  
21 please, we heard this, we heard that, now we've  
22 decided. It's also very difficult for a lawyer  
23 to get back up after you good folks have already  
24 found what you have found. We have to say so be  
25 it and that is what I say this morning.

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## Opening Statement by Mr. Cummings

1           You have found Mr. Bowman guilty of  
2       murder and arson and no one will ever invade  
3       your province and your decisions. Whatever the  
4       good 12 of you did back in that room with our  
5       four alternates sitting in a separate room, that  
6       is your total issue. No one has ever challenged  
7       that. When you came back with that verdict at  
8       6:29 the other night, you folks left, and we  
9       continued the work.

10           We're back before you this morning  
11       again to tell you that Mr. Bowman has been found  
12       guilty of those two crimes. The least amount of  
13       time this man will ever do is to die in prison.  
14       And that is not something stated before you  
15       lightly. He will never, ever walk out of a  
16       prison in this case unless it is feet first  
17       being carried by other people. That is the  
18       least punishment that could happen to this human  
19       being now, Mr. Bowman.

20           He was 20 years old when this incident  
21       took place, he is now 21. Miss Martin was a  
22       young lady also. If I've done anything, folks,  
23       to do anything other than be polite or  
24       respectful to the memories of Miss Martin I  
25       apologize to each and every one of you. I've

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