
NO. 20-12**RECEIVED**

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

Jan 02 2025
S.C. SUPREME COURT

MARION BOWMAN

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.

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

**APPENDIX
VOLUME 2 OF 9
PAGES 501 – 1000**

Lindsey S. Vann
JUSTICE 360
900 Elmwood Avenue, Suite 200
Columbia, SC 29201
(803) 765-1044
lindsey@justice360sc.org

Melody J. Brown
OFFICE OF THE SOUTH CAROLINA
ATTORNEY GENERAL
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305
mbrown@scag.gov

Megan E. Barnes
JUSTICE 360
900 Elmwood Avenue, Suite 200
Columbia, SC 29201
(803) 765-1044
megan@justice360sc.org

Joe Maye
OFFICE OF THE SOUTH CAROLINA
ATTORNEY GENERAL
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305
jmaye@scag.gov

Counsel for Petitioner-Appellant

Counsel for Respondent-Appellee

STATE COURT RECORD

Transcript Dated May 17, 2002 – Jury Selection/Jury Trial	JA1
OPENING STATEMENT BY MR. BAILEY	JA1
OPENING STATEMENT BY MR. CUMMINGS	JA14
TESTIMONY	
WILLIAM HENRY KOGER	
Direct Examination.....	JA28
Cross Examination.....	JA35
JOSEPH F. FOGLE	
Direct Examination.....	JA37
Cross Examination.....	JA42
KEITH RIVERS	
Direct Examination.....	JA43
Cross Examination.....	JA47
CAROLYN L. BROWN	
Direct Examination.....	JA53
Cross Examination.....	JA57
Redirect Examination	JA68
Recross Examination	JA70
EDWARD WATERS	
Direct Examination.....	JA72
Cross Examination.....	JA82
YOLAND S. BOWMAN	
Direct Examination.....	JA89
Cross Examination.....	JA101
Transcript Dated May 18, 2002- Jury Trial	JA112

KATRINA WEST

Direct Examination.....	JA116
Cross Examination.....	JA121

DENNIS JUDY

Direct Examination.....	JA129
Cross Examination.....	JA149

GORDON B. NEWHOUSE

Direct Examination.....	JA153
Cross Examination.....	JA158

PERRY CHINNERS

Direct Examination.....	JA161
Cross Examination.....	JA166

JAMES P. KICKLIGHTER

Direct Examination.....	JA174
Cross Examination.....	JA178

ALVIN COKER

Direct Examination.....	JA184
Cross Examination.....	JA197

EDWARD A. PORTER

Direct Examination.....	JA202
Cross Examination.....	JA216
Redirect Examination	JA228
Recross Examination	JA228

JAMES HELMS

Direct Examination.....	JA229
Cross Examination.....	JA268
Redirect Examination	JA285
Recross Examination	JA286

DENNIS JUDY

Direct Examination.....	JA287
-------------------------	-------

Cross Examination.....	JA289
JANICE E. ROSS	
Direct Examination.....	JA294
Cross Examination.....	JA307
JAMES J. GADSON	
Direct Examination.....	JA312
Cross Examination.....	JA316
LAURIE SHACKER	
Direct Examination.....	JA324
Cross Examination.....	JA326
SHEREE BROWN	
Direct Examination.....	JA327
Cross Examination.....	JA329
DANA FOWLER SHUTT	
Direct Examination.....	JA331
JAMES T. GADSON	
Direct Examination.....	JA335
Cross Examination.....	JA377
CAROLYN BROWN	
Direct Examination.....	JA394
Transcript Dated May 19, 2002- Jury Trial Direct Examination.....	JA406
HIRAM JOHNSON	
Direct Examination.....	JA411
Cross Examination.....	JA425
TRAVIS D. FELDER	
Direct Examination.....	JA439
Cross Examination.....	JA457
Redirect Examination	JA465

Recross Examination	JA466
VALORNA SMITH	
Direct Examination.....	JA467
Cross Examination.....	JA473
TERRENCE A. VAN DORAN	
Direct Examination.....	JA479
Cross Examination.....	JA487
JAMES A. NETTLES	
Direct Examination.....	JA494
Cross Examination.....	JA498
ALVIN COKER	
Direct Examination.....	JA504
Cross Examination.....	JA509
DOROTHY M. BOWMAN	
Direct Examination.....	JA515
CORDELLIA D. MARTIN	
Direct Examination.....	JA518
Cross Examination.....	JA521
KENDRA BOWMAN	
Direct Examination.....	JA522
Cross Examination.....	JA533
YOLAND BOWMAN	
Direct Examination.....	JA537
Cross Examination.....	JA542
Redirect Examination	JA545
DOROTHY M. BOWMAN	
Direct Examination.....	JA546
Cross Examination.....	JA560

MARK SHEETZ

Direct Examination.....	JA575
Cross Examination.....	JA577

CATHERINE M. SALLEY

Direct Examination.....	JA578
Cross Examination.....	JA580

ALVIN COKER

Direct Examination.....	JA581
Cross Examination.....	JA585
Redirect Examination	JA587
Recross Examination	JA588

ALLYSON GREER

Direct Examination.....	JA590
Cross Examination.....	JA593

SALLY M. BOOKHART

Direct Examination.....	JA599
Cross Examination.....	JA605

JAMES HELMS

Direct Examination.....	JA614
Cross Examination.....	JA618

EDWARD PORTER

Direct Examination.....	JA622
Cross Examination.....	JA631
Redirect Examination	JA643
Recross Examination	JA645

GRADY A. LAYTON

Direct Examination.....	JA647
Cross Examination.....	JA655

DAVID J. COLLINS

Direct Examination.....	JA662
-------------------------	-------

Cross Examination.....	JA675
Redirect Examination	JA685
Recross Examination	JA687
CAROL GOODIER	
Direct Examination.....	JA689
Cross Examination.....	JA691
EARL V. ASBELL	
Direct Examination.....	JA692
Cross Examination.....	JA695
BETHANY CROOKS	
Direct Examination.....	JA696
Cross Examination.....	JA699
Transcript Dated May 20, 2002- Jury Trial	JA710
DOROTHY M. BOWMAN	
Direct Examination.....	JA713
Cross Examination.....	JA714
Redirect Examination	JA718
Recross Examination	JA718
MATTHEW G. FITTS	
Direct Examination.....	JA719
Cross Examination.....	JA742
Redirect Examination	JA765
MARION BOWMAN, JR.	
Examination by The Court	JA793
CLOSING ARGUMENTS BY MR. BAILEY.....	JA811
CLOSING ARGUMENTS BY MR. CUMMINGS	JA836
JURY CHARGE	JA869

VERDICT	JA919
Transcript Dated May 22, 2003- Sentencing Phase.....	JA942
OPENING STATEMENT BY MR. BAILEY.....	JA991
OPENING STATEMENT BY MR. CUMMINGS	JA999
JOSEPH W. WIMBERLY, III	
Direct Examination.....	JA1008
Cross Examination.....	JA1009
DAVID L. THOMPSON	
Direct Examination.....	JA1012
Cross Examination.....	JA1013
JAMES HELMS	
Direct Examination.....	JA1015
Cross Examination.....	JA1020
JANICE E. ROSS	
Direct Examination.....	JA1024
Cross Examination.....	JA1029
Redirect Examination	JA1031
Recross Examination	JA1033
Redirect Examination	JA1044
Recross Examination	JA1046
CORDILLIA MARTIN	
Direct Examination.....	JA1047
WAYNE MARTIN	
Direct Examination.....	JA1058
Cross Examination.....	JA1062
MARION BOWMAN, JR.	
Examination by The Court	JA1089

KENDRA BROWN

Direct Examination.....JA1097

Cross Examination.....JA1103

DOROTHY BOWMAN

Direct Examination.....JA1105

MARGARET A. BAUGHMAN

Direct Examination.....JA1116

Cross Examination.....JA1120

Redirect Examination JA1122

JEFFERY J. YUNGMAN

Direct Examination.....JA1124

Voir Dire Examination JA1132

Direct Examination.....JA1143

Cross Examination.....JA1166

Redirect Examination JA1181

FRANKIE MARTIN

Direct Examination.....JA1185

JAMES E. AIKEN

Direct Examination.....JA1187

Cross Examination.....JA1201

Redirect Examination JA1219

Recross Examination.....JA1224

SHARON J. BRANCH

Direct Examination.....JA1237

Cross Examination.....JA1243

Redirect Examination JA1244

Transcript Dated May 23, 2002- Sentencing Phase.....JA1248

ENRIQUE BADILLO

Direct Examination.....JA1256

Cross Examination.....JA1258

TRAVIS D. FELDER

Direct Examination.....	JA1265
Cross Examination.....	JA1276
Redirect Examination	JA1280
CLOSING ARGUMENTS BY MR. BAILEY.....	JA1303
CLOSING ARGUMENTS BY MS. HARDEE-THOMAS	JA1329
CLOSING ARGUMENTS BY MR. CUMMINGS	JA1333
JURY CHARGE.....	JA1368
VERDICT	JA1404
NOTICE OF INTENT TO SEE DEATH PENALTY	JA1408
NOTICE OF EVIDENCE IN AGGRAVATION.....	JA1409
FINAL BRIEF OF APPELLANT (July 6, 2005).....	JA1410
FINAL BRIEF OF RESPONDENT (July 7, 2005).....	JA1467
FINAL REPLY BRIEF OF APPELLANT (July 6, 2005)	JA1541
 <u>POST CONVICTION RELIEF</u>	
APPLICATION FOR POST-CONVICTION RELIEF (April 7, 2006).....	JA1551
ORDER OF THE UNITED STATES SUPREME COURT DENYING PETITION FOR WRIT OF CERTIORARI (June 12, 2006)	JA1558
PRELIMINARY PROTECTIVE RETURN UNTIL POST-CONVICTION COUNSEL IS APPOINTED TO STATE’S RETURN, MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT (October 2, 2006)	JA1559
RETURN, MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT (September 1, 2006)	JA1561

AMENDED RETURN, MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT (March 15, 2007)	JA1599
AFFIDAVIT OF DALE DAVIS (June 20, 2007)	JA1653
AFFIDAVIT OF MARION BOWMAN (June 20, 2007)	JA1655
AFFIDAVIT OF DOROTHY BOWMAN (June 20, 2007)	JA1656
ORDER RELIEVING CO-COUNSEL, APPOINTING NEW CO-COUNSEL, AND SCHEDULING FURTHER MATTERS (February 6, 2008)	JA1657
FIRST AMENDED APPLICATION FOR POST-CONVICTION RELIEF (February 28, 2007)	JA1659
MOTION FOR CONTINUANCE (March 25, 2008)	JA1668
SECOND AMENDED APPLICATION FOR POST-CONVICTION RELIEF (May 19, 2008)	JA1672
ORDER REQUIRING DEPARTMENT OF SOCIAL SERVICES TO PRODUCE DOCUMENTS (August 27, 2008)	JA1684
RESPONDENT’S OBJECTION TO AMENDMENTS, MOTION TO STRIKE, AND MOTION TO COMPEL DISCOVERY (September 5, 2008)	JA1686
THIRD AMENDED APPICATION FOR POST-CONVICTION RELIEF (September 8, 2008)	JA1693
NOTICE OF INTENT TO RELY UPON AFFIDAVITS AND OTHER DOCUMENTARY EVIDENCE (September 15, 2008)	JA1710
Post-Conviction Relief Hearing Transcript Excerpts (September 15, 2008) ..	JA1712
JAMES TAWAIN GADSON	
Direct Examination by Mr. Brown	JA1713
Cross Examination by Mr. Waters	JA1775

Redirect Examination by Mr. Brown	JA1797
Recross Examination by Mr. Waters	JA1822
Redirect Examination by Mr. Brown	JA1829
Recross Examination by Mr. Waters	JA1830

RICKY DAVIS

Direct Examination by Mr. Brown	JA1831
Cross Examination by Mr. Waters	JA1845
Redirect Examination by Mr. Brown	JA1852
Recross Examination by Mr. Waters	JA1857
Redirect Examination by Mr. Brown	JA1862

DAVID COLLINS (Excerpt)

Direct Examination by Mr. Brown	JA1874
---------------------------------------	--------

HIRAM JOHNSON

Direct Examination by Mr. Sinclair	JA1875
Cross Examination by Mr. Waters	JA1918
Redirect Examination by Mr. Sinclair	JA1922
Recross Examination by Mr. Waters	JA1925

TRAVIS FELDER

Direct Examination by Mr. Sinclair	JA1926
Cross Examination by Mr. Waters	JA1971
Redirect Examination by Mr. Sinclair	JA1988
Recross Examination by Mr. Waters	JA2003
Redirect Examination by Mr. Sinclair	JA2007
Recross Examination by Mr. Waters	JA2018
Redirect Examination by Mr. Sinclair	JA2022
Recross Examination by Mr. Waters	JA2023

ALVIN COKER (Excerpt)

Direct Examination by Mr. Brown	JA2028
Cross Examination by Mr. Waters	JA2040

NORBERT CUMMINGS

Direct Examination by Mr. Brown	JA2042
---------------------------------------	--------

MARVA HARDEE-THOMAS (Excerpt)	
Direct Examination by Mr. Brown	JA2172
Cross Examination by Mr. Waters	JA2237

NORBERT CUMMINGS (con't)	
Further Direct Examination by Mr. Brown	JA2258
Cross Examination by Mr. Waters	JA2396
Redirect Examination by Mr. Brown	JA2580
Recross Examination by Mr. Waters	JA2626

WALTER BAILEY (Excerpt)	
Direct Examination by Mr. Brown	JA2636
Cross Examination by Mr. Waters	JA2742
Redirect Examination by Mr. Brown	JA2764
Recross Examination by Mr. Waters	JA2776

PCR EXHIBITS

Court's Exhibit 2- Coker File (Excerpt)	JA2790
Applicant's Exhibit 1- James Taiwan Gadson's Indictment for Murder	JA2791
Applicant's Exhibit 2- James Taiwan Gadson's Motion	JA2792
Applicant's Exhibit 3- James Taiwan Gadson's Plea Agreement	JA2793
Applicant's Exhibit 4- James Taiwan Gadson's Arrest Warrant	JA2797
Applicant's Exhibit 5- James Taiwan Gadson's Statement	JA2798
Applicant's Exhibit 6- James Taiwan Gadson's Second Statement	JA2802
Applicant's Exhibit 7- James Taiwan Gadson's Polygraph Report	JA2804
Applicant's Exhibit 8- James Taiwan Gadson's Mental Evaluation Report ..	JA2805
Applicant's Exhibit 9- James Taiwan Gadson's Sentencing Sheet	JA2810

Applicant’s Exhibit 10- James Taiwan Gadson’s Amended Sentencing Sheet	JA2811
Applicant’s Exhibit 11- Ricky Davis Handwritten Note	JA2812
Applicant’s Exhibit 12- Ricky Davis’ Appointment Order (April 23, 2001)..	JA2813
Applicant’s Exhibit 14- Travis Felder’s Plea Agreement.....	JA2814
Applicant’s Exhibit 15- Travis Felder’s Polygraph Report	JA2818
Applicant’s Exhibit 17- Travis Felder’s Warrant for Accessory to Murder/Arson	JA2819
Applicant’s Exhibit 18- Travis Felder’s Warrant for Arson	JA2820
Applicant’s Exhibit 19- Ricky Davis’ Indictment for Armed Robbery	JA2821
Applicant’s Exhibit 20- Ricky Davis’ Sentencing Sheet.....	JA2822
Applicant’s Exhibit 21- Ricky Davis’ Indictment for Armed Robbery	JA2823
Applicant’s Exhibit 22- Ricky Davis’ Docket Sheet.....	JA2824
Applicant’s Exhibit 24- Ricky Davis Deposition	JA2825
Applicant’s Exhibit 29- Margaret Hawkins Statement.....	JA2853
Applicant’s Exhibit 30- Tiara Coleman Statement.....	JA2854
Applicant’s Exhibit 31- Dr. Frierson’s Report on James Taiwan Gadson	JA2849
Applicant’s Exhibit 32- Hiram Johnson Miranda Rights Form.....	JA2860
Applicant’s Exhibit 33- Hiram Johnson Statement	JA2861
Applicant’s Exhibit 43- Travis Felder’s Indictment for Arson	JA2862

Applicant’s Exhibit 44- Travis Felder’s Indictment for Accessory.....	JA2864
Applicant’s Exhibit 48- Hiram Johnson’s Warrant for Receiving Stolen Goods	JA2866
Applicant’s Exhibit 49- Hiram Johnson’s Indictment for Receiving Stolen Goods	JA2868
Applicant’s Exhibit 64- Charles Williams Letter	JA2871
Applicant’s Exhibit 67- Sam Richardson Interview with Ricky Davis (The ‘Sam Memo’)	JA2873
Applicant’s Exhibit 68- Walter Bailey Letter.....	JA2874
Applicant’s Exhibit 71- Hiram Johnson’s Indictments Burglary 2 nd Degree .	JA2875
Respondent’s Exhibit 4- Marion Bowman Statement	JA2882
Respondent’s Exhibit 5- Marion Bowman Statement	JA2885
Respondent’s Exhibit 6- Marion Bowman Statement	JA2888
Respondent’s Exhibit 9- Hiram Johnson RAP Sheet	JA2890
Respondent’s Exhibit 17- Ricky Davis Docket Sheet	JA2894
Respondent’s Exhibit 29- Bowman’s Mental Evaluation	JA2895
Respondent’s Exhibit 30- Ricky Davis Handwritten Note.....	JA2904
Respondent’s Exhibit 34- Letter from Norbert Cummings to Walter Bailey	JA2905
Respondent’s Exhibit 35- Letter from Walter Bailey to Norbert Cummings.	JA2906
Respondent’s Exhibit 36- Letter from Walter Bailey to Norbert Cummings.	JA2907
FOURTH AMENDED APPLICATION FOR POST-CONVICTION RELIEF	

(June 5, 2009)	JA2908
APPLICANT’S AMENDED BRIEF SUPPORTING THE FOURTH AMENDED APPLICATION FOR STATE POST-CONVICTION RELIEF (June 12, 2009)	JA2927
POST TRIAL BRIEF IN OPPOSITION TO APPLICATION FOR STATE POST-CONVICTION RELIEF (August 10, 2009).....	JA3036
APPLICANT’S REPLY TO RESPONDENT’S BRIEF IN OPPOSITION (September 16, 2009).....	JA3238
ORDER DENYING APPLICATION FOR POST-CONVICTION RELIEF (March 12, 2012)	JA3267
MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(e) (March 19, 2012)	JA3398
ATTORNEY GENERAL’S LETTER IN RESPONSE TO MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(e) (April 30, 2012)	JA3416
ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(e) (November 5, 2012)	JA3417
AMENDED PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA (April 30, 2014).....	JA3418
RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA (March 24, 2014).....	JA3505
REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA (May 5, 2014)	JA 3574
ORDER GRANTING WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA (April 15, 2016)	JA3600
BRIEF OF PETITIONER (August 8, 2016).....	JA 3601

BREIF OF RESPONDENT (December 16, 2016).....	JA3629
REPLY BRIEF OF PETITIONER (January 30, 2017).....	JA3668
ORDER OF SOUTH CAROLINA SUPREME COURT AFFIRMING DENIAL OF POST-CONVICTION RELIEF (January 10, 2018).....	JA3679
PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY AND MEMORANDUM IN SUPPORT OF PETITION (January 10, 2019).....	JA3700
PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY AND MEMORANDUM IN SUPPORT OF PETITION – EXHIBIT E: AFFIDAVIT OF ORETTA MILLER (January 10, 2019)	JA3798
PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY AND MEMORANDUM IN SUPPORT OF PETITION – EXHIBIT K: AFFIDAVIT OF TRIAL FACT INVESTIGATOR ROBERT MINTER (January 10, 2019).....	JA3804
PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY AND MEMORANDUM IN SUPPORT OF PETITION- EXHIBIT L: AFFIDAVIT OF PCR COUNSEL JAMES ARTHUR BROWN, JR. (January 10, 2019).....	JA3807
RESPONDENTS’ MOTION FOR SUMMARY JUDGMENT (May 10, 2019)	JA3809
RESPONDENTS’ RETURN AND MEMORNDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT (May 10, 2019)	JA3810
PETITIONER’S TRAVERSE AND RESPONSE IN OPPOSITION TO RESPONDENT’S MOTION FOR SUMMARY JUDGMENT (August 5, 2019)	JA3926
RESPONDENTS’ REPLY TO PETITIONER’S RESPONSE IN OPPOSITION (August 19, 2019)	JA3965

REPORT AND RECOMMENDATION OF MAGISTATE JUDGE (December 10, 2019)	JA3984
PETITIONER’S OBJECTIONS TO REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE BY MARION BOWMAN (February 14, 2020)	JA4105
RESPONDENTS’ REPLY TO OBJECTION TO THE REPORT AND RECOMMENDATION (February 28, 2020)	JA4131
ORDER GRANTING SUMMARY JUDGMENT AND DENYING PETITIONER’S AMENDED PETITION (March 26, 2020)	JA4138
SUMMARY JUDGMENT ENTERED IN FAVOR OF RESPONDENT (March 26, 2020)	JA4214
MOTION TO ALTER OR AMEND JUDGMENT (April 22, 2020)	JA4215
MEMORANDUM IN SUPPORT OF MOTION TO ALTER OR AMEND JUDGMENT (May 14, 2020)	JA4218
RESPONDENTS’ RESPONSE IN OPPOSITION TO PETITIONER’S RULE 59(e) MOTION TO ALTER OR AMEND (June 15, 2020)	JA4231
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

4545

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

JA 900

Jury Charge

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

State vs. Bowman - Volume XXII

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.

State vs. Bowman - Volume XXII

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.)

State vs. Bowman - Volume XXII

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

4551

State vs. Bowman - Volume XXII

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.

JA 906

State vs. Bowman - Volume XXII

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

State vs. Bowman - Volume XXII

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

State vs. Bowman - Volume XXII

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

4555

State vs. Bowman - Volume XXII

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

JA 910

State vs. Bowman - Volume XXII

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

State vs. Bowman - Volume XXII

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

State vs. Bowman - Volume XXII

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.

4559

State vs. Bowman - Volume XXII

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

JA 914

State vs. Bowman - Volume XXII

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

4561

State vs. Bowman - Volume XXII

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

JA 916

State vs. Bowman - Volume XXII

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

State vs. Bowman - Volume XXII

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

State vs. Bowman - Volume XXII

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?

State vs. Bowman - Volume XXII

- 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.

State vs. Bowman - Volume XXII

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

State vs. Bowman - Volume XXII

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

State vs. Bowman - Volume XXII

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

State vs. Bowman - Volume XXII

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

State vs. Bowman - Volume XXII

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

4571

State vs. Bowman - Volume XXII

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

JA 926

State vs. Bowman - Volume XXII

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

State vs. Bowman - Volume XXII

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

State vs. Bowman - Volume XXII

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

State vs. Bowman - Volume XXII

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

State vs. Bowman - Volume XXII

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

State vs. Bowman - Volume XXII

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

State vs. Bowman - Volume XXII

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

State vs. Bowman - Volume XXII

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.

State vs. Bowman - Volume XXII

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

4581

State vs. Bowman - Volume XXII

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

JA 936

State vs. Bowman - Volume XXII

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

State vs. Bowman - Volume XXII

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

State vs. Bowman - Volume XXII

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

State vs. Bowman - Volume XXII

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.

12 - - - o0o - - -
13
14
15
16
17
18
19
20
21
22
23
24
25

4586

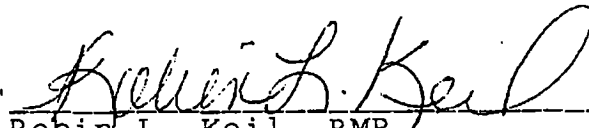
STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) : C E R T I F I C A T E

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

4587

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

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

Walter M. Bailey, Jr., Esquire
Benjamin Lafond, Esquire
Office of Solicitor
First Judicial Circuit
140 North Main Street, Suite 102
Summerville, SC 29483
For the State of South Carolina

Norbert E. Cummings, Jr., Esquire
Law Office of Norbert E. Cummings, Jr.
100 South Main Street
Summerville, SC 29483

-and-

Marva A. Hardee-Thomas, Esquire
Law Office of Marva A. Hardee-Thomas
130 East Richardson Avenue
Summerville, SC 29483
For Marion Bowman

Robin L. Keil, RMR
Resident Court Reporter
First Judicial Circuit
Post Office Box 3335
Summerville, SC 29484-3335

JA 942

I N D E X

Opening Statement by Mr. Bailey	4636	17
Opening Statement by Mr. Cummings	4644	9
 <u>WITNESSES</u>		
	<u>Page</u>	<u>Line</u>
 JOSEPH W. WIMBERLY, III		
Direct Exam By Mr. Bailey	4653	2
Cross-Exam By Mr. Cummings	4654	17
DAVID L. THOMPSON		
Direct Exam By Mr. Bailey	4657	2
Cross-Exam By Mr. Cummings	4658	2
JAMES HELMS		
Direct Exam By Mr. Bailey	4660	13
Cross-Exam By Mr. Cummings	4665	18
JANICE E. ROSS		
Direct Exam By Mr. Bailey	4669	19
Cross-Exam By Mr. Cummings	4674	2
Redirect Exam By Mr. Bailey	4676	10
Recross-Exam By Mr. Cummings	4678	18
Continued Direct Exam By Mr. Bailey	4689	7
Cross-Exam By Mr. Cummings	4691	8
CORDILLIA MARTIN		
Direct Exam By Mr. Bailey	4692	22
WAYNE MARTIN		
Direct Exam By Mr. Bailey	4703	9
Cross-Exam By Mr. Cummings	4707	16
MARION BOWMAN, Jr.		
Examination By The Court	4734	14
KENDRA BOWMAN		
Direct Exam By Ms. Hardee-Thomas	4742	11
Cross-Exam By Mr. Bailey	4748	24
DOROTHY BOWMAN		
Direct Exam By Mr. Cummings	4750	2
MARGARET A. BAUGHMAN		
Direct Exam By Mr. Cummings	4761	3
Cross-Exam By Mr. Bailey	4765	10
Redirect Exam By Mr. Cummings	4767	13
JEFFREY J. YOUNGMAN		
Direct Exam By Mr. Cummings	4769	2
Voir Dire Exam by By Mr. Bailey	4777	19
Continued Direct Exam By Mr. Cummings	4788	24
Cross-Exam By Mr. Bailey	4811	23
Redirect Exam By Mr. Cummings	4826	11
FRANKIE MARTIN		
Direct Exam By Ms. Hardee-Thomas	4830	4
JAMES E. AIKEN		
Direct Exam By Mr. Cummings	4832	21

4589

Cross-Exam By Mr. Bailey	4846	21
Redirect Exam By Mr. Cummings	4864	15
Recross-Exam By Mr. Bailey	4869	12
SHARON J. BRANCH		
Direct Exam By Mr. Cummings	4882	17
Cross-Exam By Mr. Bailey	4888	23
Redirect Exam By Mr. Cummings	4889	17

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
C-037	Competency Evaluation	4619	
C-038	Photographs of Victim	4625	
D-005	through 15 Photographs		4741
D-016	Ribbon		4764
D-017	Chart		4811
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

State vs. Bowman - Volume XXIII

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

State vs. Bowman - Volume XXIII

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

State vs. Bowman - Volume XXIII

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.

State vs. Bowman - Volume XXIII

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.

State vs. Bowman - Volume XXIII

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

State vs. Bowman - Volume XXIII

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

State vs. Bowman - Volume XXIII

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.

State vs. Bowman - Volume XXIII

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 prosed 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

State vs. Bowman - Volume XXIII

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,

4599

State vs. Bowman - Volume XXIII

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

JA 954

State vs. Bowman - Volume XXIII

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

State vs. Bowman - Volume XXIII

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

State vs. Bowman - Volume XXIII

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,

4603

State vs. Bowman - Volume XXIII

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

JA 958

State vs. Bowman - Volume XXIII

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

State vs. Bowman - Volume XXIII

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

State vs. Bowman - Volume XXIII

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.

State vs. Bowman - Volume XXIII

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.

State vs. Bowman - Volume XXIII

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

State vs. Bowman - Volume XXIII

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

State vs. Bowman - Volume XXIII

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

4611

State vs. Bowman - Volume XXIII

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

State vs. Bowman - Volume XXIII

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.

State vs. Bowman - Volume XXIII

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.

State vs. Bowman - Volume XXIII

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

State vs. Bowman - Volume XXIII

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

State vs. Bowman - Volume XXIII

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.

4617

State vs. Bowman - Volume XXIII

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

JA 972

State vs. Bowman - Volume XXIII

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.

State vs. Bowman - Volume XXIII

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

State vs. Bowman - Volume XXIII

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

State vs. Bowman - Volume XXIII

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

State vs. Bowman - Volume XXIII

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

State vs. Bowman - Volume XXIII

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

State vs. Bowman - Volume XXIII

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.

4625

State vs. Bowman - Volume XXIII

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?

JA 980

State vs. Bowman - Volume XXIII

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

State vs. Bowman - Volume XXIII

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.

State vs. Bowman - Volume XXIII

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

State vs. Bowman - Volume XXIII

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

State vs. Bowman - Volume XXIII

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.

State vs. Bowman - Volume XXIII

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

State vs. Bowman - Volume XXIII

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

State vs. Bowman - Volume XXIII

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.

State vs. Bowman - Volume XXIII

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,

State vs. Bowman - Volume XXIII

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

State vs. Bowman - Volume XXIII

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.

4639

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

JA 994

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.

4641

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

JA 996

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

4643

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

JA 998

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.

4645

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

JA 1000