
NO. 20-12

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

RECEIVED**Jan 02 2025****MARION BOWMAN****S.C. SUPREME COURT***Petitioner-Appellant,*

v.

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

Respondent-Appellees.

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

**APPENDIX
VOLUME 3 OF 9
PAGES 1001 – 1500**

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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

Opening Statement by Mr. Cummings

1 tried to do my job. I'm a tough old Marine. I
2 stand before you this morning saying that kid,
3 that kid, please show mercy with justice. To do
4 other than that is to do disservice to mankind.

5 In the opening statement this morning
6 we're supposed to give you a bridge now about
7 what can happen. What can happen is death.
8 Some day, some time your sentence will be
9 carried out. That is a given if you vote
10 collectively for death.

11 If you believe that the killing should
12 stop here, I ask you for mercy on behalf of my
13 client. If you believe that killing this man,
14 having a death sentence voted or would kill this
15 man and do justice in this case, then you shall
16 have found it.

17 Some day, some time, there will be
18 other, other issues in this community that you
19 will be looking at. Some day, some time we'll
20 all be considering this case again and everyone
21 will say could I have done this? Should I have
22 done that? Would this have happened? Would
23 that have been a difference? Did anybody let
24 anybody down? Did I do or did we do our best to
25 save this kid's life?

4647

Opening Statement by Mr. Cummings

1 The hardest thing for a lawyer to do
2 is tell you the greatest judgment today is today
3 for Mr. Bowman. I cast no light or dispersion
4 against the memory of Miss Martin. I'm asking
5 you as you hear this today to understand he has
6 been found guilty of two crimes, murder and
7 arson. I told you about the football analogy
8 about piling on. That's what this is, is piling
9 on now. There is no other way to call that.

10 Anybody who loses a loved one
11 suffers. The fact that Miss Martin is gone --
12 excuse me, the fact that Miss Martin is gone can
13 never, ever be returned by the taking of
14 Mr. Bowman's life. It seems that sometimes
15 people forget that, the fact that because a loss
16 has occurred we're going to probably have a
17 loss. Please take into consideration what you
18 have heard or not heard in the case in chief in
19 the guilt phase.

20 If you hear anything today you've got
21 to also listen to the fact that Mr. Bowman was
22 testified about by lots of people and that there
23 were a lot of inconsistencies and a lot of
24 anguish going on in the courtroom, and I
25 apologize to you folks. And some of the times

JA 1002

Opening Statement by Mr. Cummings

1 doing cross-examination it appears that because
2 of the agreements and because of other issues
3 testimony had to be a certain way. And if you
4 found that, so be it. If not, then so be that,
5 too. But the only person in this room today
6 that is facing no less than life imprisonment
7 without any possibility of parole --

8 MR. BAILEY: Judge, I object. And I would
9 like it approach the bench.

10 THE COURT: Surely.

11 (Whereupon, a bench conference was held off the
12 record in the presence of the jury but out of
13 the hearing of the jury.)

14 MR. CUMMINGS: The only person that will be
15 facing the death penalty today is Mr. Bowman.
16 Ladies and gentlemen, if you look at the
17 aggravating factors that have been presented by
18 the State for your consideration, and it's only
19 for consideration, it's an attempt to aggravate
20 the crime, it's an attempt to aggravate you in
21 here. It's an attempt. Please look at it. If
22 he was charged with kidnapping, he was not
23 indicted or presented for you for you to
24 determine whether or not he was charged and
25 presenting with kidnapping, that has not

4649

Opening Statement by Mr. Cummings

1 happened.

2 As to criminal sexual conduct, he has
3 not been presented to you, nor has he been
4 convicted of criminal sexual conduct. Robbery.
5 There's been no testimony of a robbery. And,
6 please, listen to what was presented and what
7 was not presented. It's easy to rush to
8 judgment. Everybody thinks what robbery may be,
9 everybody thinks what might have happened here.
10 The mere fact that this gentlemen had a watch in
11 his pocket doesn't mean he stole it. You
12 haven't heard any evidence today. Have you
13 heard any evidence that he stole the car to
14 convince you beyond a reasonable doubt?

15 Ladies and gentlemen, you will hear
16 victim impact statements. And I'm going to tell
17 you ahead of time I am sorry for the loss of
18 Miss Martin to her family. I say that to you as
19 an officer of the Court, I say that to you as a
20 gentleman. Simply the passion or prejudice
21 cannot come into your vote. I ask you within
22 your heart, I ask you within your civic duty to
23 show this community that justice can be tempered
24 with mercy. That's all we are is what we are.
25 Look at the surroundings, look at the situation

JA 1004

Opening Statement by Mr. Cummings

1 here and you be just, fair, and merciful jurors
2 for the sake of humanity. Thank you.

3 Thank you, Judge.

4 THE COURT: Thank you, Mr. Cummings.

5 Yes, sir. Mr. Bailey.

6 MR. BAILEY: The State would move at this
7 point to incorporate the guilt phase testimony
8 and the evidence into the penalty phase.

9 THE COURT: Very well. Of course, along
10 with all -- with the exceptions and matters
11 raised by the defense.

12 MR. CUMMINGS: Yes, ma'am.

13 THE COURT: And the rulings therein also.
14 Very well. So incorporated, Mr. Bailey.

15 MR. BAILEY: Thank you, Your Honor. Your
16 Honor, prior to calling my first witness I would
17 like to introduce four certified copies of our
18 court records that I believe have been displayed
19 to the defense.

20 MR. CUMMINGS: Correct, Judge. And with
21 the following exceptions and objections.

22 THE COURT: Over the objection of the
23 defendants they'll be marked as State's
24 Exhibits.

25 MR. BAILEY: Thank you, Your Honor. Your

4651

State vs. Bowman - Volume XXIII

1 Honor, may I publish these to the jury?

2 THE COURT: You may.

3 MR. BAILEY: Thank you, Your Honor.

4 THE COURT: What numbers are they?

5 MR. BAILEY: Your Honor, they're State's
6 37, 38, 39, 40.

7 THE COURT: State's 37, 38, 39, 40.

8 MR. BAILEY: Your Honor, I move those into
9 evidence.

10 THE COURT: Very well.

11 MR. CUMMINGS: Thank you, Judge. Of course
12 with the exceptions as noted earlier.

13 THE COURT: Thank you.

14 MR. BAILEY: Your Honor, this would be
15 State's 77, 78, 79, and 80.

16 THE COURT: These are the same exhibits
17 when I started a moment ago with different
18 numbers?

19 MR. BAILEY: Yes, ma'am.

20 THE COURT: So State's Exhibits 77, 78, 79,
21 80 in evidence over the objection of the
22 defense.

23 MR. CUMMINGS: Thank you, Judge.

24 (Entered into evidence was State's Exhibit 77,
25 conviction.)

JA 1006

State vs. Bowman - Volume XXIII

1 (Entered into evidence was State's Exhibit 78,
2 conviction.)

3 (Entered into evidence was State's Exhibit 79,
4 conviction.)

5 (Entered into evidence was State's Exhibit 80,
6 conviction.)

7 MR. BAILEY: State's 77 is an Orangeburg
8 Court of General Sessions Court conviction of
9 Marion Bowman, Jr. to the crime of petty larceny
10 dated March 9, 1998. State's 78 is an
11 Orangeburg General Sessions Court conviction of
12 Marion Bowman, Jr. for burglary in the third
13 degree dated March 9th, 1998. State's 79 is an
14 Orangeburg General Sessions Court conviction for
15 Marion Bowman, Jr. for petty larceny dated
16 March 9, 1998. State's 80 is a conviction,
17 General Sessions Court for Orangeburg County of
18 Marion Bowman, Jr. for the crime of burglary in
19 the third degree.

20 The State would next call Joey
21 Wimberly.

22 (Joseph W. Wimberly, III, called as a witness,
23 having first been duly sworn, is examined and
24 testifies as follows:)

Joseph W. Wimberly, III - Direct Exam

DIRECT EXAMINATION

1 BY MR. BAILEY:

2 Q Mr. Wimberly, where do you live, sir?

3 A Branchville, South Carolina.

4 Q Back in July of 1997 where did you live?

5 A Outside of Branchville on Highway 210.

6 Q In Orangeburg County?

7 A Yes, sir.

8 Q Calling your attention to July 27 of 1997
9 between about 10:30 a.m. and 2:00 p.m., what, if
10 anything, occurred at your home?
11

12 A My home was broken into.

13 Q All right, sir. How was it broken into?

14 A Entered through the front door.

15 Q All right, sir. And would you state whether or
16 not any of your property that belonged to you was
17 taken during the course of that burglary?

18 A One pump shotgun.

19 Q All right, sir. A pump shotgun?

20 A Yes, sir.

21 Q All right, sir. And to the best of your
22 knowledge was Marion Bowman, Jr. charged and
23 convicted of that burglary, theft of that shotgun?

24 A Yes, sir.

25 Q All right, sir. Did you get the shotgun back?

Joseph W. Wimberly, III - Direct Exam

1 A Yes, sir.

2 Q What condition was it in when you got it back?

3 A The barrel had been sawed off.

4 Q Thank you, sir. Please answer any questions the
5 defense may have for you.

6 THE COURT: Cross-examination.

7 MR. CUMMINGS: I would just move to strike
8 the last word by Mr. Wimberly there. Your
9 Honor, my client has not been charged with any
10 issue of possession or ownership of a sawed-off
11 shotgun, please, respectfully, move to strike
12 the last statement, respectfully, Judge.

13 THE COURT: Respectfully overruled, note
14 your exception.

15 MR. CUMMINGS: Thank you.

16 CROSS-EXAMINATION

17 BY MR. CUMMINGS:

18 Q I'm Norb Cummings, good morning, sir. Excuse
19 me. I'm going to take a moment here and just go back
20 over with you a little bit. This happened back on
21 July 1997, correct, sir?

22 A Yes, sir.

23 Q And you don't know who sawed off your shotgun
24 personally, do you, sir?

25 A No, sir.

Joseph W. Wimberly, III - Cross-Exam

1 Q Okay. And Mr. Bowman had never been charged
2 with a sawed-off shotgun, had he, sir?

3 A Not to my knowledge.

4 Q Again, sir, I'm not asking any trick questions
5 or whatever. Your home was entered into?

6 A Right.

7 Q Mr. Bowman, did he plead guilty to that, sir?

8 A I don't know, sir.

9 Q You didn't show up for the court hearing?

10 A Pardon me?

11 Q You did not show up for the court hearing, sir?

12 A No, sir.

13 Q Did you ever find out the age of the person of
14 Mr. Bowman back in July of 1997, sir?

15 A No, sir.

16 Q And nobody has, solicitor has not shared that
17 with you or any peace officers even as we speak
18 today?

19 A No, sir.

20 Q And, Mr. Wimberly, I think that may be the only
21 questions.

22 MR. CUMMINGS: Beg the Court's indulgence.

23 THE COURT: Certainly. Certainly.

24 (Mr. Cummings and Ms. Hardee-Thomas conferring
25 with Mr. Bowman.)

Joseph W. Wimberly, III - Cross-Exam

1 Q Mr. Wimberly, were you afforded restitution
2 through our probation, parole department as a result
3 of your damages that you suffered, sir?

4 A Yes, sir.

5 Q Was that paid by Mr. Bowman?

6 A I assume so, sir. It was through the court
7 system.

8 Q So you were made whole again?

9 A Right. Yes, sir.

10 MR. CUMMINGS: Thank you, Judge. That's
11 all the questions we have.

12 THE COURT: Any redirect?

13 MR. BAILEY: No redirect, Your Honor.

14 THE COURT: Is this witness free to leave?

15 MR. BAILEY: Yes, ma'am.

16 MR. CUMMINGS: Yes, ma'am, Your Honor, we
17 thank this gentleman.

18 THE COURT: You are free to go.

19 (Whereupon, the witness steps down from the
20 witness stand.)

21 MR. BAILEY: D. L. Thompson.

22 (David L. Thompson, called as a witness, having
23 first been duly sworn, is examined and testifies
24 as follows:)

25

David L. Thompson - Direct Exam

DIRECT EXAMINATION

1

2 BY MR. BAILEY:

3 Q Mr. Thompson, please tell the jury where you
4 live.

5 A I live in Branchville, South Carolina.

6 Q All right, sir. Where did you live July 1997?

7 A Branchville, South Carolina.

8 Q All right, sir. I want to call your attention
9 to July the 27th, 1997 between about 10:30 a.m. and
10 12:00 noon and ask what, if anything, occurred at
11 your home?

12 A Yes, sir. That particular Sunday you're talking
13 about while my wife and daughters and I were at
14 church our house was broken into and a .357 pistol
15 was stolen from my house and some cash money out of
16 my wife's checkbook. And within approximately 24
17 hours a young male from my hometown was killed with
18 that pistol.

19 Q All right. Okay. Mr. Thompson, would you state
20 whether or not Marion Bowman was charged with that
21 burglary?

22 A Yes, sir. He was charged with the burglary.

23 Q All right, sir. Thank you.

24 MR. BAILEY: That's all I have, Your Honor.

25 THE COURT: Cross-examination.

David L. Thompson - Cross-Exam

1 CROSS-EXAMINATION

2 BY MR. CUMMINGS:

3 Q Good morning, sir. I'm Norb Cummings and I
4 represent Mr. Bowman, sir.

5 A Okay.

6 Q I just want to go back a little bit here if I
7 may. This happened July of 1997, sir?

8 A Yes, sir.

9 Q Okay. And isn't it a true statement, sir, the
10 gentleman who had the gun committed suicide with it?

11 A I'm not aware of that, sir.

12 Q Well, a few moments ago you told the jury you
13 learned that somebody had died as a result of having
14 the handgun?

15 A I don't know about a suicide, no, sir. I don't
16 know about that.

17 Q Okay. Nobody was ever charged with any murder
18 offense of your personal knowledge?

19 A Not to my knowledge.

20 Q Again, sir, I'm not asking you anything to
21 challenge you today. You had your home entered into?

22 A That's correct.

23 Q And some items were taken?

24 A That's correct.

25 Q And had you received full restitution from our

David L. Thompson - Cross-Exam

1 Department of Probation and Parole and the citizen
2 who was charged with that crime?

3 A Yes, sir.

4 Q And he did make you whole; in other words, as
5 best as possible from the amount of restitution you
6 put down on there?

7 A That is correct.

8 MR. CUMMINGS: Beg the Court's indulgence,
9 Your Honor.

10 THE COURT: Yes.

11 (Mr. Cummings and Ms. Hardee-Thomas conferring
12 with Mr. Bowman.)

13 Q Let me go back and ask you one more question,
14 sir. Did you know Mr. Marion Bowman, Jr.?

15 A No, sir. I did not know Mr. Bowman.

16 Q And was either you, sir, or your spouse teaching
17 at Branchville school at that time?

18 A My wife.

19 Q Thank you.

20 MR. CUMMINGS: That's all the questions we
21 have, Judge.

22 THE COURT: Any redirect?

23 MR. BAILEY: No redirect, Your Honor.

24 THE COURT: Is this witness free to leave?

25 MR. BAILEY: Yes, ma'am.

David L. Thompson - Cross-Exam

1 MR. CUMMINGS: Without objection, Judge.

2 Thank this gentleman.

3 THE COURT: You are free to go, thank you.

4 (Whereupon, the witness steps down from the
5 witness stand.)

6 MR. BAILEY: Your Honor, the State would
7 next call James Helms.

8 THE COURT: All right.

9 (James Helms, called as a witness, having first
10 been duly sworn, is examined and testifies as
11 follows:)

12 DIRECT EXAMINATION

13 BY MR. BAILEY:

14 Q Mr. Helms, you testified in the guilt phase of
15 this proceeding I think a couple times; is that
16 correct, sir?

17 A That's correct, sir.

18 Q You testified that you worked with the SLED
19 arson department forensic laboratory and that you on
20 February 17th, 2001 came out to the crime scene; is
21 that correct, sir?

22 A Yes, sir.

23 Q And you took several photographs; is that
24 correct?

25 A That's correct, sir.

4661

James Helms - Direct Exam

1 Q Some of which were introduced in the guilt phase
2 of the trial; is that correct, sir?

3 A Yes, sir.

4 Q I would ask whether or not in addition to the
5 photographs that were introduced earlier, whether you
6 took any other photographs?

7 A That is correct, sir.

8 Q Okay. Those were photographs taken of the
9 victim, Kandee Martin's body, as you observed it on
10 February 17th, 2001?

11 A Yes.

12 Q I'm going to hand you several photographs, four
13 photographs, and ask just yes or no can you identify
14 those?

15 A Yes, sir. I can.

16 Q All right, sir. And did you take these
17 photographs, were they taken in your presence?

18 A I took those photographs, sir.

19 Q All right, sir. Do they accurately depict what
20 you observed with regard to Miss Martin's body on
21 February 17th, 2001?

22 A Yes, sir. They do.

23 MR. BAILEY: Your Honor, I would offer
24 these into evidence at this time.

25 MR. CUMMINGS: Judge, subject to all the

JA 1016

James Helms - Direct Exam

1 legal objections we made throughout the trial.

2 THE COURT: I understand. Counsel, let me
3 see you just a second if you can approach.

4 (Whereupon, a bench conference was held
5 off the record in the presence of the
6 jury but out of the hearing of the jury.)

7 MR. BAILEY: If I can withdraw two of
8 these, Your Honor. And I would ask the others,
9 remaining two, be marked into evidence at this
10 point.

11 THE COURT: All right. Very well. State's
12 Exhibits 81 and 82 in evidence over the
13 objection of the defendant.

14 (Entered into evidence was State's Exhibit 81,
15 photograph.)

16 (Entered into evidence was State's Exhibit 82,
17 photograph.)

18 Q I'm going to hand you what's been marked State's
19 81, sir, and I would ask if this is one of the
20 photographs that you took on February 17th, 2001?

21 A That would be correct, sir.

22 Q All right, sir. And would you stand up and
23 display that to the jury and tell them under what
24 circumstances you took the picture and what it
25 depicts, sir. And I would ask, sir, if after

4663

James Helms - Direct Exam

1 explaining that to the jury if you would hand that to
2 the forelady to pass among the jury so they can see
3 it..

4 A All right. This picture is taken by myself on
5 that morning. It is a picture of the victim's
6 vehicle as discussed earlier in the court. In the
7 trunk -- this was the rear view of the picture, this
8 being the open trunk here, this being the rear of the
9 vehicle, this would basically be where your brake
10 lights were, bumper, et cetera.

11 Inside the trunk area is the deceased,
12 Kandee Martin. This being her head or skull, this
13 being her back right arm, this being the torso area
14 of the deceased coming down to right here would be
15 the hips area. This would be the left leg, this
16 would be the right leg, the legs going down into the
17 wheel well of the trunk. This would be a section of
18 what remains of her left arm which was extended this
19 way.

20 The measurements on this trunk was
21 approximately three feet deep from the roof to the
22 bottom, approximately four feet wide, approximately
23 three feet deep from the latch area to the back of
24 the seat which is indicated by this piece of metal
25 here with the holes in it.

JA 1018

James Helms - Direct Exam

1 The forelady is...?

2 Q Mr. Helms, State's 82 into evidence, if you
3 would do the same thing with it, please, sir.

4 A Again, this is a photograph taken by myself on
5 the morning of the incident, this would be the
6 deceased victim in this case. This would be the
7 young lady once she had been removed from the trunk
8 of the vehicle, the trunk of the vehicle back here in
9 the background.

10 This is when we were planning to place
11 her in the body bag, which is depicted by this white
12 sheet is the body bag of the coroners. She was
13 rolled over onto her side in order for me to
14 photograph the back of her area. The area that you
15 can see in here is the area that was protected from
16 the heat, protected from the fire, very little
17 damage, thermal damage, et cetera. She was laying in
18 the back in her trunk, the backside was not exposed
19 to too much heat.

20 Again, this would be the skull,
21 primarily all the hair, facial features that were
22 burned away. As noted by the pathologist's office in
23 Newberry --

24 MR. CUMMINGS: Objection, Your Honor, this
25 gentleman can't testify to that.

4665

James Helms - Direct Exam

1 THE COURT: Sustained.

2 Q Just what you observed, sir. Let me ask you
3 this, Mr. Helms: You testified earlier as part of
4 the items that went up to SLED, testified as having
5 gasoline residue there was a shirt. Does that
6 picture depict where that portion of the shirt came
7 from?

8 A Yes, sir. There is a portion of the shirt that
9 remains here on the victim's back that was scraped
10 and peeled off in order to be collected. And some
11 remains of her shirt there, again, on the arm there.
12 This back through here is burnt skin, will not be the
13 shirt.

14 Q Mr. Helms, please answer any questions Mr.
15 Cummings may have for you, please, sir.

16 THE COURT: Cross-examination.

17 CROSS-EXAMINATION

18 BY MR. CUMMINGS:

19 Q Good morning, sir. You took those photographs
20 you just showed the ladies and gentlemen of the jury,
21 you pointed out the issues that Mr. Bailey asked you
22 to point out to them, the photographs depict what you
23 saw that day?

24 A Correct, sir.

25 Q I want to take you back just a little bit now

JA 1020

James Helms - Cross-Exam

1 and ask you did you ever retrieve a tape from the EZ
2 store shop around Branchville looking for suspects in
3 this case?

4 A Either myself or Detective Coker did.

5 Q Did you review that tape with your own eyes,
6 sir?

7 A Yes, sir.

8 Q You actually tried to take still photographs and
9 enhancements of it; did you not?

10 A That's correct, sir.

11 Q Did you notice Mr. Travis Felder on the tape
12 buying a gallon of gasoline, sir?

13 A I need to check my notes.

14 Q You're welcome to them. Let me pass up what
15 appears to be a clean copy. And I'm only asking you
16 a question about -- I believe it's on the last page,
17 sir.

18 MR. CUMMINGS: May I approach the witness,
19 Your Honor?

20 THE COURT: You may.

21 Q If that's not your entire report, sir, you let
22 me know.

23 A All right, sir. Yeah. On 2-23-2001 received
24 the tape. And this report does not reflect who was
25 on the tape at which time, which I believe I have

James Helms - Cross-Exam

1 written down in some notes on my case file.

2 Q Were you able to identify any of the people's
3 faces on that tape of your personal knowledge for
4 these ladies and gentlemen, sir? And if you need
5 your other notes I'm sure Her Honor will let you do
6 that, sir.

7 THE WITNESS: Your Honor, if you don't mind
8 if I can get my case file.

9 THE COURT: Certainly.

10 MR. CUMMINGS: Your Honor -- I think this
11 is the briefcase, sir.

12 Your Honor, I don't mean to delay, I
13 just want to ask the gentleman to just review
14 his own handwritten notes.

15 THE COURT: Certainly.

16 Q Thank you, agent Helms.

17 A If you would like to look at this before I read
18 from it as my notes.

19 Q Thank you, sir. You would use that this morning
20 to refresh your memory, sir?

21 A Yes, it is.

22 Q Look at your notes here again, sir. Holding
23 onto this does it mention any names of any people you
24 saw on the tape? That's the only question I would
25 have.

4668

James Helms - Cross-Exam

1 A I believe it did. I briefly looked at it, but
2 the fact I believe it -- ask me the question one more
3 time.

4 Q While looking at the tape could you see any
5 identifiable faces on the tape that later on resulted
6 in charges, like Mr. Felder being charged with arson,
7 Mr. Gadson being charged with murder, Mr. Bowman
8 being charged with murder and arson?

9 A As I have noted on my notes here, if you have
10 no objection to reading what I've written down.

11 Q My question, sir, do you see any names from the
12 faces that you looked at that videotape?

13 A I have one name written down here on this piece
14 of paper.

15 Q What name is that, sir?

16 A That would be James Gadson.

17 Q All right. The other issue I would ask you now
18 is from recalling your memory, your expertise, your
19 professionalism and the gentleman that you are, sir,
20 looking at that tape now do you remember Travis
21 Felder buying gasoline at three o'clock in the
22 morning in a one-gallon jug?

23 A From my recollection from identifiable faces of
24 someone buying gasoline at three o'clock in the
25 morning, my recollection I do not recall an

JA 1023

James Helms - Cross-Exam

1 identifiable person buying gasoline at that time of
2 morning.

3 Q Okay.

4 MR. CUMMINGS: Thank you, Judge. That's
5 all the questions I have of this gentleman.

6 THE COURT: Any redirect?

7 MR. BAILEY: No redirect, Your Honor.

8 THE COURT: Is this witness free to leave?

9 MR. BAILEY: Yes..

10 MR. CUMMINGS: Yes. We thank you, Judge.

11 (Whereupon, the witness steps down from the
12 witness stand.)

13 THE COURT: Please call your next witness.

14 MR. BAILEY: Call Dr. Ross.

15 (Janice E. Ross, called as a witness, having
16 first been duly sworn, is examined and testifies
17 as follows:)

18 DIRECT EXAMINATION

19 BY MR. BAILEY:

20 Q Dr. Ross, you testified in the first phase of
21 this trial that you conducted the autopsy on the body
22 of Kandee Martin on February 17th, 2001; is that
23 correct, ma'am?

24 A Yes, sir.

25 Q And during the course of the autopsy, do you all

4670

Janice E. Ross - Direct Exam

1 take photographs of the body as it appears when you
2 receive it to document its appearance?

3 A Yes, we do.

4 Q Do you refer to those photographs on occasion in
5 order to explain observations in regard to entries or
6 other items of medical inference that you see on the
7 body?

8 A Yes, sir.

9 Q All right. I'm going to hand you two
10 photographs, ma'am, and ask whether or not these
11 accurately depict Kandee Martin's body as it appeared
12 when brought to Newberry for the autopsy?

13 A Yes, sir. They are.

14 Q All right. And would those be of assistance to
15 you in explaining to the jury the injuries that you
16 observed on Miss Martin's body?

17 A Yes.

18 Q All right. The numbers on those pictures, are
19 they the autopsy numbers that you assign at the
20 autopsy in order to distinguish one from the other?

21 A That's correct. FA meaning forensic autopsy;
22 01, the year 2001, 105 is the number of autopsy that
23 year.

24 Q Thank you.

25 MR. BAILEY: Your Honor, I would offer

JA 1025

Janice E. Ross - Direct Exam

1 these into evidence at this time.

2 MR. CUMMINGS: Your Honor, same objection
3 as I would ask you to review these issues.

4 THE COURT: Very well. Ladies and
5 gentlemen, I'm going to ask you to please step
6 to your jury room. Do not discuss this matter
7 and do not let anyone discuss it with you.
8 There is matter of law which I must take up
9 outside your presence.

10 (Whereupon, the jury retires to the jury room at
11 11:10 a.m.)

12 THE COURT: All right. Mr. Bailey, I want
13 you to proffer the testimony of the doctor
14 because I want to assure myself that these
15 photographs would be admitted for the purposes
16 of corroboration.

17 MR. BAILEY: Thank you.

18 Q. If I can refer first to what's been marked at
19 this point as Court's Exhibit 15 for the record,
20 Doctor, and ask whether that's a photograph that was
21 taken at the autopsy?

22 A Yes, it is.

23 Q And would you please tell Her Honor why that
24 particular photograph was taken?

25 A We always take a full view of the body front and

Janice E. Ross - Direct Exam

1 back to document what we received and the condition
2 of the body at the time we received it before we do
3 anything else.

4 Q All right. And let me -- I'm going to ask you
5 some more about that in a second, but let me ask you
6 about Number 16 and ask what that shows for the
7 record, please.

8 A Number 16 is a closeup of the skull
9 demonstrating the bullet wound in the head.

10 Q All right, sir. And would that be of assistance
11 to you in corroborating your testimony as to the
12 point of entrance and how you can determine whether
13 or not that was an entrance or an exit wound?

14 A Yes, sir.

15 Q All right. Now, referring your attention again
16 to the -- excuse me, let me get the number -- number
17 15. That shows the entire body; is that correct?

18 A Yes.

19 Q And did you recall previously there was a
20 gunshot wound to the back that was a through-and-
21 through gunshot wound?

22 A Yes.

23 Q And if you would, just using Court's Exhibit for
24 identification, does that show the area of the second
25 shot?

Janice E. Ross - Direct Exam

1 A No, sir. It does not.

2 Q And would the photograph that you're displaying
3 in your hand be of assistance to you in explaining to
4 the jury the point of entrance, where the bullet
5 traversed, and the exit point?

6 A To a degree. The body is lying on the back so
7 the entrance wound is not readily observable, but
8 with the charred body anyway we didn't recognize an
9 entrance wound of the back until we got inside and
10 saw the bullet track, went backwards to find where it
11 came into the body.

12 Q Would that photograph be of assistance to you in
13 showing the exit point?

14 A Yes, it would.

15 Q Okay.

16 A Because the exit wound is basically an open area
17 where -- because of the secondary to the thermal
18 injury.

19 Q And is it depicted in the photograph?

20 A Yes.

21 MR. BAILEY: Your Honor, that would be
22 State's proffer.

23 THE COURT: Very well.

24 MR. CUMMINGS: If I may, Judge, just
25 briefly for a moment.

Janice E. Ross - Cross-Exam

CROSS-EXAMINATION

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BY MR. CUMMINGS:

Q You created two charts --

A Yes.

Q -- that were testified to in the case in chief, Doctor; is that correct, ma'am?

A Yeah.

MR. CUMMINGS: If I may, Judge, just hold them up for a moment. Judge, may I approach?

THE COURT: You may.

Q Doctor, I'm showing you what's been marked as State's Exhibit Number 74. There's a round marking up here at the top of the head. Is that where you put the entrance wound, the same thing that you would use that autopsy photograph?

A Yes, sir.

Q Okay. And, Doctor, you've testified already to the manner and cause of death on direct; have you not?

A Yes, sir.

Q Okay. And you testified as to the trail and the exit of that projectile out of that human being?

A Yes, sir.

Q Okay. So you could easily use this as well as this photograph; is that correct?

4675

Janice E. Ross - Cross-Exam

1 A Yes.

2 Q And it would probably be even easier for you to
3 look at this instead of having -- holding that and
4 trying to point out in an eight by ten photograph the
5 particular spot to the jury; would it not?

6 A I don't know if I can judge that.

7 Q All right. Thank you for answering our
8 questions. And then -- wrong one, sorry. Got too
9 many pieces of paper.

10 Doctor, State's Exhibit Number 76,
11 again, this showing the head and then later on down
12 in the body, and, again, ma'am, I don't want to block
13 Mr. Bailey's view, shows a wound to the back; is that
14 correct, ma'am?

15 A Yes, that's right.

16 Q The trajectory of the projectile going through
17 Miss Martin?

18 A That's correct.

19 Q You have noted here, if I'm not mistaken, the
20 area of the exit?

21 A Yes.

22 Q So it's fair to say you could use this chart
23 again to show this and explain that to the jury;
24 could you not?

25 A Yes.

JA 1030

Janice E. Ross - Cross-Exam

1 MR. CUMMINGS: Judge, we would move
2 respectfully that these photographs are so
3 prejudicial compared to --

4 MR. BAILEY: Your Honor, if I could
5 redirect. I'm sorry, I didn't mean to cut Mr.
6 Cummings off, went into his argument and all.

7 MR. CUMMINGS: Oh, I am sorry.

8 THE COURT: Surely. Yes, sir.

9 REDIRECT EXAMINATION

10 BY MR. BAILEY:

11 Q Dr. Ross, comparing the two photographs, State's
12 16 and 15, with the autopsy sketches which were in
13 evidence that Mr. Cummings referred to, I think he
14 had 74 and 76, turning your attention to these
15 sketches, are these pictures of Kandee Martin's body?

16 A They are just a basic outline of a female body.

17 Q Okay. Generic picture of any female anatomy?

18 A Yes. Yes, sir.

19 Q Okay. And which -- as between the photographs
20 and these generic sketches, which more accurately
21 depict what you observed, what you would be
22 testifying to as far as what your actual observations
23 were?

24 A Well, the photograph documents, what was
25 actually present, the diagrams are used to identify

Janice E. Ross - Redirect Exam

1 where they are on the body and what direction they
2 went.

3 Q Okay. Thank you.

4 THE COURT: All right. Earlier when asked
5 to rule on the photographs, of course Dr. Ross
6 was not present and at that point my ruling was
7 the photographs could be allowed for the
8 purposes of corroboration. But having heard
9 Dr. Ross and having heard her ability to rely
10 upon the charts and having seen the photographs
11 again, particularly along with her testimony,
12 I'm going to exclude them. I find that the
13 prejudicial effect outweighs any probative
14 value, particularly given her ability to explain
15 with the charts and I will exclude them.

16 I think it is very relevant and ruled
17 before and think it's appropriate the jury see
18 the conditions of the body as she was left by
19 the defendant, but I think that on balance that
20 this witness is able to testify sufficiently
21 with use of the charts and I'm going to exclude
22 these two photographs.

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

24 THE COURT: Yes.

25 MR. CUMMINGS: Judge, while the jury's out

Janice E. Ross - Redirect Exam

1 may I proffer some testimony ahead of, time, too,
2 so we don't have to send the jury in and out?

3 THE COURT: All right.

4 MR. CUMMINGS: Thank you. If I may come
5 around for a moment, I don't want the jury to
6 come back in if these photographs are still up
7 here. Excuse me, Doctor.

8 Judge, we have an envelope, I believe,
9 where everything that's not being used is being
10 kept.

11 THE COURT: We do in the Court's Exhibit --
12 what is the number of those?

13 MR. CUMMINGS: These were, Judge, Number 16
14 and, Your Honor, respectfully, Number 15.

15 THE COURT: Very well.

16 MR. CUMMINGS: Thank you, Judge.

17 RECROSS-EXAMINATION

18 BY MR. CUMMINGS:

19 Q Doctor, I'm just going to ask a few brief
20 questions, ma'am. You were, for lack of better
21 words, ma'am, the forensic autopsy doctor; is that
22 correct?

23 A Yes.

24 Q You've been qualified as an expert in this
25 courtroom, Her Honor so found. You order a series of

Janice E. Ross - Recross-Exam

1 tests when you conduct an autopsy; do you not?

2 A Yes.

3 Q You take fluids from certain areas of the body,
4 ma'am?

5 A Yes.

6 Q Bile, blood, other things that -- as you deem
7 appropriate; is that true, Doctor?

8 A Yes.

9 Q And in preparing for your case or any case you
10 may give testimony, do you review the whole file?

11 A Yes.

12 Q You review all the tests that were conducted on
13 the person that you perform your professional
14 services on, ma'am?

15 A Yes.

16 Q And in doing so did you prepare, yourself, in
17 your testimony for the State in the first part of the
18 case and then today, ma'am, in reading the whole file
19 over again on what was found about Miss Martin in
20 making your determination as to the cause of death
21 and in your examination of this person?

22 A Yes.

23 Q Doctor, calling your attention then back to your
24 professional work and your education, experience, and
25 training, were you able to find anything in the blood

Janice E. Ross - Recross-Exam

1 of Miss Kandee Martin?

2 A Yes.

3 Q And what did you find in the blood of Miss
4 Martin?

5 A There was a very small amount of cocaine and its
6 metabolite benzoecgonine.

7 Q All right, ma'am. How long would cocaine stay
8 in the body of a person, ma'am?

9 A It's broken down very quickly, but a couple
10 hours.

11 Q That would be the proffer of this professional
12 doctor, ma'am?

13 A That's cocaine, but the metabolite is there
14 longer.

15 Q Yes. Thank you, ma'am.

16 MR. CUMMINGS: Thank you, Judge.

17 THE COURT: All right. That would be the
18 proffer?

19 MR. CUMMINGS: Yes, ma'am.

20 THE COURT: Yes, sir. Mr. Bailey.

21 MR. BAILEY: Your Honor, this is touching
22 on a matter we discussed previously and I had
23 objected to the relevancy of any evidence
24 through the toxicologist and I stipulated
25 there's no problem with the chain of custody. I

4681

State vs. Bowman - Volume XXIII

1 think we're at the point now where Mr. Cummings
2 was going to ask the doctor that and I would
3 just ask the Court to rule on that at this point
4 in time.

5 I see no relevancy to whether or not
6 this unfortunate victim had cocaine in her
7 system or not, how it would tie into any
8 possible mitigation, how it would make
9 Mr. Bowman look any better or make the crime
10 look any better, it's just simply not relevant.

11 THE COURT: I understand.

12 MR. CUMMINGS: Judge, as to relevance it
13 may go to the issue of we're talking about
14 possession of a watch, possession of monetary
15 items of value. There potentially could be some
16 testimony that there was an offering of a watch
17 from my client so she could try to borrow money.
18 She tried to borrow money from several people
19 that day, Mr. Waters and other folks, ma'am,
20 respectfully.

21 What she intended to do with that is
22 still a matter that's out for interpretation,
23 but, respectfully, Judge, that's why I proffered
24 it, I may want to ask the doctor that if Mr.
25 Bailey is finished with his direct.

JA 1036

State vs. Bowman - Volume XXIII

1 THE COURT: Why would you not instead of --
2 let me tell you what concerns me about that.
3 If, in fact, that would be the position of the
4 defense, then it may have some relevance at that
5 time.

6 MR. CUMMINGS: Yes, ma'am.

7 THE COURT: At this time it has no
8 relevance and you are clearly not in your case.
9 Tell me why the testimony should be allowed at
10 this point, rather than requesting this doctor
11 remain under your subpoena and available to be
12 called in your case?

13 MR. CUMMINGS: If I could, ma'am, and I
14 apologize.

15 THE COURT: Very well.

16 MR. CUMMINGS: And I'm just trying to
17 proffer that to make sure I don't keep the
18 doctor waiting around for nothing.

19 THE COURT: I understand that. And I hate
20 to do that to her as well, but under these
21 circumstances I think that that testimony would
22 better come in your case, Mr. Cummings, after
23 the relevancy is placed upon the record.

24 Anything further in that regard, Mr.
25 Bailey?

State vs. Bowman - Volume XXIII

1 MR. BAILEY: Just in order to prevent the
2 doctor having to stay around here in the event
3 she may be needed I offered to stipulate the
4 chain of custody from her to the toxicologist,
5 so if that stipulation ruled it would come in if
6 it had some probative value then I think she
7 would need to be here if stipulating on the
8 chain.

9 MR. CUMMINGS: With that stipulation, not
10 just the chain, the fact that if the Doctor were
11 to testify in person that the findings of this
12 doctor would state exactly what Dr. Ross has
13 stated several minutes ago.

14 THE COURT: In other words, what I
15 understand Mr. Cummings is asking you, is in
16 order to release the doctor would you be willing
17 to stipulate as to her findings should they
18 become relevant?

19 MR. BAILEY: Yes, ma'am.

20 THE COURT: Oh, all right.

21 MR. BAILEY: The findings she testified to
22 she found the cocaine metabolites in the blood,
23 if that becomes relevant.

24 THE COURT: I heard chain of custody, I did
25 not hear results.

State vs. Bowman - Volume XXIII

1 MR. BAILEY: Right. Just to clarify that I
2 do not dispute those results. I reviewed the
3 toxicology report, my objection solely is to
4 relevancy, Your Honor.

5 THE COURT: All right. And that would
6 satisfy the defense, that if it becomes relevant
7 that that would be entered as a stipulation.

8 MR. CUMMINGS: In particular what this nice
9 doctor said was the fact that the length of time
10 that it would remain in a human being's body.

11 THE COURT: Okay. Why don't you do this so
12 there's absolutely no, hopefully,
13 misunderstanding. State what you would want the
14 stipulation to be.

15 And then you listen, Mr. Bailey, to be
16 sure that that would be the stipulation.

17 MR. CUMMINGS: May it please the Court,
18 Judge.

19 THE COURT: All right.

20 MR. CUMMINGS: That Dr. Ross, as part of
21 her procedures and practice in conducting her
22 forensic autopsy, did find the trace, Your
23 Honor, of -- and I'll read it, sounds the best I
24 can, benzo-l-e-c-g-o-i-n-i-n-e, Doctor.

25 THE WITNESS: Benzolecgoinine.

State vs. Bowman - Volume XXIII

1 MR. CUMMINGS: Which is a metabolite
2 chemical hydrolysis product of cocaine; is that
3 correct, ma'am?

4 THE WITNESS: Yes, sir.

5 MR. CUMMINGS: And that the length of time
6 that cocaine would have stayed in a human
7 being's person were a matter of hours.

8 THE WITNESS: Actually that question is
9 best left to a toxicologist, but it's my
10 understanding that it's broken down within hours
11 to the metabolite. Exactly how long it takes,
12 again, a toxicologist would better answer that.

13 MR. CUMMINGS: But it's your testimony of
14 you being a board certified doctor, that you
15 know at least from your medical practice and
16 years of experience, training, and education
17 that it would at least be in the human body for
18 a couple hours; is that correct, ma'am?

19 THE WITNESS: Yes.

20 MR. CUMMINGS: And you've done hundreds of
21 autopsies?

22 THE WITNESS: Yes.

23 THE COURT: So the stipulation would be --
24 I've got the substance, but in term of the time
25 what would it be?

4686

State vs. Bowman - Volume XXIII

1 MR. BAILEY: Your Honor, I'm not willing to
2 stipulate on time.

3 THE COURT: Thank you.

4 MR. BAILEY: Mine was strictly a chain of
5 custody stipulation.

6 THE COURT: And the substance that was
7 determined?

8 MR. BAILEY: Yes, ma'am.

9 THE COURT: And would be the extent of your
10 willingness to stipulate?

11 MR. BAILEY: Yes, ma'am. At this point
12 I --

13 THE COURT: Very well. Thank you. That's
14 why it's important to do that I think.

15 MR. CUMMINGS: Yes, ma'am. We are
16 satisfied with the stipulation the doctor
17 stating that she found the presence of that in
18 this young lady.

19 THE COURT: Okay.

20 MR. CUMMINGS: And we'll be satisfied with
21 that.

22 THE COURT: Very well. With that
23 stipulation then will the doctor be free to go
24 after that understanding she's got testimony
25 she --

JA 1041

State vs. Bowman - Volume XXIII

1 MR. BAILEY: Yes, ma'am. Well, she
2 doesn't, actually, Your Honor. The doctor's --
3 I had her here, as you know, for the purpose of
4 explaining the pictures taken at the autopsy and
5 I'm kind of left, Your Honor, frankly, with egg
6 on my face because the jury doesn't know why I
7 called her at this point in time. And I
8 understand the Court's ruling.

9 While the jury is out, Your Honor,
10 could I ask that she review the -- my next
11 testimony would be from victim impact, there are
12 three photographs.

13 THE COURT: Yes.

14 MR. BAILEY: In order to avoid --

15 THE COURT: Yes, be happy to.

16 MR. BAILEY: Yes, ma'am.

17 THE COURT: Happy to, Mr. Bailey.

18 MR. BAILEY: There are stickers on the back
19 for my benefit that I would pull off.

20 (Whereupon, a bench conference was held off the
21 record.)

22 THE COURT: Anything else in victim impact
23 anybody wants to address at this point?

24 MR. BAILEY: Nothing with regard to
25 Dr. Ross, Your Honor.

State vs. Bowman - Volume XXIII

1 THE COURT: Would there be any objection to
2 me telling the ladies and gentlemen of the jury
3 that counsel will -- that -- let me ask you
4 this: What would you propose I tell the jury
5 about Dr. Ross's absence, if anything?

6 MR. CUMMINGS: I have a couple questions of
7 her and then make it look that I put her there.

8 THE COURT: All right. Very well. Why
9 don't we take a short break, a very short break
10 and then we'll come back and we'll invite the
11 jury back in.

12 MR. BAILEY: All right.

13 (Recess, from 11:29 a.m. to 11:34 a.m.)

14 MR. BAILEY: Your Honor, could I just
15 inquire of the Court since the crime scene
16 photographs, State's 82 and 81, are already in
17 evidence and the jury's viewed those, if I could
18 have the doctor refer to those in her
19 explanation?

20 THE COURT: Most assuredly. Most
21 assuredly. If they would be of assistance, they
22 are in evidence and if you need to use them,
23 most assuredly, Mr. Bailey.

24 MR. BAILEY: Thank you, Your Honor.

25 THE COURT: All right. Yes, let's have our

State vs. Bowman - Volume XXIII

1 jury.

2 (Whereupon, the jury returns to the courtroom at
3 11:34 a.m.)

4 THE COURT: Mr. Bailey, you may continue.

5 MR. BAILEY: Thank you, Your Honor.

6 CONTINUED DIRECT EXAMINATION

7 BY MR. BAILEY:

8 Q Dr. Ross, I'm going to hand you two photographs
9 already in evidence, State's 81 and 82 which have
10 been testified as being photographs of the victim,
11 Kandee Martin, at the scene where the body was found.

12 A Yes.

13 Q All right. And I would ask whether -- I know
14 you were not present at that time, do those appear
15 the depict the body in the general condition it was
16 in when it arrived at Newberry for the autopsy?

17 A Yes, it does.

18 Q Would those photographs, either of both of them,
19 be of assistance to you in explaining to the jury the
20 point of entry and exit of the two gunshot wounds you
21 testified to previously?

22 MR. CUMMINGS: Judge, we've raised that
23 issue already and you've ruled, ma'am,
24 respectfully.

25 THE COURT: Yes, sir. But not with regards

Janice E. Ross - Continued Direct Exam

1 to these and I'll overrule your objection, note
2 your exception for the record.

3 MR. CUMMINGS: Thank you, Judge.

4 A Yes. Exhibit labeled Number 12 would assist me
5 in showing the areas of the entrance wounds.

6 Q All right. Both entrance wounds?

7 A Yes.

8 Q All right. And using that photograph then,
9 Doctor, would you please explain to the jury what
10 they depict in regard to the entrance wounds and the
11 exact location?

12 A Yes. May I approach the jury?

13 Q Yes, ma'am.

14 A You can see the body is -- you can see the back
15 of the head and the back of the body. And the
16 entrance wound on the head would be right here and
17 you can see a little bit of the fracturing to the
18 left side of the head. The entrance wound in the
19 back is within all this charred area and you can't
20 really identify the wound itself, but once I got
21 inside the body and saw the bullet, where the bullet
22 went, the bullet tracked, I could go backwards and
23 find that it was, indeed, within all this charred
24 area. The charring covered it up.

25 Q Covered up the entrance wound?

Janice E. Ross - Continued Direct Exam

1 A Yes, on the back.

2 Q I believe you testified previously that both
3 bullets exited the body; is that correct?

4 A That's correct.

5 Q All right. Please answer any questions Mr.
6 Cummings might have for you, ma'am.

7 CROSS-EXAMINATION

8 BY MR. CUMMINGS:

9 Q Thank you, Doctor. Good morning, ma'am. No
10 question, unequivocally, this lady was shot in the
11 back, the entrance wound was in the back?

12 A Yes, sir.

13 Q No questions, unequivocally, that she was shot
14 in the back of the head area?

15 A Let side of the head, yes.

16 Q I know for the record you pointed past beyond
17 your ear; is that correct, ma'am?

18 A Yes.

19 Q Had there's no question, Doctor, also that this
20 young lady was deceased, dead, before her body was
21 burned?

22 A That's correct.

23 Q And there's no testimony from you in any way
24 that you could learn who poured gasoline on this
25 young lady?

Janice E. Ross - Cross-Exam

1 A That's correct.

2 Q And, again, Doctor, you found no evidence of any
3 soot or anything in Miss Martin's lungs?

4 A That's correct.

5 Q Which means she was dead before she was burned?

6 A Yes, sir.

7 MR. CUMMINGS: Thank you, Your Honor.

8 That's all the questions I have of this nice
9 lady. Thank you, Judge.

10 THE COURT: Any redirect?

11 MR. BAILEY: No redirect.

12 THE COURT: Is this witness free to leave?

13 MR. BAILEY: Yes, ma'am.

14 THE COURT: You are free to go.

15 (Whereupon, the witness steps down from the
16 witness stand.)

17 MR. BAILEY: Ms. Martin.

18 (Cordillia Martin, called as a witness, having
19 previously been sworn, is examined and testifies
20 as follows:)

21 DIRECT EXAMINATION

22 BY MR. BAILEY:

23 Q You're Cordillia Martin?

24 A Yes, sir.

25 Q And do you have a nickname, Ms. Martin?

4693

Cordillia Martin - Direct Exam

1 A Yes, sir. It's DiDi.

2 Q DiDi. And your friends call you DiDi?

3 A Everyone knows me as DiDi.

4 Q All right. Ma'am, are you married?

5 A Yes, sir.

6 Q And who are you married to?

7 A Wayne Martin.

8 Q And how long have you and Wayne Martin been
9 married?

10 A June 27th of next month, 28 years.

11 Q All right. And where do you live at this time?

12 A We live in Orangeburg, [REDACTED].

13 Q In the City of Orangeburg?

14 A Yes, sir.

15 Q Okay. And back in February of 2001 where did
16 you live?

17 A We lived at [REDACTED] in Branchville
18 and then we moved to Orangeburg in January of 2001.

19 Q All right. How many children did you have,
20 Ms. Martin?

21 A Two.

22 Q Okay. And their names?

23 A David Martin and Kandee Louise Martin.

24 Q All right. And how old is David Martin?

25 A David a 24.

JA 1048

Cordillia Martin - Direct Exam

1 Q Okay. And how old was Kandee at the time of her
2 death?

3 A Twenty-one.

4 Q She was your youngest child?

5 A Yes, sir.

6 Q All right. Tell the jury, please, what Kandee
7 did after leaving school.

8 A She went, she got a job, she worked several
9 places and she finally found a job that she really
10 liked in a mobile home place in Orangeburg that was a
11 really good job, she liked very much. She was in the
12 process of learning the ropes of everything that, you
13 know, had to be learned.

14 Q Was she in sales there of mobile homes?

15 A She was in sales, yes, sir.

16 Q All right. Did Kandee stay at home with you and
17 your husband?

18 A Yes, sir.

19 Q Okay. Did she stay there all the time, or did
20 she at some times stayed with friends?

21 A She stayed with a friend several times.

22 Q All right. Now, Ms. Martin, I want you to tell
23 the jury, please, what occurred on
24 when -- was that the day Tyler was born?

25 A Yes, sir.

Cordillia Martin - Direct Exam

1 Q What year was that?

2 A He was born on [REDACTED] [REDACTED] [REDACTED].

3 Q 1999. And what was -- what is Tyler's full
4 name?

5 A His name is Tyler M. [REDACTED].

6 Q This was Kandee's son?

7 A It was her son.

8 Q All right. Did Kandee live with you when Tyler
9 was born?

10 A Yes, sir.

11 Q And continued to live with you after that; is
12 that correct?

13 A Yes, sir.

14 Q Okay. Ms. Martin, could you describe for the
15 jury Kandee's relationship with her son, Tyler?

16 A A wonderful relationship. He loved his mother
17 with all his heart. They had a relationship that you
18 just can't explain because it was so wonderful. He
19 loved her and she loved him. They played together,
20 they loved each other. They just had a bond that no
21 one could ever take from them.

22 Q And could you describe your relationship,
23 Ms. Martin, with your daughter?

24 A A wonderful relationship. She was my best
25 friend, my daughter and my best friend.

Cordillia Martin - Direct Exam

1 Q Okay. And your husband's relationship, can you
2 describe that?

3 A Yes, sir. Very good relationship between the
4 two of them. He loved her very much and they did a
5 lot of things together, they laughed and little
6 things together they did. They just enjoyed being
7 with one another so much.

8 Q All right. Ms. Martin, I want to hand you three
9 photographs and ask if these are pictures of Kandee
10 during her life?

11 A Yes, sir.

12 Q I think there's some water here if you need it,
13 Ms. Martin.

14 A Okay.

15 Q You look at all three of those, please.

16 A Okay.

17 MR. BAILEY: Your Honor, I would offer
18 these into evidence.

19 MR. CUMMINGS: Without objection.

20 THE COURT: Very well. State's Exhibit
21 Numbers 83, 84, 85 in evidence without
22 objection, State's Exhibits.

23 (Entered into evidence was State's Exhibit 83,
24 photograph.)

25 (Entered into evidence was State's Exhibit 84,

Cordillia Martin - Direct Exam

1 photograph.)

2 (Entered into evidence was State's Exhibit 85,

3 photograph.)

4 Q All right. Ms. Martin, I want to hand you
5 State's 84 and 85 and ask if these were taken at
6 about the same time?

7 A Yes, sir.

8 Q Okay. And I'll get you to look at those. And
9 tell the jury, please, what occasion those were taken
10 at?

11 A We all got together as mother and daughter and
12 friends and we had a Glamor Shot party, and we were
13 having a good time and we had glamor shots made all
14 together.

15 Q Okay.

16 A Because we were having a good time that day.

17 Q How old was Kandee when those pictures were
18 taken?

19 A Kandee was 18.

20 MR. BAILEY: Your Honor, if I could publish
21 these to the jury in the same manner as the
22 previous photographs.

23 THE COURT: All right.

24 Q Ms. Martin, I'll show you the third photograph,
25 State's 83, ask you if you'll tell the jury when that

Cordillia Martin - Direct Exam

1 was taken? Talk up real loud, please, so they can
2 hear you down on the end, okay?

3 A This was taken at my sister's house. We were
4 having a party for my father's birthday and we were
5 all just having a good time in the kitchen. And she
6 was so happy and we were just, you know, having a
7 good time, you know, celebrating father's birthday.

8 Q How old was Kandee then?

9 A Kandee was 20.

10 Q Ms. Martin, how did you find out that something
11 happened to your daughter?

12 MR. CUMMINGS: Judge, I'm going to object,
13 respectfully, it's hearsay. And I don't believe
14 it's proper.

15 MR. BAILEY: I would like to be heard on
16 this, Your Honor.

17 THE COURT: Sure.

18 (Whereupon, a bench conference was held off
19 the record in the presence of the
20 jury but out of the hearing of the jury.)

21 THE COURT: Defense objection is noted and
22 overruled. We will place the specifics on the
23 record in a few minutes.

24 You may proceed, Mr. Bailey.

25 MR. BAILEY: Thank you, Your Honor.

Cordillia Martin - Direct Exam

1 Q Ms. Martin, I believe when we took a short break
2 up there I'd asked you, without repeating what
3 anybody might have told you, how did you find out
4 that something had happened to Kandee?

5 A A chaplain came to my house at our mobile home
6 we were at at that time. We had went there with my
7 son and he came and he told us that they had found --

8 Q Based on what your son told you?

9 A Yes, sir. What my son had told me.

10 Q Did you know for sure that it was Kandee at that
11 time?

12 A Not at that moment we didn't know for sure.
13 They were still not sure right at that moment. I
14 called the town office in Branchville and I asked to
15 speak to someone on the force that could tell me
16 something because I was going out of my mind. And he
17 told me that I was the one --

18 MR. CUMMINGS: Judge, respectfully, Your
19 Honor, I'm sorry.

20 THE COURT: Do not talk about what someone
21 else told you, please.

22 THE WITNESS: Okay.

23 A I can't remember everything, so please excuse me
24 because it's been a while and I'm very nervous.

25 Q All right.

4700

Cordillia Martin - Direct Exam

1 A But --

2 Q Let me ask you this, Ms. Martin: How did you
3 find out for sure that it was Kandee's body that was
4 in the trunk of the car?

5 A Let me see if I can remember. The lady, I think
6 is the lady, the coroner, she came to my house and
7 she told us we had to have blood tests done.

8 Q So DNA was how you found out?

9 A DNA is how we found out.

10 MR. CUMMINGS: Your Honor, respectfully.

11 THE COURT: Sustained.

12 Q How long was it after Kandee's death until you
13 were sure that it was her?

14 A We buried her on the 27th and it was after that,
15 probably the day after.

16 Q Now, she, Kandee, was murdered on the
17 February 17th, 2001.

18 A Yes, sir.

19 Q You testified that Tyler was born on

20 [REDACTED].

21 A Yes, sir.

22 Q Did you all have plans for Tyler's birthday,
23 would have been his second birthday?

24 A Yes, sir.

25 Q What plans did you all make?

JA 1055

4701

Cordillia Martin - Direct Exam

1 A We had made plans together to get him an Elmo
2 cake. We had already put it in, the order, to get
3 him the Elmo cake, have a party for him. We were in
4 the process of getting invitations together to send
5 out for his party, but we didn't never get to do it.

6 Q Okay. Ms. Martin, can you tell the jury,
7 please, does Tyler live with -- are you and your
8 husband raising Tyler?

9 A Yes, sir.

10 Q What effect has the loss of his mother had on
11 this baby?

12 A Traumatic. He asks about her.

13 MR. CUMMINGS: Objection, Your Honor,
14 respectfully. That goes right to what we were
15 at side bar about, please.

16 MR. BAILEY: I would just ask Mr. Cummings
17 to let me try my case.

18 MR. CUMMINGS: Judge, I'm just trying to
19 get everybody a fair trial.

20 THE COURT: Gentlemen, on the basis we
21 discussed I'll allow the testimony. Overruled.

22 MR. BAILEY: Thank you, Your Honor.

23 A Could you please ask that question again?

24 Q Yes, ma'am. What effect have you observed with
25 Tyler as to the loss of his mother?

JA 1056

4702

Cordillia Martin - Direct Exam

1 A It's been pretty dramatic because he had a very
2 good relationship with his mom. He asks every day
3 for his mom. He still yet asks for his mom, when
4 she's coming home.

5 Q He asks when she's coming home?

6 A Yes, sir.

7 Q And Tyler is how old now?

8 A He's three.

9 Q He still remembers her?

10 A He remembers, yes.

11 Q Ms. Martin, my final question I want to ask you
12 is how Kandee's death has affected your husband based
13 on your observations?

14 A It's tore him apart, it's torn his whole life
15 apart, because he loved her so much. They had such a
16 special bond together. It's torn him apart. He's
17 not the same person, he's just devastated by the loss
18 of his daughter. She was everything to him.

19 Q All right. Ms. Martin, thank you. Please
20 answer any questions Mr. Cummings, Ms. Hardee-Thomas
21 may have for you.

22 THE COURT: Cross-examination.

23 MR. CUMMINGS: Judge, I have no questions
24 of this nice lady.

25 THE COURT: All right. You may step down.

JA 1057

4703

Wayne Martin - Direct Exam

1 (Whereupon, the witness steps down from the
2 witness stand.)

3 THE COURT: Yes, sir.

4 MR. BAILEY: Wayne Martin.

5 (Wayne Martin, called as a witness, having first
6 been duly sworn, is examined and testifies as
7 follows:)

8 DIRECT EXAMINATION

9 BY MR. BAILEY:

10 Q Mr. Martin, how old are you, sir?

11 A Forty-six.

12 Q And you and your wife live in Orangeburg at this
13 time?

14 A Yes, sir.

15 Q Are you all from this area, been here all your
16 life?

17 A Branchville and, you know, then we moved to
18 Orangeburg.

19 Q All right, sir. And what kind of work are you
20 in?

21 A I'm a construction worker.

22 Q What type of construction, home building?

23 A No. I do big buildings, rebar, reinforcing
24 iron.

25 Q All right, sir. And you're Kandee Martin's

JA 1058

Wayne Martin - Direct Exam

1 father; is that correct?

2 A Yes, sir.

3 Q Mr. Martin, if you could describe your daughter
4 to someone who didn't know her, how would you do
5 that?

6 A I would say she was a loving type young lady and
7 she cared for everybody and nothing she wouldn't do
8 for anybody.

9 Q Did she have a lot of friends?

10 A Oh, she had a lot of friends.

11 Q All walks of life? Did she have a lot of
12 friends in the Branchville community?

13 A Yes, sir.

14 Q Could you describe her relationship with your
15 grandson, Tyler?

16 A Oh, they got a wonderful relationship. Just
17 like my wife said, there's times they would just
18 spend special moments together and they would just
19 really have a good relationship, and, you know, we
20 was blessed that they had each other.

21 Q Okay. Could you describe your relationship with
22 your daughter? She continued to live with you after
23 she got out of school and worked and had her baby,
24 right?

25 A We had a good relationship. She was my baby

4705

Wayne Martin - Direct Exam

1 girl.

2 Q What kind of things would you all do together as
3 a family?

4 A We would take trips to Santee, we would fish
5 and, you know, go boat riding. And, you know, and
6 all of a sudden she just got too big for that, you
7 know.

8 Q Yeah.

9 A And she done other things.

10 Q And y'all have an older son; is that correct?

11 A Yes, sir.

12 Q All right, sir. Could you describe the effect
13 Kandee's murder had on your son?

14 A Oh, it's really devastated him. And I don't
15 know whether he'll ever get over it. I just wished
16 he would, you know, come to terms. I think after all
17 this is over he will -- you know, that it won't
18 affect him so bad.

19 Q All right, sir. And in regard to your wife, how
20 has Kandee's death and the way she died affected your
21 wife?

22 A Oh, that's really devastated my wife. My wife,
23 she cries all the time. I get up at night and she'll
24 be on the couch crying and I'll ask her what's wrong
25 and she just tells me she's lost a part of her and

JA 1060

Wayne Martin -- Direct Exam

1 that's her best friend.

2 Q And is she on any kind of medication now?

3 A Yes, sir.

4 Q What is she on?

5 A It's nerve medicine. I can't recall the name.

6 I think it's Xanax and Celebrex, or something like
7 that.

8 Q Are you taking an antidepressant medication

9 also?

10 A I take Prozac.

11 Q Did either one of y'all take any kind of
12 antidepressant medication before Kandee's murder?

13 A No, sir.

14 Q Are you still taking it?

15 A Yes, sir.

16 Q Tyler lives with you and your wife?

17 A Yes, sir.

18 Q Could you tell the jury in your words the effect
19 of the loss of his mother had on this baby?

20 A Well, he -- you know, he asks about her a lot
21 and, you know, it's just times he just sits with us
22 and cry, you know, wondering when his mamma is going
23 to come home. And I don't know the words to tell
24 her -- tell him. And I just tell him that, you know,
25 one day he will be able to see her again.

4707

Wayne Martin - Direct Exam

1 Q All right, sir. How often do you think of your
2 daughter?

3 A All the time. I can't go a day without thinking
4 about her, or night in the way she had to depart from
5 this world.

6 Q You couldn't say goodbye to her, could you?

7 A No, I couldn't say goodbye. I would have loved
8 to say goodbye to her. We had a closed casket
9 funeral, you know. That was the worst thing, not
10 being able to say goodbye.

11 Q Mr. Martin, that's all I have.

12 THE COURT: Cross-examination.

13 MR. CUMMINGS: Just a few questions, Your
14 Honor.

15 CROSS-EXAMINATION

16 BY MR. CUMMINGS:

17 Q Sir, I thank you for your kindness. I didn't
18 hear correctly, we know of one child, is that correct
19 sir, the child that is being raised by you?

20 A You're talking about she had?

21 Q Yes, sir.

22 A I got two. I got two children, but she's got a
23 baby.

24 Q Yes, sir. Did Kandee have another older child,
25 sir, being raised?

JA 1062

Wayne Martin - Cross-Exam

1 A No.

2 Q No other child, just that one child?

3 A Just that one child.

4 Q And the reason I ask that, sir, is obviously --
5 and, again, I'm just asking this as a gentleman now,
6 I want to make sure that I heard that correct and I
7 apologize to you, sir, for asking that.

8 Kandee, as Mr. Bailey asked, she had
9 friends in all different walks of life?

10 A All different walks of life?

11 Q Yes, sir. I mean like --

12 A She had school friends and -- you know, and
13 friends that we go places, camping or whatever. You
14 know, they make friends, you know, everybody does
15 that.

16 Q Yes, sir. What I mean by friends of all walks
17 of life, different kinds of people?

18 A Yeah.

19 Q And what is the name of the father of your
20 grandchild, sir?

21 A I don't know. I don't want to release that
22 information.

23 Q You don't know it, sir?

24 A I don't know. I'm his daddy.

25 Q Yes, sir.

Wayne Martin - Cross-Exam

1 MR. CUMMINGS: I beg the Court's
2 indulgence, Your Honor.
3 (Mr. Cummings and Ms. Hardee-Thomas conferring
4 with Mr. Bowman.)

5 MR. CUMMINGS: Judge, that's all the
6 questions I have of this nice gentleman.

7 THE COURT: Any redirect?

8 MR. BAILEY: No redirect, Your Honor.

9 THE COURT: All right. You may come down.
10 (Whereupon, the witness steps down from the
11 witness stand.)

12 THE COURT: Call your next witness please.

13 MR. BAILEY: State rests, Your Honor.

14 THE COURT: Very well. Ladies and
15 gentlemen, you have now heard from the State's
16 case, the witnesses and received the evidence
17 which you will. That signifies to me that there
18 are matters which I must take up outside your
19 presence. Therefore, I'm going to ask you to
20 please step to your jury room remembering not to
21 discuss this matter or allow anyone to discuss
22 it with you. Step to your jury room.

23 (Whereupon, the jury retires to the jury room at
24 12:06 p.m.)

25 THE COURT: Thank you, Mr. Taylor.

State vs. Bowman - Volume XXIII

1 All right. Are there any motions at
2 this time?

3 MR. CUMMINGS: May it please the Court,
4 Judge.

5 THE COURT: Yes.

6 MR. CUMMINGS: Again, if I'm long winded I
7 apologize to the Court. Your Honor, as to the
8 issues asking for a directed verdict as to any
9 aggravating circumstances, Your Honor, I would
10 request to start at the very first one the State
11 has put us on notice of and, Your Honor,
12 respectfully, that is aggravating factor of
13 kidnapping. Your Honor, respectfully, there's
14 been no testimony at all against my client as to
15 any kidnapping. If I may be -- there is such a
16 broken chain in here about the allegations of a
17 murder, we know that the aggravating
18 circumstances have to be in the commission of as
19 I humbly state to the Court.

20 Your Honor, there's been no evidence
21 presented as to any issue of kidnapping. There
22 is, respectfully, Your Honor, looking at the
23 totality of the case, looking at everything
24 that's been presented on behalf of the State,
25 Your Honor, you would have to leap to find any

4711

State vs. Bowman - Volume XXIII

1 issues of kidnapping dealing with the murder of
2 Miss Martin.

3 If the Court were to take the
4 testimony of Mr. Gadson stating that they go to
5 Nursery Road, if you put any credibility, any
6 weight on that, ma'am, that there's a break in
7 the chain as people, the three of them allegedly
8 jump in the bushes. Clearly nobody has control
9 of anybody at that point, there's no forceable
10 retention, there's no testimony of a weapon
11 being presented or threatened with or used about
12 trying to keep Ms. Martin in any particular
13 place.

14 As far as any issues, Judge, of going
15 through the elements of kidnapping, inveigle, or
16 decoy, or trying to convince somebody out there,
17 the only testimony we have in here is at the
18 best as I recall, ma'am, is there may have been
19 some conversations about turn here, turn there.

20 Your Honor, somebody else -- there's
21 been no testimony whatsoever that anybody was in
22 fear of being taken away, deprived of their
23 liberty or their right of movement as I
24 understand the broadest reaching of our
25 kidnapping statute.

JA 1066

State vs. Bowman - Volume XXIII

1 Further, Your Honor, respectfully,
2 that once the parties are there after they come
3 back out of the woods the testimony is as
4 related by Mr. Gadson, stated that she walked
5 back to her car. Her property, her domain.
6 Respectfully, Miss Martin's chain is broken away
7 from any of the two co-defendants if Your Honor
8 finds that to be credible based on what
9 Mr. Gadson states.

10 And further thereafter, Judge, there
11 is no other testimony of decoy, inveigle,
12 maintain, control, threaten with a weapon or
13 anything. The testimony, again, taken by Mr.
14 Gadson would be that she was shot
15 instantaneously without any warning, without any
16 issue and then shot a second time where this
17 young lady came to rest right on the property,
18 right there.

19 Your Honor, respectfully, we do not
20 believe the State has sufficient facts to submit
21 to you beyond a reasonable doubt or submit to
22 this jury, ma'am, please, the element of
23 aggravation of kidnapping.

24 THE COURT: All right. Let me hear about
25 kidnapping.

4713

State vs. Bowman - Volume XXIII

1 MR. BAILEY: Your Honor, of course the
2 statute uses the terms inveigle and decoy in
3 there for a reason, to distinguish that from any
4 forceable kidnapping. I think in this case you
5 have the evidence that the jury believes them
6 both. As far as enforceable kidnapping,
7 certainly between the time she is shot in the
8 back and that would have had to have been the
9 first shot for her to run toward Gadson, between
10 that time and the time she spun around, begged
11 for her life and he shot her the second time,
12 certainly she was not free to go, she was being
13 detained, held at gunpoint and had been shot.

14 Your Honor, there are a couple cases I
15 could cite with respect to inveigle, decoy
16 aspect of kidnapping statute, one is State vs.
17 Plath and Arnold, 313 S.E.2d, 619, in which they
18 upheld the aggravating circumstance of kidnap
19 under the inveigle and decoy element when the
20 victim was invited into the defendant's car
21 after the defendant had formed the intention to
22 murder her.

23 With the exception of the fact that
24 they're in the victim's car instead of the
25 defendant's car, it's the same thing. There's

JA 1068

State vs. Bowman - Volume XXIII

1 testimony from three people, Eddie Waters,
2 Yolanda Bowman, and Katrina West, that he had
3 formed the intent to kill her that night.
4 Obviously she would not have gotten into the car
5 to ride out in the woods with him if she had
6 known the purpose of that was to have her life
7 ended.

8 Your Honor, also State vs. John Ray in
9 which the defendant has shot the victim, wounded
10 her, told her he would take her to the hospital,
11 but instead took her to another location where
12 he strangled her and stabbed her to death. Your
13 Honor, here the victim was inveigled, decoyed
14 into thinking she was going to go somewhere
15 where she would be protected. Instead she was
16 being driven off for the purpose of being killed
17 which is exactly what happened here.

18 Your Honor, the last one, and I don't
19 have the cite here, is State vs. Stokes, which
20 was a case I tried in Orangeburg where the same
21 issue was raised on the appropriateness of the
22 kidnapping statute as an aggravator in which the
23 victim in that case thought that she was going
24 to a wooded area to see a third party being
25 killed. Instead the plan was to kill her which

State vs. Bowman - Volume XXIII

1 was what happened. And our Court upheld that,
2 the trial judge upheld that as being inveigle
3 and decoy.

4 So, Your Honor, I think you both types
5 of kidnapping, inveigle and decoy, plus the
6 force of confinement. I'm not aware of any law
7 that says the kidnapping has to exist for any
8 period of time, and I think clearly there is
9 evidence to go to the jury on that kidnapping
10 based upon case law.

11 THE COURT: In other words, your position
12 is much like the State vs. Plath, in that there
13 was an intention stated early on that at the
14 point in time when Miss Martin drove Mr. Gadson
15 and Mr. Bowman on that trip, that at that point
16 much like State vs. Plath --

17 MR. BAILEY: Yes, ma'am.

18 THE COURT: -- maybe a little less extent
19 State vs. Ray, but certainly State vs. Plath.

20 MR. BAILEY: That line of cases, Your
21 Honor, both of those cases.

22 THE COURT: I understand. It began because
23 there was an intention and that drive was the
24 inveigle?

25 MR. BAILEY: Yes, ma'am. An expressed

State vs. Bowman - Volume XXIII

1 intention to kill her by nightfall, which is
2 exactly what happened.

3 THE COURT: Yes, sir.

4 MR. CUMMINGS: This is why if you take that
5 testimony in the light as presented by the
6 State, this happened around noon, there is
7 nothing else that happens, Miss Martin comes
8 back to Mr. Bowman. If Mr. Waters had heard all
9 those things, if all that stuff had come out it
10 clearly would have been evidence of that, that
11 Miss Martin would have noticed Mr. Waters'
12 reactions or anything else, respectfully, Judge.
13 The chain of causation here, the time factors
14 are imperative. To have the State rely on the
15 inveigle or decoy, they have to prove the
16 inveigle or decoy. Something happened out here
17 that night, but they have the burden of proving
18 the aggravating circumstance to present to the
19 jury beyond a reasonable doubt that that would
20 have occurred. And that, again, Your Honor, is
21 in strict compliance with our aggravating factor
22 statutes.

23 And, Your Honor, respectfully, looking
24 at Ray vs. State and Plath, Your Honor, there's
25 some movement, there's some issues, there's a

4717

State vs. Bowman - Volume XXIII

1 close correlation of time. In this thing we
2 have at least a seven to eight-hour break even
3 taking the State's testimony at their best,
4 respectfully. And I would ask Your Honor before
5 any submission of that the Court review or
6 reinspect your notes, Your Honor, as well as the
7 parties' testimonies.

8 Because, Your Honor, the kidnapping
9 issue here has always been one of contention
10 about whether or not Miss Martin had control of
11 her ability to travel, to come, go, to leave.
12 And so many times and so many instances where
13 she was free and able to leave and come about as
14 she chose, respectfully.

15 THE COURT: I understand. I have that
16 issue. Let me hear from you about your next.

17 MR. CUMMINGS: Yes, ma'am. As to criminal
18 sexual conduct, Judge, there's been no evidence
19 whatsoever, any representative of any criminal
20 sexual conduct activity. Even if Your Honor
21 looks at anything about DNA, the professionals
22 stated they could not say when semen was there,
23 they could not say anything about it. There's
24 been no testimony in this room whatsoever about
25 anything dealing with sex against my client.

JA 1072

State vs. Bowman - Volume XXIII

1 Not in the case in chief, not in the guilt
2 phase, not in the penalty phase even, Judge. I
3 have not heard anything today about that
4 whatsoever.

5 THE COURT: All right.

6 MR. CUMMINGS: And, again, Your Honor, I
7 would quote cases, but, Judge, I don't think
8 there's been any testimony whatsoever to submit
9 to the jury as an aggravating factor.

10 THE COURT: Mr. Bailey.

11 MR. BAILEY: Your Honor, if it please the
12 Court. There was a chain of custody of the
13 vaginal swab up to Matt Fitts, Dr. Fitts, that
14 did the DNA analysis that said the defendant's
15 DNA profile matched the DNA profile of the
16 semen, the vaginal swabs. The odds of somebody
17 else unrelated to him having that same profile
18 is 1 in 5,300.

19 Your Honor, I would cite, and I think
20 this case is pretty much on all fours State vs.
21 Horace Butler, 290 S.E.2d 1, 1982. In that case
22 the evidence, the only evidence in support of
23 the aggravating circumstance of rape for the
24 jury was, one, the victim had a blow to the
25 head; two, the defendant was armed with a deadly

4719

State vs. Bowman - Volume XXIII

1 weapon; three, semen was in the victim's vagina.
2 And there was no DNA back then, just the semen;
3 and four, the doctor testified the semen could
4 have been defendant's blood type; and five, the
5 victim was killed.

6 Your Honor, this is the same scenario
7 we have here and I think certainly if it was
8 sufficient to go to the jury in Butler it would
9 be sufficient to go to the jury in this case,
10 especially this is actually stronger because
11 you've got the DNA evidence which was lacking in
12 Butler.

13 THE COURT: I understand.

14 MR. CUMMINGS: May it please the Court,
15 Judge.

16 THE COURT: Yes.

17 MR. CUMMINGS: Mr. Gadson testified of what
18 happened. There was a shooting on the premise.
19 Again, this is the only evidence this jury would
20 hear, that he's there, there's shots. Miss
21 Martin is taken off the roadway. Again, I'm
22 going on what I read the notes are. There
23 wasn't any time, there wasn't any testimony at
24 all mentioned about any touching of that lady's
25 person at all, Your Honor, respectfully, at that

JA 1074

State vs. Bowman - Volume XXIII

1 time, whatsoever.

2 Again, if we take it back to
3 Mr. Felder's testimony, you pull back up there,
4 if the Court believes Mr. Felder's testimony in
5 its entirety or any portion of it, when he
6 pulled back up there placing in the trunk, car
7 is driven, gasoline's poured on the car
8 allegedly by my client and car is set on fire.
9 There's been no testimony of any sort in here.
10 And under Butler and all the facts, Your Honor,
11 that case, if you read it in its entirety, there
12 had been contact, there had been some issue that
13 raised the issue of whether or not he could have
14 done that, that he had the time to do that.

15 In this case we don't have that.
16 There's been no testimony whatsoever about that
17 issue, ma'am. And, respectfully, I would ask
18 that the issue of kidnapping -- excuse me, CSC
19 as an aggravating factor not be submitted to the
20 jury, Your Honor, I think it would be, Your
21 Honor, without any evidentiary basis as we speak
22 today.

23 THE COURT: What about that, Mr. Bailey,
24 what about Mr. Cummings says that given the
25 testimony of the witnesses that there was the

4721

State vs. Bowman - Volume XXIII

1 opportunity because --

2 MR. BAILEY: Your Honor, I would concede
3 there's no eyewitness that said they witnessed a
4 rape occurring, there was no eyewitness in
5 Butler that witnessed a rape occurring. And in
6 regard to how long it would have taken, whether
7 or not it could have occurred, I don't recall
8 there being any -- I mean, they testified the
9 body was dragged into the woods and dragged out
10 of the woods and I don't think it would take a
11 great deal of time for the semen to have been
12 deposited on either one of those occasions if
13 that had happened, I think the jury could
14 reasonably construe that as occurring.

15 And, again, I fail to see the
16 distinction here in the Butler case with the
17 facts as they looked at it. Obviously there was
18 sexual intercourse, obviously the young woman
19 was killed. The jury's found he killed her.
20 And the idea of consensual sexual intercourse
21 followed by murder is just pretty bizarre.

22 MR. CUMMINGS: Judge, that goes to an issue
23 that has not been presented as evidence to this
24 jury. It is not beyond a reasonable doubt to
25 show the crime of criminal sexual conduct, there

JA 1076

State vs. Bowman - Volume XXIII

1 are certain elements to that. So an unlawful
2 sexual battery has not been proven here,
3 respectfully. Looking at every issue, again,
4 looking at that, the bra strap was maintained,
5 clothing was there, they went into great detail
6 about that and they showed everybody the
7 pictures, respectfully.

8 But, Your Honor, there has been no
9 evidence presented by the State and that's the
10 burden, the burden is beyond a reasonable doubt
11 for them to show it and not for anybody to prove
12 it's consensual. Again, it's burden shifting,
13 and permissibly, please.

14 THE COURT: I understand that. Let me hear
15 about the next one, your next objection.

16 MR. CUMMINGS: I'm sorry, Judge. Your
17 Honor, murder of Miss Martin was committed while
18 in the commission of robbery. Your Honor knows
19 the elements of robbery, we know the case law as
20 to the issue of robbery. Your Honor, robbery
21 you have to be -- you have to know you're being
22 robbed.

23 There's been no testimony whatsoever
24 here that if we look at any of the items that
25 are taken as personal property. The car. The

State vs. Bowman - Volume XXIII

1 only testimony about taking the car is from a
2 gentleman who has absolutely testified that he
3 had a brain injury and that he had been shot by
4 the police.

5 And he is the only person who said
6 allegedly that my client stole this lady's car.
7 There has been no testimony at all from anybody
8 of the unlawful taking while armed with a deadly
9 force. Mr. Gadson, if Your Honor, again,
10 believes him that he was there, never testified
11 that there was a forceful taking of property
12 either while armed with a deadly weapon or the
13 threat or use of one, Judge. Looking at the
14 circumstances and, again, the totality of the
15 testimony which is all we have. There's been
16 nothing else presented today in this case other
17 than the guilt phase. We've had some issues
18 that morning that Your Honor's ruled on.

19 So that's the only evidence the State
20 could put up now is what happened in the case in
21 the guilt phase. Been no testimony as to that.
22 There's been no statements as to a forceful
23 taking of property from this lady while she was
24 alive. And, Your Honor, and that is the issue
25 of robbery.

State vs. Bowman - Volume XXIII

1 Further, Judge, again, no presentation
2 of any weapon showed or displayed, nothing
3 testified to from Mr. Gadson or Mr. Felder.
4 Again, Your Honor, if there was any
5 reasonableness as to their testimony it goes and
6 that's the only testimony the jury has. It's
7 not until thereafter, allegedly at the club,
8 that a statement is made by my client to
9 Mr. Johnson, again, with the highest respect to
10 him, Judge, as a credible witness to you,
11 whether or not he then is trying to sell a car.
12 And there's been nobody testifying to that.

13 Mr. Johnson, despite repeated attempts
14 by the State and two attempts to put him back up
15 on the stand, never said that you saw him in
16 that car, Miss Martin's car. There's been a
17 controversy issue of testimony of whether or not
18 he was in Yolanda's car, about how he got to the
19 club in Yolanda's car. He was sitting there.
20 Nobody other than Hiram Johnson saw
21 Miss Martin's car as I humbly, respectfully,
22 remember the evidence.

23 Your Honor, I think the elements of
24 robbery have to be proven by the State. And,
25 again, to submit that issue to the jury is

4725

State vs. Bowman - Volume XXIII

1 clearly prejudicial, and, again, Your Honor,
2 respectfully not -- not proven by the State.

3 THE COURT: Thank you very much.

4 Yes, sir. Mr. Bailey.

5 MR. BAILEY: Your Honor, in order for this
6 to be a legitimate aggravating circumstance the
7 armed robbery has to occur during the commission
8 of a murder. Mr. Cummings is incorrect when he
9 says the victim has to know they're being
10 robbed. And I think he was implying that the
11 victim is dead, he can't commit the robbery
12 because the victim doesn't know that.

13 If I can cite two cases, Your Honor,
14 the proposition that that is not correct. The
15 first would be State vs. Shelly Damon, 328
16 S.E.2d, 628, 1985 South Carolina death penalty
17 case which stated that murder is committed in
18 the commission of armed robbery or larceny with
19 use of a deadly weapon when there's evidence the
20 victim's property was stolen in a continuous
21 sequence of criminal acts at the time of the
22 murder.

23 Your Honor, the factual scenario in
24 the Shelly Damon case was that the victims were
25 murdered and then property was taken after the

JA 1080

State vs. Bowman - Volume XXIII

1 murder took place.

2 The other case on point, Your Honor,
3 is State vs. Donald Jones, 340 S.E.2d, 782, 1985
4 case. I'm quoting from that. "The fact that
5 the crimes of kidnapping and criminal sexual
6 conduct were committed after the murder and upon
7 a different victim does not validate them as
8 aggravating circumstances for Mr. Fowler's
9 murder. The crimes were consummated in the
10 continuous series of acts with the murder, they
11 were committed in the same place and were not
12 separated by any substantial lapse in time."

13 Your Honor, Ms. Martin identified the
14 victim's watch that she purchased at Wal-Mart
15 about two weeks previously. The morning after
16 the murder and the morning the car is burned
17 that watch is found in the victim's pocket. And
18 I think certainly the jury can draw an inference
19 that was taken from the victim based on the
20 testimony so far.

21 The other item, Your Honor, that's the
22 subject of both aggravating circumstances of
23 larceny and robbery with a deadly weapon,
24 there's no dispute the deadly weapon is used,
25 they found him guilty of murder and the cause of

State vs. Bowman - Volume XXIII

1 death is the gunshot.

2 He was seen driving Kandee Martin's
3 car according to the testimony by Travis Felder,
4 by James Taiwan Gadson, by Hiram Johnson, all of
5 these people. And the jury if they -- and it's
6 a credibility issue. If the jury believes Hiram
7 Johnson's testimony, he says "I stole the car."
8 Stealing is larceny.

9 So with respect to both the watch and
10 the gun, clearly, Your Honor, there's sufficient
11 evidence to go to the jury on the aggravating
12 circumstance of robbery with the commission --
13 during the commission of murder, robbery with a
14 deadly weapon and larceny with a deadly weapon.

15 MR. CUMMINGS: I don't believe it's an
16 inference and it has to be beyond a reasonable
17 doubt and I don't --

18 MR. BAILEY: And I -- I'm sorry.

19 THE COURT: Go ahead.

20 MR. CUMMINGS: And, respectfully, Judge,
21 that is the higher standard, that is the burden
22 of proof of the State and not shifting it to the
23 defendant to prove that he didn't do these
24 things which is anticipated and why we objected
25 in the very beginning here, Judge.

State vs. Bowman - Volume XXIII

1 There is no testimony as to when my
2 client got that watch, there is none. Your
3 Honor, if you look at the cases Damon and Donny
4 Jones and you read them in totality, we
5 respectfully say they differ from the facts and
6 circumstances in this case.

7 Your Honor, respectfully, again, going
8 back to that issue of robbery, there's been no
9 testimony as to robbery. And, again, a
10 defendant who's put on notice of death and
11 trying to anticipate a defense can only rely on
12 the evidence that's presented against him in
13 this case and that's the only thing that can go
14 to the jury now. There's nothing else presented
15 in aggravation here to prove beyond a reasonable
16 doubt to show that the issue should be submitted
17 to the jury, respectfully. The only testimony
18 was allegedly back there.

19 Your Honor, again, that is in
20 controversy. Looking at the time when Your
21 Honor's heard this evidence, you have paid
22 attention to this case and been so kind and
23 respectful to both sides in this case as to the
24 issues of allowing us to supplement and to go
25 back and talk to you about the evidence

State vs. Bowman - Volume XXIII

1 presented here, and I would ask, again, in
2 reading this in totality, again, and I know you
3 will do before any evidence is presented to the
4 jury if you find it, ma'am, over our respective
5 objections.

6 Your Honor, as to the issue of
7 robbery, again, what item is the State relying
8 on to prove the robbery, the taking of the car
9 or the taking of the watch? I've not heard that
10 presented. Again, Judge, I leave that to you in
11 your deference, ma'am.

12 As to larceny of the watch while armed
13 with a deadly weapon there's been, again, no
14 testimony about how or whatever came into my
15 client's possession from any witnesses out
16 there. Never said that he took the watch off
17 this lady's person, never did he hold a gun out
18 there to take a watch off a person, never did he
19 have the time to do any of that there during the
20 commission of this murder.

21 Your Honor, respectfully, that is all
22 that the evidence will ever show in this file
23 and in this case, is that the mom did identify a
24 watch, it's clearly that, but petty larceny is
25 not enough to submit to a jury if the case in

State vs. Bowman - Volume XXIII

1 its entire finding were to find that my client
2 might have somehow illegally came into
3 possession of a watch different from that of the
4 gun. You're looking at the totality here again
5 of the testimony, there is no testimony at all
6 as to how my client came in possession of that
7 watch, Judge. And, again, not speculation, not
8 bootstrapping back, it's the State's burden to
9 prove how my client got that watch and they have
10 not done that.

11 THE COURT: Very well. Let me ask you this
12 question, I know that I want to do a little
13 looking just to finalize my rulings so I'm going
14 to take a little bit of time to do that, but let
15 me ask of you whether or not -- it's 12:30, it
16 seems now is a good time to take our lunch
17 break. Is the lunch here for the jurors?

18 MR. BAILEY: Yes, ma'am.

19 THE COURT: Would you prefer I bring them
20 back out to tell them we will have lunch for an
21 hour or just may I deliver a message that we
22 will have lunch and they are to take their lunch
23 break now?

24 MR. BAILEY: Deliver the message is fine
25 with the State, Your Honor.

4731

State vs. Bowman - Volume XXIII

1 MR. CUMMINGS: Deliver the message is fine
2 with us, too, stop them from coming in and out.

3 THE COURT: We will do that. Let us take
4 then an hour for lunch, we'll have lunch now,
5 and we will begin back at 1:15. Very well.
6 Thank you. Jury gets an hour, we get 45
7 minutes.

8 (Recess, from 12:30 p.m. to 1:20 p.m.)

9 THE COURT: All right. I have had an
10 opportunity to review the cases again. And, of
11 course, with the same standard that's applicable
12 as a directed verdict in any criminal case, I am
13 not charged with the responsibility of weighing
14 the evidence, but ascertaining whether or not
15 there is evidence on each of which the State
16 would have to show to establish its aggravating
17 circumstances and I've done that.

18 And with regards to the first which is
19 kidnapping, and I do state -- cite the State vs.
20 John Plath and John Arnold, and the language
21 there that talks about in that case where the
22 victim was lured into a car after the defendants
23 had formed and expressed intention to carry away
24 and murder her. That is certainly with
25 substantial similarity to this case and I will

JA 1086

State vs. Bowman - Volume XXIII

1 allow kidnapping to go to the jury as an
2 aggravating circumstance and will respectfully
3 deny the motion for directed verdict as to
4 kidnapping.

5 With regards to criminal sexual
6 conduct, and I'm citing the State vs. Butler
7 case. And in the State vs. Butler case just as
8 Mr. Bailey, you relied on the five factors that
9 the Court there talks about, that the -- there
10 are two substantial differences. In the Butler
11 case they talk about the victim receiving a blow
12 to her head prior to death and talking about the
13 blood type which was ascertained from the semen.
14 The two differences being that the injury to
15 Miss Martin occurred at the time of her death of
16 the two gunshots and that the DNA is what was
17 found present rather than a blood type.

18 Absent those two differences the case
19 is on all fours. And on the basis of the State
20 vs. Butler I would find that there is evidence
21 on each element of criminal sexual conduct in
22 accordance with the Butler case.

23 With regards to the robbery while
24 armed with a deadly weapon and the larceny armed
25 with a deadly weapon, I would point to State vs.

State vs. Bowman - Volume XXIII

1 Damon and also to the State vs. Jones, but
 2 particularly the State vs. Damon where clearly
 3 the position of the appellant in the Damon case
 4 was that the robbery was, if you will, an
 5 afterthought. And that's the way the Court
 6 refers to it and, therefore, it could not be
 7 used as aggravating circumstance because it
 8 occurred after the murder.

9 And the Court there determines that if
 10 the robbery or larceny occurs in the commission
 11 of the murder then it can be an aggravating
 12 circumstance and would, therefore, respectfully
 13 deny your motion as to larceny and robbery while
 14 armed with a deadly weapon on the basis of the
 15 State vs. Damon case. So with regards to the
 16 four aggravating circumstances which have been
 17 alleged by the State, I would deny,
 18 respectfully, your motion for directed verdict.

19 MR. CUMMINGS: Thank you, Judge.

20 MR. BAILEY: Thank you, Your Honor.

21 THE COURT: Is the defense ready to
 22 proceed?

23 MS. HARDEE-THOMAS: We're ready, Your
 24 Honor.

25 THE COURT: Counsel, of course, I'm going

State vs. Bowman - Volume XXIII

1 to and I want to talk to Mr. Bowman, both --
2 don't need to do that now -- about certainly his
3 right to testify as well as his right to
4 argument. I simply want to do that prior to the
5 time the defense rests. So if you all will
6 approach and let me know at that point and then
7 I can do those things. Unless you think it
8 would be better that I do that now? Let me see
9 you just one minute.

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

12 THE COURT: All right.

13 EXAMINATION

14 BY THE COURT:

15 Q Mr. Bowman, as you will recall we talked about
16 your right to testify, your right to decide not to
17 testify in the first phase of the trial. And at that
18 time you were placed under oath for the limited
19 questions that I asked you then and I would simply
20 remind you that you remain under oath for the limited
21 questions I'll ask you now. Do you understand that?

22 A Yes, ma'am.

23 Q All right, sir. Now, I am going to, again,
24 explain to you certain of your rights. And you will
25 recall these because we went over them in the first

4735

Marion Bowman, Jr. - Examination

1 phase. Please know, though, if you do not understand
2 anything I say, please let me know. And if you want
3 me to explain anything in more detail, please let me
4 know. Do you understand?

5 A Yes, ma'am.

6 Q All right. Now, we, of course, have reached the
7 stage of the trial where you may present your
8 defense. And you have the right to claim the
9 protections given to you by the Fifth Amendment to
10 the Constitution of the United States. And this
11 amendment states in part that no person shall be
12 compelled in any criminal case to be a witness
13 against himself. This means that you cannot be
14 required to testify in this case.

15 You have the right to testify on your
16 own behalf; however, no one can make you testify.
17 This is a personal right and no one can waive this
18 right except you. If you decide to testify, you will
19 be subject to the same rules that govern other
20 witnesses and you may be examined and cross-examined
21 on any relevant issue in this case.

22 In addition, if you have any
23 convictions involving dishonesty or false statement
24 or for crimes punishable for imprisonment for more
25 than one year and this Court determines that the

JA 1090

Marion Bowman, Jr. - Examination

1 probative value of admitting this evidence outweighs
2 its prejudicial effect to you, the solicitor will be
3 able to introduce your record to attack your
4 credibility. And when I mean this case, of course,
5 I'm talking about this phase of this trial.

6 If you decide to testify, this
7 decision on your part must be freely, voluntarily,
8 and intelligently made with knowledge of the
9 protections given to you by the Fifth Amendment and
10 the consequences of your decision to testify. If you
11 decide not to testify, I will instruct the jurors
12 that they cannot give the fact that you chose not to
13 testify any consideration whatsoever and that there
14 is to be absolutely no prejudice to you because you
15 chose not to testify. It is left entirely up to you
16 whether or not you testify. Of course you may talk
17 to your attorneys, your family and friends, or
18 anyone, but the final decision will be left entirely
19 up to you. Do you understand what I have explained
20 to you?

21 A Yes, ma'am.

22 Q And do you have any questions about what I have
23 explained to you?

24 A No, ma'am.

25 Q All right, sir. And have you discussed with

4737

Marion Bowman, Jr. - Examination

1 your lawyers whether or not you should or should not
2 testify?

3 A Yes, ma'am.

4 Q And do you need any more time to talk to your
5 lawyers about whether or not you wish or should
6 testify?

7 MR. CUMMINGS: Your Honor, if I may for the
8 record, please.

9 THE COURT: Sure.

10 MR. CUMMINGS: Based on Your Honor's
11 decisions a few moments ago in allowing any
12 aggravating factors to go to the jury, I think
13 Mr. Bowman is requesting an additional period of
14 time before he makes the ultimate decision.

15 THE COURT: Certainly. Certainly.

16 MR. CUMMINGS: Therefore, Judge, not to tie
17 up anything. I know that you'll finish the
18 charges, but his decision will probably be held
19 in abeyance at least until a later moment if we
20 may, Judge.

21 THE COURT: You certainly may. And we will
22 certainly -- if you have the number of witnesses
23 which I am anticipating, then there will
24 certainly be time. And even if there isn't time
25 we will take time for you all to have that

JA 1092

Marion Bowman, Jr. - Examination

1 opportunity to confer before Mr. Bowman makes
2 his final determination.

3 MR. CUMMINGS: Thank you, Judge.

4 THE COURT: You may need to remind me as
5 the afternoon goes along, but it certainly would
6 be my intention and you all will remind me if
7 need be.

8 MR. CUMMINGS: Yes, ma'am.

9 THE COURT: All right, then. I've
10 instructed Mr. Bowman and then once you've had
11 an opportunity to confer if you all would just
12 let me know. Mr. Bowman, you'll let me know
13 your decision?

14 MR. BOWMAN: Yes, ma'am.

15 THE COURT: All right. Very well then.
16 Anything further before we bring our jury out?

17 MR. BAILEY: Nothing from the State at this
18 time, Your Honor.

19 MR. CUMMINGS: Judge, I think we're going
20 to have access again to that easel from that
21 nice, kind gentleman again.

22 THE COURT: He's got to go find the easel.

23 MR. CUMMINGS: Then we've got to make sure,
24 it might be in the jury room. And one more
25 thing in addition there. Madam Clerk, do we

Marion Bowman, Jr. - Examination

1 have one of those pieces of paper that folds
2 over again?

3 THE COURT: Do we have paper?

4 THE CLERK: We had a whole pad here at the
5 beginning of the trial.

6 MR. CUMMINGS: I noticed when we started
7 the trial it was here, but I don't know if we
8 cleaned the courtroom out a little bit.

9 THE COURT: I don't know where it may be.
10 Let us look and see if it can be located.
11 (Pause in proceedings.)

12 MR. BAILEY: Your Honor, while he's looking
13 for that Mr. Cummings advised me one of his
14 first witnesses may be the defendant's mother.

15 THE COURT: All right.

16 MR. BAILEY: She has a 2000 Dorchester
17 County conviction of distribution of marijuana
18 and I would intend to cross-examine her on that,
19 Your Honor. It's very recent, it is not related
20 to any manner whatsoever to the -- what's going
21 on in this trial and it's a serious offense and
22 I think it would affect her credibility and
23 would advise the Court that I plan on subject to
24 the Court's ruling cross-examining her on that.

25 MR. CUMMINGS: As to 609, yes, ma'am, we

Marion Bowman, Jr. - Examination

1 understand.

2 THE COURT: All right. Y'all are aware.

3 Great.

4 (Pause in proceedings.)

5 MR. BAILEY: Your Honor, also in regard to
6 the family members I know this has come up
7 before in other cases, but there are limitations
8 on what they can go into as far as -- and I'd
9 filed a memorandum in that. I'm sure Mr.
10 Cummings has advised her that she can't try to
11 usurp the province of the jury and tell the jury
12 what to do and that type thing, that there are
13 limitations on what she can get into as far as
14 going beyond asking mercy for the defendant, so
15 I just bring that up at this time

16 MR. CUMMINGS: Yes, ma'am. Just as we did
17 politely and how we've been in an adversarial
18 situation as to victim impact evidence versus
19 the defendant. I think, Judge, you controlled
20 both of us as adversaries.

21 THE COURT: Yes. You can't tell the jury
22 what it is that they are supposed to do.

23 MR. CUMMINGS: Yes, ma'am.

24 THE COURT: Very well.

25 MS. HARDEE-THOMAS: One more matter.

4741

Marion Bowman, Jr. - Examination

1 THE COURT: Yes.

2 MS. HARDEE-THOMAS: I had some pictures we
3 want to try to introduce and we want to get them
4 marked before so it will flow through a little
5 bit with regards --

6 THE COURT: All right. Have you seen those
7 photos? Let Mr. Bailey see those.

8 MR. BAILEY: Your Honor, for the record no
9 objection to any of those photographs Ms.
10 Hardee-Thomas showed me.

11 THE COURT: All right. Let us go ahead and
12 mark the photos as an exhibit, we'll put them
13 in.

14 (Entered into evidence were Defendant's Exhibits
15 5 through 15, photographs.)

16 THE COURT: Anything further before the
17 jury comes out?

18 MR. BAILEY: Not from the State, Your
19 Honor.

20 MR. CUMMINGS: Other than getting settled.

21 THE COURT: I got you, very well. Let us
22 have our jury.

23 (Whereupon, the jury returns to the courtroom at
24 1:38 p.m.)

25 THE COURT: I hope that you had a very

JA 1096

Marion Bowman, Jr. - Examination

1 pleasant lunch. At this time we will hear from
2 the defense.

3 MS. HARDEE-THOMAS: The defense calls
4 Kendra Bowman to the stand.

5 THE COURT: Thank you, Ms. Hardee-Thomas.
6 If you would come along, please.

7 (Kendra Bowman, called as a witness, having
8 first been duly sworn, is examined and testifies
9 as follows:)

10 DIRECT EXAMINATION

11 BY MS. HARDEE-THOMAS:

12 Q I'm going to ask that you speak up loudly in the
13 microphone. Can you tell us a little bit about the
14 early years in your life?

15 A Yes. About me and Marion?

16 Q Your family, yes.

17 A Well, me, Marion, we basically grew up together
18 and we played, we always argue over who wear who
19 clothes.

20 Q Who's older?

21 A I'm the oldest.

22 Q Okay.

23 A He's in the middle.

24 Q And you have another sibling?

25 A And I have a sister.

4743

Kendra Bowman - Direct Exam

1 Q Who's younger?

2 A Who's younger, Yolanda Bowman.

3 Q Are there any other siblings?

4 A Unh-unh.

5 Q Can you finish telling us what you were getting
6 ready to say?

7 A And me, Marion, we would always argue about who
8 wear who clothes. And it always turned up I say, no,
9 you're not wearing my clothes so I always end up
10 giving him the clothes to wear. Then we would always
11 like do things together, things like that. When my
12 mom took sick in her back it was only left with me
13 and Marion to do the cleaning and the cooking. And I
14 was never the type to cook. I would always clean, he
15 would do the cooking.

16 Q Okay. So he took care of the cooking and you
17 did what now?

18 A I would always clean.

19 Q Did there come a time where you had siblings,
20 other siblings, or children or relatives in the house
21 with children?

22 A Yes, we had our godson. Well, my mother's
23 godson, Donique, she used to keep him during the
24 summer and stuff and he used to go out and play with
25 him, get up on the truck and they would ride.

JA 1098

Kendra Bowman - Direct Exam

1 Q Okay. Was your father at home?

2 A No. My father was never there.

3 Q Okay.

4 A Which is Marion Bowman, Sr.

5 Q Okay. Was there another man in the home?

6 A Yes. My stepfather, Joseph Sims.

7 Q Okay. What part did he play in the home?

8 A He played the daddy part.

9 Q Okay. Meaning what did he do with the children?

10 A He would take us out, you know, show us what a
11 father supposed to do, you know, help discipline us
12 when we didn't have our own father to do it. I mean,
13 take us out on the road with him, you know, show us,
14 you know, what a father supposed to do.

15 Q What did he do for a living?

16 A He drove truck, truck driver.

17 Q So it enabled you guys to get out of the state?

18 A Uh-huh (affirmative response).

19 THE COURT: Could you answer audibly for us
20 instead of unh-unh or uh-huh?

21 THE WITNESS: Oh, yes, ma'am.

22 THE COURT: Thank you.

23 Q I wanted to show you some pictures.

24 MS. HARDEE-THOMAS: Your Honor, may I
25 approach?

4745

Kendra Bowman - Direct Exam

1 THE COURT: You may.

2 Q Can you look at these and identify them and then
3 I'll talk to you about them?

4 A Uh-huh (affirmative response).

5 Q You have some pictures in your hand. Can you
6 identify those?

7 A Yes, ma'am.

8 Q Okay. One in particular, the first picture that
9 you have, that's a picture of Marion Bowman?

10 A Yes, ma'am.

11 Q And where did that picture come from?

12 A Six Flags Great Adventures.

13 Q Who took that?

14 A I think it's my stepfather snapping the picture.

15 Q You was with him?

16 A Yes, ma'am.

17 THE COURT: What exhibit number is that?

18 MS. HARDEE-THOMAS: That's Defense Exhibit
19 Number 11.

20 THE COURT: All right.

21 MS. HARDEE-THOMAS: We're going to
22 eventually pass those on to the jury, Your
23 Honor.

24 Q All right. Can you tell us about Defense
25 Exhibit Number 10?

JA 1100

Kendra Bowman - Direct Exam

1 A Yes, ma'am. This is my father, Joseph Sims,
2 with the truck, up on the Cadillac, that is my
3 brother, Marion Bowman, we are at Six Flag Great
4 Adventures.

5 MS. HARDEE-THOMAS: Okay. We're going to
6 eventually pass that up to the jury, Your Honor.

7 Q Looking at Defense Exhibit Number 12, can you
8 tell the jury what that is?

9 A Yes. This is my brother, Marion, and this is
10 our god-sister Naquasha W..

11 Q He's holding the baby?

12 A Yes, ma'am.

13 Q Okay..

14 MS. HARDEE-THOMAS: That's, again, Defense
15 Exhibit Number 12.

16 Q Can you tell us about Defense Exhibit Number 8?

17 A This is the blue truck of my stepfather's,
18 Joseph Sims, and this is my brother, Marion Bowman,
19 Jr., and this is my god-brother Donique B..

20 Q Can you identify these pictures? I believe this
21 is Defense Exhibit 15.

22 A This is now my eight-month-old niece, Marissa
23 B..

24 Q Whose child is that?

25 A Dorothy Mae Bowman is the mother and the father

4747

Kendra Bowman - Direct Exam

1 Marion Bowman, Jr.

2 Q We're looking at Defense Exhibit Number 14.

3 A Again, this is my niece, Marissa B. [REDACTED].

4 Q All right. Lastly we're looking at Defense
5 Exhibit 13.

6 A And this is my niece, Marissa B. [REDACTED].

7 Q All right.

8 MS. HARDEE-THOMAS: Your Honor, they've
9 been marked for identification into evidence.
10 May I be allowed to pass these to the jury?

11 THE COURT: You may.

12 Q Ms. Bowman, do you love your brother?

13 A Yes, ma'am. I do.

14 MS. HARDEE-THOMAS: Beg your indulgence,
15 Your Honor.

16 THE COURT: All right.

17 (Ms. Hardee-Thomas and Mr. Cummings conferring
18 with Mr. Bowman.)

19 Q Now, you touched on a point with regards to you
20 and the other siblings in the home when your mom had
21 health problems. When was that, what age were you
22 then?

23 A I don't know, I was about -- probably about -- I
24 was in my teens. Really, to be honest, I don't
25 remember.

JA 1102

Kendra Bowman - Direct Exam

1 Q What grade in school were you?

2 A About in seventh grade.

3 Q Okay. What grade was Marion then?

4 A Marion was in the sixth grade, I think.

5 Q And you basically helped your mom at home?

6 A Yes, ma'am.

7 Q Did you go to school during that time?

8 A Yes, ma'am.

9 Q Okay. When did your parents separate?

10 A My mom and my father separate when I was small,
11 when I was probably about to go on one.

12 Q Was there any problems in the home?

13 A Yes.

14 Q What type of problems, ma'am?

15 A My father was very abusive to my mother.

16 Q Okay. There was domestic violence in your home?

17 A Yes.

18 Q Are you asking for mercy for your brother?

19 A Yes, sir. Yes, ma'am. Yes, ma'am.

20 MS. HARDEE-THOMAS: No further questions,

21 Your Honor.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION

24 BY MR. BAILEY:

25 Q One thing, when was Dorothy Mae Bowman's baby

Kendra Bowman - Cross-Exam

1 born, the youngest child?

2 A [REDACTED].

3 MR. BAILEY: That's all I have, Your Honor.

4 THE COURT: All right. Any redirect?

5 MS. HARDEE-THOMAS: No redirect, Your
6 Honor.

7 THE COURT: Very well.

8 MR. CUMMINGS: We would call Mrs. Bowman.

9 THE COURT: You may come down. Is this
10 witness free to leave?

11 MR. CUMMINGS: Yes, ma'am.

12 THE COURT: Very well. You are free to go.
13 (Whereupon, the witness steps down from the
14 witness stand.)

15 MR. BAILEY: Can we approach briefly, Your
16 Honor?

17 THE COURT: You may.

18 (Whereupon, a bench conference was held
19 off the record in the presence of the
20 jury but out of the hearing of the jury.)

21 (Dorothy Bowman, called as a witness, having
22 first been duly sworn, is examined and testifies
23 as follows:)

24

25

Dorothy Bowman - Direct Exam

DIRECT EXAMINATION

1

2 BY MR. CUMMINGS:

3 Q Mrs. Bowman, good afternoon, ma'am.

4 A Good afternoon.

5 Q I'm going to ask you some very personal
6 questions right off the bat and I want you to
7 understand they're going to be very uncomfortable.
8 The very first thing I want to say to you is it a
9 truth, a true statement that you were convicted or
10 pled guilty in this court in the year 2000 of the
11 offense of distribution of marijuana?

12 A Yes.

13 Q In the year 2000?

14 A Yes.

15 Q What month in the year 2000, ma'am?

16 A I think it was like April. I think it's April,
17 I'm not sure.

18 Q Okay. And you received what type of sentence,
19 please, to the ladies and gentlemen of the jury?

20 A Probation.

21 Q Okay. Are you currently on probation?

22 A Yes.

23 Q I want to take you back to a real lifetime. Can
24 you please describe to these ladies and gentlemen of
25 the jury your life with Mr. Marion Bowman, Sr.

4751

Dorothy Bowman - Direct Exam

1 starting from the time of your beginning of the
2 relationship until the present day?

3 A Well, he was abusive and I divorced him when my
4 baby was 18 months old so I had to raise my kids on
5 my own. Child support wasn't an issue because he
6 wouldn't pay it, so I had to take care of my kids
7 myself. Then once Marion got big enough to mow
8 grass, he mowed grass to make ends meet.

9 Q How old were you when you had your first child,
10 ma'am?

11 A I think 17.

12 Q How old were you when you had the second child?

13 A Eighteen.

14 Q How old were you when you had the third child?

15 A Nineteen.

16 Q When did Mr. Bowman -- again, when did
17 Mr. Bowman depart the family?

18 A Well, I said he been departed because ever since
19 I had them I had to take care of them myself, but he
20 was in the house but I still had to take care of them
21 myself. I think Yolanda was like eight months when
22 we did live in different houses and she was like 18
23 months when I divorced, when my divorce came final.

24 Q Did Marion have difficulty as a child in school,
25 particularly in grammar school?

JA 1106

Dorothy Bowman - Direct Exam

1 A Well, I think it's because -- yes. And I think
2 it's because he wanted his father to be a part of his
3 life and his father never were.

4 Q Did you ever attend school issues and school
5 functions on behalf of Marion?

6 A Yes, I did. I tried to attend all he had.

7 Q Did you ever address concerns or problems with
8 the school personnel about your son?

9 A Yes, I did.

10 Q Okay. Well, let's go back a little bit. The
11 oldest child was Kendra, ma'am?

12 A Yes, sir.

13 Q Did Kendra finish high school?

14 A Yes.

15 Q Did Marion finish high school?

16 A No.

17 Q Did Yolanda finish high school?

18 A No.

19 Q What grade was the last grade in school that
20 your son, Marion, finished, ma'am?

21 A I think it was the ninth, but he didn't stop on
22 his own, he could no longer go to that school.

23 Q So he finished the ninth grade?

24 A Yes.

25 Q At the end of the ninth grade how were you

Dorothy Bowman - Direct Exam

1 supporting yourself at that time?

2 A The best way I could.

3 Q And how was that, ma'am?

4 A Well, I had a little income.

5 Q From what?

6 A From -- he was in ninth grade. It was just like
7 whenever his dad would pay child support, then he
8 would go out and cut grass for different people to
9 make money to help.

10 Q Were there any other family members that Mr. --
11 that your son was close to at that time?

12 A Yeah. He was close to people in my family.

13 Q Who is that? Who was alive back then when he
14 was around ninth grade that he was close to, please?

15 A He used to loved his Aunt Lo, Lorraine Johnson.

16 Q And how would you describe that love, in
17 particular in what ways would Mr. Bowman, Marion,
18 help his aunt?

19 A Anything he could do to help her around the
20 house he would do it, he was always there. When she
21 need him he was always there. Well, anybody need him
22 he was always there, he was a very helpful person.

23 Q What in particular would cause Marion in the
24 ninth grade to want to help Aunt Lorraine, was there
25 anything significant about her?

Dorothy Bowman - Direct Exam

1 A Well, I guess because she helped me out when I
2 need help, she would help me out as far as taking
3 care of them.

4 Q Was there any reasons that Marion had to take
5 care of that lady?

6 A Love.

7 Q Were there any reasons other than love for him
8 taking care of you?

9 A All I can say is love and I'm his mom, you know,
10 he know I need the help.

11 Q Can you describe to the ladies and gentlemen of
12 the jury your physical condition from about the time
13 that Marion was in grammar school until he got to
14 high school?

15 A Well, I start having problems with my back back
16 in '90 and I was like couldn't do nothing for myself.
17 I kept going to the doctor and they was trying to
18 find out what it was. And he was my backbone because
19 if he didn't get me out of the bed and let Kendra and
20 Yolanda dress me before he get to school I had to
21 stay in the bed until he come back.

22 Q So that was Marion's chores?

23 A Yes. When I were able to work he was the one
24 would cook and Kendra and Yolanda would clean up.

25 Q Can you describe Marion's issues with his father

4755

Dorothy Bowman - Direct Exam

1 to the ladies and gentlemen of the jury? And I want
2 you to be very open about that, please.

3 A Um.

4 Q If you don't understand my question I'll
5 rephrase.

6 A I don't understand.

7 Q Did his father ever have a relationship with
8 him?

9 A No, sir. His father always would promised him
10 that he's coming to take him fishing or to ride him
11 around. And he depend on his dad to come do those
12 things, then his dad wouldn't come and he would be
13 upset. And that's what he always do, always
14 promising he was going to come take him and do stuff
15 and spend time with him and he never would. And that
16 had bothered him a lot.

17 Q You understand today the purpose of this is to
18 have you talk to the ladies and gentlemen of the jury
19 about your son?

20 A Yes, sir.

21 Q Now, you've been shown some pictures.

22 MR. CUMMINGS: And, Your Honor, may I
23 approach the witness, please?

24 THE COURT: You may.

25 Q These are -- and, again, I don't mean to block

JA 1110

Dorothy Bowman - Direct Exam

1 anybody. I want to show you these first. Can you
2 identify the young male in these pictures?

3 A That's my loving son, Marion Bowman, Jr.

4 Q Now, these are what appear to be four school
5 pictures; is that correct, ma'am?

6 A Yes, sir.

7 Q Okay. When you were requested and asked by
8 Ms. Davis and other members of the -- Ms. Marva
9 Hardee-Thomas or I about pictures of Marion, did you
10 have any other photographs other than the ones we got
11 out of the school yearbook?

12 A No, sir. Because I wasn't -- I didn't have the
13 money to buy them like other people could buy
14 pictures for their kids, I couldn't buy them.

15 Q Again, my question to you, ma'am, is this now:
16 Out of the 20 years of Marion being on this earth,
17 and those are school photographs, that's the only
18 photographs that you have of that young man, your
19 only son?

20 A Yes, sir. It is.

21 Q Four photographs that depict the history of his
22 life?

23 A Yes, sir.

24 Q Not a birthday picture?

25 A No, sir.

Dorothy Bowman - Direct Exam

1 Q Not a picture of any issue of him in school
2 other than those four pictures?

3 A No, sir. And I would like --

4 Q Answer my question. Any pictures?

5 A No, that's it.

6 Q There came a time where you met a man in your
7 life named Mr. Joe Sims?

8 A Yes, sir.

9 Q Could you please tell the ladies and gentlemen
10 of the jury about your life with Mr. Sims and when
11 that occurred?

12 A He did what a father should do. He helped took
13 care of my kids, he took them on adventures, he took
14 out time with them and taught them different things,
15 which a father should do with a guy which was my son
16 Marion, and he made our life different.

17 Q You met that man in what year?

18 A Early '90s.

19 Q All right. And he left your life when?

20 A Like '98. Like '98, '99, something like that.

21 Q In 1997 did Marion get in trouble with the law?

22 A Yes, sir.

23 Q How old was your son in 1997, ma'am?

24 A Like 18, 17, 18.

25 Q You're not sure? When was Marion born?

Dorothy Bowman - Direct Exam

1 A Marion was born in [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED].

2 Q So in 1997 you said he was about 18? I'm not
3 trying to trick you.

4 A Yes, 17, 18.

5 Q Okay.

6 A I'm kind of nervous so I ain't really thinking
7 the age.

8 Q When you need a glass of water or something I'll
9 ask her -- oh, I'm sorry. When Marion had -- would
10 you please describe the relationship that Marion had
11 to the limited time with Mr. Sims?

12 A He had a loving relationship. He looked up at
13 him like a real dad because that's the only guy -- he
14 was the only one took up a lot of time with him. His
15 dad never was there so it was like dad to him.

16 Q Of your personal knowledge, did Mr. Bowman, had
17 you ever seen your son in the company of Miss Kandee
18 Martin?

19 A Yes, sir. I have.

20 Q And would you please describe for these ladies
21 and gentlemen of the jury how often and what
22 occasions you might see Mr. Bowman in the company of
23 Miss Martin?

24 A I have seen them plenty of times because
25 Miss Martin used to always come to my house at one

4759

Dorothy Bowman - Direct Exam

1 point and she was just like a member of the family.

2 Q Did Miss Martin have a child, ma'am?

3 A If I'm not mistaken she had two kids.

4 Q Was Miss Martin friends with Yolanda and Kendra,
5 ma'am?

6 A Yes, she were.

7 Q Would it be out of the ordinary to see
8 Mr. Bowman in the company of Miss Martin?

9 A No, sir.

10 Q Would it be out of the ordinary to see
11 Mr. Bowman in the car with Miss Martin?

12 A No, sir, because she would give him her car all
13 the time to drive.

14 Q There came a time in this case where your son is
15 convicted of murder and arson. You understand that?

16 A Yes, sir.

17 Q And you understand that the least amount of
18 sentence that the jury could impose is life without
19 the possibility of parole?

20 A Yes, sir.

21 Q What would you ask of this jury today in passing
22 judgment on your son?

23 A I'm asking the jury would they please have
24 mercy. I don't want to see my son die because that's
25 the only son I have and I don't know what went wrong.

JA 1114

Dorothy Bowman - Direct Exam

1 I don't believe he did it, but I ask the jury to
2 please have mercy on my son. That's my only son, he
3 have an eight-month-old daughter and I got to help
4 raise her now and I don't work. I'm on disability
5 and it's hard, so I'm asking y'all to please have a
6 little mercy on my son.

7 MR. CUMMINGS: Beg the Court's indulgence,
8 Your Honor.

9 THE COURT: All right.

10 (Mr. Cummings and Ms. Hardee-Thomas conferring
11 with Mr. Bowman.)

12 MR. CUMMINGS: Judge, that's all the
13 questions we have of this lady.

14 THE COURT: Cross-examination?

15 MR. BAILEY: No questions of Mrs. Bowman.

16 THE COURT: Very well. You may come down,
17 Mrs. Bowman.

18 (Whereupon, the witness steps down from the
19 witness stand.)

20 THE COURT: All right, sir. If you would
21 call your next witness.

22 MR. CUMMINGS: Ms. Alice Baughman, please.

23 THE COURT: All right.

24 (Margaret A. Baughman, called as a witness,
25 having first been duly sworn, is examined and

Margaret A. Baughman - Direct Exam

1 testifies as follows:)

2 DIRECT EXAMINATION

3 BY MR. CUMMINGS:

4 Q What do you do for an occupation, ma'am?

5 A I'm an adult education teacher for Dorchester
6 County School District Two.

7 Q Okay, ma'am. Have you had the opportunity and
8 the occasion to meet Mr. Marion Bowman, Jr., ma'am?

9 A Yes, I have.

10 Q Okay. And have you had the opportunity to work
11 with him as an instructor or teacher with Mr. Bowman?

12 A Yes, I have.

13 Q Can you please tell the ladies and gentlemen of
14 the jury approximately when you began any
15 instructions with Mr. Bowman?

16 A I don't know the exact date, but it was in the
17 late spring of 2001.

18 Q Could you just please describe to the ladies and
19 gentlemen of the jury in your own words, ma'am,
20 exactly what you teach and how in particular dealing
21 with Mr. Bowman?

22 A Well, I teach at the Dorchester County Detention
23 Center and I teach the keyboarding and GED
24 preparation along with academic refresher type
25 classes. And during the time that Mr. Bowman's been

Margaret A. Baughman - Direct Exam

1 my student he has sort of dabbled in a little of all
2 those different classes. He's also this last school
3 year been one of my teaching assistants and has taken
4 care of the library that I've established there.

5 Q And have you ever expressed any cares or
6 concerns about Mr. Bowman?

7 A Not while he was in my classroom, no.

8 Q Have you been able to form or express your --
9 anything in verbal or words dealing with Mr. Bowman
10 about how he assists you? Is he a help to you, is a
11 better question.

12 A Yes, he is. He's been a big help to me. He's
13 very consistent about coming to class. I can count
14 on him being there for me and that's important when
15 I'm in that room by myself with 15 different
16 individuals, some of whom I haven't gotten to know
17 very well. Because the jail does have a very
18 transient population, so it's hard to keep your eyes
19 on everything at one time.

20 Q Have you felt comfortable around Mr. Bowman,
21 ma'am?

22 A I have.

23 Q Have you ever expressed any cares or concerns
24 about being alone in the presence of Mr. Bowman?

25 A No, I haven't.

4763

Margaret A. Baughman - Direct Exam

1 Q Have you ever had any difficulty with him
2 whatsoever, ma'am?

3 A Not in the classroom setting, no.

4 MR. CUMMINGS: Beg the Court's indulgence.

5 THE COURT: All right.

6 Q Excuse me, I'm sorry.

7 MR. CUMMINGS: Your Honor, may I approach
8 the witness for a moment?

9 THE COURT: All right.

10 Q Do you pass out little things that every once in
11 a while you teach people with, ma'am, or give them
12 little ribbons or certificates?

13 A Yes, I do.

14 Q Let me show you this and ask if you can identify
15 it first, please.

16 A This is the red ribbon week, drug-free ribbon
17 that I gave my students last year along with some
18 pencils and things like that.

19 Q And did you give that to Mr. Bowman? Is that
20 your initials on there?

21 A Well, no, I didn't write that, no.

22 Q Okay.

23 A But that's the type of ribbon I gave out and I
24 did give it to all my students.

25 Q Okay. But you can't identify this one?

JA 1118

Margaret A. Baughman - Direct Exam

1 A It looks just like all the other ones I gave
2 out, so....

3 Q Okay. If you had a stack of them it would be
4 about the same thing?

5 MR. BAILEY: Judge, I won't object to it if
6 he wants to put it in.

7 THE COURT: Very well. Defendant's Exhibit
8 16 in evidence without objection.

9 (Entered into evidence was Defendant's Exhibit
10 16, ribbon.)

11 Q When was the last class that you have had that
12 you have seen Mr. Bowman in, ma'am, what date, this
13 is now May of 2002, when was the last time you talked
14 with him?

15 A I believe the last time I had him in class was
16 maybe the second of May.

17 Q It's continued on. It's continued on from when
18 you met him until May of this week?

19 A Right. I work a regular school teacher schedule
20 so I was off last summer and, you know, I have my
21 holidays, but he's been consistently in my class
22 since he arrived at the detention center.

23 Q That's been at least 14, 15 months of your
24 personal knowledge?

25 A Yes, sir.

4765

Margaret A. Baughman - Direct Exam

1 Q Thank you.

2 MR. CUMMINGS: Beg the Court's indulgence.

3 THE COURT: All right.

4 (Mr. Cummings and Ms. Hardee-Thomas conferring
5 with Mr. Bowman.)

6 MR. CUMMINGS: Your Honor, that's all the
7 questions we have of this nice lady.

8 THE COURT: Cross-examination.

9 CROSS-EXAMINATION

10 BY MR. BAILEY:

11 Q Mr. Cummings asked you whether or not you had
12 any trouble with Mr. Bowman and you said not in the
13 classroom setting. What did you mean by that?

14 A Well, that's the only interaction that I have
15 with the --

16 Q Okay.

17 A -- inmates at the detention center, is in a
18 classroom setting.

19 Q All right. So you hadn't seen him outside of a
20 classroom setting?

21 A No, sir. No.

22 Q That's what I wanted to find out. With regard
23 to this Defense Exhibit Number 16, it says, "Take a
24 Stand for a Drug Free Land." You give one of these
25 to everybody in your class?

JA 1120

Margaret A, Baughman - Cross-Exam

1 A I did during red ribbon week which I believe
2 falls the last week in October.

3 Q Of course people locked up in jail even if they
4 want drugs, there are no drugs --

5 A I'm sorry, I didn't --

6 Q As far as "Take a Stand for a Drug Free Land" I
7 guess it would refer to illegal drugs?

8 A Yes, sir.

9 Q Okay. And people locked up in jail would not
10 have access to street drugs?

11 MR. CUMMINGS: Judge, I think that's a
12 speculation. I hope there's not anything across
13 the street. I don't know if this lady can
14 answer that.

15 THE COURT: All right, sir. I'll overrule
16 the objection. You may answer the question.

17 Q You understand my question? I'm just trying to
18 find out what the correlation is between giving
19 people in jail a sticker like "Take a Stand for a
20 Drug Free Land," what is the significance of that
21 when they're in jail and they could not get street
22 drugs even if they wanted to?

23 A Well, my hope is that when they are not in jail
24 and they're back on the street that they wouldn't be
25 involved in any type of illegal drug use.

Margaret A, Baughman - Cross-Exam

1 Q Sure. Okay. All right. And all the people in
2 your class get that, it's not something they earn,
3 you just pass them out?

4 A Right.

5 Q Okay.

6 A During that particular week of celebration for
7 red ribbon.

8 Q Sure. I just wanted to understand that. Thank
9 you very much.

10 MR. CUMMINGS: Just a couple back.

11 THE COURT: All right. Redirect.

12 REDIRECT EXAMINATION

13 BY MR. CUMMINGS:

14 Q There are very limited opportunities for the
15 people across the street to have any classes; is that
16 fair to say?

17 A Right. It's -- I guess it's considered a
18 privilege to be able to come to class. There are a
19 lot of inmates who would like to attend and we don't
20 have a whole lot of time or space.

21 Q And, therefore, Mr. Bowman made himself
22 available to you for the limited classes that anybody
23 had to offer him there?

24 A Yes, sir.

25 Q Thank you.

Margaret A. Baughman - Redirect Exam

1 MR. CUMMINGS: That's all the questions we
2 have, Judge.

3 THE COURT: All right. Recross?

4 MR. BAILEY: No, ma'am.

5 MR. CUMMINGS: Ask the young lady be
6 excused with Your Honor's permission.

7 MR. BAILEY: No objection.

8 THE COURT: Very well. You are free to go.
9 (Whereupon, the witness steps down from the
10 witness stand.)

11 THE COURT: If you could call your next
12 witness, please, Mr. Cummings.

13 MR. CUMMINGS: Judge, we would ask if
14 Dr. West has arrived yet.

15 THE COURT: Very well.

16 MR. CUMMINGS: If I may just check the
17 backroom.

18 THE COURT: Certainly.

19 (Pause in proceedings.)

20 MR. CUMMINGS: Mr. Youngman, please.
21 (Jeffrey J. Youngman, called as a witness,
22 having first been duly sworn, is examined and
23 testifies as follows:)

24

25

4769

Jeffrey J. Youngman - Direct Exam

DIRECT EXAMINATION

1

2 BY MR. CUMMINGS:

3 Q Mr. Youngman, would you please -- and, again,
4 I'll try to be as brief as I can, Doctor -- excuse
5 me, Mister. Could you please describe to the ladies
6 and gentlemen of the jury what is your educational
7 background, sir?

8 A I have a bachelor's degree from Ohio State
9 University and two master's degrees from Tulane
10 University, one in social work one in public health.

11 Q What is your summary of your work experience,
12 sir?

13 A My professional experience as a social worker I
14 started in '81, so I've been a social worker for 21
15 years now.

16 Q All right, sir.

17 A I was child protection for approximately seven
18 years, I was -- investigated child abuse cases and I
19 supervised a unit and then I supervised the entire
20 parish which is the counties in Louisiana.

21 Q All right, sir.

22 A And then I -- from there I worked two years at a
23 homeless and runaway shelter in New Orleans for kids
24 ages 18 to 21; I worked in the school system, then I
25 moved to South Carolina, worked for the Health

JA 1124

4770

Jeffrey J. Youngman - Direct Exam

1 Department for three years, then I worked for
2 Carolina Youth Development Center which is an agency
3 had abused and neglected kids as well as emotionally
4 disturbed kids. I worked there for about six and a
5 half years and I've been at Crises Ministries, a
6 homeless shelter in Charleston, for the past three
7 years.

8 Q And do you have any relevant pre-master's work?
9 I know we've gone through a lot of things, but have
10 you spent any time in particular of a pre-master work
11 history?

12 A Well, prior to going to graduate school at
13 Tulane I was a New Orleans police officer.

14 Q How many years did you do that, sir?

15 A About two and a half.

16 Q Are you licensed as a social worker?

17 A Yes, I am. I'm licensed in the state of South
18 Carolina as a licensed independent social worker of
19 the -- there are three levels of social workers -- or
20 three levels of licensures or social workers in South
21 Carolina and LISW is the highest of the three levels.

22 Q And that's what you hold, sir?

23 A Yes, sir.

24 Q Now, do you have any postgraduate training or
25 continuing education beyond the scope of your highest

JA 1125

4771

Jeffrey J. Youngman - Direct Exam

1 level of licensing in this state?

2 A Well, to maintain my licensure I have to have 20
3 hours of social work training every year. In
4 addition June of last year I completed a postmaster's
5 certification course at Tulane in forensic social
6 work. It's the first one of its kind in the country
7 and I was one of the first. I think there was 22 of
8 us in the class.

9 Q What is forensic social work, sir?

10 A Forensic social work is just a specialty of
11 social work that deals with sort of the interface
12 between social work and the law. Anybody that works
13 in, say, well, child protection, divorce mediation,
14 child custody cases, they're all considered forensic
15 social workers.

16 Q As a forensic social worker or in the work that
17 you do, is there a procedure that is routinely
18 accepted by the Court system?

19 A I do. And it's certainly been accepted in the
20 past what's called the psychosocial assessment. It's
21 sort of the basic tool any social worker does to get
22 information from the client so that some decisions
23 can be made to what should happen with the client,
24 what to work on with the client next.

25 Q Approximately, sir, how many times have you been

JA 1126

4772

Jeffrey J. Youngman - Direct Exam

1 declared an expert in testifying in any state court,
2 or particular any state court or any federal court by
3 a judge?

4 A Well, let's see, this is the tenth case that
5 I've testified in, so ten times in forensic social
6 work. Of course I was an expert many times whenever
7 we did child protection.

8 Q All right. What are psychosocial assessments
9 used for, sir?

10 A Well, as I mentioned they're the basic building
11 block a social worker -- basic cornerstone perhaps is
12 a better term. It serves different purposes in
13 different settings. At the homeless shelter where I
14 work I do psychosocial assessments on the guests as
15 we call them that come into the shelter. They're
16 done so I can determine what were the causes of their
17 homelessness and what we can do to work on it to
18 alleviate those causes so they can be back in the
19 community in a home.

20 And the cases do -- the forensic
21 social work here in settings like this it's basically
22 to determine, again, what went on in a person's life
23 that would cause them to do the action that they've
24 been found guilty of. Because, of course, I only
25 testify in the penalty phase.

JA 1127

4773

Jeffrey J. Youngman - Direct Exam

1 And I start from the -- well, I go
2 back from the moment the incident occurred backwards,
3 so I deal with only the past. And so no matter what
4 happened after the incident took place the past was
5 still the past, it still existed.

6 Q All right, sir. Can anyone do psychosocial
7 assessments or do you have to be a social worker and
8 have special training to do that?

9 A You really have to have the special training to
10 do a complete and thorough and appropriate one. Most
11 psychologists, psychiatrists, even William S. Hall up
12 in Columbia, have social workers do those for them,
13 they don't do them themselves.

14 Q Do you do psychosocial assessments in your
15 full-time job as well as in sentencing matters here,
16 in particular these types of cases, sir?

17 A Yeah. I've done them for 21 years.

18 Q About how many psychosocial assessments have you
19 done approximately, sir? I know you said 21 years,
20 but....

21 A 2,100. I've done quite a number.

22 Q Sir, would you say this is an area of
23 specialization for you?

24 A Of the forensic psychosocial assessments
25 certainly is for me, yes.

JA 1128

4774

Jeffrey J. Youngman - Direct Exam

1 Q How do you conduct a psychosocial assessment?

2 A Again, depends on the setting. When I do it in
3 the homeless shelter I get information from the
4 guest. And if there are other agencies that have
5 worked with them I call those agencies to confirm
6 what the guest is telling me. In the case of
7 forensic psychosocial assessment I, again, talk to
8 the defendant in the case and then talk to his
9 family, talk to his friends, talk to people that have
10 had contact with him and review any records that seem
11 crucial to his life history.

12 Q In what ways do you validate your conclusions?

13 A By talking to other people. The more people
14 that tell me consistently the same information the
15 more likely the information is true.

16 Q And how many hours does it take for you to
17 complete a psychosocial assessment, sir?

18 A It, again, depends on the lead time. It seems
19 if I had 100 hours it would take me 110 because I
20 would always think of someone else I should talk to,
21 but in general 50 hours. Considering time reviewing
22 records and time interviewing people and time
23 traveling from place to place 50 hours.

24 Q What insight do forensic social workers bring to
25 the psychosocial assessments or to this courtroom,

JA 1129

4775

Jeffrey J. Youngman - Direct Exam

1 sir?

2 A What social workers do is that no event in any
3 person's life happens in a vacuum, there's always
4 some precipitating factors, there's always some
5 causal factors, people make decisions for a reason.
6 Social workers are trained to look at those reasons,
7 determine what existed and then try to figure out why
8 it happened in the way it happened.

9 Q All right, sir. How many capital sentence cases
10 have you been asked to work on and over what period
11 of time, sir?

12 A Twenty-seven in the past five years.

13 Q How many have you actually testified in?

14 A Just ten.

15 Q Why is there such a discrepancy, sir?

16 A Well, a number of reasons. Sometimes the
17 defendant pleads guilty, then, of course, I don't
18 have to testify. Sometimes I find -- in the course
19 of doing my assessment I do find some mitigation,
20 some informations that is pertinent to the case, but
21 it may not be something I can testify to. Say
22 somebody had -- in the course the assessment I
23 determine the person had brain damage, that's not my
24 area of expertise so a neurologist would have to
25 testify in that so I don't testify in those cases.

JA 1130

4776

Jeffrey J. Youngman - Direct Exam

1 Some cases there is no mitigation or nothing I could
2 find through the course of doing my assessment that
3 lends itself to the defense.

4 Q In your career have you testified for the
5 prosecution or State as well as for the defense?

6 A Oh, well, when I was a police officer obviously
7 I did, when I was in child protection I did. About a
8 year and a half ago I testified in a federal case in
9 North Carolina, pornography on the internet case.
10 The person happened to be somebody who was at Crisis
11 Ministers I had worked with, so I went up and
12 testified for the prosecution in that case.

13 Q All right. What type of cases -- again, you
14 just mentioned a moment ago the pornography case, but
15 what type of cases do you normally testify in?

16 A Now it's the capital sentence case that I
17 testify in mostly.

18 Q Has all of your court testimony been in South
19 Carolina, sir?

20 A No. I've testified in Georgia and Florida as
21 well.

22 Q Have you testified in other states as an expert
23 also?

24 A Yes. I was qualified in both those states.

25 Q And in those states as well as South Carolina,

JA 1131

4777

Jeffrey J. Youngman - Direct Exam

1 have you been qualified as an expert witness in
2 conducting psychosocial assessments and qualified to
3 offer opinions based on your findings?

4 A Yes, I have.

5 Q And in those cases were you asked to draw
6 conclusions or to render opinions as to how the
7 information that you have gathered about the
8 defendant related to his situation?

9 A Yes, I was.

10 MR. CUMMINGS: If Your Honor please, I
11 would ask that Mr. Youngman be qualified as an
12 expert in the field of forensic social work and
13 the conducting of psychosocial assessments, Your
14 Honor.

15 THE COURT: Any voir dire?

16 MR. BAILEY: May I voir dire briefly?

17 THE COURT: You may.

18 VOIR DIRE EXAMINATION

19 BY MR. BAILEY:

20 Q Mr. Youngman, you're not an MD?

21 A No, sir. I'm not.

22 Q Not a psychiatrist?

23 A No.

24 Q You're not a psychologist?

25 A No.

JA 1132

Jeffrey J. Youngman - Voir Dire Exam

1 Q All right, sir. Your degree is in social work?

2 A Yes.

3 Q All right, sir. And you've testified that
4 you've testified in the past in various contexts as a
5 police officer and then some kind of a pornography
6 case?

7 A And in child protection cases.

8 Q All right, sir. Now, as a police officer you
9 didn't testify as a Court-ordered expert in
10 psychosocial assessment, did you?

11 A No. I didn't have a master's degree at the
12 time.

13 Q All right, sir. And the case that you testified
14 about the child pornography, did you testify as an
15 expert in that case?

16 A Not in -- I was an expert in homelessness in
17 that case.

18 Q All right. Were you qualified as an expert in
19 homelessness?

20 A Yes, sir.

21 Q I want to ask you about your expertise in
22 testifying as a Court-qualified expert in
23 psychosocial assessments. How many times have you
24 testified for either the State of South Carolina,
25 North Carolina, Georgia, the prosecution as an expert

4779

Jeffrey J. Youngman - Voir Dire Exam

1 in this area?

2 A Ten times.

3 Q Ten times. All right, sir. And I thought that
4 you said --

5 A Excuse me, this is the tenth time.

6 Q You're not testifying for the State here. Let
7 me -- I apologize.

8 A Okay.

9 Q I might have asked the wrong question or asked
10 the right question the wrong way. You have testified
11 ten times as an expert in the field of psychosocial
12 assessment; is that correct, sir?

13 A Forensic psychosocial assessment.

14 Q Forensic psychosocial assessment?

15 A And this is the tenth time.

16 Q All right. And how many of those ten times did
17 you testify for the State, the prosecution?

18 A I did not testify for the State.

19 Q Okay. So all of those were for the defense?

20 A Yes, sir.

21 Q And the times that you were retained to look
22 into a case but you didn't testify as an expert, was
23 that all for the defense also?

24 A Yes, sir.

25 Q So the times you've testified for the State were

JA 1134

4780

Jeffrey J. Youngman - Voir Dire Exam

1 in some other capacity, as a police officer or a
2 homelessness expert or something of that nature?

3 A Yes, sir.

4 Q All right, sir. And as I understand what you're
5 saying what you do, you go out and you gather history
6 on somebody; is that right?

7 A That's another way to put it, yes, sir.

8 Q And you write the history up?

9 A Yes, sir.

10 Q And then at some point somebody may or may not
11 draw some conclusions from that historical data?

12 A Well, that somebody would be me, but I would be
13 the one to draw the conclusions.

14 Q How do you go about drawing your conclusions if
15 you get a bunch of facts about somebody might have
16 had some head injuries or his father wasn't the best
17 father in the world or didn't do well in school, how
18 do you add all those up to equal something else? Do
19 you see what I'm asking you?

20 A Not really. Equal. I don't know what I'm
21 equalling here.

22 Q Sir?

23 A I'm not sure what I'm equalling. You said
24 equals something else.

25 Q I'm just struggling, sir, frankly to find out

JA 1135

Jeffrey J. Youngman - Voir Dire Exam

1 what it is you testify as an expert at. Forensic
2 psychosocial assessment. Tell me in layman's terms
3 what that is, sir.

4 A Can be called a social history, social work
5 evaluation, same terminology.

6 Q All right, sir.

7 A I go back and find -- go back and get the entire
8 history of an individual from him, from his family,
9 from records and try to determine if there are any
10 factors that -- in these cases that would cause them
11 to commit the crime of murder. Just like in homeless
12 cases I go and try to find why the person became
13 homeless and hence --

14 Q Okay. So are you prepared today to give some
15 opinion on why the defendant committed the act of
16 murder?

17 A Yes.

18 Q Would it be fair, sir, that the information you
19 get to base your opinion is no better than the
20 sources of information that you get?

21 A I'd -- I guess that's fair.

22 Q All right. The more people that are closely
23 connected with the individual you're working with
24 that you get accurate information from the better
25 report you can do?

Jeffrey J. Youngman - Voir Dire Exam

1 A Yes, sir.

2 Q All right, sir. Did you talk to Dorothy Mae
3 Bowman, Mr. Bowman's wife?

4 A No. There were people I could not talk to.

5 Q Okay. I'm not going to ask you why you couldn't
6 talk to them, just did you talk to them. Okay. Did
7 you talk to his sister, Yolanda Bowman?

8 A No, I did not.

9 Q Did you talk to his friend, Hiram Johnson?

10 A No, I did not.

11 Q All right. Did you talk to any law enforcement
12 officers?

13 A No, I did not.

14 Q Anybody over at the jail?

15 A No, I did not.

16 Q You didn't talk to the Martins, did you?

17 A No, I did not.

18 MR. BAILEY: Your Honor, I do have a matter
19 of law in regard to his qualifications.

20 THE COURT: Ladies and gentlemen, I'm going
21 to ask you to please step to your jury room. Do
22 not discuss this matter and do not allow anyone
23 to discuss it with you, we will be with you
24 shortly.

25 (Whereupon, the jury retires to the jury room at

4783

State vs. Bowman - Volume XXIII

1 2:29 p.m.)

2 MR. BAILEY: Your Honor, let me apologize.
3 I'm not trying to be overly technical. If he's
4 qualified as an expert I'm willing to concede
5 it. My problem, Your Honor, is that I've read
6 an eight-page report that was faxed to me
7 yesterday from Mr. Youngman. And as I read the
8 report he garners a bunch of facts and then he
9 reaches conclusions he sets out here. And I
10 don't read these conclusions as giving any
11 opinion or reason why the defendant committed
12 the act of murder. If by qualifying him as an
13 expert in the field of forensic psychosocial
14 assessment it's going to open the door to him
15 giving an opinion to this extent, then I would
16 object to his qualification as an expert to do
17 that based on what he's said so far.

18 If he's just going to relate a history
19 and that's what the qualification's for, then I
20 have no objection to it. But what he says he's
21 going to do is not what I read in the report and
22 it's just such an esoteric field that I'm not --
23 I'm not ready to concede that he can give an
24 opinion on why this man committed murder.

25 MR. CUMMINGS: If it please the Court,

JA 1138

State vs. Bowman - Volume XXIII

1 Judge. The first issue is whether or not he's
2 qualified as an expert. That totally goes to
3 your weight, Judge, and if Mr. Bailey would
4 explain as his objection is that the ultimate
5 question or the ability of this gentleman to
6 give an opinion. So the very first thing is I
7 would submit to you, I think I've laid the
8 proper foundation now that he is an expert in
9 this field. And if Your Honor sees fit and so
10 find then he's subject to cross-examination.

11 We gave up the notes and the gentleman
12 summarized his summary what he was going to say
13 today and provided that over pursuant to 703,
14 Rule 5, and Brady. And, Your Honor,
15 respectfully, I believe that Mr. Youngman is,
16 again, Your Honor, with Your Honor being the
17 final word on that, an expert in this field,
18 he's been qualified. And, Your Honor, I think
19 I've met the rules with regards to 703, the
20 proper foundation.

21 I think it's great. And, again, like
22 I tell every expert I talk to, you're subject to
23 cross-examination and that would be the fodder
24 that you provide for cross-examination. And
25 it's the weight of the testimony the jury hears

4785

State vs. Bowman - Volume XXIII

1 and not the question of whether or not he's an
2 expert. That is your province, ma'am, as I
3 understand it.

4 MR. BAILEY: Your Honor, could I ask one
5 follow-up question? It might help me, I might
6 even withdraw it.

7 THE COURT: Sure.

8 BY MR. BAILEY:

9 Q Dr. Youngman, have you testified in the past as
10 an expert in the field of psychosocial assessment and
11 given an expert opinion in court as to why you think
12 somebody committed a murder?

13 A Every time I testified.

14 Q Okay. Give me some of those cases.

15 A Last case I worked on was the Woods case in
16 Greenville, before that the Rogers case in Beaufort,
17 before that there was, oh, man, federal case in
18 Savannah, Garret, Lamont Garret. Before that I
19 testified at the Joseph Sheppard case in Greenville,
20 testified in Abyville at the John Kennedy Hughey
21 case, testified in Clinton, South Carolina, in the
22 first case I ever did, whose name I cannot remember
23 now.

24 Q Okay. And your testimony, sir, is that you are
25 allowed as an expert in forensic psychosocial

JA 1140

State vs. Bowman - Volume XXIII

1 assessment to give your opinion on why somebody
2 committed a murder?

3 A Every time I've given factual history of the
4 person and drawn from that a history of the
5 conclusion of what caused him to behave the way he
6 did, yes, sir.

7 Q When you say behave the way he did, you're
8 talking about committing the act of murder?

9 A In every case, yes.

10 Q Okay.

11 THE COURT: Anything further, Mr. Bailey?

12 MR. BAILEY: No, ma'am.

13 THE COURT: All right.

14 MR. CUMMINGS: Judge, I would offer
15 Dr. Youngman as an expert provided.

16 THE COURT: All right. Any objection?

17 MR. BAILEY: I would just defer to the
18 Court, Your Honor.

19 THE COURT: All right. Very well. I'm
20 going to qualify Mr. Youngman as an expert in
21 the field of forensic psychosocial assessment.
22 I understand that he is a forensic social worker
23 and that is the area that he will be addressing
24 his opinion to the field of forensic
25 psychosocial assessment.

4787

State vs. Bowman - Volume XXIII

1 Very well. Let us have our jury.

2 Can I do one thing, just one thing? I
3 know I'm interrupting, but I did want to place
4 on the record that during the -- before
5 Ms. Martin's testimony and before Ms. Bowman's
6 testimony originally there was an objection to
7 the impact statement. We had a sidebar, that
8 original objection was made by -- on behalf of
9 the defense to Ms. Martin and then to Ms. Bowman
10 by the State.

11 And let me say that with regard to the
12 State it's more in line of, Judge, remember what
13 you ruled regarding to what the State could
14 permit, sauce for goose, sauce for gander, and
15 wanted the same standard to apply to both which
16 I have. And that is, of course, pursuant to the
17 Payne vs. Tennessee, that testimony to the
18 character of the victim as well as to the effect
19 of the murder on the family is admissible. And
20 that was the way that I ruled with regards to
21 both. And it allowed the impact statement of
22 Ms. Martin over the objection of the defendant.

23 And then with regards to when
24 Ms. Bowman testified that 609 (a) was raised and
25 at that time I determined that the probative

JA 1142

State vs. Bowman - Volume XXIII

1 value of the conviction outweighed any
2 prejudicial effect and I'll allow the
3 cross-examination of Ms. Bowman regarding her
4 conviction and I did that over the objection of
5 the defense. But I did -- thank you. I did
6 want to place those on the record at my next
7 available opportunity which just arose.

8 MR. CUMMINGS: Thank you, Your Honor.

9 MR. BAILEY: Thank you, Your Honor.

10 THE COURT: All right. Let's have our
11 jury.

12 (Whereupon, the jury returns to the courtroom at
13 2:36 p.m.)

14 MR. CUMMINGS: I would so move to declare
15 this gentleman an expert in the field of
16 psychosocial assessment.

17 THE COURT: Very well. And I find that
18 over the objection of the state that this
19 witness is an expert in the field of
20 psychosocial assessment and is a forensic social
21 worker, an expert in that field, yes. You may
22 proceed.

23 CONTINUED DIRECT EXAMINATION

24 BY MR. CUMMINGS:

25 Q. If it would assist you in explaining any issues

Jeffrey J. Youngman - Continued Direct Exam

1 to the ladies and gentlemen of the jury we've
2 prepared an easel up here which is blank, but I would
3 like to start the question by asking you, I would
4 like to just ask you to please tell the Court again
5 what the sources of your information were.

6 A In --

7 Q Again, I'll stand over here, I'm sorry.

8 A I interviewed -- in the case of Marion I
9 interviewed his mother, his grandmother, his sister,
10 four aunts, two teachers, a principal, and the family
11 doctor. And then I reviewed records from his school
12 records, his attendance records at the Dawn Center
13 which is a program sponsored by the Tricounty
14 Commission of Alcohol and Drug Abuse, I looked at his
15 medical records, his group counseling records from
16 William J. McCord Adolescent Treatment Facility from
17 Orangeburg, the sheriff's office records in regards
18 to the incident of 2-17-01, and psychiatric
19 evaluation of Marion from William S. Hall and some
20 Department of Social Service records from the years
21 '85 to 2000.

22 Q Were there any records that you did not review
23 that you would have like to have reviewed, or any
24 people you would have liked to have interviewed that
25 you did not or could not?

Jeffrey J. Youngman - Continued Direct Exam

1 A Well, there was a number of people I would have.
2 The records, I think I got all the records I needed.
3 There were certainly people I didn't get to interview
4 that I would have liked to interview.

5 Q Now, would you please, and, again, if you need
6 for demonstrative purposes and then explain up here,
7 would you please summarize your conclusions and what
8 major findings did you make after you conducted the
9 interviews and reviewed any reports that you deemed
10 appropriate or necessary, sir?

11 A Well, as far as the assessment I'm asked to
12 determine five things, if there's any evidence that
13 Marion Bowman, Jr.'s social and emotional functioning
14 as a child and young adult was affected by any
15 childhood trauma or family dysfunction to determine
16 if there's any evidence that Marion Bowman, Jr.'s
17 social environment played an adverse role in the
18 level of this social and emotional functioning, to
19 determine if there's any evidence that Marion Bowman,
20 Jr. had a significant history of mental illness or
21 substance abuse, to determine if there's evidence of
22 Marion Bowman, Jr. suffered any significant head
23 trauma as a child or young adult, and determine if
24 there's any evidence that Marion Bowman, Jr. had a
25 significant history of prior criminal convictions

Jeffrey J. Youngman - Continued Direct Exam

1 involving violence against another person.

2 Q And did you do that?

3 A I did that.

4 Q All right. Starting with the first one, sir,
5 please tell the ladies and gentlemen of the jury
6 exactly what you did and what your findings are,
7 please, sir, and then your conclusions.

8 A Okay. Well, what -- I'm sorry. In regards to
9 whether his social and emotional functioning as a
10 child in young adult was affected by his childhood
11 trauma or family dysfunction I found that, yes, his
12 functioning both social and emotional was affected by
13 trauma that occurred in his childhood.

14 Q What was that, sir?

15 A Well, if you'd like I can just go through what I
16 found out about Mr. Bowman, that might be better to
17 answer your question for you.

18 Q Thank you, Mr. Youngman, please.

19 A Briefly without reading it verbatim, Marion
20 Bowman was born on [] [] [] in Orangeburg, South
21 Carolina, he weighed 5 pounds and 4 ounces. He had
22 to stay in the hospital an extra day due to an
23 increase in bilirubin, but other than that there was
24 no reported problems with his pregnancy and delivery.

25 At the time of his birth his mother

Jeffrey J. Youngman - Continued Direct Exam

1 was married to Marion Bowman, Sr., they were married
2 in '78 when she was 15 and he was 20. Marion had an
3 older sister, Kendra, who was born in '79 and another
4 younger sister, Yolanda, who was born a year, 13
5 months after Marion.

6 When Marion was approximately three
7 years old his parents separated. He and his mother
8 and sisters moved in with their maternal grandmother
9 in Branchville. From all reports Mr. Bowman was very
10 abusive to Mrs. Bowman. There was reports from
11 various relatives that they saw bruises on her from
12 the beatings she received, that her own daughter told
13 me about the time that her teeth were knocked out
14 when Mr. Bowman used brass knuckles and hit her in
15 the mouth. He also used to rake the yard when he
16 left the house so that he could see if there were any
17 footprints in the yard to keep his wife in the house.
18 Finally she could not take it anymore, she loaded her
19 kids up into a little red wagon and pulled the kids
20 down the street with the clothes on her back and went
21 to live with her mother.

22 After they separated it was
23 financially and emotionally difficult for the kids,
24 especially Marion, he wanted to have a relationship
25 with his father, he has said that, other family

Jeffrey J. Youngman - Continued Direct Exam

1 members have said that. Mr. Bowman -- he would run
2 into Mr. Bowman in the town of Branchville,
3 Mr. Bowman would show him that he had money, but not
4 give them any money, tell them to go see their mother
5 about it. He would say I'll come over and pick you
6 up to take you, I don't know, to the movies, and he
7 would not show up. Or he would show up and not do
8 what he was supposed to do. And Marion felt that his
9 father would continually lie to him.

10 Q What else did you do as a result of learning
11 those things, sir?

12 A By the time Marion started school he was five,
13 when he started at Locket Elementary which is now
14 Branchville Elementary. His family had moved to
15 Turnkey Apartments and she was on welfare, the family
16 was on welfare and they still were having financial
17 difficulties. The child support payments didn't come
18 on a regular basis from his dad. Relatives have told
19 me that the kids were deprived, they were dirty, they
20 were wearing tattered clothes and they never had
21 stuff like other kids had they said.

22 After two years Mr. Bowman filed for a
23 divorce on the grounds of a one-year separation.
24 Ms. Bowman didn't contest the divorce. Ms. Bowman
25 did have difficulty being 21, or actually 20 at the

Jeffrey J. Youngman - Continued Direct Exam

1 time I think, with three kids under five. She was
2 described by family members as real strict. They
3 told me that she boxed the children, boxed being in
4 parenthesis, and beat the children daily. Beat,
5 again, the word they used. She would cut their
6 behind using switches or a belt. The relatives also
7 told me that Mrs. Bowman was known to drink, also
8 suspected of using drugs and she testified she was
9 arrested once for possession of drugs.

10 In 1986 Marion's hand was -- when he
11 was six his hand was burned on a kerosene heater.
12 According to the hospital records they were burned
13 bad enough to leave blisters on his hand. This was
14 the second injury he had as a child. The first one
15 was at 18 months when he broke his arm when he
16 reportedly fell off the porch. And he was also
17 involved in an automobile accident in '86 when he
18 flew from the back seat and hit his head on the front
19 seat. He had a contusion of his forehead when he
20 flew forward.

21 I spoke to Dr. O'Quinn yesterday, late
22 yesterday about the injuries and to whether he could
23 determine if there were any abuse or neglect. He
24 said he could not recall, he did not suspect any, he
25 does not remember the incidents themselves.

4795

Jeffrey J. Youngman - Continued Direct Exam

1 Marion then entered school. He did
2 pretty good in first, second, third grades. Third
3 grade his -- he was -- his mother was notified that
4 his grades were below standard. First grade,
5 actually. The teacher checked in one of the standard
6 text boxes that Marion was handicapped. There was no
7 follow-up on that, something I saw anywhere else that
8 indicated he was handicapped so I'm not sure why that
9 handicapped condition occurred.

10 By the fourth grade then Marion
11 started to have problems in school. In one incident
12 he asked to go to the bathroom and the teacher
13 refused because he had just -- they just had a break.
14 He ended up defecating in his pants, the teacher made
15 him stay all day with feces in his pants. He went
16 home and told his mother what had happened, she went
17 back the next day and put the pants on the teacher's
18 desk and they had words.

19 This was probably the first in what
20 the school system tells me are a series of incidents
21 where -- although certainly this case one would make
22 a case the teacher shouldn't have let him -- let him
23 use the bathroom. But over time the teachers and the
24 school would have problems with Marion, they would
25 describe his mother as coming to the school and

JA 1150

Jeffrey J. Youngman - Continued Direct Exam

1 always sticking up for Marion, never listening to the
2 teacher's side of the story, never taking the side of
3 the school, never making Marion be responsible for
4 his actions. A few months after this incident
5 there's documented in the medical records that he had
6 been grabbed on the left arm causing abrasions by a
7 teacher, but I didn't see anything in any of the
8 school records on that.

9 He certainly by fourth grade was
10 described as very impulsive. This could have been
11 attention -- ADHD attention deficit.

12 MR. BAILEY: Your Honor, I'm going to
13 object to "could have been" if he's unable --

14 THE COURT: Sustained.

15 MR. BAILEY: Thank you.

16 A Whether it was or not the school didn't explore
17 it.

18 Q Okay.

19 A That same year when he was -- when he was nine,
20 his sister was ten, Kendra was ten and Yolanda was
21 seven is when his mother became bedridden with her
22 back injury. So at the age of ten, nine, seven the
23 kids were providing for their mother. And as Kendra
24 said, she was doing the cleaning, Marion was doing
25 the cooking. Other family members did not -- helped

4797

Jeffrey J. Youngman - Continued Direct Exam

1 some, but it really fell on those three kids and
2 especially the two oldest, Marion and Kendra, to
3 provide for their mother. They had to change her
4 when she used the bathroom, they had to feed her,
5 they had to clean the house, they had to do
6 everything. They sometimes missed school because of
7 this, sometimes they were late for school because of
8 this.

9 The next year, 1990, Marion's dad
10 remarried after having very little if any contact
11 with his kids over that period of time. In that same
12 year Marion's mother's boyfriend, Joseph Sims, moved
13 into the home. By all reports from people in the
14 school system things changed when Joseph Sims was in
15 the home. He would go to the school, he would listen
16 to what the school would say, he would hold the kids
17 accountable, he would be cooperative with the school,
18 but he was a long distance truck driver so he was not
19 home all the time, he was on the road a lot.

20 Fourth grade was a grade that Marion
21 had to repeat. The next year he was suspended and
22 sent to an intervention program for students with
23 chronic behavior problems. Also that same year he
24 began experimenting with drugs -- excuse me, not with
25 drugs, with alcohol. He would steal sips from his

JA 1152

Jeffrey J. Youngman - Continued Direct Exam

1 uncle's drinks. His use of alcohol is not
2 surprising, his mom and dad both drank and there is a
3 history of alcohol use on his -- heavy alcohol use on
4 his mother's side of the family.

5 During summer break after the second
6 year in fourth grade the family, including Joseph
7 Sims, moved to New York City. They lived in a
8 downstairs apartment at Mr. Sims' mother's house. He
9 attended PS 37. Although there were some records on
10 that there was also a record that no PS 37 ever asked
11 for Branchville records, so I'm not sure what went on
12 there with the school. There was a note in the
13 school records from PS 37 that Marion did have
14 problems completing his homework, completing
15 classroom assignments and that he was frequently
16 daydreaming.

17 In '92 Marion and his family moved
18 back to Branchville where the sixth grade his
19 behavior resulted in an expulsion hearing in that
20 year. Reportedly Marion went over after another
21 student with a pine limb. Marion says he was hit
22 first, but the school found that after that he had to
23 take -- they had to take the limb forcibly from
24 Marion. They did not expel him, they placed him on
25 probation the rest of the school year. He did have

Jeffrey J. Youngman - Continued Direct Exam

1 an expulsion hearing, though.

2 In seventh grade he also had problems,
3 it was noted he was disruptive in the DARE program
4 and in class, school sent home a letter saying he was
5 in danger of being suspended again. There's no
6 evidence in this grade or any of the grades of school
7 that the school ever addressed Marion's behavior
8 problems by an individualized education plan or a 504
9 accommodation plan, which is often done in cases
10 where kids are having behavior problems. They're
11 usually used to determine what those problems are or
12 why those problems are occurring, address them, and
13 there's nothing in the records to indicate that was
14 done.

15 Q Did the mother come up to the school and ask for
16 any particular assistance?

17 A No, that did not occur either. The mother
18 didn't push the issue, the school didn't address the
19 issue.

20 In '94 he entered the eighth grade at
21 Branchville High School. Due to his behavior in that
22 year he was referred to Dawn Center in Orangeburg for
23 structured group counseling which he did go to. The
24 assessment done there at the Dawn Center indicated
25 Marion wanted a closer relationship with his father

4800

Jeffrey J. Youngman - Continued Direct Exam

1 and he resented that his father had refused to
2 maintain that relationship.

3 That same year, '94, he and Kendra
4 encountered their father on the streets of
5 Branchville, in the town of Branchville. And they
6 said they needed money for a field trip, he gave
7 Marion \$10. Kendra said she needed money, too. He
8 said, "Get it from your mother." At that point
9 Marion through down the money, said, "I don't want
10 your money," and left his father. At that point
11 Marion told me that they then realized that he had to
12 help support the family since it was pretty clear
13 that his dad wasn't going to be supportive.

14 Unfortunately the way he did that is
15 that same year he would mow lawns to earn money then
16 use that money to buy drugs which he could sell
17 drugs, mostly marijuana. So at 14 -- and the same
18 time at age 14 he began drinking on weekends on a
19 fairly regular basis, so by age 14 he was drinking
20 and using -- he was selling drugs and drinking.

21 In ninth grade his mother was notified
22 twice that his grades were unsatisfactory and he was
23 in danger of failing. In tenth grade he was referred
24 to the Alternative Living Environment Program, ALEP,
25 for students who can't complete their regular

JA 1155

4801

Jeffrey J. Youngman - Continued Direct Exam

1 classroom assignments. Before he finished the tenth
2 grade he dropped out of school, at that time he was
3 failing four courses and his GPA was 1.50.

4 From '95 to '97 while he struggled in
5 school he did experience a number of traumatic events
6 that caused him great sadness, great distress. One
7 was in '95, his cousin Orin, who he was very close
8 with, fell and hurt his arm in school, he was taken
9 to Orangeburg Medical Center where they gave him the
10 wrong medication and he died.

11 This upset Marion greatly, so much so
12 that he described one incident where he was driving
13 along a road at night and he thought he saw Marion --
14 or, excuse me, he thought he saw Orin on the street,
15 on the road in front of him as he was driving. And
16 he swerved, went off the road to avoid Orin who of
17 course was not there.

18 In '97 another cousin of his who he
19 was close with, Patrick, shot himself with a gun that
20 Marion had given him, or Marion had made available to
21 him. And that gun was a gun that Marion had stolen
22 in a burglary. Marion still to this day talks about
23 how responsible he feels for Patrick's death, he
24 described it as a death that ate him up. His guilt
25 became so bad that his mom actually insisted he go to

JA 1156

4802

Jeffrey J. Youngman - Continued Direct Exam

1 mental health, which he did one time. He said he
2 didn't like it and didn't believe in what mental
3 health had to offer so he didn't go again.

4 That same year with the death of
5 Patrick, Joseph Sims, who had been a very stabilizing
6 force in the family, had done -- had really taken an
7 active role as a father for Marion and his sisters,
8 left the home, he moved out. And so this was the
9 second father figure that abandoned Marion.

10 They moved again after Mr. Sims left
11 which made the eighth move in 17 years for the Bowman
12 family. In addition, that year Marion was hit in the
13 head with a small baseball bat and was knocked
14 unconscious for ten to 15 minutes. He reported that
15 he was breaking up a fight between a man and a woman
16 and was struck by one of the man's friends.

17 In '98 as a result of the burglary of
18 a gun that killed Patrick, Marion was convicted of
19 third degree burglary and sentenced under the
20 Youthful Offender's Act, he served 104 days in shock
21 incarceration, given two years' probation. After he
22 was released he held a succession of construction and
23 rebar jobs. He remained essentially employed most of
24 that time until his most recent arrest.

25 While he was doing this and actually

JA 1157

4803

Jeffrey J. Youngman - Continued Direct Exam

1 all the time he was growing up, he would help his
2 relatives around the house, especially his
3 grandmother, Mary Ellen Gadson, and more especially
4 his aunt, Mary Johnson, who is an invalid and can't
5 do for herself. And he would go to her house
6 frequently offering to do whatever he could to help
7 her, mow the lawn, clean the fan blades on the
8 ceiling fan, do whatever he could to help her.

9 In '99 Marion lost the third father
10 figure in the form of his maternal grandfather,
11 Robert Gadson, Sr. Marion described Mr. Gadson as
12 his life and he said he felt dead when his
13 grandfather passed away. He also admitted that he
14 started drinking even heavier than he had before and
15 almost to the point where he was drinking every day.

16 The same year, though, he did marry
17 Dorothy Mae Williams. They're still currently
18 married, to my knowledge, and that he had -- was
19 never violent towards his wife. She had two children
20 which he had a very good relationship with and who
21 reportedly love him. He also had a daughter,
22 Marissa, who was born in 2001.

23 Marion was arrested again in 2000 on
24 charges of burglary, two charges of armed robbery.

25 Q I want to stop you there again and ask you -- he

JA 1158

Jeffrey J. Youngman - Continued Direct Exam

1 was found not guilty of those, correct?

2 A Yes, he was. That same year he was knocked
3 unconscious once again when he fell back and hit his
4 head on a bench when he was playing outside. They
5 were playing in water, he slipped and fell. He
6 suffered a deep gash in his head, had severe
7 headaches and blurred vision, but he refused to go to
8 the hospital, he refuses to use a hospital since the
9 death of his cousin, Orin.

10 And by the end of 2000 Marion was --
11 alcohol use was getting progressively worse, he drank
12 every day of the week usually to a point of
13 intoxication, usually mostly Old English malt liquor
14 and gin.

15 Q Mr. Youngman, I'm just going to ask you a brief
16 question here now. As far as any conclusions that
17 you reached after going through all of what you just
18 told these good ladies and gentlemen of the jury, and
19 I'm going to ask you to briefly describe your
20 conclusions. If you need to use the easel here,
21 please do so.

22 A I would like to draw it if that's okay.

23 THE COURT: It is.

24 Q And, again, you'll have to stand now so that
25 each one of these young folks can see what you've got

Jeffrey J. Youngman - Continued Direct Exam

1 to do and if I move it this way --

2 A Yeah, this will do.

3 Q So Mr. Bailey can see also. Again, please,
4 explain to the ladies and gentlemen of the jury what
5 you're doing and why.

6 A The idea is, as I mentioned earlier in my
7 testimony, no event happens in a vacuum, things come
8 about in a person's life to cause them to behave the
9 way they did. So to conceptualize this if you think
10 of a valley, I guess. And this side of the valley is
11 a problem, something that comes up in a person's life
12 that they have to address in some way. And over here
13 is the choices they make or the decision they make
14 that leads that -- that addresses that problem. Not
15 necessarily solves that problem, but at least
16 addresses it.

17 Okay. So to get from the one to the
18 other you have to have a bridge, you have to have in
19 your mind some way to cross over to the problem to
20 how to solve that problem, what decision to make or
21 what choice to make, the various options you have.
22 Okay. In life everybody has these bridges, everybody
23 has some supports that help hold that bridge up to
24 help you make good decisions.

25 In Marion's case some of those

Jeffrey J. Youngman - Continued Direct Exam

1 supports, or some of the good things that helped him
2 make good decisions, was that he was helpful to his
3 family, he was good to his stepchildren, he was
4 actually good to Kendra's child, too, his nephew. He
5 had no prior criminal convictions.

6 Q Mr. Youngman, you're going to have to step back
7 so the jury can see right there.

8 A I'm sorry.

9 Q I'm sorry.

10 A I'll just put no prior criminal....

11 Q Could you repeat that again? Because I blocked
12 that.

13 A He has no prior criminal convictions. And he
14 was able to maintain employment. Not always the same
15 job, but always employed in some way. These things
16 are all supports on that bridge. But there's also
17 things that weaken your decision-making abilities,
18 weaken the way you think things through. In Marion's
19 case he had a number of things that weakened his
20 bridge, such things as the fact that his mother was
21 age 15 at birth, at the birth of her first child.

22 Q I'm going to ask you to hold up one second while
23 a train goes by.

24 (Train.)

25 THE COURT: All right. You can proceed.

4807

Jeffrey J. Youngman - Continued Direct Exam

1 Q Age 15 at the birth of her first child and she
2 had three children while still a teen. There was
3 certainly domestic violence in the home, there was
4 his father abandoned him, there was the financial
5 difficulties in the home, there was his mother's
6 incapacitation, or invalid status, and there was his
7 mother's -- well, excuse me, the family history of
8 alcohol abuse and the mother's drug use, or at least
9 conviction of drug selling. All these things were
10 things that weakened that bridge structure that
11 helped Marion make a decision and make choices, make
12 a decision on any given issue.

13 But you also have things that happen
14 in your life to weigh this bridge down, cause that
15 bridge to weaken and further things that happen as
16 you go through life as you get older. In Marion's
17 case he had a whole host of things that were weighing
18 his bridge down. His own alcohol abuse, the fact
19 that he was selling drugs, his IQ which is measured
20 according to the William S. Hall at 81, his mother's
21 uncooperativeness with the school and in refusal to
22 take responsibility or having Marion take
23 responsibility for his actions, the trauma of the
24 death of Orin, the death of Patrick, the death of his
25 grandfather, Joe Sims leaving the house all within a

JA 1162

Jeffrey J. Youngman - Continued Direct Exam

1 period of two years, his chaotic, deprived childhood,
2 the fact just going through adolescence, lack of
3 school intervention. Let's see, the fact that he
4 received, let's see, excessive corporal punishment,
5 last one school behavior problems.

6 Q As a result of those, Mr. Youngman, looking at
7 all those things that you described as a bridge or
8 going between the valley to here, have you been able
9 to reach a conclusion as to a degree of reasonable,
10 and, again, I'm going to defer to my -- yeah, please,
11 go back on the stand for a moment -- forensic
12 psychosocial assessment as a licensed social worker,
13 to a reasonable degree of psychosocial assessment or
14 social work assessment have you reached an opinion as
15 to this?

16 A Yes, I have.

17 Q And what is that, sir?

18 A Anybody that would experience those many things,
19 those many factors that effectively weighed on his
20 bridge as it were, and pretty much crumbled that
21 bridge would be expected to make poorly thought out
22 impulsive decisions, decisions that where the person
23 in this case, Mr. Bowman, would not consider the
24 consequence of actions because all these things
25 weighing on him he doesn't think those things

4809

Jeffrey J. Youngman - Continued Direct Exam

1 through. It's just his whole decision-making process
2 is affected and his choices that -- his, say, menu of
3 choices is limited by all these things that happened.
4 Certainly his IQ is, lack of school intervention,
5 everything he went through as a child. You know, if
6 you didn't have those things you would have a wider
7 array of choices to address any issue. Marion did
8 not have that wide of array because of all the things
9 that happened in his life.

10 Q What you're saying is that an excuse for his
11 behavior, sir?

12 A No.

13 Q And, please, tell these ladies and gentlemen of
14 the jury what you would say.

15 A It's not an excuse. There's no excuse for
16 murdering another human being. What it is, is an
17 explanation as to why one person would act a
18 particular way in a particular incident, in this case
19 Mr. Bowman. It certainly is not meant by any stretch
20 to be an excuse for what he did.

21 Q In working with Ms. Thomas and I --

22 MR. CUMMINGS: And, again, if I may
23 approach the witness just for a moment, Judge.

24 THE COURT: All right.

25 Q When you learned -- and, again, I'm not going to

JA 1164

4810

Jeffrey J. Youngman - Continued Direct Exam

1 try to block these young ladies and gentlemen. When
2 you learned, and I'm going to use this word, mamma,
3 had only four pictures which were taken out of a
4 yearbook of her son, did that cause you any prompting
5 or anything else in your work along this line?

6 A Oh, yeah. Well, certainly. I, you know, in the
7 course of my 21 years as a social worker I have been
8 some -- and especially in child protection and now
9 work with the homeless population, I've had a lot of
10 dealings with some of the most deprived people that
11 exist. And I don't know of a family that I've ever
12 worked with, I expect there probably is one somewhere
13 out there or a couple, I don't know for sure, but the
14 vast, vast, vast majority of people I work with, at
15 least even when they were deprived had money to put
16 together some pictures of their children. Some go to
17 JC Penney and the 99-cent picture, or K-Mart, or
18 whatever. There's always been some pictures. Always
19 been some pictures at least of major holidays, like
20 Christmas and birthday, there's something to document
21 a child's life.

22 In this case there was nothing, which
23 astounded me that that could occur. That just
24 doesn't happen much, and would lead me to believe
25 that I can conclude the family didn't really care

JA 1165

4811

Jeffrey J. Youngman - Continued Direct Exam

1 much for the kids if they weren't going to keep
2 pictures of them.

3 MR. CUMMINGS: Your Honor, at this time we
4 would move into evidence the chart that
5 Mr. Youngman had prepared here, Your Honor.

6 MR. BAILEY: Without objection, Your Honor.

7 THE COURT: Very well. That chart will be
8 marked as Defense Exhibit 17 without objection.
9 (Entered into evidence was Defendant's Exhibit
10 17, chart.)

11 MR. CUMMINGS: Can I just beg the Court's
12 indulgence for one moment?

13 THE COURT: All right.

14 (Mr. Cummings and Ms. Hardee-Thomas conferring
15 with Mr. Bowman.)

16 MR. CUMMINGS: Judge, that's all the
17 questions we have of this gentleman.

18 Q. Please answer any questions Mr. Bailey may have,
19 sir.

20 THE COURT: Cross-examination.

21 MR. BAILEY: Yes, ma'am.

22 CROSS-EXAMINATION

23 BY MR. BAILEY:

24 Q Mr. Youngman, it appears someone did take some
25 pictures of Mr. Bowman when he was younger. Have you

JA 1166

Jeffrey J. Youngman - Cross-Exam

1 seen these pictures here?

2 A Yes, I have.

3 Q All right, sir.

4 A These aren't him.

5 Q Okay.

6 A I have seen these, and appeared to me that at
7 least two of four were actually more of the child he
8 was holding rather than him.

9 Q Well, he's in the picture?

10 A He's in the picture. And the other one was more
11 of his stepfather, his mother's boyfriend, Joseph
12 Sims, than him. So only really one is a picture
13 solely devoted to him, that would be this one.

14 Q What you're saying is other people in the
15 picture besides him?

16 A Yes, sir.

17 Q And you don't know whether whoever took the
18 picture was more interested in Marion or the other
19 person, do you?

20 A No, I don't.

21 Q Because you don't know who took the picture?

22 A No.

23 Q You would assume somebody in his family, though,
24 sir, wouldn't you, or a friend?

25 A I received them from his sister, Kendra, so

4813

Jeffrey J. Youngman - Cross-Exam

1 assume it was --

2 Q His sister, Kendra, that grew up with him in the
3 same house, and you would assume that these were
4 pictures taken of him as a child?

5 A Well, they are not really child. He was a young
6 adult in those pictures.

7 Q Young adult, okay. I want to ask you about your
8 bridge. If you can step around here. As I
9 understand what we're talking about here, problems
10 over here?

11 A Yes, sir.

12 Q Choices over here. Those choices would be to
13 solve the problem, right?

14 A Correct.

15 Q And to get from the problem to the choice or the
16 decision we've got to cross this bridge?

17 A The process, yes.

18 Q Okay. Now, bear with me a second. And this
19 case this jury is considering, the choice or decision
20 that Mr. Bowman made was the murder of Kandee Martin,
21 burning of her automobile with her body, corpse in
22 the trunk, are you aware of that, sir?

23 A Yes, sir.

24 Q On this piece of paper here, sir, if you would,
25 I want you to tell the jury what Marion Bowman's

JA 1168

Jeffrey J. Youngman - Cross-Exam

1 problem was over here that he solved by killing and
2 burning Kandee Martin's body. Could you do that for
3 me?

4 A I can speculate.

5 Q No, sir. I don't want you to speculate. I want
6 you to put the problem over here. Because you've
7 explained this bridge, kind of sums up your whole
8 concept here. You got -- you had a person with a
9 problem, they make a bad choice and they get from the
10 problem to the choice. This is where Bowman ended
11 up, this is his decision to solve a problem. I want
12 you to write down here what the problem was.

13 MR. CUMMINGS: Your Honor, speculation. Of
14 course, I don't think this gentleman can do
15 that.

16 MR. BAILEY: Cross-examination, Your Honor,
17 it's his exhibit.

18 MR. CUMMINGS: I agree, but I don't think
19 about speculation. I would hope Mr. Youngman
20 would have time to think and answer, I'm sure he
21 will, but as far as speculation I don't think
22 the Court or anybody would be allowed to answer
23 that way.

24 THE COURT: You're objecting?

25 MR. CUMMINGS: Yes, ma'am. Only as to the

4815

Jeffrey J. Youngman - Cross-Exam

1 issue of speculation. If he can't answer
2 something, he can't answer if.

3 MR. BAILEY: I agree, Your Honor, if he
4 can't answer it he can tell us he can't answer
5 it.

6 THE COURT: Very well. Do not speculate.
7 If you can't answer, say you can't answer.

8 A. I don't know what the problem was. I know the
9 solution, but I don't know what the problem was.

10 Q You know what a solution was. And isn't the
11 solution the answer to a problem?

12 A Well, yes.

13 Q I'm not trying to be cute with you, sir, I'm
14 just trying to see where you're coming from because I
15 don't understand.

16 A I know -- I know this is what he did.

17 Q Right.

18 A And I know his decision to do this was based on
19 all this stuff.

20 Q You know that because people told you that,
21 right?

22 A Correct. Well, no, I know that because I've
23 been a social worker 21 years.

24 Q You hadn't been working on this case 21 years?

25 A No, but I know these things from my life history

JA 1170

Jeffrey J. Youngman - Cross-Exam

1 of being a social worker.

2 Q How long have you been working on this case?

3 A Three months, two months.

4 Q All right, sir. And everything you got up here
5 is something that somebody else told you in the last
6 three months; is that correct, sir?

7 A Correct.

8 Q You didn't grow up in Branchville, you don't
9 know this firsthand.

10 A No.

11 Q I'm sorry, I didn't mean to interrupt you, go
12 ahead.

13 A I lost my train of thought.

14 Q I apologize. Let me ask you again. We got a
15 solution which was the murder of a young 21-year-old
16 woman with a child. There was a problem that you
17 said he had to cross this bridge and made this bad
18 choice here. What problem did he solve by killing
19 Kandee Martin?

20 A That part I don't know.

21 Q Okay. Well, could you put a question mark on
22 this yellow paper you don't know?

23 A Sure.

24 Q Thank you, sir. All right. Let me ask a couple
25 other things. These things here that you say are

Jeffrey J. Youngman - Cross-Exam

1 weighting down the bridge.

2 A Yes, sir.

3 Q They're making tough decisions, tough for Marion
4 to cross the bridge? Just trying to --

5 A Okay. Using the bridge analogy.

6 Q It's your analogy.

7 A Sort of mixed analogy. These things all affect
8 his decision-making process. In this case, yes,
9 crossing the bridge, viewing the bridge as a
10 decision-making process this affects it.

11 Q Okay. So the fact that Marion voluntarily sold
12 some drugs is affecting his decision making process
13 that ended up in the murder of Kandee Martin?

14 A Yes, sir.

15 Q Can you explain that to me, how his acts of
16 selling drugs to somebody in the past caused him to
17 murder Kandee Martin or was a factor in that
18 decision?

19 A People who sell drugs have a certain code -- or
20 it's not code, behavior patterns that they have to
21 protect their image, so I don't know -- I think part
22 of this whole process was him protecting his image.

23 Q His mamma sold drugs, but she didn't kill
24 anybody, did she?

25 A No, but his mamma didn't go through these

Jeffrey J. Youngman - Cross-Exam

1 things.

2 Q Well, let's take another one. Grandfather died.
3 If you live long enough your father dies, your mother
4 dies, your grandparents die, that's the way it goes
5 generation after generation, right? That's not
6 unusual?

7 A Not unusual, but it's the third father figure of
8 his that he saw leave his life.

9 Q Okay. And Patrick Strange, right? Patrick
10 Strange is a young man that apparently shot himself
11 with a .357 Magnum that Mr. Bowman stole in a
12 burglary; is that correct, sir?

13 A That's correct.

14 Q Okay. And that was volitional behavior on the
15 part of Mr. Bowman, wasn't it?

16 A The burglary?

17 Q Yes, sir. The burglary is something he decided
18 to do and he did it?

19 A He did.

20 Q He decided to enter that home of somebody else,
21 somebody else's residence and take a gun out of it,
22 didn't he?

23 A Yes, he did.

24 Q And then his cousin gets shot with the gun and
25 he feels bad about it?

Jeffrey J. Youngman - Cross-Exam

1 A He feels worse than bad. He feels guilty, he
2 feels responsibility.

3 Q Yes, sir. And how does that enter into his
4 decision to burn Kandee Martin's body up after he
5 shoots her two times?

6 A It's a process. You think things through and
7 you have different choices you can make.

8 Q Okay.

9 A And in his case all these things that occurred
10 in his life sort of skewed his decision-making
11 process.

12 Q All right. Okay. Okay. Behavior problems in
13 school. He was a bad kid in school, right?

14 A Yes, he was.

15 Q Okay. And the fact that he decided not to
16 follow the rules of school, are you saying that had
17 something to do with his decision to murder this
18 young woman?

19 A Sure, because from everything I read the school
20 didn't intervene and try to deal with his problems.

21 Q So it's the school's fault he killed Kandee
22 Martin?

23 A No, I didn't say that. It's the school's fault
24 they didn't intervene in his behavior problems.

25 Q Okay. So let's blame the school, okay?

Jeffrey J. Youngman - Cross-Exam

1 A No, I didn't stay that.

2 MR. CUMMINGS: It's not what the gentleman
3 stated.

4 THE COURT: It's cross-examination, he can
5 respond.

6 Q Is it the school's fault?

7 A I didn't say it was the school's fault.

8 Q Well, is it Marion's fault then that he didn't
9 behave in school?

10 A Marion's fault he didn't behave in school. It's
11 the school's fault that they didn't intervene to
12 change the behavior.

13 Q. We're all at fault.

14 MR. CUMMINGS: Judge, the comment --

15 THE COURT: Yes, sir. If you'll ask
16 questions and not comment.

17 MR. BAILEY: Yes, ma'am. I apologize, Your
18 Honor.

19 THE COURT: Okay.

20 Q Adolescence. You used to be a adolescent, Mr.
21 Cummings, we're all adolescents. And you're saying
22 that leads into the act of murder?

23 A I'm saying one factor that made him make his
24 decision.

25 Q Because he was an adolescent?

Jeffrey J. Youngman - Cross-Exam

1 A If he been an adult he might have decided
2 differently.

3 Q Wasn't he an adult? He was 21 years old.

4 A Twenty-one is pretty young.

5 Q Pretty young. Old enough to be in the army,
6 vote? All right, sir. I'm trying to read some of
7 this stuff. Drug use, we talked about that. You say
8 he had no prior criminal record. You weren't correct
9 there, were you?

10 A No. I said no prior convictions for violent
11 crimes.

12 Q Okay. He does, in fact, have a record of
13 burglary third?

14 A Yes, he does.

15 Q All right, sir. Which involved going in
16 people's homes and taking guns.

17 All right, sir. Why don't you have a
18 seat, I want to ask you a few more questions, but I
19 don't think we need the chart.

20 A (The witness complies.)

21 Q Mr. Youngman, you were asked -- you said on the
22 first page of your report dated May 21st that the
23 lawyers have given me a copy of, the purpose of your
24 assessment was to do five things that you listed on
25 that first page, is that right, sir, and you had that

Jeffrey J. Youngman - Cross-Exam

1 in front of you?

2 A Yes, sir.

3 Q All right, sir. Isn't it a fact, sir, that what
4 you were doing, you were going out there in the
5 Branchville community talking to people that you
6 thought were going to give you information that can
7 lead you to a specific conclusion?

8 A That's not the case, no.

9 Q You were looking for the bad stuff?

10 A I was doing a forensic psychosocial assessment.
11 I didn't know what I was going to find.

12 Q Well, the scientific method is if you're looking
13 for something you don't have a preconceived idea of
14 what you're looking for, you're just studying the
15 facts and you follow those facts where they lead you;
16 is that correct?

17 A Yes.

18 Q All right, sir. Let's take your first one. Do
19 you have a copy of it up there?

20 A Yes, I do.

21 Q Determine if there is any evidence that Marion
22 Bowman, Jr. social's and emotional functioning as a
23 child and a young adult was affected by any childhood
24 trauma or family dysfunction.

25 Well, sir, you were specifically going

Jeffrey J. Youngman - Cross-Exam

1 out there and looking for evidence of childhood
2 trauma and family dysfunction; were you not? You
3 weren't looking for a happy childhood, were you?

4 A I was looking to see if it existed.

5 MR. CUMMINGS: It was two questions and --

6 THE COURT: Yes. Ask him one question,
7 allow him to answer.

8 MR. BAILEY: I apologize.

9 THE COURT: All right.

10 A I was looking to see if that existed.

11 Q Okay. Were you looking to see if he had a happy
12 family?

13 A I was looking to see what kind of family he had.

14 Q Tell me why it's -- you wrote this, sir, didn't
15 you?

16 A Yes, I did.

17 Q Why is it that you say that the purpose of the
18 assessment was to determine if there was any evidence
19 of Marion Bowman Jr.'s social and emotional function
20 as a child and a young adult was affected by any
21 childhood trauma or family dysfunction; in other
22 words, why didn't you say the purpose of the
23 assessment was to see whether or not his actions were
24 affected by a happy childhood?

25 A Just the way I wrote it. I mean, I could have

Jeffrey J. Youngman - Cross-Exam

1 found either.

2 Q And Marion Bowman's two sisters, Kendra and
3 Yolanda Bowman, were raised in that same family,
4 weren't they?

5 A Yes, they were.

6 Q They didn't go out and kill people, did they?

7 A No, they did not.

8 Q All right. Your second one: "Determine if
9 there is any evidence that Marion Bowman, Jr.'s
10 social environment played an adverse role in his
11 level of social and emotional functioning."

12 His two sisters were raised in that
13 same environment, weren't they?

14 A Yes, they were.

15 Q Again, they didn't go out and become criminals,
16 did they?

17 A No, they did not.

18 Q Your third one is to determine if there's
19 evidence that Marion Bowman, Jr. has a significant
20 history of mental illness or substance abuse. Now,
21 you found no significant history of mental illness;
22 is that correct?

23 A That is correct.

24 Q You found substance abuse?

25 A Yes, I did.

4825

Jeffrey J. Youngman - Cross-Exam

1 Q You didn't find that anybody forced any alcohol
2 or drugs into him, did you?

3 A No.

4 Q Whatever he did he did of his own freewill and
5 choice because he wanted to?

6 A Certainly did.

7 Q All right, sir. Number four you want to
8 determine if there's evidence of Marion Bowman, Jr.
9 suffered any significant head trauma as a child or
10 young adult. And you found that there was no
11 significant head trauma; is that correct, sir?

12 A Correct. He did suffer head trauma, but I saw
13 nothing -- or there was no records indicating it was
14 severe.

15 Q Okay. The fifth one is to determine if there is
16 evidence that Marion Bowman, Jr. has a significant
17 history of prior criminal convictions involving
18 violence against another person. You found that he
19 did not. Although in the course of looking for that
20 you found out about at least three burglaries; is
21 that correct?

22 A Yes.

23 Q And these were all three burglaries of
24 residences where people lived?

25 A Yes.

JA 1180

Jeffrey J. Youngman - Cross-Exam

1 Q All right, sir. Excuse me a second, please,
2 Mr. Youngman.

3 THE COURT: All right.

4 (Pause in proceedings.)

5 Q That's all I have. I apologize if I stated
6 questions in a way that might have confused you, but
7 I'm not real good at scientific stuff so I'm just
8 trying to figure it out. Thank you.

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION

11 BY MR. CUMMINGS:

12 Q Just as Mr. Bailey stated a moment ago, thank
13 you, two burglary convictions, correct, two burglary
14 convictions?

15 A Yes. Two burglary convictions, that's right.

16 Q And did you go out looking for any preconceived
17 ideas in your mind, sir, that you're going to go out
18 there, and particular when asked a question about
19 family dysfunction or looking for childhood trauma,
20 did you go out with a closed mind?

21 A No. I go out to see what people have to say.

22 Q Is there anything that you have found here or
23 stated here that leads you towards one side or the
24 other stating the testimony to these ladies and
25 gentlemen of the jury; in other words, the State or

Jeffrey J. Youngman - Redirect Exam

1 defense? Is there anything leading towards one or
2 the other, did anybody ask you to find one way or the
3 other?

4 A No, certainly not.

5 Q All right. Is your testimony today based on
6 what you found?

7 A Yes, sir.

8 Q Did you answer Mr. Bailey's questions on
9 cross-examination to the best of your ability?

10 A Certainly I did, yes.

11 MR. CUMMINGS: Beg the Court's indulgence,
12 Your Honor.

13 THE COURT: All right.

14 (Mr. Cummings and Ms. Hardee-Thomas conferring
15 with Mr. Bowman.)

16 MR. CUMMINGS: That's all the questions we
17 have of this gentleman, Judge.

18 THE COURT: Any recross?

19 MR. BAILEY: No, Ma'am.

20 THE COURT: All right. Is this witness
21 free to okay leave?

22 MR. CUMMINGS: Yes, ma'am. If he so
23 chooses.

24 THE COURT: Very well. You are free to go.
25 (Whereupon, the witness steps down from the

Jeffrey J. Youngman - Redirect Exam

1 witness stand.)

2 THE COURT: Ladies and gentlemen, we are
3 going to take our afternoon break at this time.
4 And I'm going to ask you to please in a moment
5 to step to your jury room, being mindful not to
6 discuss this matter or allow anyone to discuss
7 it with you, smokers can smoke, walkers can
8 walk. Be mindful not to discuss this matter or
9 allow anyone to discuss it with you.
10 (Whereupon, the jury retires to the jury room at
11 3:25 p.m.)

12 THE COURT: Anything before we take our
13 break from the State?

14 MR. BAILEY: No, ma'am.

15 THE COURT: From the defense?

16 MR. CUMMINGS: Nothing else right now,
17 Judge, thank you.

18 (Recess, from 3:25 p.m. to 3:56 p.m.)

19 THE COURT: All right, then. Anything
20 before we bring the jury out?

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

23 MS. HARDEE-THOMAS: Your Honor, my
24 co-counsel is saying start without him, he's in
25 the back.

State vs. Bowman - Volume XXIII

1 THE COURT: All right. With the permission
2 of your client? Please consult with Ms.
3 Hardee-Thomas.

4 MS. HARDEE-THOMAS: One second, Your Honor.

5 THE COURT: Certainly. Certainly.

6 (Pause in proceedings.)

7 MR. CUMMINGS: I apologize, Judge.

8 THE COURT: Not a problem. All right.
9 Anything from the State before we bring the jury
10 out?

11 MR. BAILEY: Nothing from the State, Your
12 Honor.

13 THE COURT: All right. Anything from the
14 defense?

15 MR. CUMMINGS: Nothing else, Judge.

16 THE COURT: Very well. All right, yes, let
17 us have our jury.

18 (Whereupon, the jury returns to the courtroom at
19 4:01 p.m.)

20 THE COURT: All right. Ladies and
21 gentlemen, we will continue with the defense
22 case.

23 MS. HARDEE-THOMAS: The defense calls
24 Mr. Frankie Martin to the stand.

25 (Frankie Martin, called as a witness, having

Frankie Martin - Direct Exam

1 first been duly sworn, is examined and testifies
2 as follows:)

3 DIRECT EXAMINATION

4 BY MS. HARDEE-THOMAS:

5 Q Mr. Martin, where were you on the 16th of
6 February of 2001?

7 A I just had came home from work about twelve
8 o'clock.

9 Q Okay. And you were where?

10 A At my house.

11 Q Okay. And can you tell us who else was there?

12 A Kandeel came by and asked me to borrow \$3.

13 Q Excuse me, do not talk about what someone said
14 to you and I'll try not to ask a question in that
15 regard. Who was at your home?

16 A Kandeel.

17 Q Okay. Who else later arrived at your home?

18 A Marion and Joe Fogle.

19 Q How did they get there?

20 A In Joe Fogle's car.

21 Q Okay. Who was there first?

22 A Kandeel.

23 Q Now, how long were they all there?

24 A A couple of minutes is all.

25 Q And where were they?

Frankie Martin - Direct Exam

1 A Well, they were in the bathroom, talked for a
2 minute, then they left out.

3 Q Okay. And where were you?

4 A I was in the room hanging up clothes.

5 Q You were in the --

6 A Hang up clothes, getting myself ready.

7 Q In one of your rooms?

8 A Yeah.

9 Q One of the backrooms, or front rooms?

10 A Yeah, backroom.

11 Q Were you able to see where they went?

12 A They were in the bathroom.

13 Q Okay. How long did they stay in your home?

14 A About a minute or two, couple of minutes.

15 Q Okay. What happened after that?

16 A Marion left with Kandee and Joe Fogle followed
17 in the car.

18 Q Okay.

19 MS. HARDEE-THOMAS: Please beg your
20 indulgence, Your Honor.

21 THE COURT: Yes.

22 (Ms. Hardee-Thomas conferring with Mr. Cummings
23 and Mr. Bowman.)

24 Q You indicated what time of day was that?

25 A About 12:00 or 1:00, something like that.

Frankie Martin - Direct Exam

1 Q Thank you. No further questions.

2 THE COURT: All right. Cross-examination.

3 MR. BAILEY: Indulge me one second, please.

4 THE COURT: Yes.

5 MR. BAILEY: No questions, Your Honor.

6 THE COURT: Very well. Is this witness
7 free to leave?

8 MR. BAILEY: Yes, ma'am.

9 MS. HARDEE-THOMAS: Yes, Your Honor.

10 THE COURT: You are free to go.

11 (Whereupon, the witness steps down from the
12 witness stand.)

13 THE COURT: If you would call your next
14 witness.

15 MR. CUMMINGS: Judge, we would call
16 Mr. James Evans Aiken.

17 (James E. Aiken, called as a witness, having
18 first been duly sworn, is examined and testifies
19 as follows:)

20 DIRECT EXAMINATION

21 BY MR. CUMMINGS:

22 Q Mr. Aiken, can you please at present time please
23 tell us your profession, sir?

24 A I am a correctional consultant. I consult
25 concerning prison systems and the like.

4833

James E. Aiken - Direct Exam

1 Q All right. I want to take you back in your
2 young life today, sir, all right? And take you back
3 a little bit. When were you first employed -- let me
4 go back. What is your educational background, sir,
5 please, starting with your college?

6 A Well, I was born and raised in Camden, South
7 Carolina, I was received an undergraduate degree from
8 Benedict College, Columbia, South Carolina, and a
9 master's degree from the University of South
10 Carolina, master's in criminal justice.

11 Q All right, sir. And what year did you obtain
12 that, sir? I know we're dating you now.

13 A Okay. 1985/'86.

14 Q All right, sir. And what is your work history
15 or summary of your work history as you go on from
16 dealing with your education now, sir?

17 A I started with the South Carolina Department of
18 Corrections in 1971 in the capacity of a social
19 worker in the substance abuse program at the Manning
20 Correctional Institution. Manning Correctional
21 Institution was about a 400-bed medium security
22 prison that had fences and gun towers around it. It
23 was a male facility for what we call youthful
24 offenders, individuals from age 18 through age 26, 25
25 or 26. From there I became deputy warden of that

JA 1188

4834

James E. Aiken - Direct Exam

1 same facility. And from there -- I mean I wasn't
2 deputy warden, I became administrative assistant and
3 then I became deputy warden of that facility.

4 From there I became deputy warden of
5 the Central Correctional Institution commonly known
6 as CCI. It is a medium/maximum security prison that
7 housed approximately 1,800 predator, high security
8 inmate population. I served in that capacity until I
9 was appointed warden of the Women's Correctional
10 Prison which is also in Columbia.

11 From there I became warden of CCI,
12 which was the State penitentiary. And this facility,
13 of course, housed predator population as I stated to
14 you before, as well as psychiatrically impaired
15 criminals as well as death row population.

16 From there I became a deputy regional
17 administrator for the Midlands Correctional Region in
18 South Carolina. I supervised approximately 16
19 wardens over 16 facilities. Those facilities ranged
20 from open custody minimum security prisons to the
21 most super maximum security prisons.

22 And from there I became commissioner
23 of corrections for the State of Indiana, and it
24 encompassed about 46, 47 facilities, adult facilities
25 as well as juvenile facilities, parole services as

JA 1189

4835

James E. Aiken - Direct Exam

1 well as maximum, super maximum security environment.

2 And I was the chief policy maker for that agency.

3 And from there I took over the United
4 States Virgin Islands as the chief administrator over
5 their jail and prison population. I've also, since
6 1986, I have been a consultant with the US Justice
7 Department as well as a private consultant to
8 correctional agencies throughout the United States
9 and other countries. I have provided technical
10 assistance and expert assistance to jurisdictions
11 involving classification. Classification is putting
12 the right inmate in the right level of security and
13 the right level of management. And the reason why is
14 because my previous experience I have literally
15 classified thousands of inmates, thousands of inmates
16 in putting them in the right custody in the right
17 security.

18 Also I advised jurisdictions in
19 relationship to managing disruptive predator inmate
20 population, I train wardens of prisons, I train
21 wardens that are just becoming wardens of prisons, I
22 train wardens of super maximum security prisons.
23 Also I have provided technical assistance and
24 leadership training for wardens as well as
25 correctional professionals throughout the United

JA 1190

James E. Aiken - Direct Exam

1 States. I also provide technical assistance and have
2 provided technical assistance to the countries of
3 Canada, Costa Rica, and the Dutch Kingdom.

4 Additionally, I involve myself in gang
5 management, security threat group management, also
6 for -- involved myself in providing technical
7 assistance to other jurisdictions throughout the
8 United States as well as other countries in
9 relationship to managing populations that are -- we
10 call emerging populations, people with different
11 behavior patterns that they did not have previously.

12 Q All right, sir. Have you ever been qualified as
13 an expert to provide such testimony particular in
14 this state, sir? And thereafter I'll ask you other
15 questions.

16 A Yes. I have provided expert testimony in these
17 type of proceedings in the state of South Carolina as
18 well as --

19 Q I'm sorry.

20 A Go ahead.

21 Q You've been approved by a judge like Her Honor
22 in this state to testify in this capacity?

23 A Yes, on a number of occasions.

24 Q What other states, sir, have you testified in
25 that you qualified as an expert?

James E. Aiken - Direct Exam

1 A I've provided expert testimony in these type of
2 proceedings in the state of Florida, in the state of
3 Georgia, of course the state of South Carolina, the
4 state of Virginia, the state of Mississippi, the
5 state of Alabama, the state of Missouri, and the
6 United States Federal District Court.

7 Q And in particular the United States District
8 Court, sir, what were you qualified as an expert in
9 that testimony, sir, and what you were able to
10 testify about in a district court, sir?

11 A I was able to provide expert testimony in
12 relationship to the placement of an inmate and
13 classifying of an inmate within a correctional
14 setting.

15 Q All right, sir. What about as to relative --

16 A If I'm not mistaken.

17 Q What about as to the relevant issue of future
18 danger and prison adjustment issues?

19 A That is -- when I say classification, that is
20 what I'm saying.

21 Q All right. Thank you, sir. And, again, have
22 you ever been denied testifying as an expert into
23 that particular area, sir, by any judge either on a
24 district court level, sir, or, respectfully, in a
25 state court level?

James E. Aiken - Direct Exam

1 A No.

2 MR. CUMMINGS: Your Honor, at this time I
3 would offer Mr. Aiken as an expert in, Your
4 Honor, classification and, Your Honor, as to
5 relative in future danger and prison adjustment
6 issues.

7 MR. BAILEY: Your Honor, I'm familiar with
8 Mr. Aiken's qualifications and I have no
9 objection.

10 THE COURT: Very well, he's so qualified.

11 MR. CUMMINGS: Thank you, Your Honor.

12 Thank you, Solicitor.

13 Q I want to call your attention back now to before
14 coming into this court today and preparing your
15 testimony in this case, have you had the occasion to
16 review records that would lend to you, sir, the
17 appropriate ability to speak to these ladies and
18 gentlemen of the jury as to the issues of Mr. Bowman
19 being, question of future danger of prison adjustment
20 issues?

21 A That's correct, sir. I have been provided
22 documents by counsel to review in formulating my
23 opinion.

24 Q All right, sir. Have you received information
25 from Mr. Bowman's prior incarceration, sir, on crimes

4839

James E. Aiken - Direct Exam

1 of burglary and petty larceny?

2 A That is correct, sir.

3 Q All right, sir. Mr. Aiken, I'm going to ask
4 you, please, if you would, tell the ladies and
5 gentlemen of the jury what you did and then how you
6 came to your conclusion, sir.

7 A The approach that I take is not a theoretical
8 approach. I evaluate the record and relationship to
9 that inmate coming to my prison and I classify that
10 inmate as if he was coming to my prison. And I'm
11 responsible for the welfare of staff as well as
12 inmates.

13 I evaluate not only what's in the
14 record, but what is not in the record. What type of
15 behavior patterns have been noted by the officials
16 and what type of behavior patterns that have not been
17 noted by officials. And the key word is "officials."
18 Those people that have evaluated this inmate every
19 day in a confinement setting.

20 Q When you have the occasion, sir, to review
21 everything in this file and in particular in dealing
22 with Mr. Marion Bowman, Jr. were you put on notice
23 that he was facing a murder charge, sir, and an arson
24 charge when you did your background or qualification
25 and classification of Mr. Bowman, gentleman seated

JA 1194

James E. Aiken - Direct Exam

1 right there in the blue jacket, sir?

2 A Yes, sir. When I make my evaluation I make the
3 assumption that the individual is guilty of
4 everything, because he would never come to me in the
5 first place if he was not guilty.

6 Q All right, sir. When you looked at that nature
7 of the offense and the nature surrounding this
8 offense, did that cause you any hesitation in your
9 qualification of this gentleman?

10 A No, it did not, because of the fact that I have
11 dealt with those type of people for 30 years. I have
12 dealt with people that have committed very heinous
13 crimes, I have dealt with people that require being
14 excluded from the general community for the remainder
15 of his or her life. And I put a very high level of
16 priority on that person's community behavior in
17 relationship to the protection of the public.

18 Q In this particular case, sir, now that the
19 ladies and gentlemen of the jury have found
20 Mr. Bowman guilty of murder, what is your
21 understanding, sir, as our sentence, as to the
22 sentence that Mr. Bowman will receive if the jury
23 finds life without the possibility of parole, what
24 would happen to Mr. Bowman in our state prison
25 system, sir?

4841

James E. Aiken - Direct Exam

1 A Repeat that question, please.

2 Q If the ladies and gentlemen of this jury
3 determine that a life without the possibility of
4 parole sentence would be appropriate, they have two
5 choices and only two, what would happen to him as far
6 as his sentence, sir, to be carried out by the prison
7 system?

8 MR. BAILEY: Your Honor, I may have an
9 objection. Could we approach just as a
10 clarification?

11 THE COURT: Surely.

12 (Whereupon, a bench conference was held
13 off the record in the presence of the
14 jury, but out of the hearing of the jury.)

15 Q Mr. Aiken, to simplify my question it's been
16 agreed to just ask you this: Will Mr. Bowman ever
17 walk out of a South Carolina State Department of
18 Corrections prison if these ladies and gentlemen of
19 the jury so find that to be the appropriate sentence?

20 A No, he would not. He will stay there until he's
21 dead.

22 Q In dealing and looking with the issues of
23 Mr. Bowman, in particular his age, what makes you so
24 certain, sir, when using your education, your
25 training, your experience and your issues here that

JA 1196

James E. Aiken - Direct Exam

1 this gentlemen could adapt to prison and follow the
2 adjustments and not be a danger in the future?

3 A I look at his previous institutional record,
4 he's had one fight. I would look at the ability of
5 that individual to serve time, he's been incarcerated
6 in three separate facilities -- systems, should I
7 say. That is the Orangeburg system, Dorchester
8 system, and the South Carolina Department of
9 Corrections system. And this individual has adjusted
10 relatively well.

11 Keeping in mind that the South
12 Carolina Department of Corrections can incapacitate
13 an individual for the remainder of his life. That
14 means we have fences, we have gun towers, we have
15 people that know how to use weapons, we know how to
16 lock people up and keep them there for extended
17 periods of time.

18 Additionally, every day this
19 individual is getting older and older, which means
20 that we can adequately manage this person whether
21 he's 20 years old or whether he's a hundred years
22 old, we have the capacity to do that.

23 Q What does it show you, sir, that if somebody who
24 is awaiting trial, pretrial detainee in a county
25 facility attends classes, what is that showing you as

4843

James E. Aiken - Direct Exam

1 a classifier of prison, sir?

2 A It tells me two things, especially in this
3 situation. This individual is a fairly young
4 individual and has been able within the proper
5 confinement and structure to do some positive things.
6 Something else that it tells me as a penitentiary
7 warden, is that I don't care how good he may be, he's
8 not getting out. You have to understand that. It is
9 appropriate, it is appropriate that we acknowledge
10 that this individual is doing the right thing,
11 especially during a period of time of high stress,
12 but the point is, is that we will manage this
13 individual and incapacitate this individual as
14 required in whatever manner that's authorized by law.

15 Q Mr. Aiken, if that person in the class also
16 assists a professor or teacher, would that also have
17 an incident to bear upon your classification?

18 A It is a very good predictor that this individual
19 will adequately adjust to a maximum security
20 correctional environment for the remainder of his
21 life.

22 Q As far as, again, sir, and I do not state this
23 lightly, as a person gets ready to face trial in a
24 pretrial confinement setting or whatever and as they
25 get ready to come to court, you testified previously

JA 1198

James E. Aiken - Direct Exam

1 about stress levels. Would that cause a person
2 sometimes to speak out?

3 A Not only speak out, inmate population also can
4 have the tendency to inflict violence upon other
5 inmates as well as staff. And I saw nothing of that
6 in his record.

7 Q If somebody were the type of person you just
8 told these ladies and gentlemen about, would that
9 appear after a period of three incarcerations, would
10 that show up somewhere?

11 A One thing that -- the answer to that is yes, it
12 would show up, because one thing people, layman who
13 have never been in a correctional environment don't
14 understand, and it is you can't fake it. You can't
15 fake it. That behavior pattern, that behavior
16 pattern that you are most accustomed to, whether it's
17 violence or nonviolence, in a stressful correctional
18 environment you can't fake it.

19 Q As far as Mr. Bowman, sir, would you have any
20 hesitation in telling these ladies and gentlemen of
21 the jury at the end of your statements today that he
22 could adapt to future prison knowing that he would be
23 there the rest of his life?

24 A I have no reservations whatsoever.

25 Q Would you have any concerns as a warden, or a

4845

James E. Aiken - Direct Exam

1 man, or a lady under your direction, sir, working in
2 that prison being around Mr. Bowman?

3 A No.

4 Q Would you have any issues to tell these ladies
5 and gentlemen of the jury about the classification of
6 Mr. Bowman that you would make if he were delivered
7 from this courthouse to your prison tomorrow?

8 A That he would be kept behind gun towers, behind
9 fences, behind bars, behind concrete, and he would be
10 adequately managed in a security setting for the
11 remainder of his life because of his behavior in the
12 community. And that the system can adequately manage
13 him. And that I have classified thousands of inmates
14 in this type of situation where they have inflicted
15 violence upon people, they have violated the laws of
16 the jurisdiction.

17 Q Mr. Aiken, would you have this statement, I
18 guess, sir, as not to embarrass you or anything, are
19 you saying this because you've been asked by the
20 defense to come up to the stand and testify, sir?

21 A No. I don't take every case.

22 Q Have you also testified for the State or the
23 federal government, sir, against people?

24 A Yes. I have testified for the prosecution in
25 criminal matters.

JA 1200

James E. Aiken - Direct Exam

1 Q Where you have told ladies and gentlemen of the
2 jury what, sir?

3 A Beg your pardon?

4 Q In what capacity would you have told ladies and
5 gentlemen of the jury about people's adaptation or
6 classification in prisons?

7 A I'm talking about criminal matters in which I
8 have testified for the prosecution for this person to
9 be punished for his behavior. I have done that
10 before.

11 MR. CUMMINGS: Beg the Court's indulgence,
12 Your Honor.

13 THE COURT: All right.

14 (Mr. Cummings and Ms. Hardee-Thomas conferring
15 with Mr. Bowman.)

16 Q. Mr. Aiken, I thank you very much, sir. Please
17 answer any questions Mr. Bailey or Her Honor may have
18 for you, sir.

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION

21 BY MR. BAILEY:

22 Q Mr. Aiken, how are you doing?

23 A Fine, sir. How are you?

24 Q Fine. Good to see you.

25 A Good to see you, too.

James E. Aiken - Cross-Exam

1 Q Tell the jury what a YOA sentence is.

2 A A youthful offender sentence. YOA means
3 Youthful Offender Act. It is a statute that was
4 passed in South Carolina to give an individual an
5 opportunity even though he or she has violated a
6 serious offense, a sentence that would give that
7 individual some incarceration but an opportunity to
8 get back into the community with proper supervision.

9 Q And the whole purpose of that is an attempt to
10 rehabilitate the youthful offender; is that correct,
11 sir?

12 A That's my understanding, sir.

13 Q All right. And the type sentence Mr. Bowman
14 received when he got the two burglary convictions,
15 you reviewed his records, was a youthful offender
16 sentence; is that correct, sir?

17 A That's correct. To include, if I'm not
18 mistaken, something about restitution and shock
19 probation, if I'm not mistaken, sir.

20 Q And the whole thrust as you just said is to try
21 to rehabilitate that person and hopefully he won't
22 come back to the Department of Corrections?

23 A The centerpiece of that you said correctly, is
24 for successful reintegration into the society.

25 Q All right. He didn't make it, did he?

James E. Aiken - Cross-Exam

1 A Beg your pardon?

2 Q Mr. Bowman didn't make it, did he?

3 A He flunked out.

4 Q All right, sir. Now, what is a use of force
5 document?

6 A A use of force document is a document -- I'm
7 using it in a prison context.

8 Q Yes, sir. That's what I intended.

9 A Use of force is when staff makes any contact,
10 physical contact with an inmate.

11 Q So if an inmate gets out of hand or something
12 and they have to physically restrain them or hold
13 them back or something, they would fill out a use of
14 force form which would become part of the record of
15 that inmate?

16 A Yes. And to understand the concept of the use
17 of force we have to keep extreme important --
18 extremely important that we have to keep
19 documentation in these environments. And a use of
20 force is left up to interpretation of use of force
21 and it has a very wide variance.

22 Q All right, sir. In reviewing Mr. Bowman's file
23 from his YOA sentence, did you find out whether there
24 was force used against him on one occasion?

25 A I think there was a use of force report in

James E. Aiken - Cross-Exam

1 relationship to after a fight, if I'm not mistaken,
2 sir. And that was at Stephenson; is that correct?

3 Q I don't know. I forget.

4 Mr. Aiken, as far as the
5 classification process, when a person receives a
6 sentence they go to R and E; is that correct?

7 A R and E means Reception and Evaluation, yes.

8 Q At that point in time they're tested and then
9 they're sent out to one of the different facilities
10 in the state?

11 A In relationship to not only just testing, but to
12 looking at the security needs of the individual, yes.

13 Q All right, sir. And what factors do you take
14 into consideration when you classify somebody that
15 decides whether they go to a minimum security or
16 maximum security, do you look at the offense or do
17 you look at the characteristics of that individual,
18 or do you look at both?

19 A Classification is all of that and probably some
20 additional stuff, too, sir.

21 Q All right, sir. And starting at the bottom, the
22 least restrictive classification, the most harmless
23 inmate, is there a name or a letter for that?

24 A Well, it's minimum custody.

25 Q Minimum custody?

James E. Aiken - Cross-Exam

- 1 A Yes, sir.
- 2 Q And didn't it used to be like an alpha and
- 3 different --
- 4 A We're talking about apples and oranges now.
- 5 Q Okay. Help me out.
- 6 A Okay. When you start talking about objective
- 7 classification which we started off with this
- 8 conversation, we're talking about maximum security,
- 9 or medium security, or minimum security.
- 10 Q Right.
- 11 A And some jurisdictions level one through level
- 12 five.
- 13 Q Let's just talk South Carolina starting from the
- 14 bottom to the top.
- 15 A It's the lowest level of security which is
- 16 minimum security and maximum security.
- 17 Q What's next?
- 18 A You've got medium security and then maximum
- 19 security. But you can have low medium, high medium,
- 20 and B custody, and C custody, but basically for
- 21 layman I use maximum, medium, and minimum. And when
- 22 you said alpha, that's what is known as internal
- 23 classification.
- 24 Q Tell us about that.
- 25 A Once a person is inside a prison, then -- in a

4851

James E. Aiken - Cross-Exam

1 number of systems another evaluation is taken in
2 relationship to that person's personality. That
3 person's personality may be manipulative or
4 aggressive, or it may be passive, or it may be a
5 person that gets along with just about anybody. And
6 that internal classification system places inmates in
7 living areas only in relationship to those
8 personality traits, because what we found is that you
9 put more aggressive population with more aggressive
10 population with adequate management the incidence of
11 violence decrease.

12 Q Starting with internal classification starting
13 at the least, I guess the more passive and going on
14 up to the most aggressive, how do you classify it?

15 A Alpha, beta, and gamma. But I think that's a
16 misnomer when you say the least. We're not talking
17 about the most, we're not talking about the least.
18 What we're talking about is what type of management
19 and supervision that this individual requires, that's
20 objective classification. What we're talking about
21 also with internal classification, alpha and gamma
22 and beta, is how we place them in the institution in
23 relationship to their ability to get along with other
24 inmates.

25 Q Okay. Well, at the risk of being --

JA 1206

James E. Aiken - Cross-Exam

1 A So it's punitive, that's what I am trying to
2 say.

3 Q What's alpha, layman's terms what kind of inmate
4 is an alpha classified inmate?

5 A Manipulative, a person that can -- has the
6 ability to use verbal skills that can be considered
7 to be intimidating at times, a person that can be
8 aggressive, but not necessarily violent.

9 Q All right. How about beta?

10 A Beta are those people that I don't bother you,
11 you don't bother me. I'm sorry, beta is those people
12 that are people saying that I'm worried all the time,
13 somebody may get me, those passive inmates. And the
14 latter being an inmate that we said get along with
15 you, I don't bother you, you don't bother me.

16 Q Okay. That's gamma?

17 A Yes.

18 Q Okay. All right. Now, you got different
19 facilities in the state that house different
20 classifications of inmates and you've got some
21 facilities like that that are medium/maximum that
22 would have both types, right?

23 A Both types. What are you talking about?

24 Q Medium/maximum.

25 A Yeah, medium/max. This system can house medium

4853

James E. Aiken - Cross-Exam

1 inmates and maximum inmates in the same environment
2 because the external fences and gun towers and
3 electronic surveillance systems determine maximum as
4 well as medium.

5 Q Okay. So if you have an individual first-time
6 offender that commits a nonviolent crime and he's
7 kind of a passive person, where would he start out
8 within the system?

9 A It all depends. It all depends. Sometimes they
10 will go straight to a minimum security environment,
11 sometimes they may go to a max or a medium/maximum
12 security environment because they have a detainer,
13 for example. Or maybe they'll go to a medium/maximum
14 security environment because they require certain
15 medical evaluation.

16 So I've seen people go from a maximum
17 security environment and stay there for a couple of
18 days, or a couple of weeks, or even a month or so and
19 then go straight to the least restrictive environment
20 such as a work release center.

21 Q All right, sir. So a person that gets in a
22 maximum security situation would have a tendency to
23 want to work toward a less restrictive environment
24 within the prison system normally?

25 A The word "normal" is what I'm kind of having

JA 1208

James E. Aiken - Cross-Exam

1 difficulty with.

2 Q Well, I realize that's not a normal environment
3 in the prison system, but normal as far as the prison
4 system goes. Don't most people that have restrictive
5 classifications that are in the most secure portion
6 of the facility that are locked down, don't they
7 aspire to gain more privileges and to get classified
8 in a manner where they would have more freedom, more
9 privileges?

10 MR. CUMMINGS: I have a matter of law that
11 we had at sidebar earlier about what Mr. Bailey
12 is asking on cross now, ma'am. There was an
13 objection at sidebar as to --

14 THE COURT: I remember. Let me see you,
15 counsel.

16 (Whereupon, a bench conference was held
17 off the record in the presence of the
18 jury, but out of the hearing of the jury.)

19 MR. BAILEY: Your Honor, if I may.

20 THE COURT: Yes, sir. You may continue,
21 Mr. Bailey.

22 Q If you're an inmate you can move from one
23 classification to another; is that correct,
24 potentially?

25 A Potentially, yes, with the understanding that

James E. Aiken - Cross-Exam

1 certain offenses you do not move down.

2 Q All right. And you would not move down at all?

3 A That's correct, sir.

4 Q What is super max?

5 A Super max is in layman's terms.

6 Q Sure.

7 A Is the jail for the prison system.

8 Q Okay.

9 A. It's a place where people that cannot adjust to
10 a correctional environment that causes problems, you
11 take this person and separate that person from the
12 general population and put them in special housing.

13 Some jurisdictions call it super max. Such as a
14 federal system and ADX, that's where you have your
15 terrorists and those kind of folks. But also in
16 prisons like in South Carolina you have
17 administrative segregation or super max environment.

18 Q Okay. They're the guys that wear the yellow
19 jumpsuits?

20 A Different systems have different types of
21 jumpsuits.

22 Q I'm talking about South Carolina.

23 A Yeah, I think so. I'm not sure.

24 Q All right, sir. And those people wouldn't
25 necessarily stay there forever, would they, in super

James E. Aiken - Cross-Exam

1 max? They would do a period of time there, then
2 dropped down a level?

3 A It depends on their behavior.

4 Q But there is the ability to move from one
5 classification to another?

6 A They go to their program and they can move back
7 to general population in relationship to their
8 behavior, but if their behavior dictates that he want
9 to be disruptive to other inmates as well as to staff
10 they stay there.

11 Q Okay. And general population, does that mean
12 you kind of got the run of the yard to a certain
13 extent?

14 A Well, when you say run of the yard, that's you
15 can go from point A to point B, but you are
16 constantly under supervision and you're constantly
17 around very predator inmate population.

18 Q Prison is not a nice place, is it?

19 A Prisons are a dangerous place.

20 Q Okay. But my point is that, as you've said,
21 there are different levels of security within
22 particular prison facilities and based on an inmate's
23 conduct he can move from a more restrictive and a
24 less restrictive environment within that prison
25 potentially, is that --

James E. Aiken - Cross-Exam

1 A Potentially, yes, with the understanding that
2 the community sanction, and that is the nature of the
3 offense, the sentence is the driving force and the
4 overriding force in making those decisions.

5 Q All right, sir. But an inmate's conduct while
6 incarcerated also would have an effect of his ability
7 to move from one or the other; would it not?

8 A Whether he moves up or whether he moves down,
9 but he can move up and down and still have gun towers
10 and maximum security.

11 Q I understand all that.

12 A Okay.

13 Q But within the gun towers around the whole
14 place, but within the place you have people that have
15 more freedom than other people?

16 A That is correct, sir.

17 Q And that is not a carved in concrete situation,
18 you can move from one to the other and back and forth
19 and all around?

20 A As long as you stay behind those fences and gun
21 towers.

22 Q We understand that. We're talking about within
23 that facility?

24 A You go to work and those type of things, yes,
25 sir.

James E. Aiken - Cross-Exam

1 Q Right. Okay. On occasion people are allowed to
2 leave that facility to pick up trash on the side of
3 the road?

4 MR. CUMMINGS: Objection, Your Honor.
5 That's clearly not available here and it's not
6 proper.

7 MR. BAILEY: Your Honor, he just said
8 they're all behind the walls all the time.
9 (Whereupon, a bench conference was held
10 off the record in the presence of the
11 jury but out of the hearing of the jury.)

12 Q Mr. Aiken, would it be fair to say that
13 regardless of how bad a person thinks he is or how
14 serious the crime is, there is a mechanism in place
15 within the South Carolina Department of Corrections
16 to deal with that inmate; is that correct?

17 A That is correct, to include killing the inmate.

18 Q Yes, sir. Execution?

19 A Not only that, use of lethal force.

20 Q Okay. I understand that, too. Now, if a person
21 is docile, gets along, does what he's supposed to do,
22 it's going to take a fairly minimum level of
23 supervision given the fact that you're behind the
24 walls and you have the guns and the towers and all
25 that; is that correct?

James E. Aiken - Cross-Exam

1 A That's not correct, sir.

2 Q It's not?

3 A No, sir. The word minimum is a misnomer. In a
4 prison environment in a maximum security, a
5 medium/maximum security environment with fences and
6 gun towers, providing supervision, a level of
7 supervision is always maintained.

8 Q I understand that.

9 A And it has no relationship to minimum security
10 supervision that will be in a work release center, a
11 work release center will never be seen by this
12 individual.

13 Q Okay. But when you say minimum custody, you
14 have facilities that have minimum custody and medium
15 custody; is that correct?

16 A Not together, no, sir.

17 Q Okay.

18 A There are some exceptions, such as a person that
19 needs to be in medium custody even though they are
20 minimum classified for a certain reason.

21 Q Okay.

22 A But you don't normally put minimum custody
23 inmate population behind gun towers and fences.

24 Q Okay. Well, I'm trying to kind of talk your
25 language and if I'm using the wrong words, please

James E. Aiken - Cross-Exam

1 correct me.

2 A Okay.

3 Q And I'm not trying to be cute or tricky.

4 A I certainly understand that.

5 Q All right, sir. What I'm trying to get at, what
6 I'm asking you about is some people that are not
7 aggressive and that are following the rules have less
8 restrictions on them within the prison system than
9 somebody, what I'm going to call, super max; is that
10 correct?

11 A With the understanding --

12 Q That they're all behind the walls?

13 A They're all behind the walls.

14 Q I got that.

15 A They're all being strip searched.

16 Q Sure.

17 A They're all being watched with gun towers and --

18 Q I got that, Mr. Aiken.

19 A -- all of that.

20 MR. CUMMINGS: He's allowed to answer the
21 question.

22 THE COURT: I'll allow him to finish. Let
23 him finish.

24 A Okay. With all of that being considered, and as
25 I stated to you previously when you said the word

James E. Aiken - Cross-Exam

1 supermax is the jail for the prison system. And what
2 I also stated in previous testimony here today is
3 that certain inmates, such as this individual, I
4 don't care how good they are, I don't care how docile
5 they may act, this individual will be kept in the
6 secure environment for the remainder of his life.

7 Q All right, sir. Let me ask you about that. An
8 individual serving life without parole cannot work
9 into a minimum security situation, what incentive
10 does he have to follow the rules of that institution?

11 A The incentive that he has is one thing that the
12 management of that prison system has authority to
13 ensure that his behavior is appropriate. And that's
14 anywhere from sanctioning him, that's anywhere from
15 using lethal force against that individual, as well
16 as to give this individual an opportunity to obey the
17 rules and regulations. His motivation. We are not
18 in the business of motivation when you deal with a
19 life without parole. Our business is incapacitation.

20 We're not preparing you to go
21 anywhere. You're going to stay with us as long as
22 you are breathing, so we're not talking about trying
23 to prepare you for anything. What we're talking
24 about is that we do a good job of keeping you behind
25 bars and behind fences and in gun towers for the

James E. Aiken - Cross-Exam

1 remainder of your life.

2 Q Okay.

3 A So it's a different ball game all together.

4 Q I got that. I understand that. My question
5 simply, sir, that I've asked you several times, let
6 me try again, there are different levels of
7 restriction that a person serving life without parole
8 can find himself under and he can work from one end
9 to the other and back again or stay in the middle.
10 Am I saying something that you don't understand?

11 A Yes. Let me try to explain it this way then.

12 Q Please do.

13 A I'm the one that's maybe confusing it and I'm
14 sorry. But a person with life without parole when
15 you say least, you know, incentives or something, a
16 person gets to go to work, the person gets an
17 opportunity to live --

18 Q A person serving life without parole gets to go
19 to work?

20 A A person -- if you're going to be in prison
21 you're going to work.

22 Q Okay. What if he doesn't want to work? What if
23 he says I don't want to work today?

24 A If he doesn't want to work we'll put you in a
25 place you don't have to work and you call that super

4863

James E. Aiken - Cross-Exam

1 max, where we lock you down 23 hours a day and feed
2 you three times because you will be given a direct
3 order to work and if you don't work you have violated
4 the rules and regulations.

5 And on top of that, this dimension,
6 which we haven't discussed since we're talking about
7 the environment, is that this prison system of a
8 prison contains very dangerous people. People that
9 resolve issues through violence, people that do not
10 necessarily want to go by the rules and regulations.
11 And looking at this gentleman as we were discussing,
12 he has been in an environment that's very stressful
13 which increases the probability of antisocial
14 behavior. And I've not seen that in his record.

15 So in a prison environment I don't
16 anticipate him being disruptive. I anticipate him
17 getting up and going to work, I anticipate this
18 individual obeying rules, regulations, and orders.
19 But as we were discussing if we have to put him away,
20 we'll do that. And if we have to use lethal force
21 against him, we can do that also.

22 Q So no matter how bad that person acts, you can
23 ratchet up that level of control to control his
24 behavior?

25 A To manage his behavior, yes, sir.

JA 1218

James E. Aiken - Cross-Exam

1 Q They can't beat the system?

2 A They can't beat the system.

3 Q So wouldn't it be true, Mr. Aiken, that with a
4 system like that in place there's nobody that cannot
5 adapt to the prison system because the prison system
6 is going to adopt to whatever level of conduct they
7 display?

8 A The prison system can manage any type of
9 behavior this individual demonstrates.

10 Q Okay. That was the point I was trying to get
11 at. Thank you, sir.

12 THE COURT: Yes, sir. Any redirect?

13 MR. CUMMINGS: Yes, please.

14 REDIRECT EXAMINATION

15 BY MR. CUMMINGS:

16 Q I just want to make sure I'm clear on this. I
17 know Mr. Bailey asked you this question. A person
18 serving life without the possibility of parole, could
19 he ever be able to pick up trash or go outside that
20 gate?

21 A No way.

22 Q Could that person, again, if anything happens
23 inside the prison, can they be referred to a good
24 solicitor to be prosecuted in here in front of 12
25 other good citizens tried and true?

4865

James E. Aiken - Redirect Exam

1 A No. The person can be tried, that is correct.
2 Just because you're in prison doesn't mean you can't
3 break the law and can't be prosecuted for it.

4 Q And then are they not dealt with inside there
5 even including as you stated, up to lethal force if
6 it's called upon by the Department of Corrections,
7 people inside that prison?

8 A The Department of Corrections is authorized to
9 use lethal force. And I have authorized lethal force
10 to be used.

11 Q The prison that Mr. Marion Bowman may go to,
12 whatever the Department of Corrections states he
13 would go to, is it going to be a kiddy camp?

14 A No way.

15 Q Is it going to be someplace where, you know,
16 they have picnic lunches outside the gate?

17 A No. You will be around predator, dangerous,
18 violent inmate population.

19 Q And when you say "super max," I want you to
20 again, because I know quickly, sir, you were
21 answering that question, I want you to tell the folks
22 exactly what super max is.

23 A It is a confinement facility in which people
24 stay in their cells 23 hours a day, they get out one
25 hour a day as mandated by federal judiciary. And

JA 1220

James E. Aiken - Redirect Exam

1 this houses -- the staff are especially trained to
2 use whatever force that's legally necessary to manage
3 the behavior.

4 Q Describe a super max cell for these folks,
5 please.

6 A I guess the best way to describe it is it's
7 about the size of a -- little bigger than a bathroom
8 and it's got steel and concrete to include the bed.
9 And your toilet is right there with you and you are
10 under constant surveillance by a security staff or
11 technology.

12 Q If an inmate such as Mr. Bowman is following the
13 basic prison that can make him get up to something
14 productive for society to pay his debt back, what is
15 available? When you say work, what can he do within
16 a prison that doesn't make light of somebody trying
17 to do something with their time?

18 A This individual can be constructively engaged in
19 prison industry that is reducing your tax load by
20 providing cheap labor to pay back to the society that
21 government does not have to pay so much money for.
22 This individual can work in a food service area, for
23 example, this person can provide maintenance at the
24 facility such as painting, this person can do
25 something for himself, do something for himself in

4867

James E. Aiken - Redirect Exam

1 order to become constructively engaged. But the
2 understanding is that the mission here is
3 incapacitation. I don't care how well he does, he
4 will never get out of that prison.

5 Q And as far, again, as ever being, for lack of
6 better words, model-collied (phonetic), is he going
7 to model-collied by anybody inside there going in
8 there on a murder conviction found by Dorchester
9 County jurors and an arson conviction knowing the
10 rest of his life will be behind bars?

11 A That's not the nature of prisons.

12 Q As far as a 21-year-old man, 20-year-old at the
13 time of the offense and a 21-year-old man now, can
14 Mr. Bowman salvage something of his life inside our
15 prison?

16 A Yes. As long as he stays within that prison,
17 and he will remain in that prison, he can have
18 redeeming qualities, yes. But the understanding is
19 that those redeeming qualities will never get him
20 released or exposed to the public.

21 Q Do you think Mr. Bowman, based on your records
22 and representations and your reading and your
23 experience, sir, would be a gentleman that could work
24 with the Scared Straight program to try to solve some
25 other little kid coming through the system where

JA 1222

James E. Aiken - Redirect Exam

1 other citizens don't have to sit in judgment of them?

2 A Yes, sir. With time he could be a very living
3 example of saying that I came into a correctional
4 environment when I was in my 20s, now I'm in my 40s
5 and I've been in prison so long I don't remember what
6 you go through the stoplight with, a red light or a
7 green light because I've never, I have never done
8 this. I have not done this in 30 years, I don't even
9 remember.

10 Q As far as, again, Mr. Bowman, when you read that
11 issue about the disturbance that Mr. Bailey asked you
12 about when he was in the youthful facility, Stevenson
13 I believe it is, was that a disturbance with another
14 individual in a line, or was that towards the hurting
15 or going near a guard, sir?

16 A That was a fight. And don't -- it's not a
17 disturbance.

18 Q All right, sir.

19 A That was a fight between two inmates. And he
20 was properly sanctioned for it, I think he got two
21 weeks extension. And in a scale of 1 to 10 this
22 barely makes it to a 1.

23 Q The guard was never in jeopardy by Mr. Bowman?

24 A As I stated it, no, he was not. As I stated in
25 my definition of use of force, when there is physical

James E. Aiken - Redirect Exam

1 contact, it may be touching, I have to fill out a use
2 of force because we document everything in the prison
3 environment.

4 MR. CUMMINGS: Beg the Court's indulgence,
5 Your Honor.

6 THE COURT: All right.

7 (Mr. Cummings and Ms. Hardee-Thomas conferring
8 with Mr. Bowman.)

9 MR. CUMMINGS: Your Honor, that's all the
10 questions we have of this gentleman.

11 RECROSS-EXAMINATION

12 BY MR. BAILEY:

13 Q Mr. Cummings asked you and I think you said in
14 response he will never get out of prison; is that
15 correct, sir?

16 A That's correct.

17 Q During the time that you have been affiliated
18 with the Department of Corrections of South Carolina,
19 how many inmates have escaped?

20 MR. CUMMINGS: I'm going to object. This
21 is a life without possibility of sentence and we
22 have told this jury that is all he will ever get
23 and that is the law.

24 MR. BAILEY: Your Honor, I'm asking --

25 THE COURT: Let me hear the question,

James E. Aiken - Recross-Exam

1 first, gentlemen.

2 (Whereupon, a bench conference was held
3 off the record in the presence of the
4 jury but out of the hearing of the jury.)

5 THE COURT: Ladies and gentlemen, I'm going
6 to ask you to please step to your jury room,
7 there is a matter that I must take up outside
8 your presence. Be mindful not to discuss this
9 matter or allow anyone to discuss it with you.
10 (Whereupon, the jury retires to the jury room at
11 4:58 p.m.)

12 MR. BAILEY: Your Honor, to --

13 THE COURT: Yes.

14 MR. BAILEY: Your Honor, the case I had in
15 mind was State vs. Plath, 313 S.E.2d, 619. That
16 case said that when a defendant expert testifies
17 on life in prison the State cannot err by
18 cross-examining him on prison conditions and on
19 a specific inmate escaped while serving a life
20 term, Your Honor. That's the line of
21 questioning I was getting into.

22 I think Mr. Cummings opened the door
23 when Mr. Aiken said the quote from my notes, "He
24 will never get out of that prison." And, Your
25 Honor, case law says I can ask that and --

4871

James E. Aiken - Recross-Exam

1 THE COURT: Let me look at the case.

2 MR. BAILEY: Ma'am?

3 THE COURT: Let me look at the case.

4 MR. CUMMINGS: As you wait for it to pop up
5 this door would not even have swung open if we
6 had followed the strict instructions you had
7 asked, ma'am.

8 MR. BAILEY: Your Honor, of course, Mr.
9 Cummings referred to it as a kiddy camp and that
10 he could not be in super max, I think the door
11 is wide open.

12 (Pause in proceedings.)

13 THE COURT: Tell me where you find the
14 language in the -- first of all, which State vs.
15 Plath decision and then where in that decision?

16 MR. BAILEY: It's 1984, the second State
17 vs. Plath decision.

18 THE COURT: Okay. I got it. All right.
19 In the Plath decision the difference is, is that
20 Plath himself was an escapee. That's why it was
21 relevant and that's why the door had been opened
22 was because Plath was an escapee at the time
23 that the offense was committed. And the door
24 was open at the point in time when the question
25 was -- when they went into that area regarding

JA 1226

James E. Aiken - Recross-Exam

1 Mr. Plath. And specifically the door was opened
2 because Mr. Plath had committed the offense that
3 he was being tried on when he was actually an
4 escapee, not in general.

5 MR. CUMMINGS: Now I'm at a loss and I
6 apologize to Your Honor in not calling upon the
7 Court here. I don't know if a curative
8 instruction would reemphasize the issue of an
9 escape or the possibility of escape to these
10 jurors which would be in violation of everything
11 about the instruction from the Supreme Court of
12 the United States and our Supreme Court that
13 life without the possibility of parole means
14 just that, the literal meaning. They've heard
15 now a question about escape. I objected I hope
16 in a timely manner, Your Honor has ruled.

17 Again, it places the defense in a
18 quandary of how to get that thought out of the
19 jurors' minds now about the possibility of a --
20 you're talking about a possibility. And even
21 then time to come back now, explain that no, you
22 know, worry about escape. Well, now it's been
23 planted.

24 MR. BAILEY: Your Honor, of course -- I'm
25 sorry, I don't mean to interrupt you.

James E. Aiken - Recross-Exam

1 THE COURT: That's okay.

2 MR. BAILEY: Of course this witness has
3 said repeatedly in a nonresponsive manner to
4 several questions I've asked him about the guns
5 and the walls and the guns trained on everybody
6 to try to intentionally give the jury the
7 impression nobody gets out of there. And I
8 think it's common knowledge there's probably not
9 a single prison in this state, including Lieber,
10 where people don't escape on a halfway frequent
11 basis. I mean, if I could proffer -- can I
12 proffer, Your Honor?

13 THE COURT: You can certainly proffer, but
14 that will be the extent of it. We're not going
15 to put that before the jury, but you certainly
16 may, please.

17 MR. BAILEY: No point in proffering then.

18 THE COURT: Please proffer it if you would
19 like to for purposes of the record, but I'm not
20 going to allow that to go to the jury.

21 MR. BAILEY: It wouldn't do any good. In
22 view of the fact that Mr. Cummings has
23 established that it's not a kiddy camp and that
24 there is work available and that he probably
25 would not be in super max since he's such a

James E. Aiken - Recross-Exam

1 model inmate, can I pursue those areas by asking
2 about certain conditions of the general
3 population, the work conditions he's already
4 gotten into, that area?

5 THE COURT: Yes, you may.

6 MR. BAILEY: Thank you.

7 MR. CUMMINGS: We're on recross, Judge.

8 THE COURT: I understand. I will let him
9 go into those areas. Where are the work
10 situations, I certainly will, because insofar as
11 I think those issues are certainly before the
12 jury at this point. What I would like to know
13 is how far the question got.

14 Ms. Keil, if you could go back to the
15 question that was asked by Mr. Bailey and let me
16 know. I think you were sitting on the edge of
17 your seat, so I don't know if the word got past
18 "S," so we'll see.

19 MR. CUMMINGS: Then it got out.

20 THE COURT: Okay. All right. What would
21 you propose for a curative instruction?

22 MR. CUMMINGS: This is the quandary I get
23 in every case that I've been appointed on death
24 penalty. You ask for a curative instruction and
25 you say no thank you, then you have settled for

James E. Aiken - Recross-Exam

1 that and my client settles for that. If you go
2 back and ask for a curative instruction it
3 reemphasized like, I hate to say it, bad
4 analogy, but rookie policeman standing there
5 testifying he saw somebody run a red light and
6 the defense attorney says are you sure you saw
7 my client run a red light? They've heard it
8 twice now.

9 And I guess, Judge, respectfully in
10 standing up before you to protect the record of
11 course I would move for a mistrial in the
12 sentencing phase here based on the fact that
13 this is more prejudicial to my client now and
14 cannot be curative, respectfully. And in so
15 doing so then Your Honor has -- again, will call
16 upon me and Ms. Thomas to quandary whether or
17 not --

18 THE COURT: Let me give you this as a
19 proposal. I'm going to deny your motion for a
20 mistrial.

21 MR. CUMMINGS: Yes, ma'am.

22 THE COURT: But I would propose as curative
23 instruction that I tell the jury that there are
24 two instructions, or two sentences that they
25 will concern themselves. One, the death penalty

James E. Aiken - Recross-Exam

1 which we'll talk about, and the other is life
2 imprisonment without the possibility of parole.

3 MR. CUMMINGS: Yes, ma'am.

4 THE COURT: All right. And if you like
5 I'll give the definition that's in the statute
6 that says until the death of the defendant. And
7 that those are the two sentences that they
8 will -- to which they are going to be concerned.

9 MR. CUMMINGS: Yes, ma'am. And, again,
10 with the legal quandary that we've been placed
11 in that is the only issue that once Your Honor
12 has denied the mistrial motion if I don't want
13 the curative instruction at that point, Judge,
14 then I would waive it. And, respectfully, I
15 would ask for that, but noting, Judge, that
16 again that word would not have come out and now
17 the jurors have heard it and it's something
18 they've got to consider.

19 THE COURT: I understand.

20 MR. CUMMINGS: Thank you, Judge.

21 THE COURT: Thank you. And I'll entertain
22 an additional one, or a change if you would like
23 me to, but that's what I would propose to tell
24 them.

25 MR. CUMMINGS: Yes, ma'am.

James E. Aiken - Recross-Exam

1 THE COURT: All right. Very well. Let us
2 have our jury back.

3 (Whereupon, the jury returns to the courtroom at
4 5:07 p.m.)

5 THE COURT: Ladies and gentlemen, there was
6 a question that was asked before you left and I
7 have ruled that the question was not a proper
8 question and I'm going to ask you to disavow
9 that from your minds for this reason: There are
10 two sentences that you will concern yourselves
11 and we're going to have an opportunity during my
12 charge to talk about them at great length, but
13 for this moment I will tell you, and I think I
14 am reminding you based on the instructions that
15 you have received even preliminarily, but there
16 are two sentences that you will concern
17 yourselves. One, the death penalty, and the
18 other is life imprisonment without the
19 possibility of parole. The Statute says until
20 the death of the defendant. Those would be the
21 two sentences that you will concern yourselves.

22 With that instruction you may proceed,
23 Mr. Bailey.

24 MR. BAILEY: Thank you, Your Honor.

25 BY MR. BAILEY:

James E. Aiken - Recross-Exam

1 Q Mr. Aiken.

2 A Yes, sir.

3 Q I take it in response to your questions from Mr.
4 Cummings that Mr. Bowman would not be a candidate for
5 super max, he would be a lower level of control?

6 A Based on his behavior, this individual can --
7 will not be initially placed in super max due to the
8 fact of his behavior and due to the fact that super
9 max is an additional management tool that we use for
10 disruptive population.

11 Q All right, sir. And you mentioned that if he's
12 not in super max he would have the availability to
13 work; is that correct, sir?

14 A That's correct.

15 Q Would he be compensated for that work?

16 A Very minimally as provided by the courts.
17 Whether he's in super max or whether he's in the
18 general population all inmates get a certain level of
19 income.

20 Q So they get more if they work?

21 A Yes.

22 Q How much?

23 A I couldn't tell you right off, 3, 4, \$5, I
24 guess.

25 Q All right, sir. And assuming he's in a

4879

James E. Aiken - Recross-Exam.

1 medium/maximum facility, not in super max, obviously
2 not work release as you've said, when he's not at
3 work what is he adapting to, what is going on there?

4 A Well, there are two things going on. I can give
5 you the routine, and the routine in relationship to
6 such as your daily routine of coming home and mowing
7 the lawn or something like that.

8 An inmate's routine in that context is
9 one of getting up in the morning, being able to eat,
10 being able to go to work, to be able to take recess
11 in the middle of the day, lunch break, to eat as
12 provided by the constitution, and of course go back
13 to work and then eat in the evening.

14 And a person can involve himself in
15 Bible study, a person can involve himself in
16 education, a person can involve himself in anger
17 management and other things that are provided within
18 the correctional environment. That's one routine.

19 But to put it in a wholistic concept
20 you have to understand that this is in a prison
21 environment and this is not in a community
22 environment. And what I mean by that, you have the
23 police watching you 24 hours a day, seven days a
24 week. It's just like the police being in your home
25 and writing you up for any violation. Not

JA 1234

James E. Aiken - Recross-Exam

1 necessarily of law, even though they have that
2 authority, but administrative violations such as
3 speaking too loud, such as disrespect, such as
4 disobeying a direct order.

5 Additionally you are around very
6 predator people. What do you mean by predator? I've
7 used that term. Predator people are people --

8 MR. BAILEY: Your Honor, I think he's not
9 being responsive to my question. I was simply
10 asking him about conditions of the prison that
11 he had testified about and he's going off into a
12 speech. I would ask him to respond. So I've
13 tried to ask simple questions and get direct
14 answers.

15 MR. CUMMINGS: I think the gentleman was
16 trying to answer, Judge.

17 THE COURT: I think he is trying to answer.

18 Let me ask you, if you will, please,
19 to be as responsive as you can. Rather than
20 giving quite as much as a narrative I want you
21 to answer your question, I want you to answer
22 the question fully, but if you could be mindful
23 to remember brevity I would appreciate it.

24 THE WITNESS: I will certainly do that,
25 Your Honor. Thank you.

4881

James E. Aiken -- Recross-Exam

1 THE COURT: Thank you. You may proceed.

2 A I'll just answer the question like this. I gave
3 the daily routine, but you have to understand that
4 you are doing it around very dangerous people that
5 use violence to resolve issues. And that gives a
6 better picture of what it means living in prison.

7 Q All right, sir. And are there recreational
8 facilities available?

9 A Yes, sir.

10 Q What type of recreational facilities?

11 A An inmate can play basketball, an inmate can
12 exercise, you know, on his own, but to understand,
13 again, to give it in a complete context as briefly as
14 I can, you're doing it around very dangerous predator
15 people.

16 Q My question is related to the recreational
17 facilities and we understand prison is dangerous
18 people. In addition to that are there libraries they
19 go to, to read books?

20 A Yes, sir. As guaranteed by the constitution.

21 Q Are there movies they can watch?

22 A Yes, sir.

23 Q Television?

24 A In some instances, yes, sir.

25 Q Softball, do they play softball?

JA 1236

James E. Aiken - Recross-Exam

1 A I don't know. It's some type of recreation such
2 as that.

3 Q Thank you. That's all I have.

4 THE COURT: Very well. Is this witness
5 free to leave?

6 MR. CUMMINGS: Yes, ma'am.

7 THE COURT: Very well. You are free to go.
8 (Whereupon, the witness steps down from the
9 witness stand.)

10 THE COURT: Yes, sir. If you would call
11 your next witness.

12 MR. CUMMINGS: Ms. Branch, please.

13 (Sharon J. Branch, called as a witness, having
14 first been duly sworn, is examined and testifies
15 as follows:)

16 DIRECT EXAMINATION

17 BY MR. CUMMINGS:

18 Q Ms. Branch, I just wanted to go back a little
19 bit. Obviously you're in the uniform of a Dorchester
20 County Detention Center, correct?

21 A Yes.

22 Q And you are the rank of a sergeant?

23 A Yes.

24 Q How long have you been employed by the
25 Dorchester County Sheriff's Department, ma'am?

4883

Sharon J. Branch - Direct Exam

1 A This coming July will be six years.

2 Q Six years. And I'm going to recall your
3 attention back to February of 2001. And did you come
4 into contact with Mr. Marion Bowman, Jr., ma'am?

5 A Not on that particular day. I wasn't there when
6 he came in.

7 Q Okay. Since February of that year, have you
8 been in contact with Mr. Bowman?

9 A Yes.

10 Q Okay. Almost on a daily basis?

11 A Yes.

12 Q Okay. Dealing with Mr. Bowman, could you
13 briefly describe to the ladies and gentlemen of the
14 jury dealing with Mr. Bowman exactly where he has
15 been inside the facility, please?

16 A Ever since he came to us in 2001 he's been in
17 maximum security, which we call C side or max.

18 Q Okay. Is that because of the nature of the
19 offense?

20 A Yes.

21 Q Okay. And that's the sole reason?

22 A Yes.

23 Q And since he's been over there that time, has he
24 ever done anything to harm a law enforcement officer
25 in your facility to your personal knowledge?

JA 1238

4884

Sharon J. Branch - Direct Exam

- 1 A No.
- 2 Q All right. Has he done anything to you to be
- 3 disrespectful?
- 4 A Attitude.
- 5 Q Okay. When was that, this past Sunday?
- 6 A This past Sunday and other occasions in the past
- 7 from time to time.
- 8 Q Attitude means he spoke out about something?
- 9 A He spoke out. And he does a lot of refusing.
- 10 Q Okay. Did he ever, ever raise his hand?
- 11 A Negative.
- 12 Q Have you ever felt threatened by him?
- 13 A Negative.
- 14 Q Have you ever felt that he would not follow the
- 15 rules and regulations as you demanded?
- 16 A Yes.
- 17 Q What was that?
- 18 A His refusal to do a lot of direct orders.
- 19 Q What's that?
- 20 A They were very simple orders, go back in your
- 21 cell, when the lights flash go back in your cell.
- 22 I'm not going. If you want me to go in, put me in.
- 23 It just depended on what kind of day Marion was
- 24 having.
- 25 Q Was that as we got closer to trial also?

JA 1239

4885

Sharon J. Branch - Direct Exam

1 A As we got closer to the trial he got to become a
2 calmer person, a better person. Then, like you said,
3 all of a sudden Sunday, I don't know what happened.

4 Q That was Sunday morning, about what time for
5 what?

6 A We were getting ready for church service
7 about -- we normally get them ready about a quarter
8 to 8:00 when we start calling them out and he wanted
9 to go to church. And we told him that, you know, he
10 couldn't go to church. And we tried to explain to
11 him why he couldn't go to church because of the fact
12 he was on trial and the trial was so significant. We
13 kept explaining it to him, he kept demanding if I
14 don't go to church I'm not going to court. We kept
15 saying you can't do that. They sent officers back
16 there to talk to him before I got back there. So
17 when the ministers came in we asked the ministers to
18 go back there and talk to him.

19 So the ministers talked to him. I
20 went back there to assist the ministers to talk to
21 him. So I was the sergeant next on shift, I said if
22 anything will go down, I said let me go with the
23 ministers and let me take in manpower. So I took
24 another guy with me. So I went back and told Marion,
25 said, "Marion, let's go out front so we can get you

JA 1240

Sharon J. Branch - Direct Exam

1 dressed and get ready for court because you couldn't
2 go to church because of what was going on."

3 "That's the reason they stopped
4 church, stopped court because of, you know, me going
5 to church?"

6 I said, "No, Marion, they stopped
7 court, not to talk to ten o'clock so the jurors could
8 go to church." He couldn't understand that. He
9 couldn't understand that. So like I said, the
10 ministers talked to him.

11 And I went back up front and I said,
12 "Lieutenant Heyward," I said, "Marion is refusing to
13 do anything." I said, "How do you want me to bring
14 him to you?"

15 Said, "The choice is yours, just tell
16 us." And so that's when she came back along with the
17 ministers. So we talked to him, ministers prayed for
18 him, talked to him and explained things to him. So
19 finally he gave in, he came up front and got dressed.

20 Q Without any hand placed on anybody?

21 A He did not touch them.

22 Q And his major complaint was Sunday morning,
23 right?

24 A Yeah, at that particular time.

25 Q And, again, of your personal knowledge, I know

4887

Sharon J. Branch - Direct Exam

1 you've been seeing Ms. Thomas and I up there a long
2 time.

3 A Right.

4 Q Have you ever had any issues with Mr. Bowman in
5 dealing with us, or any concerns about that?

6 A No, sir.

7 Q Have you ever had any issues about Mr. Bowman in
8 placing any correctional officer in jeopardy?

9 A No, sir.

10 MR. CUMMINGS: Beg the Court's indulgence,
11 Your Honor.

12 THE COURT: All right.

13 (Mr. Cummings and Ms. Hardee-Thomas conferring
14 with Mr. Bowman.)

15 Q When you said that he had some trouble following
16 rules and regulations, would he work on some
17 paperwork, read, didn't want to go back into his
18 cell, is that what you meant?

19 A No, we allowed them because they were in maximum
20 security. We know they only came out -- policy
21 procedure wise only entitled to one hour of rec per
22 day or whatever and, you know, if you complied with
23 us we try to be lenient on you. We say, well, we'll
24 let him out extra, give him time, all depends on how
25 you're acting toward us. We try to give you a break

JA 1242

4888

Sharon J. Branch - Direct Exam

1 sometimes. Any inmate, they get out of hand, take
2 advantage of situations. When you flash the lights
3 they don't want to go back in, you have to go back
4 there, try to talk to them. They want to get hostile
5 because they want to show up in front of other
6 inmates, so to speak, and you cause everybody to get
7 involved and you cause confrontation, you start a
8 small thing into something big. That's not needed.
9 And you keep asking to go back in. No, I'm not going
10 back. If you if you want me to go back in, you put
11 me back in. You never want to do that.

12 Q You didn't have to do that with him?

13 A I didn't have to do that.

14 Q The other issue is, I don't mean this with any
15 disrespect to you, ma'am, that is one hour a
16 Saturday, that is all they're allowed out of that
17 cell unless their lawyer came?

18 A Right.

19 Q In 15 months?

20 A Yes.

21 Q That's all we have.

22 CROSS-EXAMINATION

23 BY MR. BAILEY:

24 Q You have never worked in the Department of
25 Corrections, have you, as a correctional officer?

JA 1243

4889

Sharon J. Branch - Cross-Exam

1 A No, sir.

2 Q So you don't know anything about conditions in
3 prison as compared to the jail here, do you?

4 A No, sir.

5 Q Okay. Now, this Sunday when you had the
6 incident where Mr. Bowman didn't want to come to
7 court here, you said the ministers went in to talk to
8 him and then you went in after that, after --

9 A I went in along with them.

10 Q All right. Did you go in there to protect the
11 ministers?

12 A So to speak, yeah.

13 Q Okay. From Marion?

14 A Right.

15 Q Thank you.

16 REDIRECT EXAMINATION

17 BY MR. CUMMINGS:

18 Q Did you need to do that, though, in reality?

19 A I didn't know, I was just being prepared for
20 anything.

21 Q He asked to pray to his god?

22 A Right.

23 MR. BAILEY: Judge, I object.

24 THE COURT: I sustain the objection.

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

JA 1244

Sharon J. Branch - Redirect Exam

1 THE COURT: Very well.

2 MR. CUMMINGS: That's all the questions I
3 have.

4 THE COURT: Is this witness free to leave?

5 MR. CUMMINGS: Yes, Your Honor.

6 THE COURT: I'm sorry, did you any recross
7 along that line?

8 MR. BAILEY: No, ma'am.

9 THE COURT: All right. You are free to go.
10 (Whereupon, the witness steps down from the
11 witness stand.)

12 THE COURT: Please call your next witness.

13 MR. CUMMINGS: Judge, may we approach?

14 THE COURT: I was going to ask you if you
15 need to approach, all right, come on.

16 (Whereupon, a bench conference was held off the
17 record in the presence of the jury but out of
18 the hearing of the jury.)

19 THE COURT: Ladies and gentlemen, that will
20 conclude the work which we will do today. You
21 obviously -- I understand there's another
22 culinary event scheduled for you this evening
23 which I certainly hope that you will enjoy and
24 hope you enjoy your rest over the evening. We
25 will begin in the morning at nine o'clock, at

4892

State vs. Bowman - Volume XXIII

1 question as I craft one portion of it, so if you
2 all will come back and work with me a little
3 bit. All right. Then we'll be in recess until
4 nine o'clock in the morning. Actually for any
5 of us, if we have any issues we'll be here at
6 8:30, but the jury will be back at 9:00.

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JA 1246

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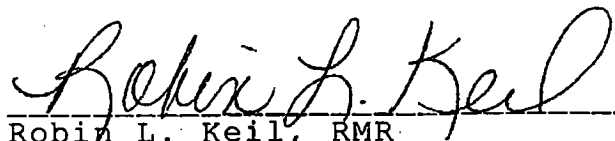
STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) : C E R T I F I C A T E

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

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

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

IN WITNESS WHEREOF I have hereunto set my hand this the 24th day of September 2003.


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

JA 1247

4894

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

ORIGINAL

STATE OF SOUTH CAROLINA,) VOLUME XXIV Pages 4894 - 5068
Plaintiff,) TRANSCRIPT OF RECORD
-versus-) SENTENCING PHASE
MARION BOWMAN, JR.,) May 23, 2002
Defendant.) St. George, South Carolina

B E F O R E:

The Honorable Diane S. Goodstein

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JA 1248

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I N D E X

<u>WITNESSES</u>	<u>Page</u>	<u>Line</u>
ENRIQUE BADILLO		
Direct Exam By Mr. Cummings	4902	3
Cross-Exam By Mr. Bailey	4904	24
TRAVIS D. FELDER		
Direct Exam By Mr. Cummings	4911	18
Cross-Exam By Mr. Bailey	4922	2
Redirect Exam By Mr. Cummings	4926	2

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
C-039	Photograph	4898	
C-040	Jury Question	5040	
D-018	Affidavit of Mary Johnson		4906
D-019	Videocassette Tape		4929
Closing Argument by Mr. Bailey	4949	23	
Closing Argument by Ms. Hardee-Thomas	4975	10	
Closing Argument by Mr. Cummings	4979	1	
Jury Charge	5014	25	
Verdict of the Jury	5050	21	

State vs. Bowman - Volume XXIV

1 (May 23, 2002.)

2 THE COURT: Thank you all so much and
3 please be seated. Now, yesterday I had an
4 opportunity to speak to Mr. Bowman about whether
5 or not he wished to testify and instructed him
6 regarding his decision to testify or not to
7 testify.

8 And, counsel, has Mr. Bowman made his
9 decision?

10 MR. CUMMINGS: May it please the Court,
11 Judge, I would like to have Mr. Bowman stand up.

12 THE COURT: Certainly.

13 MR. CUMMINGS: And then I'll tell you first
14 and then Mr. Bowman can correct me if I'm in
15 error.

16 THE COURT: Certainly.

17 MR. CUMMINGS: Mr. Bowman has made the
18 decision with advice of counsel to not testify
19 in the sentencing phase.

20 THE COURT: Very well. And that is your
21 decision?

22 MR. BOWMAN: Yes, ma'am.

23 THE COURT: You don't have any questions
24 for me?

25 MR. BOWMAN: No, ma'am.

State vs. Bowman - Volume XXIV

1 THE COURT: You understand your right to
2 testify and your right to choose not to testify?

3 MR. BOWMAN: Yes, ma'am.

4 THE COURT: Very well. Understanding those
5 things, though, and remembering the instruction
6 yesterday, then you choose not to testify?

7 MR. BOWMAN: Yes, ma'am.

8 THE COURT: Very well. All right. Thank
9 you.

10 Anything before we bring the jury out?

11 MR. CUMMINGS: Just for housekeeping
12 matters this morning.

13 THE COURT: Certainly.

14 MR. CUMMINGS: As you know we're going to
15 have one short witness. We have an affidavit
16 which I would propose to mark ahead of time to
17 Madam Clerk from one lady. And, Judge, we
18 showed Mr. Bailey the reason for the
19 incapacitation of this young lady and I'll pass
20 this up to the Court. This is not evidence, but
21 I want to show Your Honor why we are marking it
22 my affidavit pursuant to statute.

23 THE COURT: Certainly.

24 MR. CUMMINGS: That's the reason why the
25 young lady -- we can't have anything to get her

State vs. Bowman - Volume XXIV

1 to the courthouse.

2 THE COURT: I understand. Why don't you
3 mark that as a Court's Exhibit?

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

5 THE COURT: As I understand there's no
6 objection to the affidavit being submitted?

7 MR. BAILEY: That's correct, Your Honor. I
8 have reviewed that and I have no objection to
9 it.

10 THE COURT: Very well. We'll mark that
11 photo as a Court's Exhibit.

12 Anything further?

13 MR. BAILEY: Nothing from the State, Your
14 Honor.

15 THE COURT: Thank you.

16 (Marked for purposes of the record was
17 Court's Exhibit 39, photograph.)

18 MR. CUMMINGS: Then, Judge, of course the
19 method of playing the tape, the chain has been
20 stipulated to. Without having to call an
21 officer or anything else what I would propose to
22 do is to play the tape, stop it at integral
23 point and let them see the tape and then put
24 that into evidence as far as the tape going that
25 was recovered from the store. I don't know if

State vs. Bowman - Volume XXIV

1 Mr. Bailey has any objections to that.

2 MR. BAILEY: Your Honor, I have no
3 objection to the chain of custody on the tape.

4 THE COURT: Very well.

5 MR. BAILEY: If that's the issue.

6 THE COURT: Very well. All right.

7 MR. CUMMINGS: I don't know if there's
8 going to be an objection to the introduction of
9 the tape, I know no argument to the chain.

10 MR. BAILEY: No objection to the chain or
11 the introduction of the tape.

12 THE COURT: Very well.

13 MR. CUMMINGS: Thank you, Judge.

14 THE COURT: Got it. There's something,
15 what?

16 MR. BAILEY: Your Honor, I'm not sure what
17 the tape shows, what the probative value of it
18 is.

19 THE COURT: I understand.

20 MR. BAILEY: And I'm not certain whether
21 anybody, if they can be identified on the tape,
22 whether that's going to require somebody to
23 explain who that is and so forth.

24 THE COURT: As I understand there would not
25 be a witness --

4900

State vs. Bowman - Volume XXIV

1 MR. BAILEY: That's correct.

2 THE COURT: -- to explain that.

3 MR. BAILEY: Yes, ma'am.

4 THE COURT: The tape will only be what the
5 tape is.

6 MR. BAILEY: Yes, ma'am. I'll not object
7 to it for whatever, whatever it's worth.

8 THE COURT: Very well. All right.

9 Anything else that you need to put on
10 the record?

11 MR. CUMMINGS: Beg the Court's indulgence,
12 please, for a moment.

13 THE COURT: Certainly.

14 (Pause in proceedings.)

15 MR. CUMMINGS: Your Honor, in the interest
16 of justice may I approach the bench with the
17 solicitor and this lady at --

18 THE COURT: Certainly, of course.

19 (Whereupon, a bench conference was held off the
20 record.)

21 THE COURT: All right, sir.

22 MR. CUMMINGS: May it please the Court,
23 Judge. At this time, Judge, of course we're
24 going to move to -- and you'll see us busy at
25 the table here and I have a subpoena issued for

JA 1254

State vs. Bowman - Volume XXIV

1 a particular gentleman and have him brought to
2 the courthouse today, Judge, per my client's
3 instructions.

4 THE COURT: All right. Very well.

5 MR. CUMMINGS: Thank you, Judge.

6 THE COURT: All right. You are prepared to
7 call your first witness?

8 MR. CUMMINGS: Yes, ma'am. We are.

9 THE COURT: Very well. Let us have our
10 jury.

11 (Whereupon, the jury returns to the courtroom at
12 9:31 a.m.)

13 THE COURT: Good morning, ladies and
14 gentlemen. And I certainly hope that you had a
15 pleasant evening last evening. I understand
16 that you continued your culinary tour around
17 Dorchester County. And I certainly hope your
18 meal last evening was satisfactory for you. And
19 at this time we will continue with the defense
20 case.

21 Mr. Cummings.

22 MR. CUMMINGS: Thank you, Your Honor. We
23 would call Deputy Badillo to the stand, please.
24 (Enrique Badillo, called as a witness, having
25 first been duly sworn, is examined and testifies

Enrique Badillo - Direct Exam

1 as follows:)

2 DIRECT EXAMINATION

3 BY MR. CUMMINGS:

4 Q. As Her Honor stated you do need to speak up very
5 loudly this morning. I know you're tired. What time
6 did you get off this morning?

7 A. Six o'clock in the morning, sir.

8 Q. I'm going to ask you a little bit, obviously by
9 your uniform, where are you employed?

10 A. I work for Dorchester County Detention Center.

11 Q. All right, sir. And have you had the occasion
12 to come into contact with Mr. Marion Bowman, Jr.,
13 sir?

14 A. Yes, sir.

15 Q. In what capacity have you been in contact with
16 Mr. Bowman?

17 A. Well, I work 12-hour shift and every day we just
18 go and check in the place he had every single day for
19 one hour every other hour. Every time I just got the
20 privilege to go back there and talk to him and talk
21 to the other inmates that are back there.

22 Q. Did Mr. Bowman ever give you any difficulty at
23 all, sir?

24 A. Never.

25 Q. Has he been anything other than a gentleman to

Enrique Badillo - Direct Exam

1 you?

2 A. Yes, sir. He is just as polite as can be.

3 Q. And have you had the occasion to be around him
4 sufficiently, sir? I'm going to ask you when exactly
5 did you meet Mr. Bowman?

6 A. I met him in August, that's when I start working
7 in detention center.

8 Q. Yes, sir.

9 A. Until this day.

10 Q. And what unit is Mr. Bowman housed in because of
11 the nature of his charge?

12 A. He is in maximum security, sir.

13 Q. All right, sir. And have you had the occasion
14 to be where Mr. Bowman has been out of his cell and
15 be around you and have you work -- you work around
16 him, sir?

17 A. Yes, sir.

18 Q. All right. Would you please tell the ladies and
19 gentlemen of the jury his demeanor and his attitude
20 towards you?

21 A. Well, his attitude towards not only me, but the
22 rest of the officer is I would say it's all right.
23 He never raise his voice. And when somebody get out
24 of line over there in max he, himself, he tell the
25 people just to be polite with the officers because we

4904

Enrique Badillo - Direct Exam

1 always try to help them in anything, you know, we
2 can.

3 Q. Have you ever noticed anything about him that
4 would cause you any concern or any care for your
5 safety?

6 A. No, sir. Never.

7 Q. Have you ever asked his assistance while back in
8 that unit for any reason?

9 A. No, sir.

10 Q. Have you ever had any issues or problems with
11 Mr. Bowman that would lead you to state that he is
12 anything other than a person who could adapt to his
13 surroundings?

14 A. No, sir.

15 MR. CUMMINGS: Beg the Court's indulgence,
16 Your Honor.

17 THE COURT: All right.

18 (Mr. Cummings and Ms. Hardee-Thomas conferring
19 with Mr. Bowman.)

20 MR. CUMMINGS: Your Honor, that's all the
21 questions we have of this gentleman, and thank
22 you.

23 CROSS-EXAMINATION

24 BY MR. BAILEY:

25 Q. You have never worked in the South Carolina

JA 1258

Enrique Badillo - Cross-Exam

1 Department of Corrections, have you, sir?

2 A. No, sir.

3 Q. Yes, sir. So your experience would be limited
4 to the Dorchester County Detention Center?

5 A. Yes, sir.

6 Q. All right, sir. And you do not have any
7 knowledge of the conditions and incarcerations at any
8 other facility besides the jail over here?

9 A. That is correct, sir.

10 Q. All right, sir. Are you here under subpoena?

11 A. No, sir.

12 Q. Thank you. That's all I have.

13 THE COURT: Very well. Any redirect?

14 MR. CUMMINGS: No, ma'am. Nothing else on
15 redirect.

16 THE COURT: Is this witness free to go?

17 MR. CUMMINGS: Yes, ma'am. I hope he goes
18 home and gets some sleep.

19 THE COURT: You are free to leave.

20 THE WITNESS: Thank you.

21 (Whereupon, the witness steps down from the
22 witness stand.)

23 MR. CUMMINGS: Judge, as this gentleman is
24 getting off the stand, Your Honor, pursuant to
25 our rules and by agreement and stipulation there

Enrique Badillo - Cross-Exam

1 is one affidavit which will be presented as
2 Defendant's Exhibit Number 18 into evidence,
3 Your Honor, which is an affidavit from Ms. Mary
4 Johnson in reference to Mr. Bowman. Due to her
5 health problems, incapacitation, she has
6 submitted a limited affidavit based on our
7 rules, ma'am, and, we would offer that into the
8 jury's consideration, ma'am.

9 MR. BAILEY: Without objection, Your Honor,
10 would stipulate.

11 THE COURT: Very well. Defendant's Exhibit
12 18 in evidence without objection.
13 (Entered into evidence was Defendant's Exhibit
14 18, affidavit of Mary Johnson.)

15 MR. CUMMINGS: Thank you, Judge. Your
16 Honor, we pose the next issue before you that we
17 talked about earlier.

18 THE COURT: Very well. All right.
19 Counsel, let me see you a second.
20 (Whereupon, a bench conference was held
21 off the record in the presence of the
22 jury but out of the hearing of the jury.)

23 THE COURT: Ladies and gentlemen, we are --
24 there is an additional matter that you very well
25 may need to concern yourselves. And the

State vs. Bowman - Volume XXIV

1 scheduling of a trial sometimes gets to be a
2 little bit like probably orchestrating an event,
3 play, or something of that nature. And I
4 mention that to you because we have a little
5 scheduling snafu at this point and I'm going to
6 ask you to be at ease in your jury room while we
7 wait on the individual to show up. And we are
8 hoping that it will not be particularly lengthy,
9 but those of you that wanted to take your walk
10 outside or to go ahead and smoke, I wanted you
11 to be at ease to do that because it is
12 appropriate that we allow this person to arrive
13 and that's what we're going to be doing at this
14 time, quite frankly, is we're going to have, if
15 you will, a little break at this point, but I
16 wanted you to know what this break is about and
17 I wanted you to certainly be at ease.

18 Those of you that wanted to smoke I
19 wanted you to smoke, those of you I know that
20 sometimes you've taken a stroll and I wanted you
21 to be able to do that as well. I don't think it
22 will be lengthy, I genuinely don't, but we need
23 to do that. Certainly no fault of these folks,
24 it's just one of those things that happens
25 frequently during the conduct of a trial. So we

State vs. Bowman - Volume XXIV

1 will be at ease.

2 Be mindful not to discuss this matter
3 or allow anyone to discuss it with you. I think
4 there are probably cookies, et cetera, snacks
5 for you in your jury room. If not we'll
6 certainly get those for you immediately. Thank
7 you. If you would, please, step to your jury
8 room. Remember not to discuss this matter with
9 anyone or allow anyone to discuss it with you.
10 (Whereupon, the jury retires to the jury room at
11 9:41 a.m.)

12 THE COURT: All right. Counsel, what I'd
13 like you to do is I understand the solicitor's
14 office has made a phone call. I would like you
15 to follow that up to see if his lawyer's been
16 able to locate him and then just report to me so
17 I can have an idea how long we're going to need
18 to be at ease.

19 MR. CUMMINGS: We've also sent the
20 investigator for our team, ma'am, to go.

21 THE COURT: Subpoena as well.
22 Unfortunately by the time the subpoena finds him
23 it could be hours and we cannot wait hours.

24 MR. CUMMINGS: Yes, ma'am.

25 THE COURT: But we'll certainly wait a

State vs. Bowman - Volume XXIV

1 reasonable period of time.

2 MR. BAILEY: Can I put one thing on the
3 record in regard to Mr. Felder who is
4 potentially going to be recalled by the defense?

5 THE COURT: Yes.

6 MR. BAILEY: As I advised Mr. Cummings and
7 the Court as he testified to, there was a plea
8 agreement he negotiated through Charles
9 Williams, his attorney. At the time he
10 testified we had not consummated that into a
11 written agreement. And after he testified I did
12 receive from Mr. Williams the copy of the
13 agreement that he has signed and since he'll be
14 testifying I think I ought to go ahead and
15 provide him with a copy of that now, make
16 that -- just put that on the record.

17 THE COURT: Very well.

18 MR. BAILEY: I've not even signed this yet,
19 it just came in the mail, so I'll sign that and
20 run a copy for him.

21 THE COURT: Very well. Thank you for doing
22 that, Mr. Bailey.

23 Anything further?

24 MR. CUMMINGS: No, Judge. We appreciate
25 your kindness.

State vs. Bowman - Volume XXIV

1 THE COURT: All right. We'll be in recess.
2 You all just let me know what you learn.

3 MR. CUMMINGS: Yes, ma'am.

4 (Recess, from 9:42 a.m. to 10:18 a.m.)

5
6 THE COURT: Thank you very much. And
7 please be seated. Anything before we bring the
8 jury out?

9 MR. BAILEY: No, ma'am.

10 MR. CUMMINGS: No, Judge. And we thank you
11 very much for your kindness. Just so you know,
12 Your Honor, Ms. Thomas is more electronically
13 inclined than I am so she may be standing by as
14 we're talking about things, not looking like two
15 lawyers working on the same witness.

16 THE COURT: Very well. That is fine. As I
17 understand it, Mr. Williams did not wish to be
18 present today; is that right?

19 MR. BAILEY: That's correct, Your Honor. I
20 talked to Mr. Williams on the phone, he does not
21 wish to be present, but he's given his go ahead
22 to have Mr. Felder testify again.

23 MR. CUMMINGS: Thank you, Judge.

24 THE COURT: Very well, all right. Let us
25 have our jury.

State vs. Bowman - Volume XXIV

1 (Whereupon, the jury returns to the courtroom at
2 10:18 a.m.)

3 THE COURT: All right. Ladies and
4 gentlemen, at this time we will continue with
5 the defense's case.

6 Mr. Cummings.

7 MR. CUMMINGS: Thank you, Your Honor. We
8 would call Mr. Travis Felder to the stand,
9 please.

10 THE COURT: All right. Mr. Felder, please.

11 Mr. Felder, if you will recall you've
12 already been sworn in on this matter, you can
13 come around.

14 (Travis D. Felder, called as a witness, having
15 first been duly sworn, is examined and testifies
16 as follows:)

17 DIRECT EXAMINATION

18 BY MR. CUMMINGS:

19 Q. Mr. Felder, good morning, sir.

20 A. Good morning.

21 Q. I'm going to recall your attention back to the
22 night of the 16th and 17th of February in the year
23 2001, sir. And you should recall that, you testified
24 in here a few days ago.

25 A. Yes.

Travis D. Felder - Direct Exam

1 Q. All right. And I want to bring you back to that
2 evening at approximately around the time of three
3 o'clock in the morning. Where did you go?

4 A. I went to EZ Shop.

5 Q. I'm going to ask Ms. Thomas with the Court's
6 permission to turn the tape on. I'm going to ask
7 you, Mr. Felder, if you'll, please, go down, stand
8 next to the television set for a moment.

9 THE COURT: You got to be careful not to
10 block.

11 Q. There's a pointer right there, young man. Okay.
12 If you stand close to the side of the TV set for a
13 moment and we'll start and stop the frame as needed,
14 but you won't block those nice folks. Stand right
15 there, okay?

16 A. (The witness complies.)

17 Q. All right. Can you identify the gentleman in
18 the frame up here, sir? Take a good look.

19 A. Right here?

20 Q. Yes, sir. Okay. Keep watching.

21 A. (The witness complies.)

22 Q. Okay. Mr. Felder, is that you talking to the
23 young lady there?

24 A. I guess.

25 Q. Don't guess. Is that you?

Travis D. Felder - Direct Exam

1 A. I can't -- I can't see it.

2 Q. Okay. Hold on. All right. Stop the frame. Is
3 that you, sir? Stop right there. Is that your face
4 here, sir?

5 A. Yeah, that's me.

6 Q. That's your voice?

7 A. Yeah.

8 Q. No question. What time does it say on this
9 machine, sir, if you can see it, two...?

10 A. 2:58.

11 Q. 2:58 in the morning, okay.

12 A. Uh-huh (affirmative response).

13 Q. No question about that, right?

14 THE COURT: You need to answer audibly,
15 please.

16 A. Yes. Yes, sir.

17 Q. And the date?

18 A. Seventeenth.

19 Q. Of February?

20 A. Yes, sir.

21 Q. 2001?

22 A. Yes, sir.

23 Q. And you were at the store there?

24 A. Yes, sir.

25 Q. Was Mr. Bowman with you?

4914

Travis D. Felder - Direct Exam

1 A. No, sir.

2 Q. Okay. Ms. Thomas is going to fast forward this
3 for a few moments, but I don't want to block
4 anybody's view, if you'll just stand right there for
5 a moment, sir. As she's doing that, where did you go
6 after you made that purchase?

7 A. I went to Apartment [REDACTED] in the Villa Apartments.

8 Q. How far is that from this store?

9 A. Maybe a mile to two.

10 Q. And what's the name of the store you went into
11 that night?

12 A. Horizon.

13 Q. Horizon?

14 A. EZ Horizon.

15 MR. CUMMINGS: Beg the Court's indulgence,
16 Your Honor, while we fast forward this.

17 (Pause in proceedings.)

18 Q. Stop the frame. Is that you again, Mr. Felder?

19 A. No idea, I didn't see it.

20 Q. No idea. Well, let it run first then.

21 A. Yes, sir.

22 Q. Okay. What time is that, sir?

23 A. 3:14.

24 Q. 3:14. And what day of the week and the month,
25 sir?

JA 1268

Travis D. Felder - Direct Exam

1 A. 2-17.

2 Q. You came back to the store, what did you
3 purchase?

4 A. Gasoline.

5 Q. Gasoline. I'm going to ask you to take the
6 stand for just a moment. And if we could just leave
7 that frame on for just a minute.

8 A. (The witness complies.)

9 Q. When you testified here a few days ago did you
10 tell the ladies and gentlemen of the jury that you
11 purchased gasoline?

12 A. No, sir. I didn't.

13 Q. Did you ever tell them that you went back to the
14 store that night after testifying in here the other
15 day?

16 A. No, sir. I didn't.

17 Q. Mr. Bowman is not in that picture at all in the
18 store, is he?

19 A. No, sir. He isn't.

20 Q. Because he wasn't there in the store with you?

21 A. No, sir. He wasn't.

22 Q. And then Mr. Bowman -- it's your testimony to
23 these ladies and gentlemen of the jury, and if I'm
24 incorrect, sir, you'll correct me, it's your
25 testimony that you went back to the projects after

4916

Travis D. Felder - Direct Exam

1 buying a dollar's worth of gas or a gallon jug of
2 gas?

3 A. No, sir. That's not my testimony.

4 Q. Did you state that you were at the projects and
5 Marion came and got you?

6 A. Yes, sir.

7 Q. You purchased the gasoline; is that correct,
8 sir?

9 A. Yes, sir.

10 Q. All right. Did you go to the projects and pick
11 Marion up?

12 A. No, sir.

13 Q. Did Marion come to you and pick you up? Did he
14 pick you up in a car?

15 A. No, sir. He came to the projects -- he came to
16 the projects in a car.

17 Q. You asked -- you were asked in here, you stated
18 that Marion, Mr. Bowman, was the person who goes
19 out -- and, again, sir, I'm going to ask you to
20 recall your memory first, your testimony in here,
21 it's your testimony that you -- Marion comes to the
22 door, you leave at 3:15; is that correct?

23 A. Somewhere like that, yes, sir.

24 Q. 3:15 you left. And you followed him to Nursery
25 Road in your car?

JA 1270

Travis D. Felder - Direct Exam

1 A. Yes.

2 Q. You stayed -- as I understand correctly, sir,
3 did you follow him out there, you're sitting in the
4 car, Marion gets out, brings Miss Martin back out,
5 puts her in the car, drives up a little bit, sets it
6 on fire?

7 A. Yes, sir.

8 Q. How did Marion have anything in his hand to do
9 that?

10 A. He came and got the gas.

11 Q. Where did he get the gas from?

12 A. Out of my car.

13 Q. Out of your car. So you transported the gas to
14 Nursery Road according to your testimony?

15 A. Yes.

16 Q. You did not state that the other day, did you?

17 A. No, I didn't.

18 Q. When you testified today to these folks, that's
19 you in that store buying gas at 3:14 in the morning?

20 A. Yes, sir.

21 Q. There's no question now, today, you purchased
22 the gas, correct?

23 A. Yes, sir.

24 Q. You transported the gas to Nursery Road
25 according to your testimony?

4918

Travis D. Felder - Direct Exam

1 A. Yes, sir.

2 Q. It's now your testimony that you gave Marion the
3 gas, correct, you gave him?

4 A. Yeah.

5 Q. You drove -- let me ask you a simple question:
6 Was the gasoline in your car?

7 A. Yes.

8 Q. In what type of container?

9 A. A gas jug.

10 Q. And you're just driving down the road from
11 Branchville to Nursery Road with a jug of gas?

12 A. Yes, sir.

13 Q. Then, again, from your testimony it's Marion
14 that does this?

15 A. Yes, sir.

16 Q. No doubt about that?

17 A. Yes, sir.

18 Q. And as far as your testimony, you never
19 mentioned buying gas to these folks when you
20 testified, did you?

21 A. No, sir.

22 Q. And you were asked again by Mr. Bailey as part
23 of your deal to tell the truth to these good folks?

24 A. Yes, sir.

25 Q. I mean, that was one of the questions Mr. Bailey

JA 1272

Travis D. Felder - Direct Exam

1 asked you in particular about that?

2 A. Yes, sir.

3 Q. Okay. And then as far as -- I'm sorry, I
4 apologize. No question that's your face in the
5 camera, your person?

6 A. Yes.

7 Q. No question what you did now? No question what
8 you did?

9 A. No question.

10 Q. You testified you were in shock the other day.

11 A. Yes, sir.

12 Q. You were in shock when you bought the gasoline?

13 A. No, sir.

14 Q. You were in shock transporting the gasoline?

15 A. No, sir.

16 Q. You were in shock having the gas in your car
17 seeing Marion touching a human being from your
18 statements by the ankles, I believe you said?

19 A. Yes, sir.

20 Q. That when he came up to you from your testimony
21 now and asked you for a gallon of gas, you told your
22 buddy here? I'm trying to get your words out of you,
23 sir. Answer my question.

24 A. Could you repeat the question?

25 Q. You saw Marion touch Miss Martin by her ankles,

Travis D. Felder - Direct Exam

1 your testimony, I'm only using your words, and take
2 Miss Martin and drag her body out of the woods.

3 A. Yes, sir.

4 Q. Picked this person up, put it in the trunk, all
5 by himself?

6 A. Yes, sir.

7 Q. And then he just comes over to you nonchalantly
8 or in any way, walks over to you and says may I have
9 the gallon of gasoline that you just purchased?

10 A. Yes, sir.

11 Q. And you just sat there?

12 A. Yes, sir.

13 Q. Because I believe you said you stated to the
14 ladies and gentlemen of the jury that, oh, my
15 goodness, it's Kandee, your friend?

16 A. No, I didn't. I did not. I did not say that.

17 Q. What did you say, sir, when you recognized it
18 was Miss Martin? You told them that.

19 A. Yes. I asked him, I said --

20 Q. Speak up, please.

21 A. I said, "What's going on?" He said, "I killed
22 Kandee."

23 Q. You're as sure of that as the rest of the
24 testimony you gave these folks the other day in
25 giving them your complete testimony?

Travis D. Felder - Direct Exam

1 A. Yes, sir.

2 Q. So Marion had to be the one to burn the remains
3 of Miss Martin?

4 A. Yes, sir.

5 Q. And Marion had to be one that killed her because
6 you say so?

7 A. That's what he said.

8 MR. CUMMINGS: Beg the Court's indulgence.

9 (Mr. Cummings and Ms. Hardee-Thomas conferring
10 with Mr. Bowman.)

11 Q. I understand this morning you've had the
12 opportunity to speak to Mr. Bailey and myself
13 politely; have you not, sir?

14 A. Yes, sir.

15 Q. And you were brought back to the courtroom today
16 for your testimony again?

17 A. Yes, sir.

18 MR. CUMMINGS: Thank you, Your Honor.
19 That's all the questions we have of this
20 gentleman.

21 THE COURT: All right. Cross-examination.

22 MR. CUMMINGS: At the end, Your Honor, I do
23 have one issue I would like to raise.

24 THE COURT: All right.

25

Travis D. Felder - Cross-Exam

CROSS-EXAMINATION

1 BY MR. BAILEY:

2 Q. Mr. Felder, all I want out of you today is what
3 I asked you for the last time, is the truth. So you
4 understand that?
5

6 A. Yes, sir.

7 Q. All right. Now, backing up a little bit, you
8 left the Allen Murray Club in Bowman with two girls;
9 is that correct?

10 A. Yes, sir.

11 Q. You stopped at the EZ Store?

12 A. Yes, sir.

13 Q. The jury has seen about three minutes to 3:00 I
14 think you stop and you go in there and you see
15 yourself getting chips and dip?

16 A. Yes, sir.

17 Q. Where did you go then?

18 A. I went to Apartment ☐.

19 Q. Okay. Were you expecting to meet Marion Bowman
20 later on?

21 A. No, sir. I wasn't.

22 Q. At some point after you got back to Apartment ☐
23 you got a knock on the door; is that right?

24 A. Yes, sir.

25 Q. Who was at the door?

Travis D. Felder - Cross-Exam

1 A. Marion Bowman.

2 Q. Okay. And you've testified previously that he
3 asked you to step outside and you did; is that
4 correct?

5 A. Yes, sir.

6 Q. What did he tell you?

7 A. He said he want to go park a car.

8 Q. Go park a car. And you agreed to that; is that
9 correct, sir?

10 A. Yes, sir.

11 Q. Okay. And on this videotape here at about 3:17
12 you drove to the Horizon EZ Store again, the same
13 place you bought the chips and dip?

14 A. Yes, sir.

15 Q. You bought some gasoline?

16 A. Yes, sir.

17 Q. What kind of container did you put the gasoline
18 in?

19 A. In a gas jug.

20 Q. Metal jug, glass jug?

21 A. One of the red plastic jugs.

22 Q. Where did it come from?

23 A. From Mr. Bowman.

24 Q. Okay. When did Mr. Bowman give you that jug?

25 A. Before I got in my car.

Travis D. Felder - Cross-Exam

1 Q. Did he say anything to you when he gave you that
2 jug?

3 A. He said he needed 2 or \$3 worth of gas.

4 Q. Okay. All right. And so you stopped at the
5 store on the way out of town and bought that gas at
6 the request of Marion Bowman?

7 A. Yes, sir. I did.

8 Q. And what did you do with the gas after you
9 bought it, where did you put it?

10 A. I put it in my car.

11 Q. All right, sir. And as you followed Marion
12 Bowman driving Kandee Martin's car out to the Nursery
13 Road near Reevesville, what was on your mind as far
14 as what was going to happen once he got to wherever
15 he was going to park this car?

16 A. He was going to park the car, put the gas in it,
17 maybe he was going to come back to it later on
18 another day.

19 Q. Okay. All right. And then when you got out
20 there, you followed him out there, he parked Kandee's
21 car, you parked your car?

22 A. Yes, sir.

23 Q. You testified previously that he got out and he
24 dragged the body out of the woods?

25 A. Yes, sir.

Travis D. Felder - Cross-Exam

1 Q. Put it in the trunk, admitted to you that he
2 shot Kande Martin. Is all that true?

3 A. Yes, sir.

4 Q. Okay. And what happened to the gasoline?

5 A. He came and got the gas out of my car.

6 Q. Okay. What did he do with it?

7 A. He came and got the gas out of my car, he got in
8 his car.

9 Q. And you testified earlier he told you to go make
10 a U-turn and come around back heading the other way?

11 A. Yes, sir.

12 Q. You testified you saw Marion Bowman light that
13 car on fire; is that correct?

14 A. Yes, sir.

15 Q. All right. Did that happen?

16 A. Yes, sir.

17 Q. Why didn't you tell us that the other day,
18 Mr. Felder?

19 A. Excuse me?

20 Q. Why didn't you tell us about the gasoline the
21 other day?

22 A. You didn't ask.

23 MR. BAILEY: Your Honor, that's all I have.

24 THE COURT: Redirect?

25

Travis D. Felder - Redirect Exam

REDIRECT EXAMINATION

1
2 BY MR. CUMMINGS:

3 Q. You were asked to tell these ladies and
4 gentlemen of the jury what happened that day and Mr.
5 Bailey stood up here and you talked for a long period
6 of time. So it's not the fact that the State
7 prosecutor didn't ask you, you didn't tell them;
8 isn't that true?

9 A. Excuse me? Say that again.

10 Q. Isn't it true it's not that Mr. Bailey didn't
11 ask you, son, because the whole part of this deal is
12 you had to tell these folks everything to keep your
13 deal. You didn't tell them that, did you?

14 A. I was supposed to tell the truth. Tell the
15 truth.

16 Q. Yeah, okay. You did not tell them that you
17 bought the gasoline?

18 A. No, sir. I didn't.

19 Q. You did not tell these folks that you're driving
20 down a road with a gallon jug of gas, from your
21 statements now, driving down the road because you
22 think he's going to go park a car. Well, the purpose
23 of buying gas in a jug normally is to put the gas in
24 a car; is it not?

25 A. Yes, sir.

Travis D. Felder - Redirect Exam

1 Q. If you're asking to buy a dollar's worth of gas,
2 what does it usually mean to you when you go by a
3 dollar's worth of gas?

4 A. It was \$3 worth of gas.

5 Q. Oh, okay. You buy this gas as Mr. Bailey asked
6 you a few moments ago. This is a matter of seconds
7 according to your testimony now. You stopped the
8 car, Mr. Bowman gets out, goes to the woods, drags
9 Kandee by her feet, ankles, pulls her out, puts her
10 in the trunk, drives up a little bit and then sets
11 the car on fire because that's what you say?

12 A. Yes, sir.

13 Q. When you left the gas station, what direction do
14 you go, what direction is your car going at 3:17 in
15 the morning?

16 A. Out towards McAlhany Road.

17 Q. McAlhany Road. Did Marion ask you to take him
18 home from the projects? Isn't that why he knocked on
19 the door, he asked you to take him home?

20 A. No, sir.

21 Q. No. Because you took him out to the Nursery
22 Road because you say so; isn't that right?

23 A. Yes, sir.

24 Q. You told these folks you said that?

25 A. Yes, sir.

Travis D. Felder - Redirect Exam

1 Q. You're riding around with a gallon or two or
2 three gallons worth of gas in your front seat and you
3 think he's just going to park a car?

4 A. Yes, sir.

5 Q. Are you as sure about all your testimony about
6 what you said today as what you left out to those
7 folks the other day?

8 A. Excuse me?

9 Q. Are you as sure today about your testimony,
10 exactly as sure about your testimony today as what
11 you left out the other day for those good folks to
12 hear?

13 A. Yes.

14 MR. CUMMINGS: That's all the questions of
15 this gentleman.

16 THE COURT: All right. Any redirect?

17 MR. BAILEY: No, ma'am.

18 THE COURT: Is this witness free to leave?

19 MR. CUMMINGS: Yes, ma'am, Judge.

20 THE COURT: You are free to go.

21 (Whereupon, the witness steps down from the
22 witness stand.)

23 THE COURT: All right then, Mr. Cummings,
24 if you would please call your next witness.

25 MR. CUMMINGS: May it please the Court,

State vs. Bowman - Volume XXIV

1 Judge, as I said we may have a matter. Your
2 Honor, I would move to mark this tape into
3 evidence, Your Honor, Defense Exhibit Number 19.

4 MR. BAILEY: Without objection.

5 THE COURT: Without objection. Defense
6 Exhibit Number 19 in evidence without objection.
7 (Entered into evidence was Defendant's Exhibit
8 19, videocassette tape.)

9 MR. CUMMINGS: Your Honor, at this point
10 the defense would rest, please.

11 THE COURT: Will there be any reply?

12 MR. BAILEY: No, ma'am.

13 THE COURT: Very well. Ladies and
14 gentlemen, you have now heard the witnesses and
15 received the evidence which you will in this
16 phase of this trial. That signifies to me that
17 there are matters which I must take up outside
18 your presence; therefore, I'm going to ask you
19 to please step to your jury room. Do not
20 discuss this matter and do not allow anyone to
21 discuss it with you. We will be with you
22 shortly. And when we are together on our next
23 occasion we will be together to hear the
24 arguments of counsel and then my charge on the
25 law. Please step to your jury room.

State vs. Bowman - Volume XXIV

1 (Whereupon, the jury retires to the jury room at
2 10:44 a.m.)

3 THE COURT: First of all, Mr. Cummings, you
4 said you had a matter.

5 MR. CUMMINGS: That was it, Judge. I
6 wanted to state we would rest and of course make
7 my legal argument before the Court again
8 renewing my motions, again, Judge, and just
9 trying to give Your Honor the preface ahead of
10 time.

11 THE COURT: Yes, sir. Let me hear from
12 you.

13 MR. CUMMINGS: My arguments, again, as to
14 the aggravating factors being submitted to the
15 jury, Your Honor, for their consideration as to
16 punishment, Your Honor, I'll start off again
17 with kidnapping. You've heard my argument, you
18 read everything. I think, Judge, now
19 particularly in light of listening to Mr. Felder
20 again, as well as other evidence taken in
21 totality, again, Judge, we respectfully renew
22 our motion for a directed verdict or to prohibit
23 the Court in allowing the aggravating factor to
24 be presented to the jury because, Your Honor,
25 there has been no evidence presented that would

State vs. Bowman - Volume XXIV

1 show kidnapping beyond a reasonable doubt that
2 any reasonable jury could infer from, ma'am, and
3 that we would ask Your Honor to direct that
4 verdict and to prohibit or not allow the
5 aggravating factor of kidnapping to go back,
6 ma'am.

7 THE COURT: Thank you very much. I'll
8 incorporate my ruling from the other day and
9 respectfully deny your motion on the same basis
10 and on the same -- on those same cases that I
11 cited I believe yesterday and would respectfully
12 deny your motion for a directed verdict and note
13 your exception for the record.

14 MR. CUMMINGS: Thank you, ma'am. And then
15 as to the second one, criminal sexual conduct in
16 any degree, Your Honor, respectfully, I believe
17 there's not any evidence at all of any criminal
18 sexual activity, there's been no proof of any
19 nonconsensual criminal sexual conduct on behalf
20 of Mr. Bowman with Miss Martin.

21 Your Honor, the reason why I state
22 that is we have certain degrees of criminal
23 sexual conduct and I know that we have studied
24 this, everybody, both Mr. Bailey, the defense,
25 Your Honor has studied this in great detail

State vs. Bowman - Volume XXIV

1 about the charge of criminal sexual conduct and
2 I believe humbly, Your Honor, the State has the
3 burden of proving some degree of criminal sexual
4 conduct and the fact that it was nonconsensual
5 sexual activity in any presentation of evidence.
6 There's only been the matters presented here and
7 evidence that they found some DNA of Mr. Bowman
8 with this lady, Your Honor.

9 And at that point, Judge, there's no
10 possible way you could charge any degree of
11 criminal sexual conduct with reasonable degree
12 of certainty or that this jury could find any
13 degree of criminal sexual conduct beyond a
14 reasonable doubt and, Your Honor, I would ask
15 that you not present or allow that evidence to
16 be presented as an aggravating factor on behalf
17 and against Mr. Bowman.

18 THE COURT: Very well. Do you want to
19 speak to that, Mr. Bailey, the degrees, that's a
20 little different than --

21 MR. BAILEY: Yes, ma'am. Your Honor, of
22 course the evidence with regard to criminal
23 sexual conduct is circumstantial evidence and we
24 discussed State vs. Butler which is on all fours
25 with this. As far as the degrees would go in I

State vs. Bowman - Volume XXIV

1 would defer to the Court, Your Honor. I think
2 the only one that would be inconsistent with any
3 circumstantial evidence the jury might reach
4 would be the latter part of the third degree,
5 the death issue third degree with criminal
6 sexual conduct.

7 The State's position is CSC should be
8 submitted with specific wording in the charge.
9 If you want to just charge generic CSC I would
10 have no objection to that. If you wanted to get
11 the entire first degree, second degree, and the
12 appropriate portion of the third degree I would
13 have no objection to that either at the Court's
14 discretion.

15 THE COURT: Very well.

16 MR. CUMMINGS: Judge, the only dilemma I
17 have, of course Ms. Thomas and I discussed this,
18 in charging all three it appears almost -- and,
19 again, from practice and pattern of being around
20 a long time the true professionals that we argue
21 all the time, is that you start reading off the
22 first and a lesser included offense is second
23 and a lesser included offense may be third
24 depending on the characteristics, and by that
25 time the jury's hearing, respectfully, ma'am, if

State vs. Bowman - Volume XXIV

1 you don't find one let's look at two, if you
2 don't find two let's look at three. Then we
3 have the general catch-all statute if Your Honor
4 just includes that generic charge also.

5 So on behalf of Mr. Bowman I would
6 respectfully state that, Judge, and also for the
7 record, that I know we're going to have to
8 tailor this charge about presenting it back in
9 aggravation in a particular manner and I would
10 ask the Court even as we're talking right now to
11 take any consideration that we may need again to
12 go over what you all believe would be the proper
13 presentation back to this jury on the
14 aggravating factor of criminal sexual conduct,
15 Judge.

16 THE COURT: Let me say to you that on the
17 basis of State vs. Butler just as I did I'm
18 going to submit criminal sexual conduct as an
19 aggravating circumstance. And I know that at
20 this moment my charge has the generic, if you
21 will, the general CSC charge, criminal sexual
22 conduct charge. However, if you request
23 anything additional to that I will charge that.

24 MR. CUMMINGS: No, ma'am. And that's why I
25 presented that to Your Honor, respectfully,

State vs. Bowman - Volume XXIV

1 Judge.

2 THE COURT: Yes, sir.

3 MR. CUMMINGS: In that the generic charge
4 is what I would request and, again, over my
5 objection, Your Honor, respectfully about
6 it's --

7 THE COURT: I do understand that, that you
8 don't think it ought to be in there at all.

9 MR. CUMMINGS: Correct.

10 THE COURT: Very well.

11 MR. CUMMINGS: And I'll move on now.

12 THE COURT: All right, sir.

13 MR. CUMMINGS: As to the aggravating factor
14 of robbery, again, while armed with a deadly
15 weapon, it would be the same argument we made
16 the other day and I won't speak longer, Judge.
17 And, again, we emphasize at the end of the
18 State's case and the of the defendant's case
19 now, that there's been no evidence at all of a
20 robbery while armed with a deadly weapon at all
21 and we would ask that you not submit that,
22 Judge, and direct a verdict of the fact that my
23 client would not be facing that aggravating
24 factor, ma'am.

25 And as to larceny while armed with a

State vs. Bowman - Volume XXIV

1 deadly weapon, Judge, there's been no evidence
2 in the record of any property being taken,
3 there's been no evidence, again, Your Honor,
4 respectfully, that he was armed with a deadly
5 weapon when any larceny took place. And I know,
6 Your Honor, it's an aggravating factor that,
7 respectfully, Judge, that should not be
8 submitted to the jury and we would ask you to
9 bar that from the jury again. That would be the
10 four, Your Honor, I've covered and I believe
11 I've stated that now twice and I hope I've not
12 been too repetitive here, Your Honor.

13 THE COURT: No, sir. Not at all. And on
14 the same basis in incorporating my rulings from
15 the other day I would respectfully deny your
16 motion for a directed verdict as to both robbery
17 and larceny, both of them armed with a deadly
18 weapon, and I will submit all four of the
19 aggravating circumstances over the objection of
20 the defense.

21 MR. CUMMINGS: Normally ask you about
22 mitigating factors, I thank Your Honor for
23 allowing me to stand back up and state that. We
24 have requested certain mitigating issues, Judge,
25 to include, of course, the last one the jury may

State vs. Bowman - Volume XXIV

1 consider any mitigating factor or mercy without
2 any reason.

3 THE COURT: Yes, sir.

4 MR. CUMMINGS: Reading Your Honor's charge
5 it actually states it out more specific than my
6 listing them out just under what I call the head
7 notes of the statute. We had asked for
8 particularly, Judge, in our number two submitted
9 to the Court for the capacity of the defendant
10 to appreciate the criminality of his conduct or
11 to conform his conduct to the requirements of
12 law was substantially impaired.

13 Your Honor, respectfully, we have
14 requested that. I know that there's a basis in
15 law that has to be met to the satisfaction of
16 the Court to ask that, but, again, on behalf of
17 Mr. Bowman he has asked that we submit that to
18 you for consideration of mitigation. And
19 because of certain issues that were part of
20 preliminary matters, certain issues that were
21 part of the record that my client would be
22 placed in greater jeopardy, Your Honor, if we
23 had presented anything else yesterday as to the
24 issues surrounding mitigating factor number two.

25 But, therefore, Judge, I believe,

State vs. Bowman - Volume XXIV

1 respectfully, as we read that the defendant
2 should not be denied the right according to our
3 statutory scheme to seek the mitigating factors
4 and, again, Judge, as the sole ruler of the
5 evidence to find if we met any part of that to
6 allow that to be considered by the jury since
7 his life is at stake, ma'am.

8 THE COURT: Thank you very much.

9 MR. CUMMINGS: Other than that, Judge, I
10 don't believe there's any other mitigating
11 factors, but I know the Court would ask
12 Mr. Bowman if he wanted to have these three
13 mitigating factors, Judge, as Your Honor has
14 found. And then of course the fourth one asked
15 for by the defendant subject to Your Honor's
16 ruling.

17 THE COURT: Very well. All right. Yes,
18 sir. Do you need to speak to any of that, Mr.
19 Bailey?

20 MR. BAILEY: No, ma'am.

21 THE COURT: Very well.

22 MR. BAILEY: At this point I don't. I
23 would just say that Mr. Cummings apparently has
24 made a tactical decision as part of this trial
25 strategy, and not to get into any potential

State vs. Bowman - Volume XXIV

1 diagnosis of any mental health conditions that
2 could create some impairment in his ability to
3 conform his conduct. Since that's not before
4 the jury I think it would be inappropriate to
5 submit that as a mitigating circumstance,
6 there's no evidential basis for it.

7 THE COURT: Thank you. With regards to the
8 mitigating circumstance that was listed as
9 number two and that was, of course, the capacity
10 mitigating circumstance, I do believe that there
11 would be some evidence required to show that
12 Mr. Bowman lacked the capacity to conform his
13 conduct and lacked -- so -- and I find the
14 record void of any evidence to that. And if
15 I've missed anything, please let me know, but I
16 think, as you say, you've made a decision not
17 to -- such that perhaps that was considered, but
18 is not before the Court, has not been submitted
19 to the Court, but certainly -- I certainly would
20 submit the other mitigating circumstances
21 requested.

22 And, of course, number three is listed
23 as any other mitigating factors that the jury
24 may find and then also tell the jury that they
25 may also consider any nonstatutory mitigating

State vs. Bowman - Volume XXIV

1 circumstances that they wish and then the other
2 charges which you have seen that even finding --
3 even if this jury was to find an aggravating
4 circumstance beyond a reasonable doubt, they can
5 choose life or even in the face of finding an
6 aggravating circumstance or they don't need any
7 reason for recommending life.

8 MR. CUMMINGS: Yes, ma'am. Again, I wanted
9 Mr. Bowman to hear that from the bench as part
10 of your charge, Your Honor.

11 THE COURT: Certainly.

12 MR. CUMMINGS: You would charge what we
13 would call the catch-all mitigating factor,
14 respectfully. And, Judge, please, respectfully
15 over my objection as to the capacity of the
16 defendant to conform I noticed Your Honor -- I
17 did not stand up right immediately thereafter
18 and object, I apologize for that.

19 THE COURT: That's quite all right. I can
20 certainly understand the exception of the dense.

21 MR. CUMMINGS: I have also advised my
22 client that he has a statutory right to make a
23 statement to the jury at the -- we've ended now,
24 at the conclusion, Your Honor, before you charge
25 and at the conclusion as Your Honor sees fit in

State vs. Bowman - Volume XXIV

1 time here. I told my client that he can
2 formulate, or whatever word we want to call it
3 here, he can guide himself by the evidence as
4 presented both in the case in chief, the guilt
5 phase thing, and the penalty phase here in his
6 statement to the jury on behalf of his life.

7 And I've told him that he is subject,
8 if Mr. Bailey raises an objection about an
9 issue, subject to Her Honor's rules and
10 regulations and that his conduct must conform to
11 the guidelines as Your Honor states just as we
12 as officers of the Court.

13 But, Your Honor, I know, again, I
14 state this on the record, my client is a young
15 man, he has not finished high school and I know
16 the Court would show leniency and, again,
17 temperance in Mr. Bowman if he makes an error,
18 how to instruct him how to do it. I'm willing
19 to stand by him, stand anywhere near, Your
20 Honor, wherever you want me to be as he speaks
21 to the jury.

22 THE COURT: Very well. A couple of things.
23 As I understand it from the defense the defense
24 does wish for me to submit that the defendant
25 has no significant history of prior criminal

State vs. Bowman - Volume XXIV

1 conviction involving the use of violence against
2 another person, that one the defense wishes to
3 be submitted.

4 MR. CUMMINGS: Yes, ma'am.

5 THE COURT: Along with the age or mentality
6 of the defendant at the time of the crime.

7 MR. CUMMINGS: Correct, Judge.

8 THE COURT: I will submit those as well as
9 number three, which is or any other mitigating
10 factors that the jury may find.

11 MR. CUMMINGS: Yes, ma'am. And then the
12 last one you're basically summing up all the
13 issues the jury could find mercy.

14 THE COURT: Yes. And, Mr. Bowman, if I
15 may -- thank you, Mr. Bowman. I wanted to tell
16 you that, again, that under the law under our
17 Code of Laws at Section 16-3-28, the law says
18 that in any criminal trial where the maximum
19 penalty is death or in a separate sentencing
20 proceeding following the trial, and that's this,
21 of course, is a separate sentencing proceeding,
22 that you and your lawyers have the right to make
23 the last argument. And your lawyers have
24 discussed this with you?

25 MR. BOWMAN: Yes, ma'am.

State vs. Bowman - Volume XXIV

1 THE COURT: All right. And you understand
2 that normally the State gets the right to make
3 the last argument. However, because of this
4 type of trial and because the State is seeking
5 the imposition of the death penalty, you and
6 your lawyers have the right to make the last
7 argument. And do you understand that?

8 MR. BOWMAN: Yes, ma'am.

9 THE COURT: All right. You do understand
10 that if you make the last argument, Mr. Bowman,
11 that obviously, like the other people who are
12 making final arguments, you must be bound by the
13 evidence and you could not testify in effect
14 before the jury. You could simply make an
15 argument within the record that is established
16 in the case. Do you understand that?

17 MR. BOWMAN: Yes, ma'am.

18 THE COURT: In other words, you are to
19 stick to the facts and the inferences which
20 reasonably can be drawn from those facts. You
21 understand that?

22 MR. BOWMAN: Yes, ma'am.

23 THE COURT: Rather than testifying, if you
24 will. You understand that?

25 MR. BOWMAN: Yes, ma'am.

State vs. Bowman - Volume XXIV

1 THE COURT: All right. Now, obviously, and
2 your lawyers I'm sure will go over with you your
3 right, your ability to talk to this jury about
4 penalty, you certainly are entitled to do that
5 and I want you to feel free to do that,
6 Mr. Bowman. Do you understand what I'm saying?

7 MR. BOWMAN: Yes, ma'am.

8 THE COURT: In other words, I want you to
9 feel very free to discuss with them as you
10 choose to discuss with them the issue of
11 penalty.

12 MR. BOWMAN: Yes, ma'am.

13 THE COURT: In other words, I want you to
14 stick within the facts that have been presented
15 in the trial, but when it comes to the issue of
16 penalty itself I want you to feel free to
17 discuss that with them freely.

18 MR. BOWMAN: Yes, ma'am.

19 THE COURT: All right, sir. Now, are you
20 fully aware of your right to make the last
21 argument?

22 MR. BOWMAN: Yes, ma'am.

23 THE COURT: All right. In regards to the
24 last argument any other questions, Mr. Bailey?

25 MR. BAILEY: Nothing from the State at this

State vs. Bowman - Volume XXIV

1 time, Your Honor.

2 THE COURT: And, Mr. Bowman, have you
3 decided whether you will make a final argument
4 at this time?

5 MR. BOWMAN: I said not yet.

6 THE COURT: All right. Very well. Well,
7 you have a little longer to make that decision.

8 MR. BOWMAN: Yes, ma'am.

9 THE COURT: All right, sir. I will note --
10 thank you, Mr. Bowman. What I will -- I think
11 that the way to proceed is that you obviously
12 will know whether or not Mr. Bowman chooses to
13 make the final argument, I gather that both of
14 you will argue and then whoever of the -- maybe
15 the first of you who argues will be -- will have
16 the word from Mr. Bowman. When the second is
17 finished if you will just simply stand and let
18 me know that Mr. Bowman will now argue or, Your
19 Honor, that concludes the defense's arguments,
20 if you will do that for me.

21 MR. CUMMINGS: Thank you, Judge.

22 THE COURT: That will be a signal to me.

23 Now, Mr. Bowman, in that we are going
24 to be proceeding that way, be mindful that your
25 choice to argue the final argument or not argue

State vs. Bowman - Volume XXIV

1 the final argument must be freely and
2 voluntarily made. Do you understand that?

3 MR. BOWMAN: Yes, ma'am.

4 THE COURT: And do you believe that you
5 will make that decision freely and voluntarily?

6 MR. BOWMAN: Yes, ma'am.

7 THE COURT: All right, sir. And you know
8 that's your decision to make?

9 MR. BOWMAN: Yes, ma'am.

10 THE COURT: You can talk to your lawyers
11 about that, or your friends, or family, or
12 anyone that you feel that you want to talk to
13 about that, but you understand that that is your
14 decision?

15 MR. BOWMAN: Yes, ma'am.

16 THE COURT: All right. And irrespective of
17 what that decision is you feel that you will be
18 able to make that decision freely and
19 voluntarily?

20 MR. BOWMAN: Yes, ma'am.

21 THE COURT: And do you understand what I'm
22 asking your lawyers to do, is just at that -- at
23 the moment where that comes in the trial that
24 they will either introduce you in terms of
25 making the argument or tell me that that is the

State vs. Bowman - Volume XXIV

1 final argument?

2 MR. BOWMAN: Yes, ma'am.

3 THE COURT: You understand that procedure?

4 MR. BOWMAN: Yes, ma'am.

5 THE COURT: And do you think that that will
6 allow you a little more time to make up your
7 mind whether or not you wish to argue?

8 MR. BOWMAN: Yes, ma'am.

9 THE COURT: All right, sir. All right.
10 And if you have any concerns at that time just
11 ask your lawyers to approach and we'll handle it
12 then, okay?

13 MR. BOWMAN: Yes, ma'am.

14 THE COURT: Very well. Thank you.

15 MR. CUMMINGS: Thank you, Judge.

16 THE COURT: All right. Any other motions
17 at this time?

18 MR. BAILEY: None from the State, Your
19 Honor.

20 MR. CUMMINGS: Nothing else from the
21 defense, Judge, that we can think at this time.

22 THE COURT: Very well. What we will do
23 then is I know you all are going to need a few
24 moments to take a break and we'll take what's
25 known as a comfort break, but I also wanted to

State vs. Bowman - Volume XXIV

1 have an opportunity to pull the television down,
2 we're going to need that space. If you need
3 easels, to put up easels, but I did want an
4 opportunity to move the lectern around and I
5 wanted to have an opportunity really to look at
6 the way that we are, we have configured the
7 courtroom.

8 Ms. Keil, let me see you a minute as
9 well. All right. We'll be in recess for about
10 five minutes.

11 MR. CUMMINGS: Thank you, Judge.

12 (Recess, from 11:03 a.m. to 11:23 a.m.)

13 THE COURT: All right. Anything before we
14 bring our jury out for closing arguments and
15 charge?

16 MR. BAILEY: Nothing from the State.

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

19 THE COURT: Once the closing arguments have
20 begun I do not want anyone entering the
21 courtroom, I do not want these lawyers
22 distracted or disturbed during these closing
23 arguments. In between the closing arguments
24 they're welcome to come in quickly and sit at
25 the back. Thank you very much, all right.

State vs. Bowman - Volume XXIV

1 If you'll announce in the back for me,
2 ma'am, if anyone is coming in for closing
3 arguments let them come in now just so anyone
4 that wants to come in will know. Thank you.

5 Let us have our jury.

6 (Whereupon, the jury returns to the courtroom at
7 11:23 a.m.)

8 THE COURT: Ladies and gentlemen, I want to
9 tell you a little bit about how we will be
10 proceeding. You will first hear the closing
11 arguments from the State and then you will hear
12 the closing arguments on behalf of the defense.
13 When the closing arguments are concluded we will
14 have a very short break and then I will deliver
15 to you the charge or the instruction on the law
16 and there will be another very short break and
17 then you will receive this matter for your
18 deliberations.

19 Ladies and gentlemen, I'm going to ask
20 that you draw close as we listen to the closing
21 arguments.

22 Mr. Bailey.

23 MR. BAILEY: Thank you, Your Honor.

24 I want to thank you all one final time
25 for your attention, I ask you to bear with us

Closing Argument by Mr. Bailey

1 all a little longer as we finish up these
2 proceedings.

3 Jury service in a case of this
4 magnitude is the highest duty that any citizen
5 can render their state, their county, and their
6 country except military service in time of war,
7 so I think I can speak for everybody at this
8 courthouse that we appreciate your service
9 beyond any way that we can express it.

10 This is the last opportunity I'll have
11 to speak to you and as previously somebody has
12 to go first, somebody goes last and so whatever
13 I say I've got to go ahead and get it out now.
14 So if I go on too long I apologize in advance.

15 At this stage of the proceedings
16 guilt, innocence are no longer an issue. Each
17 of you has found Marion Bowman, Jr. guilty of
18 murder of Kandee Martin with malice aforethought
19 and arson. He sits before you a convicted
20 murderer. And that cloak of innocence, that
21 presumption of innocence that he had when we
22 started this trial has been removed by the
23 evidence from that witness stand. Your sole
24 duty, ladies and gentlemen, as you know at this
25 point is to determine the appropriate

Closing Argument by Mr. Bailey

1 punishment. Two choices: Life in prison or the
2 death penalty. That's the issue.

3 When y'all went through the jury
4 qualification process, it seems like a month ago
5 now, each of you raised your hands, you were put
6 under an oath or affirmation to tell the truth,
7 the whole truth, nothing but the truth so help
8 me God. You were asked a series of questions to
9 qualify you to be jurors in this kind of a case.
10 You were questioned by Judge Goodstein, by me,
11 by one of the defense lawyers.

12 Each of you all said that in the
13 appropriate case you could bring back a verdict
14 for the death penalty. And each of you under
15 that same oath said that if you brought back a
16 verdict for the death penalty you could sign the
17 death verdict form and each of you said that you
18 could announce that verdict when your name was
19 called. And when y'all said that under oath if
20 the case was bad enough you could bring back the
21 death penalty and could follow the statutory
22 procedure, I believed you or you would not be
23 sitting on this jury today.

24 So the issue of whether the death
25 penalty is right or wrong, whether we ought to

Closing Argument by Mr. Bailey

1 have a death penalty is not an issue in this
2 case, because, again, each of you has said under
3 oath that it is appropriate in some
4 circumstances. So the only question is this
5 case, this defendant, the appropriate case for
6 the death penalty in the state of South
7 Carolina.

8 Ladies and gentlemen, the facts that
9 you have heard throughout the last several days
10 spell out a picture of a course of conduct so
11 devoid of conscience, so bent on malice, so
12 lacking in basic human compassion that it cries
13 out for the death penalty, the ultimate
14 punishment.

15 Last week when y'all were questioned
16 about the death penalty and your ability to
17 impose that penalty, you had a mental picture in
18 mind of the case so bad that it would warrant
19 the death penalty. And, ladies and gentlemen,
20 you have seen it, you have heard it in this
21 courtroom. If you heard or read in the paper
22 that somebody had taken a stray dog --

23 MR. CUMMINGS: Your Honor, I object at this
24 point, please.

25 THE COURT: Let me see you, please.

Closing Argument by Mr. Bailey

1 (Whereupon, a bench conference was held
2 off the record in the presence of the
3 jury but out of the hearing of the jury.)

4 THE COURT: All right. Over the objection
5 of the defendant you may proceed.

6 MR. BAILEY: As I was saying, ladies and
7 gentlemen, if you heard or read in the paper,
8 saw on the news that somebody picked up a stray
9 dog, took a pistol and shot that dog two times
10 and burned that dog's body up, you would say
11 this is horrible, how could a person do
12 something like that to an animal? Marion Bowman
13 did that to a living, breathing human somebody,
14 somebody's daughter, somebody's mother. It
15 wasn't only a malicious act, it was a cowardly
16 act. Here's a big man, grown man with a gun and
17 a helpless woman out there in the country alone.
18 He snuffed out her life for no reason.

19 What did he gain by her murder?
20 Nothing. Motivated by meanness, by depravity.
21 You've heard testimony that he was upset because
22 she owed him money. The enormity of this crime
23 that happened just up the road five or six miles
24 from this courthouse we're sitting in, the
25 horror of what happened on February 16th is just

Closing Argument by Mr. Bailey

1 kind of lost. I feel inadequate through the
2 testimony and the evidence that you've -- to
3 really get across to you the horror of what
4 happened out there.

5 We're all dressed up in our coats and
6 ties, we stand up and sit down at the
7 appropriate moment and we have this decorum.
8 And in this atmosphere I just can't get across
9 to y'all I don't believe how bad this is, how
10 horrible it is. I'm trying with the evidence,
11 but it's difficult.

12 And I would ask that you think of the
13 evidence, just in your mind's eye the evidence
14 you heard from that stand, the fear when Bowman
15 began to shoot at her, a man she thought was her
16 friend, the fear and pain when she was hit with
17 that first shot in the back, the fear she felt
18 as she ran away and he ran after her with that
19 gun, turned toward him and begged for her life.

20 You've heard the testimony, the last
21 moments of her life she didn't think about
22 herself, she was thinking about her baby.

23 "Black, please, don't shoot me no more, I've got
24 a child to take care of." And after that he put
25 that fatal shot in her head. I'm not going to

Closing Argument by Mr. Bailey

1 say she's a perfect human being, no one is,
2 nobody's perfect, they have their flaws, but in
3 her dying moments she thought of her child.

4 Judge Goodstein is going to instruct
5 you on aggravating circumstances, she'll
6 instruct you on mitigating circumstances. I
7 want to talk about aggravating circumstances for
8 a minute. And the significance of an
9 aggravating circumstance is that all y'all have
10 to find at least one aggravating circumstance
11 beyond a reasonable doubt or you cannot impose
12 the death penalty even if you wanted to. You
13 have to find at least one aggravating
14 circumstance. We've alleged four, you would
15 have to find at least one.

16 And I want to talk about these
17 aggravating circumstances and the proof. And as
18 y'all recall, I said this in the opening
19 statement as part of the trial, but I would
20 incorporate the guilt phase so I wouldn't have
21 to go through all this other stuff again. But
22 most of the evidence of aggravating
23 circumstances came out in the first phase of the
24 trial. And you've heard it. Let me talk about
25 the aggravating circumstance that the murder of

Closing Argument by Mr. Bailey

1 Kande Martin was committed while in the
2 commission of robbery while armed with a deadly
3 weapon.

4 Stating the obvious, this gun is a
5 deadly weapon. Kande Martin's watch identified
6 by her mother that she bought a couple of weeks
7 earlier was found in this man's pocket laying on
8 the bed in his wife's trailer the day after
9 Kande Martin is murdered and the day the car
10 and her body is burned up. A woman's watch in
11 his pocket.

12 The second aggravating circumstance
13 that I want to talk about, and the judge will
14 instruct you in these aggravating circumstances,
15 is the murder of Kande Martin was committed
16 while in the commission of larceny with the use
17 of a deadly weapon. Larceny, ladies and
18 gentlemen, is stealing. And, of course, this
19 refers to the watch. It would also refer to the
20 car.

21 You've heard numerous witnesses
22 testify about Marion Bowman after the death of
23 Kande Martin tooling around town, driving to
24 Branchville, driving to Allen Murray Club,
25 trying to sell the car at the club, driving it

Closing Argument by Mr. Bailey

1 back from the club. You've heard that
2 testimony. He stole the car in the commission
3 of that murder of Kandee Martin.

4 Now, when you found Marion Bowman, Jr.
5 guilty of murder the evidence was the cause of
6 death was this gun. When you found him guilty
7 of the arson of Kandee's car, in essence the
8 factual scenario is there to prove beyond a
9 reasonable doubt both of those aggravating
10 circumstances, larceny with the use of a deadly
11 weapon and robbery in the course -- armed
12 robbery in the course of the murder. These
13 circumstances have been proven.

14 And the judge will instruct you what
15 it means, what the word in the commission of,
16 because aggravating circumstances are the murder
17 was committed in the commission of armed
18 robbery, in the commission of larceny with a
19 deadly weapon. It doesn't matter whether the
20 murder happens before or after the aggravator,
21 what is important is it happens in the
22 continuing series of events with the murder. It
23 happened before the murder or after the murder.
24 And the fact the defendant's already dead when
25 her watch or her car is taken doesn't make any

Closing Argument by Mr. Bailey

1 difference as a legal matter.

2 I'll talk to you all about the next
3 aggravating circumstance alleged by the State
4 which is kidnapping. I talked to you about that
5 in the opening and I won't go through all that
6 again, but I would ask you to remember your duty
7 to make the law as the judge gives it to you,
8 listen to her instructions on the definition of
9 kidnapping, the words inveigle and decoy,
10 kidnapping is restricting a person's freedom.
11 It doesn't have to happen for any period of
12 time, it's preventing them from going where they
13 want to go, holding them where they can't go
14 where they want to go and it can be accomplished
15 by trickery or deceit.

16 As I said earlier, obviously Kandee
17 Martin would not have driven in that car to her
18 death had she known the purpose of that trip.
19 And obviously between the time she's shot the
20 first time and the time she's shot the second
21 time she didn't want to be there and she's
22 prevented from leaving at gunpoint by Marion
23 Bowman.

24 The fourth aggravating circumstance I
25 will talk to you about is the murder of Kandee

Closing Argument by Mr. Bailey

1 Martin was done during the commission of
2 criminal sexual conduct to any degree. Judge
3 Goodstein will define criminal sexual conduct.
4 It includes sexual intercourse, nonconsensual
5 sexual intercourse.

6 During the course of her instructions
7 in the first part of this trial you heard a
8 definition of circumstantial evidence. There is
9 no direct evidence, no eyewitness account of a
10 sexual assault on the victim of this case,
11 Kandee Martin. You base your decision on the
12 evidence and the reasonable inferences to be
13 drawn from that evidence.

14 You've heard the DNA expert that
15 tested the vaginal swab and the semen. The DNA
16 profile in that semen matched Marion Bowman's
17 blood and the odds of someone unrelated to
18 Marion Bowman having that same profile or being
19 the donor of that semen, 1 in 5,300. Now, is
20 consensual sex consistent with the subsequent
21 shooting someone to death and burning the body?
22 Again, use your common sense when you consider
23 this aggravating circumstance.

24 And, again, I repeat, you do not have
25 to find all four aggravating circumstances in

Closing Argument by Mr. Bailey

1 order to bring back the death penalty. If you
2 find one of them unanimously beyond a reasonable
3 doubt, you would then have the ability if you so
4 desire to bring back the death penalty. But
5 you're not limited to aggravating circumstances.
6 You should consider all of the testimony that
7 you hear in this case.

8 You can look at Marion Bowman's prior
9 conduct not as a statutory aggravating
10 circumstance, but as a characteristic of the
11 defendant. And when you consider life in prison
12 as an alternative to the death penalty, I want
13 you to consider that he has a criminal record.
14 You've heard that, you've heard from experts and
15 other people and you know he's been convicted of
16 two burglaries, entering people's homes, their
17 residence where they live, taking guns from
18 those homes.

19 And when he went to court he got a
20 youthful offender sentence. And you'll recall
21 Mr. Aiken testified for the defense, very
22 knowledgeable man, an expert in prison
23 adaptability, and he told you all about a
24 youthful offender sentence. And the idea behind
25 a youthful offender sentence is it's supposed to

Closing Argument by Mr. Bailey

1 rehabilitate or straighten somebody out to put
2 them on the right path. And it didn't work with
3 Marion Bowman because he got out of prison and
4 has now graduated to murder and arson.

5 I'm going to talk about the mitigating
6 circumstances. And the judge will instruct you
7 to consider mitigating circumstances. And you
8 should consider them. Look at them, you decide
9 what significance to give them if you find that
10 they, in fact, exist.

11 Judge Goodstein will ask you to
12 consider Mr. Bowman's age and mentality at the
13 time of the crime. As far as his mentality, I'm
14 not going to stand up here and tell you that he
15 was engaging in normal behavior. Murder, ladies
16 and gentlemen, is not normal behavior. He's a
17 murderer. At the time he committed these crimes
18 I believe he was 21 years old, not a boy, he's a
19 man.

20 The defense put up as part of their
21 case an expert witness, Mr. Youngman, who
22 testified that he's a social worker. And he did
23 a forensic psychosocial assessment of Marion
24 Bowman. He talked to a bunch of people in the
25 community that knew Marion Bowman, he got his

Closing Argument by Mr. Bailey

1 school records, he got other records. What did
2 Mr. Youngman tell you all? He told you all that
3 Marion Bowman drank, he did drugs, sold drugs,
4 that he was an adolescent at one time and that
5 he committed some crimes and burglaries and he
6 had an unpleasant upbringing.

7 And then he drew this picture here,
8 this is Defendant's Exhibit Number 17, to
9 explain his findings to you. And he listed all
10 of these things here that went wrong in Marion
11 Bowman, Jr.'s life. And he said that Marion
12 Bowman had a problem making choices, that there
13 was a bridge he had to cross to make those
14 choices and that these things were affecting his
15 ability to reach the right decision.

16 And over on this side of the bridge
17 Mr. Youngman drew the stick and said these were
18 his choices and here was a problem over here.
19 And I asked Mr. Youngman the decision, the
20 choice was to kill a young woman with an
21 automatic pistol and burn her body. And I asked
22 him, I said, what is the problem that caused him
23 to make that decision? And he couldn't tell me.

24 Ladies and gentlemen, I ask you based
25 on what you've heard here, what does all that

Closing Argument by Mr. Bailey

1 stuff that happened to Marion during his youth
2 have to do with Kandee Martin? How is she in
3 any way involved in the fact that he sold drugs,
4 that he did drugs, that he drank liquor, that he
5 wasn't a good student, that he was an
6 adolescent, that his grandfather died, and all
7 the other stuff, what has it got to do with it?
8 Nothing. He knows right from wrong.

9 Mr. Youngman also said that a person
10 like this would have impulsive behavior.
11 Impulsive behavior is when you do something spur
12 of the moment. Marion Bowman planned this thing
13 out. You heard the testimony of the three
14 people, his sister, his cousin, Eddie Waters,
15 that when he couldn't attract her attention, get
16 her attention right off the bat, he says "That
17 bitch is dead dark fall." And shortly after
18 dark fall, around eight o'clock, he murdered
19 her. It wasn't an impulsive thing. It was
20 something he planned. It was a purposeful
21 goal-directed activity.

22 Another mitigating circumstance
23 they'll ask you to consider is the defendant has
24 no significant history of prior criminal
25 convictions involving the use of violence

Closing Argument by Mr. Bailey

1 against another person. And I'll concede that
2 that exists. It is up to you to decide what
3 weight to give it. Bear in mind he does have a
4 criminal record.

5 Now, as far as Marion Bowman's
6 background, who has a perfect background? I
7 mean, you see "Leave it to Beaver", Ward and
8 June, and you see "The Bill Cosby Show." None
9 of us have a background like that. But, again,
10 where is the connection? Where is the
11 connection, anybody who's gotten up here and
12 drawn a line between anything involving Marion
13 Bowman's background or family or mentality and
14 the murder of Kandee Martin. There's just no
15 connection.

16 He made his choices, to murder and
17 burn that body beyond recognition. You heard
18 Wayne Martin testify that he couldn't say
19 goodbye to his daughter because of the condition
20 that Marion Bowman left her body in.

21 Look at life imprisonment as an
22 alternative to the death penalty. Because
23 that's what this is all about, deciding on one
24 of those two choices, life in prison or the
25 death penalty, and decide whether that sentence

Closing Argument by Mr. Bailey

1 is appropriate for the horror story that you've
2 heard.

3 Mr. Aiken, again, that testified for
4 the defense, again, a very knowledgeable person.
5 I had some trouble getting him to answer some
6 questions, but I would concede he's very
7 knowledgeable, he's an expert in prison
8 adjustment. And he told you all that Marion
9 Bowman could adjust well in his opinion to
10 prison. And he told you that he wouldn't be the
11 kind of person he would have to put up in super
12 max or a high degree of confinement and he told
13 you he would be behind those walls and they
14 would have guns there and they would be closely
15 guarded.

16 But when you're talking about
17 adaptability to prison environment, you need to
18 know what that environment is like. And he told
19 you all a little bit about it, Mr. Aiken. I
20 asked him about the prison environment, you
21 work, you get paid some degree of money, some
22 amount of money for working, that after work
23 there are recreational opportunities available,
24 he said they could play basketball, they had a
25 library where they could read books, movies,

Closing Argument by Mr. Bailey

1 television. In the meantime, Kandee Martin's in
2 her grave and she'll be there forever.

3 Judge Goodstein in her instructions is
4 going to tell you that you can consider any
5 mitigating circumstance or anything else that
6 you want to consider in determining the
7 appropriate penalty. But even if you find every
8 single mitigating circumstance that she
9 instructs you on, you still have the ability to
10 bring back the death penalty if you find at
11 least one aggravating circumstance. You look at
12 everything. You look at the statutory
13 aggravating circumstances, you look at the
14 mitigating circumstances, circumstances of the
15 crime, characteristics of Marion Bowman, and the
16 impact of Kandee Martin's death on the victims.

17 For the defense, Mr. Youngman got up
18 here and he tried to cast some blame, throw some
19 blame around. He blamed Mrs. Bowman, his
20 mother, he blamed the school. Y'all aren't
21 sitting on judgment on anybody other than Marion
22 Bowman, Jr., that man over here. He's an adult,
23 he's fully capable of making his own decisions.

24 They showed some pictures of Marion
25 Bowman as a child, some school pictures to get

Closing Argument by Mr. Bailey

1 your sympathy. The judge will instruct you that
2 you cannot make your decision based on passion,
3 prejudice, sympathy, or any other undue factor.
4 Everybody was a child at one time. That's got
5 nothing to do with the man he turned into and
6 the conduct he engaged in after that.

7 I would ask you to listen to the
8 Judge's instructions, your decision should be
9 based on circumstances of the crime and
10 characteristics of Marion Bowman. Let's not
11 forget who the victim is here. Marion Bowman is
12 not the victim, his family is not the victim.
13 The victim was Kandee Martin, her family, her
14 mother, her father, and her two-year-old baby.

15 I ask you to remember what this is all
16 about. This is a penalty hearing. It's not a
17 rehabilitation hearing or an excuse hearing, it
18 is a penalty hearing. We're talking about the
19 most appropriate punishment.

20 The defense lawyers will get up here
21 in a few minutes when I sit down and they're
22 going to tell you how severe a life without
23 parole sentence is, that he'll spend the rest of
24 his life in prison. Ladies and gentlemen,
25 they're going to beg you for that sentence. And

Closing Argument by Mr. Bailey

1 the reason for that is that at this point that
2 is the best thing that y'all can do for Marion
3 Bowman, Jr. The best thing for him is a life
4 without parole. But you're not here to decide
5 what's best for Marion, you are here to do
6 justice in this case, to decide the appropriate
7 punishment.

8 During the course of some of this
9 testimony there were some tears in this
10 courtroom. And the only person in this
11 courtroom responsible for those tears is over
12 here, Marion Bowman, Jr. What I'm talking
13 about, ladies and gentlemen, is accountability,
14 responsibility.

15 Under our judicial system for our
16 society to work as a civilized society a person
17 must account for and be responsible for their
18 own actions. And I'm not -- I'm a prosecutor,
19 I'm not a psychiatrist or psychologist and I
20 can't get up here and explain to you how Marion
21 Bowman got to be the way he is now, that's not
22 the problem. The problem is once he gets to be
23 the person who's done the things that you know
24 he has done, once he's in our midst, what do you
25 do with a person like this?

Closing Argument by Mr. Bailey

1 This murder, ladies and gentlemen, was
2 horrendous. It wasn't an act of recklessness,
3 it wasn't a killing in the heat of passion, it
4 wasn't a crime of impulse, it was a cold-blooded
5 murder. And I submit to you that when you kill
6 that way you should forfeit your right to live
7 on this earth.

8 Marion Bowman, according to the
9 testimony you have heard from that witness
10 stand, enjoyed the act of murdering Kandee
11 Martin. You recall Gadson's testimony. After
12 that second shot, that second, the fatal shot
13 when she fell to the ground, his testimony was
14 Marion Bowman says "Did you hear her head hit
15 the pavement?"

16 You recall Hiram Johnson, Hiram
17 Johnson went to that beer joint in Kandee
18 Martin's car being driven by Marion Bowman and
19 on the way back before he got dropped off, what
20 did he say? Y'all recall his testimony, Marion
21 Bowman says "I killed Kandee" and then he
22 laughed. Hiram Johnson got up here and
23 basically quoted him. "I killed Kandee, heh,
24 heh, heh." He thought it was funny. And then
25 after that he went back and he burned her car

Closing Argument by Mr. Bailey

1 and he burned her dead corpse in that car.

2 Keep focused, ladies and gentlemen, on
3 what is the appropriate punishment for an
4 intentionally committed horrible crime and don't
5 be distracted by efforts to portray Marion
6 Bowman as the victim. He is not the victim.

7 Kandee Martin had a baby, a
8 two-year-old son. She had a right to live her
9 life the way she wanted to live it just like we
10 all do. And her son had a right to be raised by
11 his mother and he deprived that baby of the
12 right to grow up with his mother for no reason.

13 I ask you to use your common sense, to
14 follow the judge's instructions, to base your
15 decision on the circumstances of the crime and
16 the characteristics of Marion Bowman. And I
17 would ask you to search the evidence, to search
18 your minds of all you've heard throughout this
19 entire trial and ask yourselves what is it about
20 the circumstances surrounding the murder of
21 Kandee Martin that would want to make me reward
22 Marion Bowman with a life sentence? What is it
23 about how Marion Bowman has conducted his life
24 that would make me want to reward him with a
25 life sentence, which is the best thing that you

Closing Argument by Mr. Bailey

1 could do for him today.

2 Marion Bowman has forever deprived
3 Tyler M. [REDACTED] of his mother. The child was two
4 years old when his mother was murdered. You
5 heard Didi Martin, Kandee's mother, that even
6 now all this time has passed since
7 February 16th, 2001, and that baby still cries
8 for his mother. When he's grown he'll have some
9 pictures, but he won't remember her. When he
10 finishes high school his mother won't be there.
11 When he gets married his mother won't be at the
12 wedding. All because that man killed her
13 knowing she had a baby at home and she begged
14 for her life not for herself, but for that baby.

15 He's forever deprived Wayne and Didi
16 Martin of their youngest daughter that they
17 loved very much, the youngest child. Their
18 lives have changed forever. They didn't even
19 get to say goodbye to her. They will never
20 understand how and why Marion Bowman who knew
21 their daughter could do that to her.

22 Ladies and gentlemen, nothing that has
23 come out in this case that you have heard, and
24 you have to base your decision on the evidence,
25 is sufficient to justify anything less than the

Closing Argument by Mr. Bailey

1 death penalty. I submit to you that under the
2 facts you've heard Marion Bowman deserves the
3 ultimate penalty that you all said that you
4 could impose in the appropriate case. Burned
5 this girl's body like she was a piece of
6 discarded trash.

7 When you come back in here and reach
8 your verdict, you should reach a verdict where
9 you can look in the eye of Marion Bowman, Jr.
10 and look into the eyes of the other people in
11 this courtroom and let them know that justice is
12 being done by your verdict.

13 The judge will instruct you that you
14 can bring back a life sentence for any reason or
15 no reason at all as an act of mercy. And that's
16 what the defense will ask you to do. And that's
17 within your power, you can do that. For any
18 reason or no reason at all you can come back and
19 extend mercy to this defendant. But, ladies and
20 gentlemen, under the facts of this case you
21 can't do both, you can't extend mercy to Marion
22 Bowman and do justice to this case. The death
23 penalty in this case is not the most appropriate
24 sentence, it's the only appropriate sentence.

25 And when you talk about a trial like

Closing Argument by Mr. Bailey

1 this, we're talking about the goal of justice.
2 And what is justice? Justice is a simple
3 concept where the punishment meets the crime.
4 If the punishment doesn't meet the crime you
5 don't have justice, you don't administer
6 justice. No matter what your verdict is, either
7 one of those two choices, obviously it's not
8 going to bring Kandee back to life. A life
9 sentence won't bring her back, the death penalty
10 can't bring her back, but it can do one thing,
11 it can bring justice into this courtroom.

12 Your task is an awesome task and I
13 know what I'm asking the 12 of you to do is not
14 easy, it's not supposed to be easy. But as I
15 pointed out earlier that you all were picked out
16 of 350 jurors by both sides as being fair and
17 impartial people that could follow your duty,
18 follow the evidence, follow the facts, follow
19 the law and bring back a verdict that spoke the
20 truth in the first phase of this trial and to
21 bring back a verdict that spoke justice.

22 I'm going to sit down in a few
23 minutes, I've talked too long already, and I
24 have one request of you. You're going to have
25 all the evidence that was introduced in both

Closing Argument by Mr. Bailey

1 parts of this trial back in the jury room with
2 you for whatever use you want to make of it, you
3 can look at it or you don't have to look at it.
4 But I request that you look at the photographs
5 that were introduced. I took no pleasure in
6 showing you these photographs. They show
7 nothing more or less than what Marion Bowman did
8 to Kandee Martin's body.

9 And if you don't look at those
10 photographs, if you turn them facedown, you're
11 not facing the reality of this case. These are
12 in evidence. This is before and after. He
13 turned this into this with malice aforethought.
14 This is his handiwork. So I ask you when you
15 deliberate to look at these. If you can't look
16 at it, then you can't face the facts of this
17 case. And they're hard facts, they're rough
18 facts, they're cruel facts. And I would ask you
19 to look at that and think about a human being
20 and what he did to her for no reason. And he
21 laughed about it. Nothing the defense says when
22 they give their closing statement to you can
23 change that reality.

24 And, again, each of you raised your
25 hands and took a solemn oath and said in the

Closing Argument by Mr. Bailey

1 appropriate case I can bring back the death
2 penalty. Ladies and gentlemen, on behalf of
3 Dorchester County, State of South Carolina, I'm
4 asking you to have the courage in this case to
5 do your full duty, your verdict whatever it is
6 must be unanimous, all 12 of you must agree.
7 Thank you.

8 THE COURT: Thank you, Mr. Bailey.

9 Yes, ma'am.

10 MS. HARDEE-THOMAS: May it please the
11 Court.

12 THE COURT: Ms. Hardee-Thomas.

13 MS. HARDEE-THOMAS: Ladies and gentlemen of
14 the jury, you have spoken. You have found
15 Mr. Marion Bowman guilty of murder and arson
16 third. But, ladies and gentlemen, we're talking
17 about aggravating circumstances. We're talking
18 about murder was committed while in the
19 commission of CSC, murder was committed while in
20 the commission of kidnapping, murder was
21 committed while in the commission of larceny
22 with the use of a deadly weapon, and murder was
23 committed while in the commission of robbery
24 while armed with a deadly weapon. Mr. Bowman
25 hasn't been charged with any one of those

Closing Argument by Ms. Hardee-Thomas

1 charges; criminal sexual conduct, kidnapping,
2 larceny, or robbery. You found him guilty of
3 murder and arson.

4 Let's look at the facts. Murder was
5 committed while in the commission of criminal
6 sexual conduct. Did Mr. Bowman intend to commit
7 CSC and a murder occurred? What did you hear?
8 You heard from Frankie Martin, he was on that
9 stand, he said Kandee Martin was at his
10 apartment. And who came up? Marion Bowman and
11 Mr. Fogle. They went into the bathroom
12 together, Kandee and Marion. What do people do
13 in the bathroom? Have consensual sex? Because
14 if they didn't, they did come out of the
15 bathroom. Frankie Martin was able to tell you
16 nothing looked different to him, both of them
17 looked okay, they went in her car. You would
18 have heard something from Frankie Martin if
19 anything was different. And they drove away.

20 What did you hear about kidnapping?
21 Murder was committed while in the commission of
22 kidnapping. Start off with Frankie Martin.
23 They were together at his apartment, they left
24 together in his car. You even heard from
25 Gadson, he got in the back of a car when he saw

Closing Argument by Ms. Hardee-Thomas

1 them, was riding with them. He told you that
2 Marion was telling her where to go to make you
3 think that she was held without her will. What
4 happened when they actually got to the
5 destination? They both got out of the car, a
6 car came by in the dark, everybody went in the
7 woods. Everybody. That's the perfect aspect to
8 find out if somebody's really kidnapped. A car
9 is coming, that car can help me. There was no
10 information with regards to her running towards
11 the car when the lights came down. But what
12 happened? The car went past, she came out of
13 the woods and walked towards her car.

14 You've heard murder was committed
15 while in the commission of larceny. What have
16 you heard? You've heard a watch was found on
17 Mr. Bowman. A watch. How did it get there?
18 That's what the State wants you to see. How did
19 it get there? Well, they were together during
20 the day at Frankie Martin's house, they were
21 riding around, you heard that. Did Mr. Bowman
22 intend to get a watch, or to get a car and then
23 a murder occurred? That's what the State wants
24 you to believe.

25 You've heard from Mrs. Bowman if you

Closing Argument by Ms. Hardee-Thomas

1 want to believe her, I'm talking about Marion's
2 mother. They've seen Kandee. He's rode in her
3 car before several times, and on this particular
4 date he was riding in the car again. If someone
5 is killed and a watch or a car is taken is that
6 an afterthought of murder? The intent has to be
7 simultaneously.

8 MR. BAILEY: Objection, Your Honor. She's
9 misstating the law to the jury.

10 THE COURT: I sustain the objection. Be
11 mindful.

12 MS. HARDEE-THOMAS: You have four
13 aggravating circumstances. You do not have
14 Mr. Bowman having an intent to do any four of
15 them. You have Mr. Bowman who's 21 years of
16 age, you've heard that he's committed two
17 burglaries which is not significant of anything,
18 you've heard that he has family problems and had
19 family problems throughout his life. We ask
20 that you consider that the mitigating
21 circumstances that the State has shown he
22 deserve -- Mr. Bowman deserves your
23 consideration with regards to these and to give
24 him life without the possibility of parole in
25 prison. Thank you.

Closing Argument by Mr. Cummings

1 THE COURT: Thank you, Ms. Hardee-Thomas.

2 Mr. Cummings.

3 MR. CUMMINGS: May it please the Court,
4 Judge, Mr. Bailey, Madam Forelady and ladies and
5 gentlemen of the jury. The last time I spoke
6 before you the opening statement here I told you
7 I had a heavy heart, today it doesn't get any
8 lighter. And neither shall your job get any
9 lighter as we speak here and get right down to
10 the closing.

11 If you want to look at just two
12 photographs, to take another human being's life
13 that's your option. This is the remains of Miss
14 Martin. She was a lovely, beautiful young lady,
15 no question. And I have not in anything in this
16 case done anything to try to get you to hate me,
17 to hate the defense trying to insult Miss
18 Martin. And if I have done that in any way I
19 apologize to the Martin family and I apologize
20 to you good ladies and gentlemen.

21 Miss Martin is not on trial in here.
22 Mr. Bailey is absolutely correct, he's a
23 colleague an adversary against me and I'm an
24 adversary against him in the courtroom today, we
25 all come in here to do a job, hopefully. And in

Closing Argument by Mr. Cummings

1 doing our job we look and sometimes we talk so
2 hard, so fast, so glancing over issues that we
3 forget how important it is to remain human.
4 It's going to take me some time to talk to you.
5 You were so kind and so polite both in the
6 closing argument and in the first phase and then
7 in the opening statement here to pay attention
8 to me, and I've asked you to do that. It's easy
9 to shut your mind off. You've heard some
10 horrible things in here. But will you, please,
11 keep your mind open long enough to remember that
12 we have lost a human being and yet we are
13 dealing with another human being.

14 And, ladies and gentlemen, it's
15 everybody's job in here to do justice. This is
16 not a personal case on behalf of anybody against
17 Mr. Bowman. It's called the State of South
18 Carolina against Mr. Bowman. And because of
19 that, ladies and gentlemen, justice is left to
20 you. You are the buffer between anybody
21 allowing any group, mob, vigilante, you know,
22 whatever to go out there and administer justice.
23 We asked you not to leave your good common sense
24 behind when you came in that door and you
25 haven't. You've not done that, you've listened

Closing Argument by Mr. Cummings

1 in here.

2 As a matter of fact I want to point
3 this out real quick, while all us in here in our
4 clothing and everything else, in our jobs, we're
5 in here, we argue, we legally challenge, we look
6 like we inconvenience the heck out of you. And
7 when you went back to your jury room the other
8 day, and this is why I call this to the
9 attention of you good folks again, we sent back
10 the evidence, the evidence that Your Honor had
11 allowed in after fighting, after yelling,
12 after -- and I mean yelling politely as you all
13 know, we don't yell in here at each other, but
14 there was something left.

15 And when you folks sent your note out
16 to us there were three things in here. You
17 wanted an easel, that was something easy we
18 could do; number two, you wanted a transcript
19 which is not possible. We take everything down,
20 but this poor lady could never do everything
21 back instantaneously, science has not yet caught
22 up to how fast the human mouth can speak or
23 think.

24 But the one thing that you were sure
25 of sitting in here paying attention was that you

Closing Argument by Mr. Cummings

1 wanted something that was done on the side by a
2 peace officer to show you a particular thing
3 about Nursery Road. So there was a mistake made
4 in here, in this room. Not by you folks, not by
5 anyone in here intentionally, it was a mistake
6 made, an error, a human error. You're that
7 buffer. Did you see the importance of that a
8 moment ago? Because if it sounds like I'm only
9 talking about a piece of paper, I'm not. It's
10 called humanity. We make mistakes.

11 Ladies and gentlemen, justice is
12 tempered with mercy. The only way anybody can
13 have mercy is if others show it. It sounds
14 like, that's right, the defense is going to get
15 up here and beg for his life and that, you know,
16 the reward-a-prison. And I'm quoting the
17 prosecutor, I'm not going to use Mr. Bailey's
18 name unless it slips out of my tongue because of
19 our relationship as adversaries over the years.

20 The State, the State prosecutor, it
21 could be anybody, is going to come before you
22 and say the ultimate crime is the right crime
23 and punishment in this case based on the nature
24 of the offense. And bingo we can shut that
25 right off because that's exactly what they want.

Closing Argument by Mr. Cummings

1 The legislature in here has asked you
2 to consider both. The people of the state of
3 South Carolina have asked you to consider both.
4 Why? Because not everybody has to be put to
5 death. If that was automatic we'd have a murder
6 trial, take them out in the backyard and hang
7 them. Is that what you're considering today?
8 I'm asking you to consider justice with mercy.
9 It takes a bigger person to give mercy. It
10 takes a human being to show compassion and
11 mercy.

12 Ladies and gentlemen, I make no excuse
13 for any wrongdoing or criminal conduct. And I
14 want to say this out quickly right now because I
15 feel like maybe I was inadequate in doing
16 something in this room the other day, or in
17 doing something on behalf of Mr. Bowman and that
18 was Mr. Youngman, the professional gentleman who
19 came in here, former cop, NOPD, that's New
20 Orleans Police Department, that's a rough
21 neighborhood.

22 He then goes to work helping homeless
23 people and works in a crisis ministry. Okay.
24 We got advanced degrees, we got the ability, you
25 got to answer our questions in here. You can

Closing Argument by Mr. Cummings

1 tear him up all you want like you could anybody
2 in here. I tore up Mr. Felder, I tore up
3 Mr. Waters, I even yelled back at Mr. Marion
4 Bowman's family. I did. Because I'm trying to
5 emphasize here answer the questions, please.
6 These folks need to hear the whole truth, you
7 need to hear everything and not selective stuff
8 just to be able to convict Mr. Bowman, which he
9 has been convicted, or now to make sure that you
10 want to hate him enough to take his life.

11 MR. BAILEY: Your Honor, I object to that.

12 THE COURT: Sustained.

13 MR. CUMMINGS: Excuse me, be angry enough
14 to take his life.

15 MR. BAILEY: I object to that, Your Honor.

16 THE COURT: Sustained.

17 MR. BAILEY: Your Honor, I'd ask for a
18 curative instruction at the appropriate time
19 based on Mr. Cummings' comments, inappropriate
20 comments.

21 THE COURT: Very well. Ladies and
22 gentlemen, it is incumbent upon you, of course,
23 to follow the instructions of the Court and I
24 will give those to you. Those decisions are to
25 be made without the emotion, certainly, that

Closing Argument by Mr. Cummings

1 counsel is speaking of. I will instruct you
2 more of that, that's the reason for the
3 objection, hatred and anger. The decisions that
4 you will make will be made on -- absent those
5 kinds of emotion and I will instruct you to
6 that. And that's the purpose of the instruction
7 as well as -- or the objection as well as my
8 sustaining the objection.

9 Thank you, gentlemen. You may
10 proceed, Mr. Cummings.

11 MR. CUMMINGS: Thank you, Judge.

12 As the solicitor told you earlier to
13 not show sympathy, not to come into
14 consideration. You define how, and when, and
15 why, and where we can ever talk about mercy.
16 I'm asking you, ladies and gentlemen, to go back
17 a little bit here now and ask you to go down
18 into your life and going back and talking to you
19 about Mr. Youngman. He told you it was not an
20 excuse. He just tried to paint a picture of
21 Mr. Bowman's upbringing so you could have some
22 idea of the person. Because that's all we do.
23 We tried to give you a picture of Miss Martin,
24 not we personally of the defense, again, not
25 attacking this lady, she was presented to you in

Closing Argument by Mr. Cummings

1 the light by her family. Mr. Bowman has the
2 right to present himself to you with his family
3 and through Mr. Youngman.

4 He told you what he found. Is that an
5 excuse? No. There are plenty of people who are
6 successful in this world who are raised in a
7 one-parent household. There are plenty of
8 people who dig themselves out of the gutter,
9 pick themselves up and never hurt another human
10 being. There are plenty of people who can mount
11 that challenge, top the hill, live a good life,
12 there are plenty of people that can. Why
13 Mr. Bowman has not reached that, why he has not
14 followed anything according to the testimony
15 presented in this courtroom is in your province.
16 But I do state that it is unfair for us to take
17 any witness, especially people who come in and
18 just try to do something and they try and try to
19 leave you with an image that they're trying to
20 tell you something that's not correct.

21 You are the judge of the credibility,
22 you are the judges of the evidence that comes to
23 you. Her Honor is the one who rules on the
24 evidence, that is the law. A few moments ago
25 you heard her when the whistle was blown she

Closing Argument by Mr. Cummings

1 made the call.

2 Ladies and gentlemen, I just want to
3 go down again with you about the importance of
4 things as I see them and as the defense would
5 see them on behalf of this gentleman. And,
6 ladies and gentlemen, it takes a while and it
7 takes a long time. And as Mr. Bailey asked you,
8 you promised to do one of two things here today.
9 And there are only two choices. So even if you
10 want to discount Mr. Youngman coming in here at
11 all and trying to explain to you about some
12 horrible things and tragedies, you're right,
13 absolutely, let's stop it, that's a sympathizer,
14 that's a guy looking for excuses, that's a guy
15 looking for reasons, that's a guy who could
16 explain something to probably put some decency
17 back into how and why a human being is the way
18 he is. Are we not now the product of our
19 environment? Has that not been shown?

20 In doing this case and presenting it
21 to you, again, using your good common sense, if
22 anybody were to go to a home and not see a
23 photograph of a child, do you not think that
24 child does not count? If people have to get a
25 picture out of a yearbook at a school and

Closing Argument by Mr. Cummings

1 present that to you as the only showing of
2 Mr. Bowman, you come to your own conclusions.
3 Mrs. Bowman, his mom, who I have the greatest
4 respect for and sympathy for today, is sitting
5 here today and she's being cast aspersion upon
6 her which is not correct and not fair.

7 Mr. Bowman is the one in your hands
8 and that is correct. Mr. Bowman is in your
9 hands for punishment, justice, mercy, whatever
10 you shall find, whatever you choose not to find.
11 Mr. Bowman is the person that we point the
12 finger at. But I ask you was he discarded, was
13 he not cared for to where we never, never would
14 be here today because of that?

15 I did not grow up in Branchville, nor
16 did the defense team, nor did Mr. Bailey or
17 anybody else. We did not grow up in
18 Branchville. I did not grow up in Mrs. Bowman's
19 home, nor did anybody else other than the
20 children of Mrs. Bowman. And the testimony came
21 in here today about it.

22 Do I blame Mr. Marion Bowman, Sr. for
23 anything? No, I do not. I blame the
24 surroundings, I blame me. I blame us. I blame
25 the fact that nobody took an interest in this

Closing Argument by Mr. Cummings

1 kid. At 17 he is convicted of two burglaries.
2 You think that's pretty important in somebody's
3 life to know what age somebody's in trouble.
4 Nobody cared. Mr. Bowman can read the charges.
5 And this is where -- and that only comes in for
6 his character, okay, not an aggravating factor,
7 his character. Again, that's to get you to
8 think, present Mr. Bowman in a bad light to you,
9 ladies and gentlemen, and to get you to vote a
10 certain way.

11 He got a shock incarceration sentence.
12 That's what he got. You do a certain amount of
13 time like in a boot camp and you're put back
14 out. You may not consider this or you may
15 consider this. He paid restitution back to the
16 two victims himself. He did that. Not a big
17 deal because it shows some responsibility and
18 maybe that would go towards something for you to
19 consider about character. Not a big deal, not
20 anything else, you can take it, you can throw it
21 out. That alone would not be the reason to vote
22 to have capital punishment imposed on
23 Mr. Bowman. It's like I told you earlier,
24 piling on. If you pile on enough it's easy to
25 lose a person.

Closing Argument by Mr. Cummings

1 Ladies and gentlemen, are we so sure
2 in this case that we would vote to find
3 aggravating factors beyond a reasonable doubt?
4 I'm going to jump ahead a little bit and go back
5 and ask your kind permission to allow me to
6 continue speaking for a while. This is a
7 person's life and I'm going to ask you to grant
8 us the mercy, the kindness, the consideration
9 that you've shown throughout this trial a little
10 bit longer. We don't take this task light and
11 you have not taken this task light either.

12 If Mr. Bowman in your opinion right
13 now is the one who done all these horrible
14 things and you cannot show him mercy, all 12 of
15 you folks will sign that form and he will be put
16 to his death some day. That will be followed
17 out.

18 If you find mercy or find any reason
19 not to find any aggravating factors because you
20 didn't see the evidence here, and I'm going to
21 go back and talk about the evidence here, then
22 so be it. He will spend the rest of his life
23 without the possibility of parole and that is a
24 fact.

25 There's a lot of testimony here

Closing Argument by Mr. Cummings

1 yesterday against Mr. Aiken. And, please, look
2 at Mr. Aiken in the totality of what he says.
3 Again, if you're seeking a certain punishment,
4 if you're seeking that certain punishment it's
5 easy to try to paint prison as a reward. All
6 right. The line forms back there if anybody
7 wants to spend the rest of their life behind
8 bars. If you think that's the place to be, you
9 think people want it, do we put the gate on the
10 outside or do we put the gate on the inside to
11 make sure nobody's getting in?

12 I try to say that to you with the most
13 polite candor that I can. That if you think
14 that is a reward, then that is a wrong and that
15 is an injustice. The death penalty, ladies and
16 gentlemen, is the ultimate penalty. And I
17 submit to you that there is no way unless you
18 are convinced beyond a reasonable doubt, all 12
19 of you collectively putting your minds together
20 that's the appropriate punishment of a now
21 21-year-old young man, that is your province.

22 You can, you can vote and sign your
23 names to that. Mr. Bailey, again, on behalf of
24 the State, the prosecutor, I apologize, has
25 asked you to do that. He's asked you to do that

Closing Argument by Mr. Cummings

1 because you're so sure, you are so sure that
2 this is the appropriate punishment. But are we
3 so sure today after hearing Mr. Felder testify
4 that he didn't tell you everything? That was
5 the deal; was it not? Folks, there's always
6 more, there's always questions, there's always a
7 mistake. We're human.

8 MR. BAILEY: Your Honor, may we approach?
9 I have an objection.

10 THE COURT: Yes.

11 (Whereupon, a bench conference was held
12 off the record in the presence of the
13 jury but out of the hearing of the jury.)

14 MR. CUMMINGS: Am I allowed to proceed,
15 Your Honor?

16 THE COURT: You are.

17 MR. CUMMINGS: Thank you. And I state that
18 to you because we are human. There is no
19 infallibility within these courthouse walls.
20 Ladies and gentlemen, are we seeking vengeance,
21 are we seeking retribution by the death penalty?
22 Are we seeking justice by asking that this young
23 man be executed?

24 You have every legal right and every
25 legal responsibility to consider both

Closing Argument by Mr. Cummings

1 punishments. If you don't believe in that, then
2 everybody has failed in this room. It is easy
3 to be locked in and not keep an open mind about
4 anything. Nothing will bring Miss Martin back,
5 that is an absolute fact, that is the only thing
6 we know for certain in this room here.

7 I am not making light of that on
8 behalf of Mr. Bowman, nor am I making light of
9 any other issue. Because if you believe that
10 Mr. Bowman's life should be taken for the life
11 of Miss Martin, then that is your province.
12 That means you have not shown him mercy as the
13 statute says you can, or to listen to any
14 mitigating factors because you choose not to.
15 You choose to find the way you find in that jury
16 room.

17 And, again, Her Honor will clearly
18 tell you ladies and gentlemen of the jury that
19 no one has the right to second-guess what you
20 do. No one will ever come up to you and ask you
21 why did you do this. You are not here to
22 reward, you are not here strictly to punish, you
23 are not here in this case to do anything other
24 than justice. It just happens to be this time
25 in this particular case that you are the people,

Closing Argument by Mr. Cummings

1 the 12 of you, that meter out the punishment.
2 that deems appropriate by any and all
3 considerations you may give.

4 If you think that Mr. Bowman should
5 meet his fate, you'll vote for that. There's
6 nothing anybody else can do to stop you. If you
7 believe there's mercy in any way here or any
8 mitigating factor you may consider, I beg you as
9 Mr. Bailey said I would, I beg you for this
10 man's life.

11 I also say to you if you're so sure
12 about these witnesses that you would vote to
13 take another human being's life because it is so
14 credible, or that there is no other issue of
15 credibility as to these people, or that you've
16 gotten everything that you wanted to hear enough
17 to vote for this man's life, then so be it.

18 I've known Marion Bowman now for about
19 14 months. I've never been in his neighborhood,
20 I don't know if he's ever been in mine. You
21 hear different things from the correction
22 officers who spent time with him. Mr. Badillo,
23 nice, young, polite man and he wears a uniform.
24 You take his words from Mr. Badillo. It's awful
25 hard for those kids to come over here, testify

Closing Argument by Mr. Cummings

1 on that stand when they got other people in the
2 same color uniforms working around the
3 courtroom. They come in and tell you their --
4 what they see, what they do, how they act. If
5 you believe that there's any chance that Mr.
6 Badillo showed you some sort of human compassion
7 on behalf of Mr. Bowman, I ask you and submit to
8 you to consider that. Twenty-three hours a day
9 locked up, one hour a day out. You heard from
10 Sergeant Branch, you heard about one particular
11 issue as we got close to court. You heard that
12 was a disruption, not anything with violence.

13 Can he adapt to prison? Can any 20
14 year old, 21-year-old now person, who knows
15 they're going to be looked away the rest of
16 their life no matter what, do you think they
17 have any reason to not act up, to not hurt
18 somebody or do something? That didn't happen
19 here. You got a kid over there and you got a
20 duty to consider his age and mentality. His IQ
21 is approximately 80, 81 from the evidence
22 presented in here. You be the judge of that.

23 Is that an excuse? No. Is that
24 anything for me trying to ask you under smoke
25 and mirrors to try to get you to, oh, lessen the

Closing Argument by Mr. Cummings

1 fact that Miss Martin is gone? No. I'm just
2 giving you a total package for you to consider
3 and that's the job. Mr. Youngman tried to give
4 you a total package for you to consider, because
5 deep down inside everybody wants to ask the
6 question, everybody wants to ask the question in
7 here, what happened?

8 You know, unfortunately pursuant to
9 issues and rules and regulations and other
10 things, the course that control everything about
11 this room, that issue is for you to determine
12 and the answer to that question is for you to
13 determine based on the facts and evidence as
14 presented in this courtroom.

15 I'm going to ask something here that's
16 probably going to anger my client at me. It's
17 easy once you realize that the rest of your life
18 is going to be behind bars to maybe want to
19 consider, well, they might as well go ahead to
20 vote and take my life anyway because I don't
21 have a life. I'm locked up the rest of my life.
22 If you look around the jury pool, the jury panel
23 today, we have an age group from young to what I
24 call a very young older person. Can you imagine
25 spending from the years of the youngest person

Closing Argument by Mr. Cummings

1 on the jury until the oldest person on the jury
2 behind bars? That's a life sentence without the
3 possibility of parole. Or, on the other hand,
4 come out of that bathroom closet as Mr. Aiken
5 stated, the bathroom area, and meet the ultimate
6 fate.

7 I'm going to ask you to do something,
8 and this is not trickery or any lawyer --
9 everybody's got opinions about lawyers. I keep
10 wondering why the heck we do this now. But you
11 know we try to help. First people come to is a
12 lawyer, they don't go to their doctor, they
13 don't go to their accountant, they usually go to
14 a lawyer. We try to help. Mr. Bailey helps on
15 behalf of the State and I help on behalf of this
16 human being charged with these crimes, charged
17 with two crimes.

18 And that help is this. You ought to
19 make Mr. Bowman for the remainder of his natural
20 days, you remember that there are some people in
21 this community that would show him mercy, you
22 ought to make Mr. Bowman know that he's got to
23 remember the memory of everything that happened
24 in this courtroom until the remainder of his
25 natural life in prison. You ought to make

Closing Argument by Mr. Cummings

1 Mr. Bowman remember the memory of Miss Martin
2 until he closes his eyes some other way.

3 If you do not want him to do that,
4 then vote to take his life. That's your
5 province. I'm not asking you to do it. I'm
6 saying to you, you can give him a death sentence
7 without sentencing him to death. And that's the
8 ironic part of this statute. That is the ironic
9 part that we come before you and argue. You
10 have the right to submit him to execution at
11 some date, some time. Sign your name, all 12 of
12 you, and that will happen if you find an
13 aggravating factor. Or you will make him
14 suffer.

15 Now, does that make it sound like a
16 reward? Does that make it sound light? Does
17 that make it equal to punishment that the State
18 is seeking, the justice? You define justice,
19 ladies and gentlemen, I've never been able to.
20 And neither have most lawyers because sometimes
21 you think you got a case or a defense, sometimes
22 you think you don't, sometimes you think you got
23 a great big lawsuit out here and the jury comes
24 back and says defendant's verdict. And you go
25 like, wow, 12 people tried and true, a jury of

Closing Argument by Mr. Cummings

1 his peers have said, no, you don't get anything.

2 How about in this case a jury of his
3 peers, and that's what you are, folks, you are a
4 jury of Mr. Bowman's peers. And if I offend you
5 in any way, I apologize. We are who we are. We
6 are now asked to sit in judgment of a fellow
7 human being. It would be slight of me not to
8 ask you to make this man suffer in a way that
9 will send a message back from everything --

10 MR. BAILEY: Your Honor, I think you've
11 ruled on that previously.

12 MR. CUMMINGS: I did not say anything other
13 than send a message back of humanity. That's
14 all. A message of humanity. I apologize,
15 again, if I loose my train of thought. This is
16 what we do in here. Is it that important? Is
17 it that important that we have to have
18 Mr. Bowman put to death? Will that do anything?
19 Will that change anything today in this
20 courtroom? Vengeance is mine. If you ever --

21 MR. BAILEY: Judge, may we approach,
22 please?

23 THE COURT: Yes.

24 (Whereupon, a bench conference was held
25 off the record in the presence of the

5000

Closing Argument by Mr. Cummings

1 jury but out of the hearing of the jury.)

2 MR. CUMMINGS: You hold the punishment, you
3 and you alone. I'm asking you to consider both.
4 If you believe that everything that Mr. Hiram
5 Johnson said was so credible, the woman was shot
6 in the back of the head, and that he said Marion
7 said I shot and killed her, I laughed, then so
8 be it. If you believe Mr. Felder is too
9 credible to say anything along that line.

10 And I'm going to where the aggravating
11 factors are now, I'm not going back over the
12 evidence, folks, the aggravating factors. Do
13 any of these four stick? Do any of them have
14 proof beyond a reasonable doubt? He's been
15 charged with two crimes. This is piling on.
16 This is now to get the death penalty verdict.
17 Can you see it? Do you see kidnapping is a
18 pretty serious crime, isn't it? I mean it's
19 pretty darn serious you got to kidnap somebody.
20 They got to know they're being kidnapped or look
21 in the circumstances surrounding the activity,
22 that is a kidnapping.

23 Is that it? Has that been proven to
24 you beyond a reasonable doubt? If it has then
25 so be it. If it has, then you will vote the way

JA 1354

5001

Closing Argument by Mr. Cummings

1 that you will vote. If Mr. Bowman did not do
2 that, don't vote just because it's something you
3 think you should do. Please take your time,
4 please consider every issue here. Proof beyond
5 a reasonable doubt is our standard.

6 What was Miss Martin doing over at
7 Frankie Martin's house? I don't know.
8 Mr. Martin testified they were alone. Why is
9 there an aggravating factor in here about
10 criminal sexual conduct? Has anybody testified
11 to you in here of nonconsensual relations
12 between a human being and another human being?
13 It doesn't matter whether Miss Martin who is
14 shown in that picture, Mr. Bowman there as
15 seated there happen to be friends.

16 That is not to anger you, that's not
17 for me to anger you and I apologize. And I
18 raised my voice for a moment to point something
19 out and that is this: You've got to prove, the
20 State has to prove to you folks there was
21 nonconsensual sex. Other than that we just
22 muddy up the water. Again, another reason to
23 pile it on.

24 Robbery while armed with a deadly
25 weapon. Has anybody testified about a robbery,

JA 1355

5002

Closing Argument by Mr. Cummings

1 has anybody testified about that? Do you
2 believe these witnesses that came before you and
3 told you I'll tell you the truth, the whole
4 truth and nothing but the truth, tell you
5 everything? Well, you got a tape now to look at
6 back there, too. And you have Mr. Felder again
7 coming here again today on behalf of the
8 defense.

9 If you believe, ladies and gentlemen,
10 that there was a larceny of anything while armed
11 with a deadly weapon, when did it occur? When
12 could this criminal sexual conduct have
13 occurred? If you take the testimony and any
14 aspect of this, when could it have occurred?
15 Did you not hear Mr. Felder a few moments ago
16 come out here and say grabbed her by the ankles,
17 pulled her back out and then he set the car on
18 fire? Marion had to do it in order to get you
19 to say everything that you would vote for today.

20 I'm asking you to consider
21 inconsistencies and whether there's proof beyond
22 a reasonable doubt as to these aggravating
23 factors. I'm asking you today to go back. And
24 are we so sure, beyond a reasonable doubt, that
25 we would vote to take a human being's life? Is

JA 1356

5003

Closing Argument by Mr. Cummings

1 there any inconsistencies, is there any gaps in
2 the testimony, is there any reason today to
3 cause any doubt to issue the ultimate penalty?
4 That is the question. That begs the question in
5 this room. If you say no, then so about it.
6 Are we so sure? But when could this have
7 happened, when did the criminal sexual conduct
8 happen? Give me -- I don't mean me, give us
9 date, time, place, who, what, when, where, how
10 and why. Where is it?

11 The mere fact that they have been
12 friends is not enough as an aggravating factor
13 of criminal sexual conduct. The mere fact if
14 you found, and you did find the other day, Miss
15 Martin was shot by Mr. Bowman. You found that.
16 You found that and you believe that. Do you
17 think he then kidnapped her? Where was the
18 kidnapping? You've got to look at everything.

19 Take the charge as Her Honor gives the
20 law, I don't want to sit here get yelled at
21 again, I'm sitting here asking you to look at
22 everything that's presented to you as evidence,
23 not what we think might be evidence. You have
24 the right to consider what is the evidence, what
25 is not the evidence, what was presented, what

JA 1357

5004

Closing Argument by Mr. Cummings

1 was not presented to you. Her Honor's the boss
2 on the evidence.

3 Ladies and gentlemen, if there's not
4 an aggravating factor here the last thing is to
5 ask you to show mercy. You cannot bring back
6 the death penalty. You cannot consider just
7 mere character alone to execute this young man.
8 I ask you for understanding, not an excuse as to
9 his conduct. I ask you will we ever really be
10 able to understand any -- and these are just
11 some headnotes, and I promise you I'm on the way
12 down and away from this podium from you soon.

13 Before we vote for the ultimate
14 penalty, before you take this young man's
15 situation in your hands, do you think, do you
16 feel, do you believe that his young age has
17 anything to do with this? If not, so be it. Do
18 you believe, do you feel that his mentality has
19 anything to do with this? If so, I stipulate
20 that to you.

21 If you believe that there is any
22 reason to show mercy to this man, that is your
23 province. If you believe in looking at the fact
24 he has no significant history of prior criminal
25 conviction involving use of violence against

JA 1358

5005

Closing Argument by Mr. Cummings

1 another person, then I ask you and submit to you
2 legally that burglary third degree is not a
3 crime of violence. We don't like it, but we
4 don't execute people for stealing property. We
5 don't. I think we've gotten away from being
6 barbaric as to the death penalty for anything
7 other than the most horrific or the most serious
8 crimes.

9 You need look at the death penalty and
10 do not leave your common sense outside the door.
11 If you look at the death penalty as you see it,
12 that is what it's intended to do by the
13 legislature, to give you options. Because we
14 can't tell you what to do. We can only ask of
15 you to do what is right and just. I ask each of
16 you to look inside yourself and to make sure
17 that you find the appropriate punishment. Is
18 the victim impact issues in this area going to
19 hurt, going to do anything? Yes, it hurts. It
20 hurts the fact that Miss Martin has lost her
21 life and is gone. Mr. Bowman's life is gone,
22 it's just a question of how. Just a question of
23 humanity and how.

24 We think often, and Mr. Aiken probably
25 said it best, that prison is a dangerous place.

JA 1359

5006

Closing Argument by Mr. Cummings

1 Prison is an appropriate punishment for
2 Mr. Bowman because from 21 to whenever he closes
3 his eyes is a death sentence. If you would just
4 consider that and look at it in the totality of
5 the circumstances I'm explaining to you. It is
6 easy, ladies and gentlemen, please, to vote to
7 take a human being's life when you hear how
8 humans treat other humans. Has that ever
9 stopped in this world? Has it ever stopped 'til
10 today? Again, using your common sense, when
11 there were public executions years ago back in
12 the old days, I mean before we were even a
13 country, there were kids pickpocketing crowds as
14 they looked at the execution being carried out.

15 MR. BAILEY: It's getting off the record.
16 I would object to that.

17 MR. CUMMINGS: I apologize, Judge, I'll
18 come right back to the record.

19 You are, ladies and gentlemen, only
20 going to vote on two things today and only two.
21 I ask you today to consider both despite the
22 fact that there is every reason in the world to
23 want to set everything aside and just do what
24 you've been asked to do by one side against the
25 other. Please don't think that I'm standing up

JA 1360

5008

Closing Argument by Mr. Cummings

1 different light to you. Perhaps another day,
2 another time this young man despite all the
3 things Mr. Youngman said about him, we could
4 forget about that and just state you're right,
5 that it's not the reason to kill Miss Martin,
6 but we can just forget it and go right to the
7 heart of the matter about voting for death or
8 voting for life without the possibility of
9 parole.

10 If you're looking for any connections
11 in here, if you're looking for anything and if
12 there's one break in the chain as to anything,
13 you must with no one to promise, no one to
14 reward, no one, you're not allowed to have
15 sympathy, you're not allowed to have bias or
16 prejudice come into this case.

17 Everybody has tried to do their best
18 to present things to you for your consideration.
19 All we can do is explain that Marion could adapt
20 to a horrible situation. Yes, begging for life
21 without the possibility of parole is what is
22 being said to you right now. Begging to stop,
23 begging to stop the thing. Is justice going to
24 be served by taking his life? Is that justice?

25 All we can do is present the facts and

JA 1361

5009

Closing Argument by Mr. Cummings

1 evidence that is given to us by the State and
2 the evidence as allowed in the courtroom. I'm
3 asking -- excuse me, on behalf of Mr. Bowman
4 requesting to show mercy on his life. I'm
5 asking on behalf of Mr. Bowman to have you
6 consider both sentences. I have to state that
7 by statute. I'm asking you on behalf of
8 Mr. Bowman to spare his life.

9 Begging for his life is not just a
10 job, begging for his life, for mercy, is not
11 anything less than manhood or in light of the
12 circumstances surrounding what happened.
13 Begging for his life is the right thing to do.
14 It's the only thing to do. Begging for his life
15 to you sets aside the chances of bias,
16 prejudice, or any other reason that came up in
17 this courtroom to vote to take a human being's
18 life away. Because as we all find out, as we
19 all know, if you're not thought of, if you're
20 not important enough, you don't matter. You
21 just don't matter. I'm going to ask you to make
22 it matter. I'm asking you to make Mr. Bowman
23 matter.

24 Ladies and gentlemen, on behalf of
25 Mr. Bowman, Ms. Thomas and I, I thank you for

JA 1362

Closing Argument by Mr. Cummings

1 the privilege and opportunity to appear before
2 you and I ask you, again, mercy to spare my
3 client's life. Thank you, Judge.

4 THE COURT: Thank you, Mr. Cummings.

5 MR. CUMMINGS: Ma'am, at this time could we
6 take a short break?

7 THE COURT: Yes. Very well.

8 Ladies and gentlemen, I'm going to ask
9 you to please step to your jury room. Do not
10 discuss this matter and do not allow anyone to
11 discuss it with you. Hold on one second. I'm
12 checking on to see if your lunch has arrived.

13 I'll tell you what we're going to do,
14 we're going to have a little bit of a change.
15 Ladies and gentlemen, it's going to take me
16 probably the better part of an hour to deliver
17 the charge to you. And as a result of that what
18 we're going to do is we're going to take our
19 lunch break. What I would like for you to do is
20 be mindful, of course, not to discuss this
21 matter or allow anyone to discuss it with you
22 because you've not heard the charge on the law.
23 And then I want you to have your lunch and then
24 when you've finished your lunch, and I bet some
25 folks are going to want to smoke after you've

State vs. Bowman - Volume XXIV

1 had your lunch, when you have concluded those
2 two matters, lunch, smoke, I want you to let us
3 know because then we will -- I will deliver the
4 charge to you. But before you step out let me
5 see counsel for just a moment.

6 (Whereupon, a bench conference was held
7 off the record in the presence of the
8 jury but out of the hearing of the jury.)

9 THE COURT: All right, then. Ladies and
10 gentlemen, step to your jury room, have your
11 lunch. Thank you.

12 (Whereupon, the jury retires to the jury room at
13 12:53 p.m.)

14 THE COURT: All right. Prior to the
15 closing arguments I had asked counsel for
16 Mr. Bowman that in the event he wished to argue
17 just to introduce him, if he did not wish to
18 argue just to indicate to me that we needed to
19 take a break. And Mr. Cummings has indicated to
20 me that we needed to take a break so I take that
21 to mean that Mr. Bowman has chosen not to make a
22 final argument?

23 MR. CUMMINGS: Judge, I would like to have
24 my client stand up for just a moment, please.

25 THE COURT: Certainly. Yes, sir,

State vs. Bowman - Volume XXIV

1 Mr. Bowman. Mr. Bowman, as we talked about
2 earlier you understand, of course, your right to
3 make a closing argument?

4 MR. BOWMAN: Yes, ma'am.

5 THE COURT: And have you decided that you
6 wish not to make a closing argument?

7 MR. BOWMAN: Yes, ma'am.

8 THE COURT: All right. And are you making
9 that decision freely and voluntarily?

10 MR. BOWMAN: Yes, ma'am.

11 THE COURT: And you've discussed that with
12 your attorneys?

13 MR. BOWMAN: Yes, ma'am.

14 THE COURT: Do you have any questions with
15 me or your attorneys about your right to make
16 closing argument?

17 MR. BOWMAN: No, ma'am.

18 THE COURT: All right. And you understand
19 then that you have the right to make your
20 closing argument and you wish not to?

21 MR. BOWMAN: Yes, ma'am.

22 THE COURT: And you're doing that freely,
23 knowingly, and voluntarily?

24 MR. BOWMAN: Yes, ma'am.

25 THE COURT: Very well. Any questions on

State vs. Bowman - Volume XXIV

1 behalf of the State for Mr. Bowman?

2 MR. BAILEY: Not from the State,
3 Mr. Bowman.

4 MR. CUMMINGS: I don't have a question, but
5 I would like to make a statement and ask my
6 client to reconsider what he has just stated,
7 Your Honor, because the ultimate penalty is
8 present I would suggest and I would recommend to
9 my client, again, that he stand before these
10 good folks and have the right to ask them to
11 spare his life. And I apologize, I'm not trying
12 to cause any delay, I'm asking him to please
13 reconsider that.

14 THE COURT: Delay is of no moment to this
15 matter at all. You want to talk to him? Why
16 don't you sit and talk to him.

17 MR. CUMMINGS: Yes, Judge, for a moment,
18 please.

19 THE COURT: If you wish to change your
20 mind, Mr. Bowman, you let me know.

21 (Mr. Cummings and Ms. Hardee-Thomas conferring
22 with Mr. Bowman.)

23 THE COURT: All right, then. I think what
24 we'll do is we're going to go ahead and take our
25 break likewise for the lunch break and if he --

State vs. Bowman - Volume XXIV

1 give you all an opportunity to talk outside the
2 courtroom, it appears that that would be
3 appropriate.

4 MR. CUMMINGS: Yes, ma'am.

5 THE COURT: I do need, though, before you
6 do that to see counsel just for a moment
7 regarding the charge.

8 (Lunch recess taken from 12:57 p.m. to
9 1:45 p.m.)

10 THE COURT: All right. Now, of course
11 we've had the lunch break. And, counsel, have
12 you had an opportunity, Mr. Cummings, Ms.
13 Hardee-Thomas, to talk to Mr. Bowman?

14 MR. CUMMINGS: That is correct, Judge.

15 THE COURT: All right. And do you still
16 wish to waive arguments?

17 MR. BOWMAN: Yes, ma'am.

18 THE COURT: Very well. And you're doing so
19 freely, voluntarily, and knowingly?

20 MR. BOWMAN: Yes, ma'am.

21 THE COURT: Very well. Thank you. Let us
22 have our jury.

23 (Whereupon, the jury returns to the courtroom at
24 1:46 p.m.)

25 THE COURT: Ladies and gentlemen, in your

Jury Charge

1 seat there are a number of forms which we're
2 going to talk about. They are actually
3 organized, hopefully, in the order which we will
4 go over them. I will ask you, though, to pay
5 attention to me and don't read these forms at
6 this time. You will have ample opportunity
7 during the course of the charge to go over them.
8 If you want to hold them that's perfectly fine,
9 but I'll go over them with you one at a time,
10 allow you an opportunity to get to those forms
11 as we go through the charge. But I do need you
12 to look only at the charge that we are talking
13 about and to -- but before we go to any charges
14 I would appreciate it if you would give me your
15 undivided attention.

16 Madam Foreperson and members of the
17 jury, it now becomes your duty to decide what
18 sentence you will recommend that this Court
19 impose upon the defendant, Mr. Marion Bowman,
20 Jr. When I use the word "defendant" in these
21 instructions, please know that I am referring to
22 Mr. Marion Bowman, Jr.

23 There are two verdicts you are to
24 consider in this case. One is the death
25 penalty, which in this state is by electrocution

Jury Charge

1 or lethal injection at the option of the
2 defendant, and the other is life imprisonment
3 without the possibility of parole. If you
4 sentence the defendant to death, you must assume
5 that the sentence will be carried out. If a
6 recommendation of life imprisonment is made, the
7 defendant will be sentenced to life imprisonment
8 without the possibility of parole. Your
9 sentencing recommendation will be followed by
10 this Court.

11 The order in which I explain these two
12 sentences is in no way a recommendation by this
13 Court as to which sentence you should choose to
14 recommend. It is simply that one must be stated
15 first.

16 We're going to begin, and I'm holding
17 up here the "Recommendation of Sentence Death
18 Penalty," the death penalty form. It should be
19 the first form that you have. By this
20 recommendation of sentence form which I hold in
21 my hand, you, the jury, may recommend that this
22 Court sentence the defendant to death.

23 Please observe that immediately below
24 the body of the recommendation there are 12
25 lines. This is where should you decide to

Jury Charge

1 recommend the death penalty, each one of you
2 would sign your name. It is the law in this
3 state, Madam Foreperson and members of the jury,
4 that a recommendation for imposition of the
5 death penalty be a unanimous recommendation and
6 that each and every juror sign his or her name
7 to the recommendation form.

8 I will now read to you the text of
9 this form. "We, the jury, in the above-entitled
10 case, having found beyond a reasonable doubt the
11 existence of the following statutory aggravating
12 circumstance, or circumstances, to-wit:" At
13 this point there is a place for you to write
14 such circumstances about which I will instruct
15 you further. And I quote "Now recommend to the
16 Court that the defendant, Marion Bowman, Jr., be
17 sentenced to death."

18 Now, for this recommendation to be
19 made, that is that the defendant be sentenced to
20 death, you must first find that a statutory
21 aggravating circumstance existed beyond a
22 reasonable doubt. What is a statutory
23 aggravating circumstance? It is a fact, an
24 incident, a detail, or an occurrence which the
25 general assembly has declared by statute would

Jury Charge

1 make worse; that is, aggravate the offense of
2 murder when the two occur together. In other
3 words, it is something that increases the
4 enormity or adds to the injurious consequences
5 of the offense.

6 Now, ladies and gentlemen, let me
7 direct your attention to the next sheet which
8 says "Statutory Instructions." Upon this sheet
9 of paper which I hold in my hand are written the
10 words "Statutory Instructions." You will have
11 this paper in your jury room during your
12 deliberations. The body of this form states,
13 and I quote, "In determining whether to
14 recommend that the defendant, Marion Bowman, Jr.
15 be sentenced by the Court to life imprisonment
16 or to death, you may consider the following
17 statutory aggravating circumstances. (1) Murder
18 was committed while in the commission of
19 criminal sexual conduct. (2) Murder was
20 committed while in the commission of kidnapping.
21 (3) Murder was committed while in the commission
22 of larceny with the use of a deadly weapon. And
23 (4) Murder was committed while in the commission
24 of robbery while armed with a deadly weapon.

25 Now, at this point, ladies and

Jury Charge

1 gentlemen, we will put aside that sheet of paper
2 and I will explain further to you those
3 instructions and I will come back to this sheet
4 momentarily. Let me emphasize to you that these
5 are the only circumstances you may consider as
6 aggravating circumstances. Let me say again
7 that these four circumstances are the only
8 circumstances you may consider as aggravating
9 circumstances.

10 Should you find, and it must be a
11 unanimous finding; that is, a finding by each
12 and every one of you, should you find that the
13 State has proven beyond a reasonable doubt the
14 existence of one or more of the circumstances
15 listed on this sheet of paper, then you would be
16 authorized, which obviously means permitted, to
17 consider recommending to this Court that the
18 defendant be sentenced to death.

19 Now, what do I mean by the term
20 "proven beyond a reasonable doubt"? Proof
21 beyond a reasonable doubt is proof that leaves
22 you firmly convinced of the existence of one or
23 more of the aggravating circumstances. There
24 are few things in this world that we know with
25 absolute certainty and in criminal cases the law

Jury Charge

1 does not require proof that overcomes every
2 possible doubt. If, based on your consideration
3 of the evidence, you are firmly convinced that
4 an aggravating circumstance or aggravating
5 circumstances exist, then you would be
6 authorized, which is to say permitted, to
7 consider recommending to this Court that the
8 defendant be sentenced to death.

9 If, on the other hand, you think that
10 no aggravating circumstance or aggravating
11 circumstances exist, you should give him the
12 benefit of the doubt and in such case you would
13 make no recommendation of sentence if you find
14 that no aggravating circumstance exists. The
15 Court would then sentence the defendant under
16 the law.

17 Let me say again if you find that no
18 aggravating circumstances exist, then and in
19 such occasion you could make no recommendation
20 of sentence. The Court would then sentence the
21 defendant under the law.

22 Now, please pay close attention to
23 this. You are never required to recommend the
24 death penalty even if you find that a statutory
25 aggravating circumstance existed at the time the

Jury Charge

1 offense occurred. However, if you find the
2 existence of a statutory aggravating
3 circumstance, please list that circumstance on
4 the form entitled "Aggravating Circumstance" and
5 all 12 will sign. That is this form. In that
6 event, the jury simply lists the statutory
7 aggravating circumstances that it found and
8 there's a place there for each and every one of
9 you to sign.

10 Now, Madam Foreperson and ladies and
11 gentlemen, as you will recall the four statutory
12 aggravating circumstances submitted to you for
13 your consideration in this case are: Murder
14 while in the commission of criminal sexual
15 conduct, murder while in the commission of
16 kidnapping, murder while in the commission of
17 robbery with a deadly weapon which we call armed
18 robbery, and murder while in the commission of
19 larceny with the use of a deadly weapon.

20 First of all, criminal sexual conduct
21 is defined as the defendant engaging in a sexual
22 battery with the victim. Sexual battery is
23 nonconsensual sexual intercourse, cunnilingus,
24 fellatio, anal intercourse, or any intrusion,
25 however slight, of any part of a person's body

Jury Charge

1 or of any object into the genital or anal
2 openings of another person's body except when
3 the intrusion is accomplished for medically
4 recognized treatment or diagnostic purposes.

5 Next, kidnapping. Kidnapping is
6 knowingly and unlawfully seizing, confining,
7 inveigling, decoying, kidnapping, abducting, or
8 carrying away another person without authority
9 of law. To do a thing unlawfully is to do it
10 willfully against the law. Knowingly means with
11 knowledge, consciously, not accidentally.
12 Seizing means to take hold of suddenly or
13 forcibly. Confining means to limit, restrict,
14 or enclose within bounds, imprison or shut or
15 keep in. Inveigling means to lure, entice, or
16 lead astray by false representations, promises,
17 or other deceitful means. Decoying means to
18 lure by or as if by decoy. A decoy is something
19 to entice a person into a trip. Kidnapping is
20 to remove a person against her will by unlawful
21 force or by fraud, I should say his or her will
22 by force or by fraud. Abducting means to carry
23 off secretly or by force for an illegal purpose.
24 Carrying away means to remove. Something done
25 without authority of law is something which the

Jury Charge

1 law does not sanction, permit, allow, condone,
2 or provide justification for.

3 Next of all is robbery while armed
4 with a deadly weapon or armed robbery. It is
5 defined in our statute as a person who commits
6 robbery while armed with a pistol or other
7 deadly weapon.

8 Now, ladies and gentlemen, as you know
9 robbery while armed with a deadly weapon
10 includes larceny, robbery, and the imposition of
11 a weapon. Larceny is the same thing as
12 stealing. It means a wrongful taking into
13 possession of somebody else's personal property.
14 Secondly, it means the carrying away and the
15 removal of that personal property, and finally
16 it means the wrongful intent, the felonious
17 intent to steal on the part of the taker so as
18 to permanently deprive the owner of the use of
19 that property. That's what larceny is.

20 Robbery is larceny from the person or
21 in the presence of another either by using
22 violence or by putting that person in fear of
23 violence. Armed robbery takes all of those
24 elements and adds the imposition of a deadly
25 weapon into the equation.

Jury Charge

1 So, robbery while armed with a deadly
2 weapon includes all of the elements of larceny
3 and robbery, and it also requires that one must
4 have used a deadly weapon to establish the
5 purpose of the robbery. Now, larceny while
6 armed with a deadly weapon is that stealing,
7 that felonious taking into possession of the
8 personal property of another, the carrying away
9 and removal of that personal property with the
10 felonious intent to steal on the part of the
11 taker so as to permanently deprive the owner of
12 its use and to change it over to the taker's own
13 use while armed with a deadly weapon.

14 So, you see that there is slight
15 difference, but an important distinction between
16 robbery while armed with a deadly weapon and
17 larceny while armed with a deadly weapon.
18 Larceny does not necessarily imply the use of
19 violence or by putting a person in fear of
20 violence, or by taking the property from the
21 person or presence of another. Ladies and
22 gentlemen, those are the elements of robbery
23 while armed with a deadly weapon and larceny
24 through the use of a deadly weapon.

25 I remind you again the person need not

Jury Charge

1 be armed during the entire course of the taking.
2 It is sufficient that if the person becomes
3 armed at any point during the commission of the
4 crime and before the property is taken away to
5 satisfy the requirements of the statute.

6 Now, ladies and gentlemen, the law
7 requires as I have indicated to you that the
8 murder must have been committed while in the
9 commission of one of those particular acts. So
10 what do we mean by the terms "in the commission
11 of"? If the crimes were committed, that is the
12 crimes as already outlined, the criminal sexual
13 conduct, kidnapping, larceny, the robbery while
14 using a deadly weapon and the larceny while
15 using a deadly weapon were committed after the
16 murder, that does not necessarily invalidate
17 them as aggravating circumstances.

18 If the crimes were consummated in a
19 continuous series of acts along with the murder,
20 or if they were committed in the same place and
21 were not separated by any substantial lapse of
22 time, that does not defeat them from being
23 considered as aggravating circumstances for the
24 purpose of the statute.

25 I instruct you further that should you

Jury Charge

1 find the State has not proven that such a
2 statutory, aggravating circumstance existed,
3 that is to say you find that you still have a
4 reasonable doubt as to the existence of such a
5 circumstance, then you would not make a
6 recommendation of sentence. The Court would
7 then sentence the defendant under the law.
8 Another definition of reasonable doubt is the
9 kind of doubt that would cause a reasonable
10 person to hesitate to act.

11 Now, ladies and gentlemen, in the
12 event that the jury found that there was no
13 aggravating circumstance there is a form for
14 that as well. And that form is entitled
15 "Unanimous Finding of No Aggravating
16 Circumstances." I'll give you a moment to get
17 to that form.

18 Again, you would indicate that finding
19 on the form which is entitled "No Finding of
20 Aggravating Circumstances." And, again, the 12
21 of you would sign this form. If you are unable
22 to unanimously agree on the existence of any
23 aggravating circumstance, there is a form to
24 indicate that event. If that is the event, then
25 there is a form which says, "No Finding of

Jury Charge

1 Aggravating Circumstances." And I'll allow you
2 a moment to get to that form.

3 In the event that the jury is unable
4 to unanimously agree on the existence of any
5 aggravating circumstance, then the foreperson
6 would simply sign this form, fill it out with
7 the date, and we are in St. George in that
8 event.

9 Now, should you find beyond a
10 reasonable doubt that one of the aggravating
11 circumstances listed on the sheet of statutory
12 instructions existed at the time of the murder
13 or during the commission of the crime of murder,
14 and should you then decide after considering the
15 elements in favor of a recommendation of life
16 imprisonment about which I will instruct you
17 later, that the recommendation of the jury is to
18 be that the defendant be sentenced to death,
19 then it would be your duty, madam foreperson, to
20 write on the recommendation of this sentence
21 form the statutory aggravating circumstance or
22 circumstances which you have found. Again, I'm
23 back to the first form that we looked at, the
24 "Recommendation of Sentence Death Penalty."

25 Again, in the event that this is the

Jury Charge

1 form utilized by the jury it is incumbent upon
2 you, Madam Foreperson, to write the statutory
3 aggravating circumstance or circumstances which
4 the jury found. Then, Madam Foreperson, you and
5 each and every juror would sign your names in
6 the places provided. Of course, you would also
7 put the place as well as the date.

8 Now, other facts about the defendant's
9 background and record have been introduced by
10 the State. I charge you that this evidence of
11 these crimes, these other crimes, other acts,
12 should not be considered as substantive evidence
13 of aggravating circumstances. Should not be
14 considered as substantive evidence of
15 aggravating circumstances. But if you are
16 convinced the defendant committed those crimes
17 or any of them, you may consider them as
18 evidence of his characteristics. These may be
19 considered along with all of the other evidence
20 and you may give them whatever weight you deem
21 proper under the circumstances of this case.

22 However, under no circumstances may
23 you consider those facts even if proven as
24 evidence or proof of statutory aggravating
25 circumstances. Those other facts, if proven,

Jury Charge

1 may only be considered as evidence of the
2 defendant's characteristics and given such
3 significance as you determine they are entitled
4 to receive. They are not proof of statutory
5 aggravating circumstances and may not be
6 considered as such.

7 Now, ladies and gentlemen, I'm holding
8 out for you now the "Recommendation of Sentence
9 Life Imprisonment." Give you a moment to get to
10 that form. By this form which I hold in my
11 hand, you, the jury, can recommend to this Court
12 that the defendant be sentenced to life
13 imprisonment. I will now read the text of this
14 recommendation form. And I quote: "We, the
15 jury, in the above-entitled case, recommend to
16 the Court that the defendant, Marion Bowman, Jr.
17 be sentenced to life imprisonment." Please note
18 that although you must unanimously agree to
19 recommend life imprisonment, only the foreperson
20 is required to sign this recommendation form.

21 Ladies and gentlemen, that is the
22 paperwork that you will be considering. But
23 obviously this decision will not start on paper
24 even though it may end there. The decision will
25 come from within your hearts and your minds as

Jury Charge

1 the result of your collective reasoning,
2 thought, and deliberation that you will be
3 entering into in just a few moments.

4 So, in that regard I want to give you
5 some instructions about what you may consider in
6 making your decision as to which sentence to
7 recommend. Please, ladies and gentlemen, if you
8 have the need to refer to these forms during
9 these following instructions, do that, but do
10 not become so immersed in those forms that you
11 do not pay attention to what I'm about to tell
12 you.

13 As I previously instructed, if you
14 find the existence beyond a reasonable doubt of
15 a statutory aggravating circumstance, then you
16 are permitted, but not required, to recommend
17 the death penalty. There are three conditions
18 which you should consider in reaching your
19 decision. First, whether the existence of a
20 statutory mitigating circumstance was supported
21 by the evidence; second, whether the existence
22 of any other mitigating circumstance was
23 supported by the evidence; and third, whether
24 for any reason you can think of, or for no
25 reason at all, the defendant should be sentenced

Jury Charge

1 to life imprisonment.

2 What is a statutory mitigating
3 circumstance? It is a fact, an incident, a
4 detail, or an occurrence which the general
5 assembly has declared by statute would reduce
6 the severity of the offense of murder. In other
7 words, it is a circumstance recognized by
8 statute as one which in fairness and mercy may
9 be considered as extenuating or as reducing the
10 degree of moral culpability for the commission
11 of the act of murder.

12 A mitigating circumstance is neither
13 justification nor excuse for the murder, it
14 simply lessens the degree of one's guilt, that
15 is makes him or her less blameworthy or less
16 culpable.

17 What statutory mitigating circumstance
18 should you consider in this case? I'm now
19 holding the statutory instructions. Once again,
20 if you'll take a moment and get there. I refer
21 once again to this sheet of paper entitled
22 "Statutory Instructions." Immediately below the
23 listing of statutory aggravating circumstances
24 which I read to you earlier the text continues,
25 and I quote: "You may also consider the

Jury Charge

following statutory mitigating circumstances:

(1) The defendant has no significant history of prior criminal convictions involving the use of violence against another person. (2) The age or mentality of the defendant at the time of the crime. And (3) Or any other mitigating factors that the jury may find. You may also consider any nonstatutory mitigating circumstances."

A nonstatutory mitigating circumstance is one which is not provided for by statute, but is one which the defendant claims serves the same purpose, that is to reduce the degree of his moral culpability or blame in the offense. While there must be some evidence which supports a finding by you that a statutory or nonstatutory mitigating circumstance exists, you need not find the existence of such a circumstance beyond a reasonable doubt. You may consider any mitigating circumstance supported by the evidence submitted, and you must determine whether the evidence exists and the significance to be given that evidence.

In reaching your decision as to which sentence to recommend, you will consider aggravating and mitigating circumstances. While

Jury Charge

1 a statutory aggravating circumstance must be
2 found before you can even consider recommending
3 the death penalty, once such a finding is made
4 beyond a reasonable doubt you may recommend the
5 death sentence even though you find the
6 existence of a statutory mitigating
7 circumstance. In other words, the existence of
8 an alleged statutory mitigating circumstance, an
9 alleged nonstatutory mitigating circumstance or
10 both, is not a bar to the imposition of the
11 death penalty.

12 The third element you may consider if
13 you should could conclude that a statutory
14 aggravating circumstance exists is whether the
15 defendant should be sentenced to life
16 imprisonment for any reason, or for no reason at
17 all. That is what has traditionally been
18 referred to as a recommendation of mercy. And
19 should such be your decision, if you would so
20 indicate by returning to the Court the
21 "Recommendation of Life Imprisonment" form which
22 will be signed by the foreperson alone.

23 In other words, you may choose to
24 recommend life imprisonment if you find a
25 statutory or nonstatutory mitigating

Jury Charge

1 circumstance, or you may choose to recommend
2 life imprisonment as an act of mercy. In any
3 instance, should you choose to recommend life
4 imprisonment your decision must be a unanimous
5 one and the foreperson alone would be required
6 to sign the recommendation form.

7 Now, ladies and gentlemen, I instruct
8 you and emphasize that the fact that the
9 defendant chose not to testify is not a factor
10 to be considered by you in any way in your
11 deliberations and in your consideration on what
12 sentence the defendant should receive. It must
13 not be considered by you in any manner
14 whatsoever. A defendant has the constitutional
15 right to remain silent and the assertion of this
16 right must not be considered by you in your
17 deliberations. I repeat, under your oath you
18 are to draw no conclusion whatsoever from the
19 fact that the defendant in this case did not
20 testify.

21 The fact that this defendant did not
22 testify should not even be discussed in the jury
23 room. The burden of proof as I have stated to
24 you is on the State. The defendant is not
25 required to prove any innocence. The burden of

Jury Charge

1 proof remains on the State to prove guilt, to
2 prove aggravating circumstances beyond a
3 reasonable doubt.

4 Now, ladies and gentlemen, in this
5 case you've heard the testimony from persons who
6 have been described as experts in certain
7 fields. Our law allows persons who because of
8 their education, and knowledge, experience, have
9 become experts in certain fields and to state
10 their opinions on matters in those fields and
11 also to give their reasons for those opinions.

12 Expert opinion testimony, however,
13 should be judged just like any other testimony.
14 You can accept it or reject it, you can give it
15 as much weight as you think it deserves
16 considering the witness's education and
17 experience and the reasons given for the
18 opinions and all the other evidence in the case.
19 Expert opinion is given for the purpose of
20 helping you understand the evidence and not for
21 the purpose of controlling your judgment.

22 Now, I will summarize what I have just
23 told you. You will have in the jury room during
24 your deliberations the following forms: The
25 "Recommendation of Life Imprisonment" form, the

Jury Charge

1 "Recommendation of Death Penalty" form, the
2 "Statutory Instructions," the "Aggravating
3 Circumstances," the "Unanimous Finding of No
4 Aggravating Circumstances" form, and the form
5 indicating that the jury could not reach a
6 unanimous decision regarding aggravating
7 circumstance. You will have those six forms.

8 The statutory instructions state the
9 only aggravating circumstances you shall
10 consider in this case, should you fail to find
11 beyond a reasonable doubt that one of these
12 circumstances existed at the time the murder was
13 committed or that the crime was committed during
14 the commission of, then you would go no further.
15 You would make no recommendation and the Court
16 would sentence the defendant according to the
17 law.

18 Should you find beyond a reasonable
19 doubt the existence of an aggravating
20 circumstance or circumstances, you would then be
21 authorized to consider recommending the death
22 penalty. In your deliberations you will
23 consider any statutory or nonstatutory
24 mitigating circumstance, circumstances, which
25 are supported by the evidence. You will

Jury Charge

1 consider the aggravating circumstance or
2 circumstances you found and the mitigating
3 circumstances and you will then decide whether
4 you will recommend the death penalty or life
5 imprisonment without the possibility of parole.

6 You may also consider any other factor
7 in mitigation of the offense. And you can
8 recommend a sentence of life imprisonment for no
9 reason at all. If you decide to recommend the
10 death penalty, you will complete the proper
11 form. You must write out the aggravating
12 circumstance or circumstances that you found and
13 all 12 jurors must sign the recommendation.
14 Should you decide to recommend life imprisonment
15 only the foreperson must sign the recommendation
16 and no reason is to be given for your decision.

17 Whatever your recommendation is it
18 must be a unanimous one, that is to say it must
19 be the verdict of each and every juror. Your
20 sentencing recommendation, ladies and gentlemen,
21 will be followed by this Court.

22 In considering whether to recommend
23 whether the defendant is to be sentenced to
24 death or life imprisonment, I charge you that as
25 jurors you must decide this issue involved in

Jury Charge

1 this proceeding without bias and without
2 prejudice to any party. You cannot allow
3 yourselves to be governed by sympathy, by
4 prejudice, by passion, by public opinion, or any
5 other arbitrary factor. Both the State and
6 Mr. Bowman have the right to expect that each of
7 you will carefully and impartially consider all
8 of the evidence in this case, and that you will
9 follow the law as I have explained it to you.

10 At this time, ladies and gentlemen,
11 I'm going to ask that our four alternate jurors
12 just stand aside, stay here with us for a
13 moment, as the rest of you retire to the jury
14 room. However, just as before, do not begin
15 your deliberations until I send word for you to
16 do so. If I have stated something -- and as I
17 told you before I'm simply going it turn to
18 these attorneys, and if I have stated something
19 incorrectly and I bring you back out, please
20 allow me to correct my error in your minds. In
21 the event that I need to bring you back out
22 because I have failed to give you an instruction
23 that you may need for your deliberations, please
24 do not consider that instruction with any
25 emphasis, just know this is my opportunity to

Jury Charge

1 get this right.

2 Now, ladies and gentlemen, in the
3 event that I do not need to bring you back out,
4 then you will be brought the exhibits and the
5 forms and an instruction at that time to begin
6 your deliberations.

7 Ladies and gentlemen, as you vacate
8 the courtroom I ask you to leave those forms,
9 all of them, in your seats. And we will gather
10 them. Thank you, ladies and gentlemen. If you
11 will at this time please retire to your jury
12 room. Do not discuss this matter, do not allow
13 anyone to discuss it with you.
14 (Whereupon, the jury retires to the jury room at
15 2:29 p.m.)

16 THE COURT: Ms. Query, there you are,
17 Ms. Kiner and Ms. McDougall and Ms. Torrance.
18 At this moment I'm going to ask you to please
19 step back into the other room in the back and we
20 will be with you very shortly, remembering not
21 to discuss this matter or allow anyone to
22 discuss it with you.

23 (Whereupon, the alternate jurors exit the
24 courtroom.)

25 THE COURT: Any additions or exceptions

Jury Charge

1 from the State?

2 MR. BAILEY: None from the State, Your
3 Honor.

4 THE COURT: From the defense?

5 MR. CUMMINGS: No additions or exceptions
6 to Your Honor's charge, we thank Your Honor for
7 the time and the graciousness you've shown.
8 Thank you.

9 THE COURT: Counsel, if you will do this
10 for me, if you will please look at the exhibits,
11 look at the exhibits with our court reporter, if
12 there's any question about exhibits bring it to
13 my attention. And then I want you all to look
14 at the original forms that will be going to the
15 jury, also just to be sure that you all have
16 seen them. All right. And we will be in recess
17 then until we hear from our jury.

18 (Whereupon, the jury commences deliberation at
19 2:34 p.m.)

20 (Marked for purposes of the record was Court's
21 Exhibit 40, jury question.)

22 THE COURT: The question from the jury is
23 may the jury have written definitions of the
24 aggravating circumstances of the larceny and
25 robbery. And I would be inclined, since I'm not

Jury Charge

1 giving them the charge in its entirety, I
2 certainly am inclined, and will recharge them on
3 larceny and robbery. Any objection?

4 MR. BAILEY: No objection, Your Honor.
5 Just for clarification the State would request
6 when you recharge them that -- and the pages
7 aren't numbered where it says next of all
8 robbery while armed with a deadly weapon.

9 THE COURT: Yes.

10 MR. BAILEY: That you start there and to
11 continue down through the middle of the page
12 where it finishes up the discussion of in the
13 commission of. Since just charging robbery and
14 larceny without the further instruction about
15 the commission of is not going to be a complete
16 charge on that statutory aggravating
17 circumstance on either one of them, since the
18 actual aggravating circumstance use the word in
19 the commission of and it's all part of the same,
20 same aggravator.

21 THE COURT: Yes.

22 MR. CUMMINGS: What I would ask, and I'll
23 let Ms. Thomas speak for herself, is that,
24 again, Your Honor, as you have done in the past
25 here you start defining robbery, larceny, I

Jury Charge

1 would ask you just please on behalf of
2 Mr. Bowman if you would consider again telling
3 them briefly they have to find it without a
4 reasonable -- they have to find those things
5 beyond a reasonable doubt. Just the mere fact
6 that we're charging them does not mean they're
7 there in your own words, ma'am, as you see fit
8 and the fact that any -- really, Judge, I hate
9 to say it, it's almost like I'm going to ask you
10 to do the whole reasonable doubt charge and the
11 statutory scheme of even if they find it they
12 don't have to do it.

13 THE COURT: All right. What about that,
14 add those two things? I would be adding in the
15 commission of and I would be adding they must
16 find them beyond a reasonable doubt.

17 MR. BAILEY: Beyond a reasonable doubt,
18 that's right.

19 THE COURT: Very well. Very good.

20 MR. CUMMINGS: Thank you, Judge.

21 MR. BAILEY: Thank you, Your Honor.

22 THE COURT: Let's have the jury, please.

23 (Whereupon, the jury returns to the courtroom at
24 3:02 p.m.)

25 THE COURT: Ladies and gentlemen, I have

Jury Charge

1 your note and have it here. And as I understand
2 it the jury is in need of definitions of
3 aggravating -- the aggravating circumstances of
4 larceny and robbery. Since I was unable to
5 separate and send the written instructions to
6 you I am going to recharge them and I am happy
7 to do that for you and I'm going to do that now.

8 Of course as you have asked and as I
9 instructed, there are two aggravating
10 circumstances, larceny while armed with a deadly
11 weapon and robbery while armed with a deadly
12 weapon. And of course aggravating must be
13 proven beyond a reasonable doubt. And beyond a
14 reasonable doubt is -- one of the definitions
15 for beyond a reasonable doubt is the kind of
16 doubt that would cause a reasonable person to
17 hesitate to act.

18 Now, ladies and gentlemen, robbery
19 while armed with a deadly weapon includes
20 larceny, robbery and the imposition of a weapon.
21 So let me review. Robbery while armed with a
22 deadly weapon includes larceny, robbery and the
23 imposition of a weapon.

24 Larceny is the same thing as stealing.
25 It means a wrongful taking into possession of

Jury Charge

1 someone else's personal property. Secondly, it
2 means the carrying away and the removal of that
3 personal property. Finally, it means the
4 wrongful intent, the felonious intent to steal
5 on the part of the taker so as to permanently
6 deprive the owner of the use of that property.
7 That's what larceny is.

8 Robbery is a larceny from the person
9 or in the presence of another person either by
10 using violence or by putting that person in fear
11 of violence. Armed robbery takes all of those
12 elements and adds the imposition of a deadly
13 weapon into the equation.

14 So robbery while armed with a deadly
15 weapon includes all of the elements of larceny
16 and robbery, and it also requires that one must
17 have used a deadly weapon to establish the
18 purpose of the robbery.

19 Now, larceny while armed with a deadly
20 weapon is that stealing, that felonious taking
21 into possession of the personal property of
22 another, the carrying away and removal of that
23 personal property with the felonious intent to
24 steal on the part of the taker so as to
25 permanently deprive the owner of its use, and to

Jury Charge

1 change it over to the taker's own use while
2 armed with a deadly weapon.

3 So, you see, that there is a slight
4 but important difference and distinction between
5 robbery while armed with a deadly weapon and
6 larceny while armed with a deadly weapon.
7 Larceny does not necessarily imply the use of
8 violence, or by putting a person in fear of
9 violence, or by taking the property of the
10 person or presence of another. Ladies and
11 gentlemen, those are the elements of robbery
12 while armed with a deadly weapon and larceny
13 through the use of a deadly weapon.

14 Now, I remind you again that the
15 person need not be armed during the entire
16 course of the taking. It is sufficient that if
17 the person becomes armed at any point during the
18 commission of the crime and before the property
19 is taken away to satisfy the requirements of the
20 statute.

21 Now, ladies and gentlemen, the law
22 requires as I have indicated to you, that the
23 murder must have been committed while in the
24 commission of one of those particular acts. So
25 what do we mean by terms in the commission of?

Jury Charge

1 If the crimes were committed, that is the crimes
2 as already outlined, the criminal sexual
3 conduct, kidnapping, larceny while armed with a
4 deadly weapon and robbery while armed with a
5 deadly weapon, were committed after the murder
6 that does not necessarily invalidate them as
7 aggravating circumstances. If the crimes were
8 consummated in a continuous series of acts along
9 with the murder, or if they were committed in
10 the same place and were not separated by any
11 substantial lapse of time, that does not defeat
12 them being considered as aggravating
13 circumstances for the purpose of the statute.

14 I believe that that concludes the
15 charge on robbery and larceny as you have
16 requested both of them, of course by using a
17 deadly weapon, and at this time I will ask you
18 to please return to your jury room and continue
19 your deliberations. Thank you.

20 (Whereupon, the jury retires to the jury room to
21 continue their deliberations at 3:08 p.m.)

22 THE COURT: Thank you. Anything from the
23 State?

24 MR. BAILEY: No, ma'am.

25 THE COURT: Anything from the defense?

Jury Charge

1 MR. CUMMINGS: Judge, this may be just
2 asking more preaching to the choir, but the next
3 paragraph where you finished for the purposes of
4 the statute, "I instruct you further that should
5 you find the State has not proven that such a
6 statutory aggravating circumstance existed, that
7 is to say you find that you still have a
8 reasonable doubt as to the existence of such a
9 circumstance, then you would not make a
10 recommendation of sentence."

11 And the only reason why, Judge, I know
12 you politely stated reasonable doubt at the
13 beginning and I would ask Your Honor as we've
14 always done in every charge at the end, Your
15 Honor, we usually come back and state reasonable
16 doubt to the jury again if you so find, ma'am.
17 That's the only thing the defense would add.

18 THE COURT: All right. I'll do that. Ask
19 them to step back in.

20 MR. BAILEY: Your Honor, I'm sorry.

21 THE COURT: Yes.

22 MR. BAILEY: If you're going to recharge on
23 reasonable doubt I would request the part of the
24 state -- you did give the hesitate to act, but
25 if you would go into the firmly convinced aspect

Jury Charge

1 of it as well.

2 THE COURT: I understand. You want the
3 other reasonable doubt?

4 MR. BAILEY: If you're going to continue to
5 charge on reasonable doubt, yes, ma'am.

6 THE COURT: I will.

7 MR. BAILEY: Thank you.

8 THE COURT: Now let me have them.

9 (Whereupon, the jury returns to the courtroom at
10 3:10 p.m.)

11 THE COURT: Ladies and gentlemen, I would
12 add to that which I just recharged you the
13 following: And also previously I defined beyond
14 a reasonable doubt as the kind of doubt that
15 would cause a reasonable person to hesitate to
16 act. The kind of doubt that would cause a
17 reasonable person to hesitate to act.

18 I also would further define beyond a
19 reasonable doubt as being proof that leaves you
20 firmly convinced of the existence of one or more
21 of the aggravating circumstances. Of course
22 there are few things in this world that we know
23 with absolute certainty, and in criminal cases
24 the law does not require proof that overcomes
25 every possible doubt. If, based on your

Jury Charge

1 consideration of the evidence, you are firmly
2 convinced that an aggravating circumstance or
3 circumstances exist, then you would be, of
4 course, permitted to consider recommending to
5 this Court the defendant be sentenced to death.
6 On the other hand, if you think that no
7 aggravating circumstance exists you must give
8 Mr. Bowman the benefit of the doubt and in such
9 a case would make no recommendation of sentence
10 and the Court would then sentence the defendant
11 under the law.

12 And, again, I instruct you that should
13 you find the State has not proven that such a
14 statutory aggravating circumstance existed, that
15 you still have a reasonable doubt as to an
16 existence or the existence of a circumstance,
17 then you would not make a recommendation of
18 sentence, that the Court would then sentence
19 Mr. Bowman, the defendant, under the law.

20 Now you may retire and continue your
21 deliberations.

22 (Whereupon, the jury retires to the jury room to
23 continue deliberations at 3:12 p.m.)

24 THE COURT: All right. Anything further
25 from the State?

Jury Charge

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

3 THE COURT: And from the defense?

4 MR. CUMMINGS: Nothing else, Judge. And
5 thank you, ma'am.

6 THE COURT: Thank you. We'll be in recess
7 again until we hear from our jury.
8 (Recess.)

9 MR. CUMMINGS: Thank you, Judge.

10 THE COURT: All right. I understand that
11 the jury has reached its decision. Is there
12 anything before we bring the jury out from the
13 State?

14 MR. BAILEY: Nothing from the State, Your
15 Honor.

16 THE COURT: From the defense?

17 MS. HARDEE-THOMAS: Nothing from the
18 defense, Your Honor.

19 THE COURT: Very well. Let us have the
20 jury.

21 (Whereupon, the jury returns to open court to
22 report its verdict at 4:43 p.m.)

23 THE CLERK: Ladies and gentlemen of the
24 jury, have you agreed upon a verdict?

25 THE PRESIDING JUROR: Yes, ma'am.

State vs. Bowman - Volume XXIV

1 THE CLERK: Thank you.

2 THE COURT: All right. I have reviewed the
3 verdict of the jury and find that the verdict
4 upon review of it is in due form and would note
5 for the record that the jury has used two forms,
6 that the jury has used the "Aggravating
7 Circumstances" form and has filled in the
8 aggravating circumstances on the "Aggravating
9 Circumstances" form. It is the same as the
10 other form which I will publish and I will do
11 that now.

12 State of South Carolina, County of
13 Dorchester, in the Court of General Sessions,
14 indictment 01-GS-18-348, we, the jury, in the
15 above-entitled case, having found beyond a
16 reasonable doubt the existence of the following
17 statutory aggravating circumstances, to-wit:
18 Murder was committed while in the commission of
19 kidnapping, murder was committed while in the
20 commission of larceny with the use of a deadly
21 weapon, now recommend to the Court that the
22 defendant, Marion Bowman, Jr. be sentenced to
23 death. Signed by the foreperson, Ms., I believe
24 it's Lianne Luisi, and the other signatures
25 likewise here attached.

State vs. Bowman - Volume XXIV

1 Let my have a list of the jurors.

2 Each of the jurors has signed this verdict form.

3 If this is your verdict and remains your

4 verdict, please indicate by raising your right

5 hand. I find that all jurors' right hands are

6 raised. You may put your hands down.

7 Ms. Graham, if you would please poll
8 the jury.

9 THE CLERK: Yes, ma'am.

10 BY THE CLERK:

11 Q. As I call your name, please stand. George
12 Young, Jr. Was this your verdict?

13 A. Yes, ma'am.

14 Q. And is it still your verdict?

15 A. Yes, ma'am.

16 Q. Leo Sullivan, Jr. Was this your verdict?

17 A. Yes, ma'am.

18 Q. And is it still your verdict?

19 A. Yes, ma'am.

20 Q. Gene Davis. Was this your verdict?

21 A. Yes, ma'am.

22 Q. And is it still your verdict?

23 A. Yes, ma'am.

24 Q. Lorraine Pringle. Was this your verdict?

25 A. Yes, ma'am.

State vs. Bowman - Volume XXIV

- 1 Q. And is it still your verdict?
- 2 A. Yes, ma'am.
- 3 Q. Richard Perez. Was this your verdict?
- 4 A. Yes, ma'am.
- 5 Q. And is it still your verdict?
- 6 A. Yes, ma'am.
- 7 Q. Andre Porcher. Was this your verdict?
- 8 A. Yes, ma'am.
- 9 Q. And is it still your verdict?
- 10 A. Yes, ma'am.
- 11 Q. Eric Lowery. Was that your verdict?
- 12 A. Yes, ma'am.
- 13 Q. And is it still your verdict?
- 14 A. Yes, ma'am.
- 15 Q. Kathleen McPartlin. Was this your verdict?
- 16 A. Yes, ma'am.
- 17 Q. And is it still your verdict?
- 18 A. Yes, ma'am.
- 19 Q. Tamra Tyndell. Was this your verdict?
- 20 A. Yes, ma'am.
- 21 Q. And is it still your verdict?
- 22 A. Yes, ma'am.
- 23 Q. Margaret Washington. Was this your verdict?
- 24 A. Yes, ma'am.
- 25 Q. And is it still your verdict?

State vs. Bowman - Volume XXIV

1 A. Yes, ma'am.

2 Q. Raymond Dejong. Was this your verdict?

3 A. Yes, ma'am.

4 Q. And is it still your verdict?

5 A. Yes, ma'am.

6 Q. Lianne Luisi. Was this your verdict?

7 A. Yes, ma'am.

8 Q. And is it still your verdict?

9 A. Yes, ma'am.

10 THE CLERK: Yes, ma'am.

11 THE COURT: I find inasmuch as the jurors
12 have signed the "Aggravating Circumstances"
13 verdict form, each of them, that it is not
14 necessary that they be polled as to the
15 aggravating circumstances and they, therefore,
16 have now been polled with regards to the
17 verdict.

18 Now, is there anything further from
19 the State before we dismiss the jury?

20 MR. BAILEY: Not from the State, Your
21 Honor.

22 THE COURT: From the defense?

23 MR. CUMMINGS: Not before the dismissal of
24 the jury.

25 THE COURT: Not before the dismissal of the

5260

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

FILED - GENERAL SESSIONS
2001 JUL 18 PM 4:54
INDICTMENT # 2001-0348 & 0349

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA,)

-versus-)

MARION BOWMAN, JR.,)

Defendant.)

NOTICE OF INTENT TO SEEK
DEATH PENALTY

**TO: THE DEFENDANT, MARION BOWMAN, JR. AND HIS
ATTORNEY, MARVA HARDEE-THOMAS:**

YOU WILL PLEASE TAKE NOTICE, that, pursuant to Section 16-3-26,
SC Code Ann., 2000 Cum. Supp., upon trial of the above entitled action at least thirty (30) days
from the date of service hereof and of which you will be timely notified, the imposition of a sentence
of death upon the defendant, **Marion Bowman, Jr.**, will be sought by the State.

Walter M. Bailey, Jr.

WALTER M. BAILEY, JR.
SOLICITOR, THE FIRST JUDICIAL CIRCUIT
Post Office Box 2520
Summerville, South Carolina 29484
(843) 871-2640

July 13, 2001

CERTIFIED COPY

7-303

Cheryl Graham

Clerk of Court
Dorchester County

JA 1408

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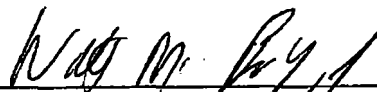
STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
STATE OF SOUTH CAROLINA,)
-versus-)
MARION BOWMAN, JR.,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT # 2001-GS-18-0348 & 0349
NOTICE OF EVIDENCE IN AGGRAVATION

**TO: THE DEFENDANT, MARION BOWMAN, JR. AND HIS
ATTORNEY, MARVA HARDEE-THOMAS:**

YOU WILL PLEASE TAKE NOTICE, that, pursuant to Section 16-3-20,
SC Code Ann., 2000 Cum. Supp., upon trial of the above entitled action at least thirty (30) days
from the date of service hereof and of which you will be timely notified, the State will seek to
introduce into evidence aggravating circumstances in the above matter as follows, to wit:

- (1) The murder of Kandee Martin was committed while in the commission of kidnapping.
- (2) The murder of Kandee Martin was committed while in the commission of criminal sexual conduct in any degree.
- (3) The murder of Kandee Martin was committed while in the commission of robbery while armed with a deadly weapon.
- (4) The murder of Kandee Martin was committed while in the commission of larceny with use of a deadly weapon.



WALTER M. BAILEY, JR.
SOLICITOR, THE FIRST JUDICIAL CIRCUIT
Post Office Box 2520
Summerville, South Carolina 29484
(843) 871-2640

July 13, 2001

JA 1409

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Dorchester County

Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARION BOWMAN, JR.,

APPELLANT

FINAL BRIEF OF APPELLANT

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5428

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	iii
STATEMENT OF ISSUES ON APPEAL.....	1
STATEMENT OF THE CASE	3
STATEMENT OF FACTS	4
ARGUMENTS	

1.

The court erred by refusing to instruct the jury on the statutory mitigating circumstance that the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired, since there was expert testimony of appellant's substance abuse problem, and evidence the parties were heavily drinking throughout the day.....16

2.

The court abused its discretion by allowing the solicitor on re-cross examination of James Aiken to examine him about conditions in general population. Recreational facilities, watching movies, watching television and reading books were matters not raised by any relevant evidence, and the jury's sole concern was supposed to be with whether appellant should be sentenced to death or life imprisonment without parole.....19

3.

The court erred by refusing to grant a mistrial where the solicitor attempted to question James Aiken about the possibility of escape, since the solicitor raised an improper consideration or arbitrary factor. The jury's attention is properly focused on the penalties of death and life without parole. Defense counsel correctly argued that the judge could

not remove the taint once escape was raised by the state as an
issue. 24

4.

The trial court lacked subject matter jurisdiction to sentence
appellant to death since the murder indictment did not allege
any aggravating circumstances. 28

5.

The court erred by ruling appellant did not have an
expectation of privacy in the pants he wore to his wife's
house, and by refusing to suppress the watch and liquid
material found in and on those pants. The pants were seized
during an illegal warrantless arrest, and the court erred by
ruling the arrest was pursuant to a valid Orangeburg warrant
for another minor offense.....34

CONCLUSION.....49

5430

TABLE OF AUTHORITIES

CASES

<u>Apprendi v. New Jersey</u> , 530 U.S. 466, 120 S.Ct. 2348 (2000)	28, 30, 31, 32
<u>Beck v. Alabama</u> , 447 U.S. 625, 100 S.Ct. 2382 (1980).....	22
<u>Gardner v. Florida</u> , 430 U.S. 349, 97 S.Ct. 1197 (1977).....	22
<u>Harris v. United States</u> , 536 U.S. 545, 122 S. Ct. 2406 (2002)	31
<u>Hooks v. State</u> , 353 S.C. 48, 577 S.E.2d 211 (2003).....	28
<u>Hopkins v. State</u> , 317 S.C. 7, 451 S.E.2d 389 (1994).....	28
<u>Jones v. United States</u> , 526 U.S. 227, 119 S.Ct. 1215 (1999)	28, 30, 32
<u>Mathis v. State</u> , 355 S.C. 87, 584 S.E.2d 366 (2003)	32
<u>Minnesota v. Olsen</u> , 495 U.S. 91, 110 S.Ct. 1684 (1990)	44
<u>Padgett v. State</u> , 324 S.C. 22, 484 S.E.2d 101 (1997)	28
<u>Payton v. New York</u> , 445 U.S. 573, 100 S.Ct. 1371 (1980).....	46, 47
<u>Ring v. Arizona</u> , 536 U.S. 584, 122 S.Ct. 2428 (2002)	28, 30, 31, 32
<u>Skipper v. South Carolina</u> , 476 U.S. 1, 106 S.Ct. 1669 (1986)	22, 26
<u>State v. Atkinson</u> , 253 S.C. 531, 172 S.E.2d 111 (1970)	21
<u>State v. Bailey</u> , 279 S.C. 437, 308 S.E.2d 795 (1983)	25
<u>State v. Beachum</u> , 288 S.C. 325, 342 S.E.2d 597 (1986)	30
<u>State v. Bellamy</u> , 293 S.C. 103, 359 S.E.2d 63 (1987)	17
<u>State v. Caldwell</u> , 300 S.C. 494, 388 S.E.2d 816 (1990).....	17
<u>State v. Council</u> , 335 S.C. 1, 515 S.E.2d 508 (1999)	27
<u>State v. Dupree</u> , 319 S.C. 454, 462 S.E.2d 279 (1995), <i>cert. denied</i> , 516 U.S. 1131, 116 S.Ct. 951 (1996).....	47

<u>State v. Fortin</u> , 178 N.J. 540, 843 A.2d 974 (2004) (internal citation omitted).....	29
<u>State v. George</u> , 323 S.C. 496, 476 S.E.2d 903 (1996)	45
<u>State v. Hughey</u> , 339 S.C. 439, 529 S.E.2d 721 (2000)	17
<u>State v. Kelley</u> , 343 S.C. 350, 540 S.E.2d 851 (2001)	26
<u>State v. Pierce</u> , 289 S.C. 430, 346 S.E.2d 707 (1986)	17
<u>State v. Plath</u> , 277 S.C. 126, 284 S.E.2d 221 (1981)	12, 25
<u>State v. Plath</u> , 281 S.C. 1, 313 S.E.2d 619 (1984)	20, 21, 24, 25
<u>State v. Quattlebaum</u> , 338 S.C. 441, 527 S.E.2d 105 (2000)	21, 25
<u>State v. Reed</u> , 293 S.C. 515, 362 S.E.2d 13 (1987)	21, 22
<u>State v. Sims</u> , 304 S.C. 409, 405 S.E.2d 377 (1991)	42, 46, 47
<u>State v. Stone</u> , 350 S.C. 442, 567 S.E.2d 244 (2002)	17
<u>State v. Woomer</u> , 278 S.C. 468, 299 S.E.2d 317 (1982)	22, 26
<u>State v. Young</u> , 305 S.C. 380, 409 S.E.2d 352 (1991)	17
<u>United States v. Fell</u> , 217 F. Supp. 2d 469 (D. Vt. 2002)	32
<u>United States v. Lentz</u> , 225 F.Supp.2d 672 (E.D. Va. 2002)	32
<u>Walton v. Arizona</u> , 497 U.S. 639, 110 S.Ct. 3047 (1990)	31
<u>Wong Sun v. United States</u> , 371 U.S. 471, 83 S.Ct. 407 (1963)	48
<u>Woodson v. North Carolina</u> , 428 U.S. 280, 96 S.Ct. 2978 (1976)	26

STATUTES

S. C. Code §16-3-20.....	31
S. C. Code §43-15-60 (1976)	45, 46
S.C. Code §16-3-20.....	31

5432

S.C. Code §16-3-20(C)(a)(1) – (11)	30, 31
S.C. Code §16-3-20(C)(b)(6)	17
S.C. Code §17-19-10.....	30

OTHER AUTHORITIES

Ariz. Rev. Stat. §13-1703	31

CONSTITUTIONAL PROVISIONS

S.C. Code §17-23-10.....	28
S.C. Const. Art. I §11.....	30
S.C. Const. Art. I, §11.....	28
U.S. Const. amend. V.....	28, 30, 32
U.S. Const. amend. VI.....	30

STATEMENT OF ISSUES ON APPEAL

1.

Whether the court erred by failing to instruct the jury on the statutory mitigating circumstance that the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired, since there was expert testimony of appellant's substance abuse, and lay testimony and circumstantial evidence that the parties were drinking alcohol throughout the day?

2.

Whether the court abused its discretion by allowing the solicitor on re-cross examination of James Aiken to examine him about conditions in general population, such as recreational facilities, watching movies, watching television and reading books, since this was not proper testimony?

3.

Whether the court erred by refusing to grant a mistrial where the solicitor cross-examined James Aiken about the possibility of escape, since the jury's attention is properly focused on the penalties of death and life without parole, and the judge's curative instruction was not sufficient to remove the taint of this extraneous improper consideration?

4.

Whether the court was without jurisdiction to try appellant for capital murder where his indictment did not allege an aggravating circumstance necessary for capital murder as required by Jones v. United States and Ring v. Arizona, and since aggravating circumstances must now be considered elements of the crime of capital murder?

5434

5.

Whether the court erred by ruling appellant did not have an expectation of privacy in the pants he wore to his wife's house, and by refusing to suppress the watch and liquid material found in and on those pants since the pants were seized during an illegal warrantless arrest and the court erred by ruling the arrest was pursuant to a valid Orangeburg warrant for another minor offense?

STATEMENT OF THE CASE

Appellant was indicted at the August 6, 2001, of the Dorchester County grand jury for the offenses of murder and arson in the third degree. ROA pp. 5254 - 5257. His case came on for trial on May 15, 2002, before the Honorable Diane S. Goodstein and a jury. Norbert E. Cummings, Jr. and Marva Hardee-Thomas represented appellant. The solicitors were Walter M. Bailey, Jr. and Benjamin Lafond. ROA p. 1.

The jury found appellant guilty on both counts. ROA p. 4564.

At the conclusion of the sentencing phase on May 23, 2002, the jury found that the murder was committed during the commission of a kidnapping, and that the murder was committed while in the commission of larceny with a deadly weapon. The jury recommended a sentence of death. ROA p. 5051, ll. 12-25. Judge Goodstein then sentenced appellant to death for murder and ten years imprisonment for arson in the third degree. ROA p. 5056, l. 4 – p. 5057, l. 4.

This appeal follows.

5436

STATEMENT OF FACTS

Keith Rivers remembered that on February 16, 2001, the men were in Hank Koger's yard "drinking beer, drinking liquor and talking." Appellant was known as "Black" or "J. R." in the community, and he was there, as was James Gadson. ROA p. 3689, ll. 21-25.

"We was just all talking, having a good time, that's all." ROA p. 3690, ll. 4-22.

All of this began about eleven o'clock that morning, according to Koger. ROA p. 3780, ll. 5-8. Koger had a fifty-five gallon drum in his yard that the men lit a fire in when it got cold. Koger explained, "We have [sic] sit there and drink beer, hang out." That's what the men were doing the morning of February 16, 2001, in Koger's yard, which was right next to the Branchville Villa Apartments. ROA p. 3674, l. 11 – p. 3675, l. 5. Koger remembered that Hiram Johnson was also there that morning. ROA p. 3675, l. 6 – p. 3676, l. 10.

Koger specifically recalled that appellant became angry because someone had removed his gun from the fifty-five gallon drum. ROA p. 3676, l. 4 – p. 3680, l. 8. Koger also remembered the men were planning for a party later that day. ROA p. 3680, ll. 15-25.

Carolyn Brown was living in apartment ☐ of the Branchville Villa Apartments on February 16, 2001. ROA p. 3698, l. 8 – p. 3700, l. 4. Brown went next door to Hank Koger's house. She remembered, "We was getting together a party for Joe Fogle, was cleaning some chicken and stuff at a neighbor's house and we walked back and forth across the street to see what was going on." Brown remembered that appellant and about fifteen to twenty other people were out in the yard that day. ROA p. 3700, ll. 18-23; ROA p. 3707, ll. 12-17. Brown also recalled the argument about someone having moved a gun out of the barrel. ROA p. 3700, l. 18 – p. 3701, l. 3.

Brown testified that later that night, she went to Allen Murray's nightclub in Bowman, South Carolina. ROA p. 3708, ll. 1-9. She got there after midnight.

Keith Rivers also went to the Allen Murray club that night "to get another beer and whatnot." ROA p. 3691, ll. 13-25. Rivers recalled seeing appellant outside the club in an automobile with Hiram Johnson. ROA p. 3692, ll. 1-9.

Brown testified they left the Allen Murray club about 2:45 a.m. that morning. ROA p. 3709, ll. 18-24. They returned to the Villa apartments. ROA p. 3710, l. 7 – p. 3711, l. 10.

Brown remembered that sometime after they returned from the club appellant knocked on the door and said, "Man, Trav [Travis Felder], could you run me home?" ROA p. 3711, ll. 11-18. Brown said, "they got in the car and left out the projects." ROA p. 3711, l. 19 – p. 3712, l. 3.

Brown testified when Travis Felder returned fifteen to twenty minutes later, he appeared "fine, they went upstairs, him and Valorna went upstairs, and me and my baby [sic] father was downstairs and we called it a night after that." ROA p. 3712, ll. 20-24.

There was evidence appellant and the decedent, Candee Martin, were friends. The state's two key witnesses against appellant were James Gadson and Travis Felder. Gadson was charged with murder and reached a plea agreement with the state where he would plead guilty to accessory after the fact and misprision of a felony. Gadson would receive a twenty-year sentence in return for his plea. ROA p. 3981, ll. 7-25.

Gadson testified appellant was his first cousin. ROA p. 3982, ll. 15-20. Gadson said he first saw appellant "early in the morning" on February 16, 2001. Appellant was in the vehicle with his sister, Yolanda Bowman, and Gadson said they were on their way to St.

5438

George “to the meat market.” ROA p. 3983, ll. 4-23. Gadson rode along with them that day. Gadson recalled appellant had a gun in his pants. ROA p. 3984, l. 2 – p. 3985, l. 9.

Gadson testified while in the car, appellant “put his beer out of the bag and he put it [the gun] in the bag.”¹ ROA p. 3985, l. 10 – p. 3986, l. 25. Gadson recalled that Yolanda Bowman then took them back to the “Villa projects.” ROA p. 3987, ll. 11-15. Then they went next door to Hank Koger’s house where there were “a lot of people.” Gadson said when he arrived, he “went up under the tree, sit down drinking.” ROA p. 3988, ll. 1-13. Gadson said appellant put his gun in the trash barrel and “left and went to the store.” ROA p. 3988, ll. 18-23.

Gadson testified when appellant returned, they began arguing because his gun was no longer in the large barrel. However, Hiram Johnson had apparently moved the gun out of fear someone would start a fire with the gun in the barrel. Johnson went into the woods and retrieved the gun for appellant. Once appellant had his gun, “he pull it out the bag to make sure everything was right and he left.” ROA p. 3989, ll. 4-24.

Gadson, appellant and the decedent

Gadson testified that he was still at Hank Koger’s house under the tree at about 7:00 or 7:30 p.m. That was when he saw appellant and the decedent in an automobile. The decedent was driving. ROA p. 3991, l. 4 – p. 3992, l. 3.

Gadson said appellant called out for him. Gadson responded, and he got into the vehicle with appellant and the decedent. Gadson admitted he had been drinking that day, but he claimed he did not start until about 1:00 p.m. ROA p. 3992, ll. 4-22.

When Gadson was asked how much gin he had had between 1:00 and 7:30 p.m., he answered “it was a good little bit.” He was “feeling in good shape.” ROA p. 3992, l. 11 – p. 3993, l. 25.

Gadson said the decedent drove to the Horizon E-Z Shop, where they got gas, and drove away without paying. ROA p. 3994, l. 3 – p. 3995, l. 2. Gadson testified appellant told the decedent where to drive and that she drove onto Nursery Road. “She stopped, cut the car off, cut the lights off, we got out.” ROA p. 3995, ll. 3-21.

Gadson claimed appellant walked away from the car and said “he was going to kill her [the decedent] because she was wearing a wire.” “We was walking down the road, she came down the road then, [she] grabbed him [appellant] by the right arm, said she was scared.” ROA p. 3998, l. 4 – p. 3999, l. 3.

Gadson maintained that a car drove by and they “jumped in the woods.” ROA p. 3999, ll. 16-21. Gadson said the decedent starting walking back to the car and appellant followed her. ROA p. 3999, l. 23 – p. 4000, l. 7.

Gadson testified that he heard a gunshot and he saw the decedent come running back towards him. ROA p. 4001, l. 5 – p. 4003, l. 17. Gadson claimed appellant shot at the decedent two times and “she fell to the ground.” Gadson said appellant then dragged her body into the woods. ROA p. 4012, ll. 1-24.

Gadson claimed that he jumped back into the car. ROA p. 4013, ll. 2-5. Gadson said that after the shooting they drove back to the Villa projects. Then Gadson testified that

¹ Defense counsel wanted to know on voir dire if juror biases about consuming alcohol would prevent them from being impartial. ROA pp. 1821-1821; ROA p. 1853; ROA p. 1854; ROA p. 3020.

5440

he then went back over to Hank Koger's house. Gadson recalled, "Marion [appellant] said he was going to the store and get some beer." ROA p. 4015, l. 16 – p. 4016, l. 11.

Gadson testified later that night he went to the Allen Murray club with appellant and Hiram Johnson. They got to the club at about midnight. ROA p. 4017, l. 4 – p. 4018, l. 17.

Gadson said they rode to the club in the decedent's car. Gadson stated that appellant instructed the men to put on the "four pair of burnt brown gloves." ROA p. 4018, l. 15 – p. 4019, l. 17.

Gadson acknowledged he had been drinking all day and that he laid down in the back seat of the automobile. ROA p. 4019, l. 6 – p. 4021, l. 9. Hiram Johnson would later testify that appellant was trying to sell the decedent's car at the Allen Murray club late that evening. ROA p. 4067, ll. 3-20.

Travis Felder

The state's theory of the case was that after the decedent was killed, appellant enlisted the help of Travis Felder to destroy the car. Felder was charged as an accessory after the fact of arson for the events that occurred after leaving the Allen Murray Club, and before the decedent's car was burned. ROA p. 4087, ll. 7-16. Felder testified appellant came to his door in the projects and told him "I need to park this car." Felder claimed he only followed appellant while appellant drove the decedent's automobile to Nursery Road. ROA p. 4092, l. 6 – p. 4096, l. 19.

Felder maintained that when they arrived at Nursery Road, appellant pulled the decedent's body out of the woods put it in the trunk and set the car on fire. ROA p. 4096, l. 13 – p. 4100, l. 14. It was undisputed that the decedent was dead at the time.

During the penalty phase of the trial, the defense played a videotape of Felder alone at the E-Z Shop gas station at 3:14 a.m. purchasing gasoline. Appellant was not with him. ROA p. 4914, l. 2 – p. 4916, l. 16. Travis Felder admitted he did not tell the jury he purchased the gasoline alone during the guilt phase of the trial. ROA p. 4915, ll. 2-21.

During the penalty stage, Felder claimed appellant got the gasoline from him on Nursery Road and that appellant set the car on fire. ROA p. 4917, ll. 8-17. On cross-examination, Felder maintained that appellant also supplied him the red plastic gasoline jug and told him to get two to three dollars worth of gasoline. ROA p. 4923, l. 17 – p. 4925, l. 16. Felder said he did not earlier tell the jury that he was the one who actually purchased the gasoline because “you [defense counsel] didn’t ask.” ROA p. 4925, ll. 17-25.

Appellant’s substance abuse

During the penalty stage, the defense presented the expert testimony of Jeffrey Youngman. Youngman was qualified as an expert in forensic social work and psychosocial assessments. ROA p. 4777, ll. 10-14; ROA p. 4786, ll. 11-25.

Among the records Youngman relied upon were appellant’s from the “Dawn Center, which is a program sponsored by the tri-county commission of alcohol and drug abuse.” ROA p. 4789, ll. 7-21. Youngman said he did his background check to see if appellant had a significant history of mental illness or substance abuse. ROA p. 4790, l. 5 – p. 4791, l. 1:

Youngman said appellant’s mother “was known to drink, also suspected of using drugs and she testified she was arrested once for possession of drugs.” ROA p. 4794, ll. 2-9. Youngman said that at age fourteen, appellant was drinking and selling drugs, mostly marijuana. ROA p. 4800, ll. 14-20.

5442

On cross-examination, Youngman testified appellant had a history of substance abuse. ROA p. 4824, ll. 18-25. Youngman admitted to the solicitor that no one forced appellant to drink or use drugs, and that he did so “of his own free will.” ROA p. 4825, ll. 1-6.

Mitigating circumstances

Defense counsel Cummings told the judge before closing arguments that the defense requested that the judge charge the statutory mitigating circumstance regarding “the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired.”² ROA p. 4937, ll. 4-14. Cummings told the judge, “Mr. Bowman has asked that we submit that to you for consideration in mitigation.” ROA p. 4937, l. 17 – p. 4938, l. 16.

The solicitor responded that the defense had decided not to “get into any potential diagnosis of any mental health conditions that could create some impairment in his ability to conform his conduct.” The solicitor therefore reasoned there was no evidentiary basis to submit this mitigating circumstance. ROA p. 4938, l. 22 – p. 4939, l. 6.

The judge then ruled that the record was void of any evidence of that statutory mitigating circumstance, and ruled that she would not charge it. ROA p. 4939, l. 7 – p. 4940, l. 7.

Testimony of James E. Aiken

Correctional Consultant James E. Aiken testified about his long career in the field of corrections. Aiken had supervised approximately sixteen wardens, and also had experience as the Commissioner of Corrections for the State of Indiana. ROA p. 4832, l. 22 – p. 4836,

l. 15. Aiken was qualified as an expert without objection. ROA p. 4838, ll. 2-9. Aiken testified appellant could adapt to serving the rest of his life in prison. ROA p. 4844, ll. 7-24.

On cross-examination, the solicitor questioned Aiken about appellant having received a youthful offender sentence in the past. Aiken acknowledged that the purpose of a youthful offender sentence was to rehabilitate the youthful offender, and that appellant “flunked out” on that score. ROA p. 4847, l. 20 – p. 4848, l. 3. Aiken also acknowledged there was a “use of force” report regarding a fight appellant had while serving his YOA sentence at Stevenson Correctional Institution. ROA p. 4848, l. 22 – p. 4849, l. 2.

Aiken then acknowledged that inmates were placed into three different classifications. Aiken testified “you put more aggressive population with more aggressive population with adequate management, the incidents of violence decreases.” ROA p. 4850, l. 13 – p. 4855, l. 17.

The solicitor then asked Aiken about “super-max.” Aiken explained that super-max was an extremely controlled environment for problem inmates. ROA p. 4855, l. 2 – p. 4856, l. 3.

The solicitor also had Aiken acknowledge that inmate behavior controls the restrictiveness of their environment. ROA p. 4856, l. 11 – p. 4857, l. 21. The solicitor also had Aiken admit that inmates can work while inside the facility. ROA p. 4857, ll. 22-25. However, when the solicitor asked Aiken to acknowledge that inmates were allowed to leave the facility and pick up trash on the side of the road, defense counsel objected on the ground “that’s clearly not available here and it’s not proper.” ROA p. 4858, ll. 1-6.

² See S.C. Code §16-3-20(C) (b)(6)

5444

After a bench conference, the solicitor asked Aiken to admit that no matter how “bad a person thinks he is or how serious the crime is, there is a mechanism in place within the Department of Corrections to deal with that inmate.” Aiken admitted that was true. ROA p. 4858, l. 12 – p. 4862, l. 10.

The solicitor then asked Aiken to admit that a person serving a life without parole sentence could still work. Aiken answered, “If you’re going to be in prison, you’re going to work.” ROA p. 4862, l. 2 – p. 4864, l. 11.

On re-direct examination, Aiken said there was not any way a person serving life without parole would be allowed outside the prison to pick up trash. ROA p. 4864, l. 16 – p. 4869, l. 3.

Escape and prison conditions

Immediately on re-cross examination, the solicitor noted Aiken had testified appellant would never get out of prison and then asked him how many inmates had escaped during the time he was affiliated with the Department of Corrections. Defense counsel objected on the basis that the sentence would be life without the possibility of parole “and we have told this jury that is all he will ever get and that is the law.” ROA p. 4869, l. 13 – p. 4970, l. 11.

The solicitor then argued that under State v. Plath, 277 S.C. 126, 284 S.E.2d 221 (1981) that he was allowed to ask this question. The trial judge stated that Plath was distinguishable. ROA p. 4870, l. 14 – p. 4872, l. 4.

Defense counsel Cummings then noted that a curative instruction would only “re-emphasize the issue on escape or the possibility of escape to these jurors.” Defense counsel argued that the jury considering the possibility of escape would preclude them from

understanding or treating life without the possibility of parole as being just that sentence – life without parole. ROA p. 4872, ll. 5-23.

The solicitor responded that the jury was being left with the impression that nobody gets out, and he argued that inmates do escape. ROA p. 4873, ll. 2-17. The judge ruled she was not going to allow the jury to consider escape. ROA p. 4873, ll. 18-20.

The solicitor then requested permission to question Aiken about “conditions of the general population, the work conditions he’s already gotten into.” The judge told the solicitor she would allow him to ask those questions. Defense counsel objected, noting “we’re on re-cross, Judge.” ROA p. 4873, l. 21 – p. 4874, l. 7. The judge responded that she understood the solicitor was on re-cross, but ruled “I will let him go into those areas.” ROA p. 4873, l. 21 – p. 4874, l. 19.

Defense counsel then noted that a curative instruction on escape would only re-emphasize the damage. Counsel argued it was like a policeman testifying he saw somebody running a red light “and the defense attorney says, ‘Are you sure you saw my client run a red light?’ They’ve heard it twice now.” Defense counsel then moved for a mistrial based on the fact that the prejudice could not be cured. ROA p. 4874, l. 22 – p. 4875, l. 17.

The judge denied the mistrial motion and stated that she would give a curative instruction that the statute on life imprisonment without parole meant “until the death of the defendant.” ROA p. 4875, l. 22 – p. 4876, l. 8.

The judge then instructed the jury that life without parole meant “until the death of the offender” and told the jurors the last question they heard was not proper, and to disregard it. ROA p. 4876, l. 4 – p. 4877, l. 23.

5446

Armed with the judge's ruling on prison conditions, the solicitor then asked Aiken about appellant's opportunity to work and the compensation he would receive for that work. Aiken responded appellant would be minimally compensated for his work at a rate of about three, four or five dollars. ROA p. 4878, l. 1 – p. 4879, l. 24.

The solicitor then asked Aiken in addition to work "what is going on there [in the prison]?" ROA p. 4878, l. 25 – p. 4879, l. 3. Aiken responded and explained the daily routine of a prisoner. He said the inmates get up in the morning, eat, go to work and take a recess and lunch break in the middle of the day. Aiken said an inmate could involve himself in Bible study, education, and anger management classes. ROA p. 4879, l. 8 – p. 4880, l. 7.

When Aiken noted that the prisoners were still watched twenty-four hours a day, the solicitor objected on the basis that Aiken was "going off into a speech." The judge stated Aiken was trying to answer the questions, but she asked Aiken to be as responsive as possible to the solicitor's questions, rather than giving narrative answers ROA p. 4880, ll. 5-23. The following then occurred on re-cross examination of Aiken:

THE COURT: Thank you. You may proceed.

A. I'll just answer the question like this. I gave the daily routine, but you have to understand that you are doing it around very dangerous people that use violence to resolve issues. And that gives a better picture of what it means living in prison.

Q. All right, sir. And are there recreational facilities available?

A. Yes, sir.

Q. What type of recreational facilities?

A. An inmate can play basketball, an inmate can exercise, you know, on his own, but to understand,

again, to give it in a complete context as briefly as I can, you're doing it around very dangerous predator people.

Q. My question is related to the recreational facilities and we understand prison [has] dangerous people. In addition to that are there libraries they go to, to read books?

A. Yes, sir. As guaranteed by the constitution.

Q. Are there movies they can watch?

A. Yes, sir.

Q. Television?

A. In some instances, yes, sir.

Q. Softball, do they play softball?

A. I don't know. It's some type of recreation such as that.

Q. Thank you. That's all I have.

ROA p. 4881, l. 1 – p. 4882, l. 3.

5448

ARGUMENT

1.

The court erred by refusing to instruct the jury on the statutory mitigating circumstance that the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired, since there was expert testimony of appellant's substance abuse problem, and evidence the parties were drinking alcohol throughout the day.

As seen, hard drinking that started in the morning and went late into the night was involved in this case. As seen, defense counsel wanted to know on voir dire if juror biases about consuming alcohol would prevent them from being impartial. ROA p. 1821-1821; ROA p. 1853; ROA p. 1854; ROA p. 3020.

Jeffrey Youngman examined letters from the Dawn Center, an alcohol and drug abuse program. ROA p. 4789, ll. 7-21. Youngman testified appellant had a history of substance abuse. Further, appellant's mother also drank, was arrested for possession of drugs, and was suspected of using drugs. ROA p. 4794, l. 2 – p. 4800, l. 20; ROA p. 4824, ll. 18-25.

As seen, there was evidence the drinking began at William Koger's on the morning of February 16, 2001. The men were planning a party for Joe Fogle.

James Gadson testified he first saw appellant "early in the morning" on February 16, 2001. The men drove with Yolanda Bowman and Gadson recalled while in the car, appellant "put his beer out of the bag and put it [the gun] in the bag." ROA p. 3985, l. 10 – p. 3986, l. 25. Gadson acknowledged he had been drinking gin for hours that day and drank

“a good little bit.” Gadson was feeling “in good shape.” ROA p. 3992, l. 11 – p. 3993, l. 25.

Moreover, the drinking continued throughout the day and Gadson said appellant went to get more beer after he claimed appellant shot the decedent and they returned to the Villa Projects. ROA p. 4015, l. 16 – p. 4016, l. 11.

The judge refused to charge the statutory mitigating circumstance at issue here. See, S.C. Code §16-3-20(C)(b)(6). That statutory mitigating circumstance is that “the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired.”

This statutory mitigating circumstance has widely been accepted to include evidence of intoxication. See State v. Stone, 350 S.C. 442, 567 S.E.2d 244, 248 (2002). Where there is evidence of intoxication or drug use, this Court has required the trial judge to instruct the jury on statutory mitigating circumstances 2, 6 and 7. See State v. Pierce, 289 S.C. 430, 435, 346 S.E.2d 707, 711 (1986); State v. Young, 305 S.C. 380, 409 S.E.2d 352, 356 (1991); State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990).

In deciding whether a statutory mitigating circumstance should be submitted, the trial judge is concerned only with the existence of the evidence, not its weight. Further, the trial judge has a duty to review all statutory mitigating circumstances and instruct the jury as to any circumstances which may be supported by the evidence, and not merely those requested by the defendant. State v. Hughey, 339 S.C. 439, 529 S.E.2d 721, 730 (2000), citing State v. Bellamy, 293 S.C. 103, 359 S.E.2d 63 (1987); State v. Caldwell, supra.

Under this Court’s precedents, appellant was at least entitled to the mitigating circumstance of S. C. Code §16-3-20(C)(b)(6) being submitted to the jury. Appellant had a

5450

history of substance abuse, he was drinking the day of this incident, and there was evidence of a “party atmosphere” throughout the day. Appellant is entitled to a new sentencing trial.

2.

The court abused its discretion by allowing the solicitor on re-cross examination of James Aiken to examine him about conditions in general population. Recreational facilities, watching movies, watching television and reading books were matters not raised by any relevant evidence, and the jury's sole concern was supposed to be whether appellant should be sentenced to death or life imprisonment without parole.

As seen, when the solicitor argued that escape from prison was a fair line of testimony, defense counsel objected on the basis that the sentence would be life without the possibility of parole "and we have told this jury that is all he will ever get and that is the law." ROA p. 4869, l. 3 – p. 4970, l. 11. Defense counsel argued the escape issue had now been put before the jury and that a curative instruction would only exacerbate the damage. Defense counsel then moved for a mistrial. ROA p. 4874, l. 22 – p. 4875, l. 17.

When the judge ruled she was not going to allow escape as a jury issue, the solicitor successfully requested permission to question Aiken about the conditions in the general population. Defense counsel objected, noting "we're on re-cross, Judge." The judge responded that "I will let him go into those areas." ROA p. 4873, l. 21 – p. 4874, l. 19.

The solicitor then had Aiken explain the daily routine of a prisoner. Aiken confirmed that inmates could become immersed in education, Bible study and anger management classes. ROA p. 4879, l. 8 – p. 4880, l. 7. The solicitor also questioned Aiken about recreational facilities and Aiken acknowledged that inmates could play basketball and had access to libraries, movies and television sets. ROA p. 4881, l. 1 – p. 4882, l. 3.

5452

Discussion

Defense counsel correctly argued that the jury's province was to decide whether appellant should be sentenced to death or life imprisonment without parole. Issues such as escape and conditions in the general population should not be placed before the jury. When evidence is allowed, it is obviously allowed as being relevant.

As this Court noted in State v. Plath, 281 S.C. 1, 313 S.E.2d 619, 627 (1984), the Department of Corrections controls the conditions of imprisonment and not the defendant. "Such determination as to the time, place, manner, and condition of execution or incarceration...are reserved by statute... to agencies other than the jury. As we have repeatedly stated, the sole function of the jury in a capital sentencing trial is the individualized selection of one or the other penalty, based upon the circumstances of the crime and the characteristics of the individual defendant."

In State v. Plath, this Court noted that it was highly improper for the defense to paint a picture of life imprisonment as slavery and capital punishment as "an ineffective instrument of deterrence, a crude device for expressing social approval, and even a counter-productive approach to control of crime." State v. Plath, 313 S.E.2d at 626.

"A jury does not need to know how often [the capital defendant] will take a shower or whether or not he will be lonely and withdrawn during his tenure [in prison]." 313 S.E.2d at 627.

The present case deals with prejudicial prison conditions evidence put before the jury by the solicitor, and not a prejudicial closing argument. However, this Court has repeatedly emphasized that solicitors must carefully tailor their arguments in a capital case so that they do not appeal to a personal bias of a juror, or arouse his passion or prejudice

See State v. Reed, 293 S.C. 515, 362 S.E.2d 13, 15 (1987). There is not any reason to treat evidence designed to appeal to juror bias or prejudices any differently.

In State v. Atkinson, 253 S.C. 531, 172 S.E.2d 111, 112 (1970), this Court noted:

The Legislature committed to the jury the responsibility to decide in the first instance whether punishment should be life or death. It charged another agency with the responsibility of how a life sentence shall be executed. The jurors perform their task completely when they decide the matter assigned to them upon the evidence before them. *What happens thereafter is no concern of theirs.*

(emphasis added).

The solicitor's obvious theme with James Aiken was that life imprisonment was not at all a harsh punishment when jurors consider that inmates can play basketball, watch television and movies, exercise, and go the library. What the solicitor did here was no less improper than what this Court condemned the defense for attempting to do in State v. Plath. The solicitor was painting a picture of life in prison as being a relaxing experience.

That was painting a picture designed to influence juror biases. Complaints are common in our society about prisoners watching television, and being able to work out, exercise and lift weights. Indeed, the cornerstone of former Commissioner Michael Moore's highly publicized "get tough" policy was the removal of television sets from the prisons.

What is perhaps most unfair about this irrelevant side issue play to juror biases is that the day to day conditions of life imprisonment are entirely beyond appellant's -- or any inmates -- control. See State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105, 111 (2000). Appellant could not deny or explain the conditions of life imprisonment.

5454

In Gardner v. Florida, 430 U.S. 349, 97 S.Ct. 1197, 1207 (1977), the Supreme Court held that a defendant is denied due process “when the death sentence was imposed, at least in part, on the basis of information which he had no opportunity to deny or explain.”

Here, the solicitor’s re-cross examination of James Aiken about the “lenient” conditions of life imprisonment implied appellant would escape real punishment if he was not sentenced to death. That was improper. See Beck v. Alabama, 447 U.S. 625, 100 S.Ct. 2382 (1980).

Just as capital punishment as public policy is a matter established by the Legislature and not a concern of the jury, so the conditions of imprisonment controlled by the South Carolina Department of Corrections should not be placed before the jury. Cf. State v. Woomey, 278 S.C. 468, 299 S.E.2d 317, 320 (1982). The solicitor’s “country club prison” cross-examination of James Aiken was totally improper, given a principled reading of this Court’s precedents.

The only relevant issue regarding prison is whether the defendant can adapt to prison, or whether he is a future danger. See, Skipper v. South Carolina, 476 U.S. 1, 106 S.Ct. 1669 (1986). This evidence is either mitigating or aggravating.

However, evidence that prison conditions are allegedly not particularly harsh or that conditions are “lenient,” and that life in the general population is like being at a “country club prison,” is improper. Evidence about prison conditions should not be used by either the defense or the solicitor as “aggravating” or “mitigating” when jurors consider the proper punishment – death or life without parole.

The solicitor here was making a “those bad life sentences” argument to the jury by way of his re-examination of James Aiken. See State v. Reed, 293 S.C. 515, 362 S.E.2d 13,

15 (1987). Appellant respectfully submits it is time for this Court again to speak on what is relevant for a jury to consider during the penalty stage of a capital trial, and prison conditions – good or bad – are not relevant to the consideration of a proper penalty.

The judge correctly ruled that escape was not a proper consideration for the jury. However, the judge erred by allowing the jury to consider evidence of prison conditions in the general population. Appellant should be granted a new sentencing trial.

5456

3.

The court erred by refusing to grant a mistrial where the solicitor attempted to question James Aiken about the possibility of escape, since the solicitor injected an improper consideration and an arbitrary factor into the sentencing phase. The jury's attention is properly focused on the penalties of death and life without parole, and not speculative matters beyond appellant's control. Defense counsel correctly argued that the judge could not remove the taint through a curative instruction once escape was raised by the state as an issue.

As seen, the solicitor asked James Aiken how many times inmates had escaped during the time he was affiliated with the Department of Corrections. Defense counsel immediately objected, noting the jury was instructed that life meant life without parole and that appellant would never be released. The judge correctly sustained the objection, and disagreed with the solicitor's assertion that he was allowed to cross-examine on the possibility of escape under the precedent of State v. Plath, 281 S.C. 1, 313 S.E.2d 619 (1984). ROA p. 4869 l.1 – p. 4970, l. 11.

Defense counsel then told the judge that a curative instruction would not remove the taint. It would only “re-emphasize the issues of escape or the possibility of escape to these jurors.” ROA p. 4872, ll. 5-23. Defense counsel urged that the bell could not be unrung. He moved for a mistrial on the basis that the prejudice caused by the state raising the possibility of escape could not be cured. ROA p. 4874, l. 22 – p. 4875, l. 17.

The judge refused to grant a mistrial. Instead, the judge gave a truncated instruction that told the jurors again that life without parole meant “until the death of the defendant” and that the last question was not proper and to disregard it. ROA p. 4875, l. 22 – p. 4877, l. 23.

Discussion

In State v. Plath, 281 S.C. 1, 313 S.E.2d 619 (1984), this Court held that raising the possibility of escape was not reversible error because it was in fair response to the defense strategy to paint life imprisonment as a form of slavery. This Court found since the witness presented himself as an expert on the horrors of prison life as a form of permanent slavery, raising the issue of escape was therefore a fair test of the witness' credibility about what occurred in prison. That was especially true since three years had passed from the earlier State v. Plath, 277 S.C. 126, 140-141, 284 S.E.2d 221, 229 (1981).

As stated, the essence of State v. Plath was that focusing the jury's attention upon conditions in prison is improper. The jury's attention was properly focused only on death or life imprisonment as a proper punishment for the particular defendant. A death penalty trial is not a forum for the prosecution and the defense to wage a political war about the death penalty or how harsh life imprisonment is in reality.

Further, in this case, there was not any evidence appellant ever escaped from prison or ever attempted to escape while awaiting trial on these charges. In State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105, 111 (2000), this Court held it was improper for the state to introduce several pieces of mail that were sent to the defendant at the Lexington County Detention Center. These pieces of mail contained illegal drugs. This Court noted that since the state could not produce any evidence the defendant conspired or asked for the drugs to be mailed to him, there was not any nexus between drugs being sent to him and his ability to adapt to prison life. See, also, State v. Bailey, 279 S.C. 437, 308 S.E.2d 795 (1983).

Here, similarly, there was not any evidence linking appellant to any escape attempt. As the solicitor did in Quattlebaum, the solicitor here wanted the jury to hold against

5458

appellant something that was out of his control – the fact some prisoner some day may escape. Cf. State v. Kelley, 343 S.C. 350, 540 S.E.2d 851, 855-857 (2001).

Further, this Court's opinion in State v. Woomer, 278 S.C. 468, 299 S.E.2d 317 (1982), also states that the possibility of escape is only admissible where it has a direct nexus to the defendant's conduct. In State v. Woomer, this Court held that evidence of the defendant's prior escape while in prison in West Virginia was a proper reply to his evidence of his good conduct while in prison in South Carolina. State v. Woomer, 299 S.E.2d at 319.

Evidence of a defendant's misconduct in jail, including any prior plan to escape or an escape attempt, is clearly relevant to his character and his ability to adapt to prison. Woodson v. North Carolina, 428 U.S. 280, 304, 96 S.Ct. 2978, 2991 (1976); State v. Woomer, 278 S.C. 468, 299 S.E.2d 317, 319 (1982). A defendant is also entitled to introduce evidence that he can adapt to prison. See Skipper v. South Carolina, 476 U.S. 1, 106 S.Ct. 1669 (1982).

However, in the final analysis, factors behind the prison walls that an individual defendant cannot control are unfair to hold against him. Where there is not any nexus between the speculative evidence and the defendant, as here, the speculative evidence should not be allowed before the jury because it constitutes an arbitrary factor.

The judge correctly ruled that it was error for the solicitor to inject the broad issue of the possibility of escape into this case. Defense counsel correctly argued prejudice from that error could not be cured, and he moved for a mistrial.

There was not any ambiguity in the solicitor's question about escape, and it was etched in the minds of the jurors. It was a vivid way of reminding jurors that an escape could happen, and some inmate could harm or kill an innocent member of the public. The

5459

judge should have declared a mistrial because it was necessary to a fair sentencing procedure untainted by the arbitrary factor of escape. Cf. State v. Council, 335 S.C. 1, 515 S.E.2d 508, 513-514 (1999). Appellant should be granted a new sentencing trial.

5460

4.

The trial court lacked subject matter jurisdiction to sentence appellant to death since the murder indictment did not allege any aggravating circumstances. Aggravating circumstances are now elements of the offense of capital murder that must be contained in the indictment.

The murder indictment against appellant does not list any of the aggravating circumstances. See R. p 5254-5257. Ring v. Arizona, 536 U.S. 584, 122 S.Ct. 2428 (2002) holds that aggravating factors are elements of the offense of capital murder, and as such, when read together with Apprendi and Jones, those aggravating factors must be charged in an indictment, and found by a jury beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 476, 120 S.Ct. 2348, 2355 (2000); Jones v. United States, 526 U.S. 227, 243 n. 6, 119 S.Ct. 1215, 1223 (1999).

South Carolina law, like the Fifth Amendment Indictment Clause of the United States Constitution, requires that all elements of a crime be alleged in an indictment. Hooks v. State, 353 S.C. 48, 577 S.E.2d 211 (2003) (Indictment defective for failing to state all the necessary elements for accessory plea); Padgett v. State, 324 S.C. 22, 484 S.E.2d 101 (1997) (First-degree burglary indictment defective because it alleged burglary of dwelling, but the evidence revealed the building was a barn); Hopkins v. State, 317 S.C. 7, 451 S.E.2d 389 (1994) (Indictment defective because at plea the state changed offense from DUI causing great bodily injury to DUI causing death, thereby raising the maximum punishment from 10 to 25 years, and the amendment deprived the court of jurisdiction to accept the guilty plea); See S.C. Const. Art. I, §11; S.C. Code §17-23-10 et seq.

The New Jersey Supreme Court has held that “the State is required to submit the aggravating factors to the grand jury and specify in the indictment those factors it intends to prove at a penalty hearing.” State v. Fortin, 178 N.J. 540, 843, A.2d 974, 1037 (2004). The Court in State v. Fortin, 178 N.J. 540, 843, A.2d 974, 1030 (2004), also ruled that assurances of adequate actual notice of the aggravating circumstances is not any substitute for the historic role of the grand jury now that aggravating circumstances are elements of the crime of capital murder.

That court held as follows:

If aggravating factors and capital triggers are the functional equivalent of elements of capital murder pursuant to the Sixth Amendment’s right to trial by jury, we see no reason to define them as something other than elements for purposes of the state constitutional right to a grand jury presentation. We, therefore, hold that our State Constitution requires that aggravating factors be submitted to the grand jury and returned in an indictment. In a criminal justice system in which all of the elements of a crime must be submitted to the grand jury it would be odd to make capital murder the one exception. Our analysis of the development of federal law does not compel this result; logic and fairness and the historical importance we attach to our grand jury system do. ¶ In light of Apprendi and Ring and our recognition that “functionally, the aggravating factors in [N.J.S.A. 2C:11-3c] are indistinguishable ... from the elements of a crime,” we conclude that Article I, Paragraph 8 [of the New Jersey Constitution] requires the submission of the aggravating factors and capital “triggers” to the grand jury.

State v. Fortin, 178 N.J. 540, 843 A.2d 974 (2004) at 1035 (internal citation omitted).

This Court, like New Jersey, should now require and hold that the aggravating circumstances must be charged in an indictment that is true-billed by the grand jury of the county in which the capital murder was committed before the state can seek the death

5462

penalty. See S.C. Const. Art. I §11; See, also S.C. Code §17-19-10. When an indictment fails to allege the essential elements of an offense, the bill of indictment is insufficient to vest the court with jurisdiction to try the defendant. State v. Beachum, 288 S.C. 325, 342 S.E.2d 597 (1986). This issue is presently pending in State v. William Ernest Downs at the time this brief was written. Nonetheless, a brief history of this issue follows, and how this Court's precedents can easily be adapted to it.

Ring v. Arizona, indictments, and defining elements

As seen, Ring now defines capital murder as that which includes murder and aggravating circumstances. The aggravating circumstances proven in the penalty phase are, in fact, elements of the aggravated crime of capital murder. Ring, supra.

The protections of Ring turn on the designation of certain facts as the essential elements of a crime. In Apprendi, the Supreme Court established a test for classifying a fact as an element of an offense or as a sentencing factor: "[U]nder the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime *must be charged in an indictment*, submitted to a jury, and proven beyond a reasonable doubt." Apprendi, 530 U.S. at 476, 120 S.Ct at 2355 quoting Jones v. United States, 526 U.S. at 243, n.6, 119 S.Ct. 1215." (emphasis supplied).

The Fourteenth Amendment commands the same answer in a case involving a state statute. Here, S.C. Code §16-3-20(C)(a)(1) – (11), is the aggravating circumstances provision of our murder statute. The key inquiry thus is whether the required finding exposes the defendant to a greater punishment than that authorized by the jury's guilty

verdict. Appendi, 530 at 494, 120 S.Ct. at 2365. If it does, then that finding is a distinct element of a criminal offense and must be charged in the indictment.

The maximum sentence for murder, the killing of another human being with malice aforethought is life imprisonment. See S.C. Code §16-3-20. The maximum sentence for capital murder, that is, murder in addition to an aggravating circumstance is death, just as in Arizona. See S.C. Code §16-3-20(C)(a)(1) – (11) (2002 Cum.Supp.). Cf. Ariz. Rev. Stat. §13-1703.

The aggravating factors enumerated in South Carolina's death penalty statute thus expose a defendant to a punishment (the death penalty) for capital murder greater than that otherwise legally prescribed (life imprisonment) for non-capital murder. Under this system, the elements of murder and the aggravating circumstances together constitute the aggravated crime of capital murder.

"[I]f the legislature defines some core crime and then provides for increasing the punishment of that crime upon a finding of some aggravating fact[,] . . . the core crime and the aggravating fact together constitute an aggravated crime, just as grand larceny is an aggravated form of petit larceny. The aggravating fact is an *element* of the aggravated crime." Appendi, 530 U.S. at 501, 120 S.Ct. at 2369, (Thomas, J., concurring); see also Harris v. United States, 536 U.S. 545, 122 S. Ct. 2406, 2417 (2002) (emphasis supplied).

A court can no longer hold that aggravating circumstances are not elements of capital murder and are merely "sentencing factors" or considerations. That was the premise of Walton v. Arizona, 497 U.S. 639, 110 S.Ct. 3047 (1990), which has now been expressly overruled by Ring.

5464

Since the indictment in this case was defective there was not the requisite jurisdiction necessary for this case to proceed as a capital case, and appellant's death sentence must be vacated.

Other courts have decided this same issue as urged by appellant

Courts in other jurisdictions have already reached the conclusion that Ring, Apprendi, and Jones, mandate that any indictment for capital murder must include the aggravating factors in the murder indictment.

In light of the Supreme Court's mandate in Jones that "any fact . . . that increases the maximum penalty of a crime must be charged in an indictment," a federal court in Virginia stated that it appears to be a foregone conclusion that *aggravating factors that are essential to the imposition of the death penalty must appear in the indictment.*" United States v. Lentz, 225 F.Supp.2d 672 (E.D. Va. 2002) (quoting Jones, 526 U.S. at 253 n.6) (emphasis supplied).

Similarly, in United States v. Fell, 217 F. Supp. 2d 469 (D. Vt. 2002), the court held that the "clear implication of the [Ring] decision is that in a federal capital case the Fifth Amendment right to grand jury indictment will apply." *Id.* at 483.

As stated, this Court's precedents on what an indictment must contain are the same as those New Jersey Supreme Court has required. For example, this Court in Mathis v. State, 355 S.C. 87, 584 S.E.2d 366 (2003), vacated the defendant's first degree burglary conviction because it did not allege the element – the aggravating circumstance - - that the burglary occurred during the nighttime. This Court again noted that lack of subject matter jurisdiction can be raised at any time.

5465

The failure to allege the aggravating factors for capital murder in the murder indictment against appellant violated this fundamental principle. Appellant's death sentence should be vacated.

5466

5.

The court erred by ruling appellant did not have an expectation of privacy in the pants he wore to his wife's house, and by refusing to suppress the watch and liquid material found in and on those pants. The pants were seized during an illegal warrantless arrest, and the court erred by ruling the arrest was pursuant to a "valid" Orangeburg warrant -- that was several months old -- and was for a minor unrelated offense.

Relevant Facts

This case involves a Dorchester County murder, and a Orangeburg County arrest warrant for receiving stolen goods that was issued on December 1, 2000. Dorchester County Detective Terrance Van Doran testified he was called to the scene of the arson on Nursery Road in Dorchester County on February 17, 2001, at 4:00 a.m.. ROA p. 7, ll. 3-21. Van Doran said appellant became a suspect in the case. Van Doran claimed the police learned there was an outstanding arrest warrant for appellant from Orangeburg County.³ ROA p. 8, ll. 6-10.

Van Doran went with some police officers to the residence of appellant and his wife at [REDACTED] in Branchville later that morning. As will be seen *infra*, appellant's wife, Dorothy Bowman, testified appellant was not living with her at the time. Under what authority the police got inside the home to arrest appellant and seize his pants was the key issue. ROA p 10, l. 21 – p. 12, l. 14.

³ This Court can take judicial notice of the fact that Nursery Road is approximately three miles from the nearest town, D'Orange, South Carolina in Dorchester County. Branchville is in Orangeburg County, South Carolina. Branchville is approximately twelve miles from the D'Orange area near Nursery Road. Branchville is approximately a twenty six minute drive from Orangeburg where the detention center is located. *See* Mapquest.com.

Van Doran said that once inside the police encountered appellant in the bedroom “behind the bed, between the bed and the wall, where you couldn’t hardly see him.” Appellant was wearing only his underwear. Appellant was arrested and Van Doran said he read appellant his Miranda rights. ROA p. 10, l. 21 – p. 12, l. 14.

Van Doran remembered that appellant asked for his pants. “I asked him where they were and he informed me that he thought they were in the living room ... we allowed Dorothy to go to the living room ... and she started to bring the pants, I thought better of allowing her to hand him the pants, I took them and I checked them for any weapons, just for safety purposes.” ROA p. 12, l. 15 – p. 13, l. 5. When Van Doran searched appellant’s pockets, he found a “lady’s watch with a brown wristband.” The state would later offer evidence the watch belonged to the decedent. ROA p. 13, ll. 6-10.

Van Doran said he discussed the watch with Detective Coker, and he then informed Dorothy that “we would need something else for him to wear because we were going to take the pants, not let him wear them.” ROA p. 13, ll. 6-17. The state would later offer evidence that petroleum products were discovered on appellant’s pants, although that petroleum product was not gasoline. The state would, nonetheless, introduce them into evidence. ROA p. 4129, ll. 10-24; ROA p. 4164, l. 15 – p. 4165, l. 14.

On cross-examination, Van Doran claimed he could not remember if anybody gave appellant a copy of the Orangeburg County arrest warrant when he was taken into custody. ROA p. 119, ll. 8-21. The Orangeburg County arrest warrant was for possession of stolen goods. The warrant was served on February 18, 2001. As stated, it had been issued on December 1, 2000. ROA p. 5258.

5468

Officer Tim Stevenson admitted he did not recall “whether or not he [appellant] had been picked up on a fresh warrant or a bench warrant.” ROA p. 134, l. 23 – p. 135, l. 1.

Appellant’s testimony

Appellant testified in camera that on February 17, 2001, he was at Dorothy’s mobile home in Branchville, South Carolina. Appellant said his stepson told him, “Daddy, I see the police.” Appellant said he looked out the window and saw the Chief of Police driving by the mobile home. Appellant sat back down in the chair. He did not attempt to flee. ROA p. 727, l. 20 – p. 729, l. 1. Appellant confirmed that he was not residing with Dorothy at the time, and the only clothing he had with him were the pants he had been wearing. ROA p. 729, ll. 2-5.

Appellant heard a knock on the door. Appellant testified he instructed his wife, “Don’t open the door for the police.” Appellant recalled, “I heard them saying that they had a search warrant to come in the house, search me and my wife, told them she didn’t know whether I was in the house or not.” Law enforcement then entered the mobile home. ROA p. 730, l. 6 – p. 731, l. 17.⁴

Appellant said the police came in the home and they saw him laying on the bed. Appellant was handcuffed. Appellant recalled that all he was wearing at the time was his white shorts. ROA p. 731, l. 20 – p. 733, l. 2. Appellant said the police “put me on my knees in the hallway floor.” ROA p. 733, ll. 2-21.

Appellant remembered, “I asked my wife for some clothes.” Appellant said the only clothes the police eventually allowed him to put on was “a pair of my wife’s jogging pants.” Appellant recalled when he asked his wife for clothes, “Mr. Van Doran walked off from the

hallway and came back, [he] was in the living room saying he had to find something else [for me] to put on, I heard him say that.” ROA p. 734, ll. 5-18.

Appellant said the police did not show him a copy of an arrest warrant or tell him there was an outstanding warrant for his arrest. Appellant testified he was not given any reason why he was being held at the Branchville Police Department following his arrest. Appellant recalled Detective Coker told him, “I was only at the police station to answer the questions.” ROA p. 743, l. 2 – p. 744, l. 21. Appellant was also never shown a copy of a search warrant. ROA p. 744, ll. 19-21.

Appellant testified he took a polygraph examination. He was then told he was lying to the police. ROA p. 763, l. 8 – p. 765, l. 7. The police then asked appellant if he did not know what happened to the decedent, “why do you have her watch?” Appellant told the police the decedent gave him the watch in return for drugs. ROA p. 765, ll. 3-16.

Dorothy Bowman

Appellant’s wife, Dorothy Bowman, testified during the pre-trial hearing on April 15, 2002, that she had been living at [REDACTED] in Branchville for about three months prior to this incident. Appellant was not living with her at the time. ROA p. 1039, ll. 13-25.

Mrs. Bowman remembered that the police came to her door about eight or nine o’clock that February morning. Branchville Police Officer Boom Walters knocked on her door “and he said something about some kind of – he had Dorchester County with him and something about J. R. [appellant] *and a warrant*. And he asked me can he come in and look for J. R. And I told him ‘Yeah.’” ROA p. 1041, l. 10 – p. 1042, l. 3. (emphasis added).

⁴ April 11, 2002, hearing.

5470

Why Mrs. Bowman let the police come into her home that morning was the key issue. The following occurred between the solicitor and Mrs. Bowman:

Q. Did they ever tell you they had a search warrant for Marion?

A. *They said something like that, about a warrant and Marion, yes, sir.*

Q. Did they say anything about an arrest warrant?

A. I can't remember that. I don't think so.

Q. What did they say about a warrant, to the best of your recollection? If they talked about a warrant, what did they say?

A. *They had a warrant for his arrest.*

Q. Okay. All right. And how many police came into your house?

A. During that time I'd say about three or four.

ROA p. 1051, l. 18 – p. 1052, l. 5. (emphasis added).

The following occurred on cross-examination of Branchville Chief of Police Quillie Walters about the Orangeburg arrest warrant:

Q. Good morning, Chief. On the back it's marked State's Exhibit 5 for ID. I'm going to ask you to look at that. Up in the left-hand corner can you read the address of where the arrest warrant for Mr. Bowman [is], [what] his address would be?

A. It says [REDACTED].

Q. All right, sir. Where is Locket Street, is that in the town of Branchville?

A. It's close by this Carry Street. It's a couple streets or two over from Carry Street.

Q. All right, sir. And I'm asking now this is an attested true copy. Did you or any law enforcement officers on the day of [February 17 2001] have this piece of paper in your possession?

A. I had the -- not -- I had a copy of the warrant.

Q. All right, sir. You carried just a photocopy around with you?

A. I had it at the office and I carried it with me that day.

Q. You would agree with me, Chief, a photocopy is not a valid warrant, it has to have a judge's signature on it?

MR. BAILEY: Objection to him getting any legal implications. It's a valid warrant, he's a fact witness.

ROA p. 325, l. 3 -- p. 326, l. 2.

THE COURT: I'll allow you to proceed, Mr. Cummings.

Q. When did you make a copy of that warrant?

A. I have no idea. I don't remember. It was sent for me from the sheriff's office. But that morning in question an investigator from the sheriff's department checked with Orangeburg with their records and verified that the warrant was in existence and it was still needed to be, still active.

Q. Who did this, sir?

A. Investigator Varnadoe.

Q. All right, sir. Since last Friday until today have you talked to any officers about your testimony today?

A. No, sir.

Q. Has anybody come to you, asked you about any issues?

A. No, sir.

5472

Q. *All right. Have you seen that attested true copy of the warrant prior to testifying today?*

A. *Not till today.*

Q. *Okay. Mr. Bailey just when he showed it to you, that the first time[was] today?*

A. *That's right.*

Q. *All right. Now, when – you were told there was a valid warrant in existence, but you didn't have actually a warrant with a judge's signature on it that day, correct?*

A. *I don't understand your question.*

Q. *Well, when you went to Mr. – Ms. Bowman's house, did you have a valid warrant with a judge's signature on it that morning, sir?*

A. *I didn't have the original warrant, no, sir, I did not.*

Q. *Did you have – did you gentlemen have a search warrant when you went to Ms. Bowman's residence?*

A. *No search warrant.*

Q. *Okay. Had you applied for a search warrant that morning?*

A. *This was the sheriff's department warrant, it wasn't mine. I was assisting them in executing their warrant.*

Q. *An arrest warrant on Mr. Bowman?*

A. *Right.*

ROA p. 326, l. 11 – p. 328, l. 4. (emphasis added).

Mrs. Bowman said after the police entered, they allowed her to stay in front “while they went down the hall to search for him.” The police did not show Mrs. Bowman any documents justifying an arrest or a search of her home. ROA p. 1042, ll. 6-15.

“Then after they found him, and then one of the officers asked me did he have any clothes in my house and I said yes. He asked me, ‘Can I go get them,’ and I went and got them ... I remember getting him a pair of black pants and a shirt, gray shirt.” ROA p. 1042, ll. 16-23.

Mrs. Bowman remembered the police searched her home after appellant’s arrest. “And then after they finished searching, they got – well, while they was searching, they had me sign some kind of waiver form ... just telling me about what they took from my house, like his pants, his watch, stuff like that.” ROA p. 1043, ll. 3-12.

The Orangeburg arrest warrant was for receiving stolen goods, one thousand to five thousand. The arrest warrant affidavit was signed on December 1, 2000, by Kerry Kinsey at Post Office Box 1366, Orangeburg, South Carolina, 29116. Magistrate Peggy G. Davis signed the arrest warrant that same day. The return stated that the warrant was delivered to appellant on February 18, 2001. See Arrest Warrant, ROA p. 5258.

Rulings on appellant’s statements following his arrest.

The judge ultimately suppressed appellant’s statement to the police. The evidence showed appellant was taken to the Orangeburg County jail, but his arraignment or bond hearing was delayed. Further, it was undisputed the police brought appellant back from the Orangeburg County jail on a Sunday night to Branchville to see his wife. The defense maintained that law enforcement was threatening that appellant’s children could be taken

5474

into DSS custody, and his wife could be charged in this case. Appellant also testified he did not read what the police wrote for him to sign. ROA pp. 770; 790; 862-864.

Arguments on seized property

Defense counsel argued before the court on May 1, 2002, that appellant was illegally arrested. Appellant was not informed of the reasons for his arrest, and there was not any testimony “saying either Chief Walters or whoever said, ‘You’re under arrest for stolen goods,’ none of that ... There’s no proof saying he had knowledge of an outstanding felony warrant. Judge, a copy of a warrant is insufficient. This is illegal to have a copy of the warrant. The copy of the warrant hasn’t even been produced in the various stages of this issue.” ROA p. 1254, l. 20 – p. 1256, l. 14.

Defense counsel noted that appellant’s pants were seized when they were brought to him inside the mobile home. Defense counsel argued that, if the court were to find appellant was legally being arrested for receiving stolen goods, “what issue is the pants based on that case?” ROA p. 1257, l. 15 – p. 1259, l. 14.

Counsel also argued Mrs. Bowman “can’t give permission for his pants.” Counsel said appellant had standing to challenge the search. ROA p. 1259, l. 15 – p. 1260, l. 1. Counsel argued that the watch and any other evidence seized from appellant’s clothes were the fruit of the poisonous tree, and should be suppressed. ROA p. 1261, l. 1 – p. 1262, l. 6.

State v. Sims

The judge asked the parties to discuss the arrest in terms of State v. Sims, 304 S.C. 409, 405 S.E.2d 377 (1991). Counsel argued the police were vague about the warrant, “who had access to it, how it got there, who got the warrant...” The warrant was “only allegedly signed by a judge in December, [2000].” ROA p. 1263, l. 1 – p. 1264, l. 7.

Counsel reminded the judge that the police did not tell appellant he was being arrested for receiving stolen goods. ROA p. 1263, l. 21 – p. 1266, l. 17. Counsel noted the police “chose to seize those pants as the result of a homicide investigation, not receiving stolen goods, not for any issue of contraband...” ROA p. 1266, l. 13 – p. 1267, l. 1. “Therefore, Judge, respectfully, the pants and anything found therein should be suppressed.” ROA p. 1267, ll. 2-8.

The judge denied appellant’s motion to suppress the evidence seized at the time of his arrest. The judge ruled, “the arrest was made based upon information that there was a valid warrant. And, in fact, there was a valid warrant. And I find that, first of all, it was a valid arrest.”

The judge also ruled appellant had no expectation to privacy in his pants, and that they were legally seized incident to arrest. ROA p. 1275, l. 16 – p. 1276, l. 19.

Trial evidence

Appellant’s pants and the watch were later entered into evidence. ROA p. 4129, ll. 10-24; ROA p. 4164, l. 15 – p. 4165, l. 14. SLED agent Grady Layton testified he “found the presence of a heavy petroleum product on these jeans.” Layton admitted on cross-examination these heavy petroleum products could be charcoal starters, oil lamps, paint thinners, or insect sprays. Layton also acknowledged that a heavy petroleum product was also found on the shoe of James Gadson. ROA p. 4300, l. 7 – p. 4301, l. 24.

The solicitor noted that the decedent’s watch was found in appellant’s pants, and he argued appellant’s wife consented to the police taking appellant’s pants and the watch. ROA p. 4476, l. 11 – p. 4477, l. 9.

5476

Discussion

The judge erred by ruling appellant did not have any expectation of privacy in his pants. Those pants were seized from his wife's mobile home while appellant was present, and inside the home with his wife's permission.

In Minnesota v. Olsen, 495 U.S. 91, 110 S.Ct. 1684 (1990), the police entered a residence, without a warrant, to apprehend an overnight guest who was a suspect in a murder and robbery. The Supreme Court found the defendant's status as an overnight guest alone was "enough to show that he had an expectation of privacy in the home that society is prepared to recognize as reasonable." Minnesota v. Olsen, 495 U.S. at 96-97, 110 S.Ct. at 1688. Appellant was at least as well situated in this case. He was staying at his wife's mobile home when the police entered.

Defense counsel correctly argued that appellant was illegally arrested. The state's witnesses were very vague about the December 1, 2000, warrant issued for appellant's arrest by Judge Peggy D. Davis for receiving stolen goods. This Orangeburg County arrest warrant alleged appellant sold four guns that were stolen from a residence in Cope, South Carolina. ROA p. 5258.

Further, there was not any reason in this case that the police could not have obtained a valid arrest warrant for murder, assuming they had probable cause for appellant's arrest at the time. As seen, the Chief of Police claimed: "an investigator from the sheriff's department checked with Orangeburg with their records and verified that the warrant was in existence and it was still needed to be, still active." Defense counsel correctly argued that the seizure of appellant's pants and his watch clearly showed the police entered the mobile home to arrest appellant and search for evidence of the homicide.

Further, this was not a case of hot pursuit. The police were allegedly taking time to check on the Orangeburg arrest warrant. If the police had probable cause to arrest, that same time could have been taken to obtain an arrest warrant for murder.

Appellant resided in the area. He had family ties to the community, including his wife Dorothy. Appellant was at his wife's mobile home with her permission. He was sitting around the mobile home in his boxer shorts when the police arrived. Appellant could not be considered a flight risk unless any other murder suspect who was a resident of the local area, and who had family ties to the community was to be considered a flight risk. Cf. State v. George, 323 S.C. 496, 476 S.E.2d 903, 911 (1996), (where the defendant did not have ties to the community and was a flight risk).

Dorothy Bowman remembered that the police told her they either had a search warrant or "a warrant for his arrest." ROA p. 1051, l. 18 – p. 1052, l. 5. The police were allowed into the home for that reason. If the police had a warrant and Mrs. Bowman refused them entry, the police had a right to break into her home. See S. C. Code §43-15-60 (1976). Mrs. Bowman had the right to rely on assertions the police had a warrant, and she should not be expected to deny them entry – or force the police to break into her home -- lest it be deemed that she consented to their entry. Yet Officer Tim Stephenson could not recall whether appellant was arrested on a fresh warrant or a bench warrant. ROA p. 134, l. 23 – p. 135, l. 1.

It is apparent that to any extent the police relied on the stale December 1, 2000, Orangeburg arrest warrant for receiving stolen goods, that their reliance was a subterfuge to

5478

gather evidence and obtain a statement from appellant in what was obviously a murder investigation.⁵

Further, the court's reliance on State v. Sims, *supra*, based upon the dated Orangeburg arrest warrant for receiving stolen goods was misplaced. In Sims, the police were aware of murder warrants issued for Sims' arrest. Sims was on a crime spree. The arresting officer in Sims was aware of a Federal Bureau of Investigation warrant, and of a warrant from California that had been issued for Sims' arrest. In addition, there were warrants for Sims' arrest in South Carolina. Further, unlike the present case, appellant did not voluntarily disclose the location of any inculpatory evidence when confronted by the police. The police just seized his pants. See State v. Sims, 405 S.E.2d at 382.

Interestingly, at the time Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371 (1980) was decided, South Carolina was one of four states in the country that prohibited warrantless arrests in the home by statute. See, S. C. Code §23-15-60 (1976); Payton v. New York, 445 U. S. at 599, n. 47, 100 S.Ct. at 1386, n. 47. S. C. Code §23-15-60 provides a sheriff or deputy may force his way into the home, after a request and refusal, to arrest a person, provided, the sheriff or deputy has the process requirement to arrest the person.

In Payton v. New York, a second defendant involved, one Riddick, was arrested when a detective, accompanied by three police officers, knocked on the door of his New York home. When his young son opened the door, the police saw Riddick sitting in bed

⁵ Appellant recognizes that if the police had probable cause to arrest, appellant's subsequent statement obtained after a warrantless entry into the home was not inadmissible under the exclusionary rule. New York v. Harris, 495 U.S. 14, 110 S.Ct. 1640 (1990). However, the judge excluded appellant's statement on other grounds. Appellant also testified he did not read any of the statements that were written for him, and he requested a lawyer. ROA pp. 770; 790; 862-864.

covered by a sheet. They entered the house and placed him under arrest. The United States Supreme Court in Payton v. New York found this warrantless arrest in the home unconstitutional. See Payton v New York, 445 U.S. 573 100 S.Ct. 1371 (1980).

Several facts are clear here. The solicitor argued the actions of the police were lawful under State v. Sims because they were aware of the Orangeburg County arrest warrant. That warrant did not have anything to do with the murder in this case, and it was a dated warrant for a minor offense.

Further, appellant testified he instructed his wife not to open the door for the police. Mrs. Dorothy Bowman testified that she was told the police had either an arrest or search warrant allowing them entry into the home. Mrs. Bowman allowing the police entry under these circumstances was not consent, but acquiescence to an assertion of lawful authority to enter. Finally, a fair reading of this record shows the police had time to obtain an arrest warrant from a magistrate for murder if they had probable cause to arrest, and there were not any exigent circumstances involved in this case.

Under these circumstances, the fruits of the illegal arrest, the watch and appellant's pants themselves, should have been suppressed as a result of an illegal arrest. Cf. State v. Dupree, 319 S.C. 454, 462 S.E.2d 279 (1995), *cert. denied*, 516 U.S. 1131, 116 S.Ct. 951 (1996) (search incident to lawful arrest).

The judge erred by reasoning appellant did not have an expectation of privacy in his pants that were seized in his wife's home where he was at least a guest, and by ruling appellant's arrest was lawful. The seized watch and appellant's pants were the fruit of the poisonous tree. They would not have come to light but for the illegal actions of the police,

5480

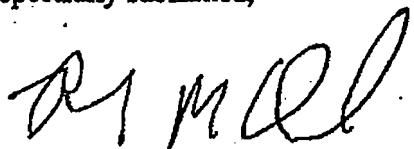
and they should have been suppressed. Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407 (1963).

The refusal to suppress the objectionable evidence was an error of law, and appellant should be granted a new trial.

CONCLUSION

By reason of argument five, appellant's conviction should be reversed, and this case remanded to the Dorchester County Court of General Sessions for a new trial. In the alternative, by reason of arguments one, two, three and four, appellant should be granted a new sentencing trial.

Respectfully submitted,



Robert M. Dudek
Assistant Appellate Defender

ATTORNEY FOR APPELLANT.

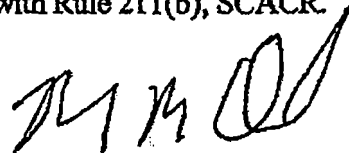
July 6, 2005

5482

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

July 6, 2005



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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Dorchester County

Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

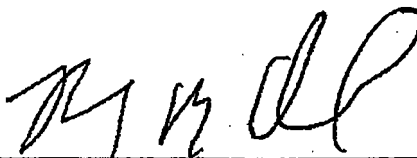
V.

MARION BOWMAN, JR.,

APPELLANT

CERTIFICATE OF SERVICE

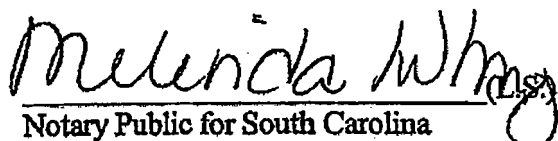
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon S. Creighton Waters, Esquire, this 6th day of July, 2005.



Robert M. Dudek
Assistant Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 6th day of July, 2005.


Notary Public for South Carolina

My Commission Expires: November 16, 2008.

5484

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Appeal from Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

Respondent,

v.

MARION BOWMAN, JR.,

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	v
STATEMENT OF THE ISSUES ON APPEAL	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	4
A. Friday evening, 2/16/01: a suspiciously abandoned car and gunshots in the night	4
B. Early morning Saturday, 2/17/01: the car found ablaze	5
C. 2/17/01: the crime scene evidence at Nursery Road	5
D. Saturday morning, 2/17/01: Appellant's arrest, his pants, and Kandee's watch	6
E. Appellant's friends and relatives come clean about Kandee's murder	7
1. The argument over the gun	8
2. Unpaid debts and threats to kill	9
3. Tywan Gadsden describes Kandee's murder	10
4. The trip to the club in Kandee's car: admissions of guilt	11
5. Travis Felder describes the car fire	12
F. May and June 2001: a pistol found in the Edisto river – and bullets found in the couch	13
G. The DNA match	14
H. The State's sentencing phase case	14
I. The defense's sentencing case	15

5486

ARGUMENT 19

I. THERE IS NO REVERSIBLE ERROR FROM THE TRIAL COURT'S FAILURE TO CHARGE THREE STATUTORY MITIGATORS BASED ON SUPPOSED EVIDENCE OF APPELLANT'S VOLUNTARY INTOXICATION, WHERE THE ISSUE WAS NOT EVEN MENTIONED TO THE TRIAL COURT, AND IN ANY EVENT THERE WAS ABSOLUTELY NO EVIDENCE APPELLANT WAS ACTUALLY INTOXICATED AT THE TIME OF THE CRIME OR ENGAGING IN HEAVY CONSUMPTION IMMEDIATELY PRIOR. 19

A. Events at trial 19

B. General Rules 23

C. The issue is not preserved. 24

D. Since there was absolutely no evidence that Appellant was actually intoxicated at the time of the crimes, there was no reversible error. 26

II. THERE WAS NO REVERSIBLE ERROR FROM THE SOLICITOR'S BRIEF AND LIMITED QUESTIONING AS TO RECREATION AVAILABLE IN PRISON, WHERE THE ISSUE IS NOT PRESERVED. IN ANY EVENT, THE QUESTIONING WAS APPROPRIATE RESPONSE TO DEFENSE EVIDENCE ABOUT THE HARSHNESS OF LIFE IN PRISON AND EMPLOYMENT REQUIREMENTS THEREIN, AS WELL AS INDEPENDENTLY RELEVANT AS SPECIFICS TO CHALLENGE THE DEFENSE EXPERT'S GENERAL ADAPTABILITY OPINION AND TO PLACE PERMISSIBLE RETRIBUTIVE CONCEPTS BEFORE THE JURY. 29

A. Events at trial 30

B. The issue is not preserved. 32

C. *State v. Plath* in view of modern developments in capital sentencing phase law on future adaptability to prison and life without parole. 34

D. The defense opened the door to the solicitor's limited questioning about conditions of confinement by first eliciting testimony about the harshness of life in prison as well as presenting evidence about employment opportunities in jail. 37

iii

5488

BY CONSENT FROM APPELLANT'S WIFE.	55
A. Events at trial	55
B. The issue is not preserved.	58
C. There can be no possible prejudice with regard admission of the pants.	58
D. Appellant was properly arrested pursuant to a valid warrant.	59
E. Seizure of the watch was valid as a search incident to arrest.	61
F. In any event, the search of the pants was permissible based on Dorothy's consent to search the house.	62
CONCLUSION	64

TABLE OF AUTHORITIES

CASES

<u>Chimel v. California</u> , 395 U.S. 752 (1969)	61
<u>Gardner v. Florida</u> , 430 U.S. 349 (1977)	32, 44
<u>Gill v. State</u> , 346 S.C. 209, 552 S.E.2d 26 (2001)	49
<u>Gregg v. Georgia</u> , 428 U.S. 153 (1976)	42, 51
<u>Hubbard v. Rowe</u> , 192 S.C. 12, 5 S.E.2d 187 (1939)	33
<u>Illinois v. Lafayette</u> , 459 U.S. 986 (1983)	62
<u>Johnson v. State</u> , 325 S.C. 182, 480 S.E.2d 733 (1997)	49
<u>Kelly v. South Carolina</u> , 534 U.S. 246 (2002)	41
<u>Painter v. Robertson</u> , 185 F.3d 557 (6th Cir. 1999)	60
<u>Payne v. Tennessee</u> , 501 U.S. 808 (1991)	43
<u>People v. Jones</u> , 767 P.2d 236 (Colo. 1989) (en banc)	61
<u>Ramdass v. Angelone</u> , 530 U.S. 156 (2000)	50
<u>Ring v. Arizona</u> , 536 U.S. 584 (2002)	54
<u>Simmons v. South Carolina</u> , 512 U.S. 154 (1994)	36, 41-43, 51
<u>Skipper v. South Carolina</u> , 476 U.S. 1 (1986)	35-36, 39, 41
<u>State v. Bailey</u> , 276 S.C. 32, 274 S.E.2d 913 (1981)	62
<u>State v. Bellamy</u> , 392 S.C. 103, 359 S.E.2d 63 (1987)	24
<u>State v. Byram</u> , 326 S.C. 107, 485 S.E.2d 360 (1997)	33
<u>State v. Caldwell</u> , 300 S.C. 494, 388 S.E.2d 816 (1990)	24
<u>State v. Crisp</u> , 362 S.C. 412, 608 S.E.2d 429 (2005)	54
<u>State v. Downs</u> , 361 S.C. 141, 604 S.E.2d 377 (2004)	54

5490

<u>State v. Drayton</u> , 293 S.C. 417, 361 S.E.2d 329 (1987)	26
<u>State v. Forrester</u> , 343 S.C. 637, 541 S.E.2d 837 (2001)	58
<u>State v. Harris</u> , 340 S.C. 59, 530 S.E.2d 626 (2000)	48
<u>State v. Holmes</u> , 320 S.C. 259, 464 S.E.2d 334 (1995)	59
<u>State v. Hughey</u> , 339 S.C. 439, 529 S.E.2d 721 (2000)	23, 24
<u>State v. Humphries</u> , 325 S.C. 28, 479	24, 26
<u>State v. Ivey</u> , 325 S.C. 137, 481 S.E.2d 125 (1997)	33
<u>State v. Johnson</u> , 306 S.C. 119, 410 S.E.2d 547 (1991)	38, 43
<u>State v. Johnson</u> , 333 S.C. 62, 508 S.E.2d 29 (1998)	26
<u>State v. Kelsey</u> , 331 S.C. 50, 502 S.E.2d 63 (1998)	48
<u>State v. Laux</u> , 344 S.C. 374, 544 S.E.2d 276 (2001)	62
<u>State v. McWee</u> , 322 S.C. 387, 472 S.E.2d 235 (1996)	33
<u>State v. Middleton</u> , 266 S.C. 251, 222 S.E.2d 763 (1976)	62
<u>State v. Pierce</u> , 289 S.C. 430, 346 S.E.2d 707 (1986)	23, 27
<u>State v. Plath</u> , 277 S.C. 126, 284 S.E.2d 221 (1981)	40, 47, 48
<u>State v. Plath</u> , 281 S.C. 1, 313 S.E.2d 619, 627 (1984) ..	32, 34-36, 38, 40, 41, 46, 47, 52
<u>State v. Plemmons</u> , 296 S.C. 76, 370 S.E.2d 871 (1988)	24
<u>State v. Quattlebaum</u> , 338 S.C. 441, 527 S.E.2d 105 (2000)	44
<u>State v. Reid</u> , 324 S.C. 74, 476 S.E.2d 695 (1995)	49
<u>State v. Shafer</u> , 352 S.C. 191, 573 S.E.2d 796 (2002)	36, 41, 50
<u>State v. Simmons</u> , 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002)	49
<u>State v. Sims</u> , 304 S.C. 409, 405 S.E.2d 377 (1991)	60

<u>State v. Smith</u> , 290 S.C. 393, 350 S.E.2d 923 (1986)	48, 50
<u>State v. Thibodeaux</u> , 750 So.2d 916 (La. 1999)	38
<u>State v. Torrence</u> , 305 S.C. 45, 406 S.E.2d 315 (1991)	24
<u>State v. Wood</u> , 362 S.C. 135, 607 S.E.2d 57 (2004)	54
<u>State v. Woomer</u> , 278 S.C. 468, 299 S.E.2d 317 (1982)	36, 38, 51
<u>Steageld v. United States</u> , 451 U.S. 204 (1981)	60
<u>United States v. Dela Pena</u> , 62 Fed. Appx. 754 (9th Cir. 2003)	60
<u>United States v. Diggs</u> , 544 F.2d 116 (3rd Cir. 1976)	62
<u>Washington v. Chrisman</u> , 455 U.S. 1 (1982)	61
<u>Whren v. United States</u> , 517 U.S. 806 (1996)	60

5492

STATEMENT OF THE ISSUES ON APPEAL

- I. IS THERE REVERSIBLE ERROR FROM THE TRIAL COURT'S FAILURE TO CHARGE THREE STATUTORY MITIGATORS BASED ON SUPPOSED EVIDENCE OF APPELLANT'S VOLUNTARY INTOXICATION, WHERE THE ISSUE WAS NOT EVEN MENTIONED TO THE TRIAL COURT, AND IN ANY EVENT THERE WAS ABSOLUTELY NO EVIDENCE APPELLANT WAS ACTUALLY INTOXICATED AT THE TIME OF THE CRIME OR ENGAGING IN HEAVY CONSUMPTION IMMEDIATELY PRIOR?
- II. WAS THERE REVERSIBLE ERROR FROM THE SOLICITOR'S BRIEF AND LIMITED QUESTIONING AS TO RECREATION AVAILABLE IN PRISON, WHERE THE ISSUE IS NOT PRESERVED, BUT IN ANY EVENT WAS APPROPRIATE RESPONSE TO DEFENSE EVIDENCE ABOUT THE HARSHNESS OF LIFE IN PRISON AND EMPLOYMENT REQUIREMENTS THEREIN, AS WELL AS INDEPENDENTLY RELEVANT AS SPECIFICS TO CHALLENGE THE DEFENSE EXPERT'S GENERAL ADAPTABILITY OPINION AND TO PLACE PERMISSIBLE RETRIBUTIVE CONCEPTS BEFORE THE JURY?
- III. WAS THE TRIAL COURT'S CURATIVE INSTRUCTION MORE THAN SUFFICIENT TO CURE ANY PREJUDICE FROM THE SOLICITOR'S ONE UNANSWERED QUESTION ABOUT ESCAPE, ESPECIALLY WHERE THE QUESTION WAS PROPER ANYWAY GIVEN THAT ONE OF THE DEFENSE EXPERT'S MAIN POINTS WAS THAT SCDC COULD SAFELY AND EASILY INCAPACITATE APPELLANT FOR THE REST OF HIS LIFE?
- IV. IS THERE REVERSIBLE ERROR WHERE THIS COURT HAS ALREADY RULED THREE TIMES THAT *RING v. ARIZONA* DOES NOT DEPRIVE A TRIAL COURT OF SUBJECT MATTER JURISDICTION EVEN THOUGH THE AGGRAVATING FACTORS WERE NOT ALLEGED WITHIN THE INDICTMENT?
- V. WAS THERE REVERSIBLE ERROR IN ADMISSION OF APPELLANT'S PANTS AND THE VICTIM'S WATCH FOUND WITHIN THEM AT THE TIME OF HIS ARREST, WHERE THE ISSUE IS NOT PRESERVED, THE PANTS WERE SEARCHED INCIDENT TO A LAWFUL ARREST PURSUANT TO A VALID WARRANT, AND THE SEARCH WAS IN ANY EVENT JUSTIFIED BY CONSENT FROM APPELLANT'S WIFE?

STATEMENT OF THE CASE

During the August 2001 term, the Dorchester County Grand Jury indicted Appellant, Marion Bowman, Jr., for murder and third degree arson (01-GS-18-0348 & -0349). {R. 5254-57}. The state gave notice of intent to seek the death penalty, and served notice of evidence in aggravation. {R. 1640-43; 4570-71; 5260-61}.

The trial judge in this case was the Honorable Diane S. Goodstein. Appellant was represented at the trial level by Norbert E. Cummings, Jr. and Marva A. Hardee-Thomas; First Circuit Solicitor Walter M. Bailey, Jr. and Assistant Solicitor Benjamin Lafond prosecuted the case for the State.

A pretrial Jackson v. Denno hearing was held before Judge Goodstein during various days between April 5th, 2002 and May 2nd, 2002. Jury selection began in Dorchester County on May 13th, 2002, and was completed on May 17th, 2002. Judge Goodstein conducted the guilt phase of Appellant's jury trial from May 17th until May 20th, 2002. Appellant's jury convicted him of both charges. {R. 4564}.

Appellant exercised his right to the 24-hour cooling-off period in subsection 16-3-20(B) of the Code of Laws for South Carolina. {R. 4569}. The sentencing phase of the trial began on May 22nd, 2002. Judge Goodstein submitted the following aggravating factors to the jury:

- (1) Murder was committed while in the commission of criminal sexual conduct.
- (2) Murder was committed while in the commission of kidnapping.
- (3) Murder was committed while in the commission of larceny with the use of a deadly weapon.

5494

(4) Murder was committed while in the commission of robbery while armed with a deadly weapon.

{R. 5018}. The following mitigating factors were charged:

(1) The defendant has no significant history of prior criminal convictions involving the use of violence against another person.

(2) The age or mentality at the time of the crime.

(3) Any other mitigating factors that the jury may find. [The jury] may also consider any nonstatutory mitigating factors.

{R. 5032}.

On May 23rd, 2002, Appellant's jury found the existence of two of the four aggravating factors: the murder was committed in the commission of kidnapping, and larceny with the use of a deadly weapon. It recommended a sentence of death. **{R. 5051}.** After finding that the verdict was not the result of prejudice, passion, or any arbitrary factor, Judge Goodstein sentenced Appellant to death for murder and ten years for third degree arson.

A timely Notice of Appeal was filed and served on May 24th, 2002. This appeal follows.

STATEMENT OF FACTS

This case concerns the murder of 21-year old Kandee Martin, who was found off a country road shot to death and in the trunk of her completely burned out Ford Escort. Appellant did not offer any witnesses in the guilt phase, but put the State to its proof. Three of the issues on appeal challenge the sentencing phase, one raises a subject matter issue based in Ring v. Arizona (which this Court has already rejected), and the last asserts a search and seizure and illegal arrest issue based on the admission of Kandee's watch and Appellant's pants.

A. Friday evening, 2/16/01: a suspiciously abandoned car and gunshots in the night

At about five minutes to eight on the Friday evening of February 16th, 2001, Dorchester County resident Dennis Judy was trying to get his wife home to see her TV show after they had eaten barbeque in Holly Hill. As he came around a curve on Nursery Road in rural Dorchester County, Judy noticed a car on the side of the road, with two of its wheels on the shoulder. Finding it odd that the car was parked with its lights off and windows down, Judy stopped briefly, but continued on. {R. 3782-85}.

Bryan Newhouse managed the nearby nursery and was watching TV that Friday evening. Hearing something outside, he muted the TV, at which point three gunshots rang out within ten or fifteen seconds apart. Newhouse went outside, opened the gate, and drove down the road to see if anyone was illegally hunting at night on the nursery grounds. Finding nothing on the dark and unlit country road, Newhouse went home, and fell asleep about midnight. {R. 3798-3801; 3803-05}.

5496

B. Early morning Saturday, 2/17/01: the car found ablaze

Newhouse was awakened from his sleep in the early morning hours by a loud exploding noise. He again drove down the road to the same location – but this time, he found a car engulfed in flames as high as twenty feet. Newhouse quickly went home and called police. {R. 3801-02}.

Dispatched to the scene a few minutes before 4:00 a.m. were Captain Perry Chinnors and his squad of volunteer firemen from nearby Reevesville, as well as Dorchester County sheriff's deputy James Kicklighter. On a path leading into a fallow field about 50 to 75 feet off Nursery Road, they found a small four-door car almost completely burned. They hosed the fire down, and opened the trunk. Inside was the charred body of Kandee Martin. {R. 3807-3810; 3814-16; 3819-22; 3875-78}.

C. 2/17/01: the crime scene evidence at Nursery Road

Dorchester County detectives and a SLED arson investigator responded in the early morning hours of February 17th, 2001. The Ford Escort's license tag was still readable, and it was registered to Kandee and her mother. {R. 3829-31}. Kandee had been shot to death by two bullets, each equally fatal, with one to the back of the head, and another to the left back. {R. 3944-49}. Her body was extremely burned and charred, and the only skin remaining was on part of her back. {R. 3941-43}. The lungs were clear, indicating that Kandee was dead before the fire started. {R. 3954-55}.

Most everything that could burn did burn in the passenger area and trunk of Kandee's Ford Escort. {R. 3879-83}. SLED investigator James Helms testified that the fire began in the passenger compartment rather than by an engine fire, because some

flammable items in the engine area as well as the VIN plate in the dashboard were not completely obliterated. {R. 3883-84}. From the Escort's trunk, officers collected the burned remainders of a woman's pocketbook, the back part of a shirt, some books and paperwork, the remainder of a belt, a gold earring, and some miscellaneous debris. {R. 3904-08}. On the pocketbook, SLED chemist Grady Layton identified a medium petroleum accelerant; on the shirt, paper material, belt, and miscellaneous debris, Layton was able to conclusively identify the presence of gasoline. {R. 4298-4399}. Thus, Agent Helms concluded the fire was intentionally set. {R. 3889-90}.

Dennis Judy returned to the scene that Saturday morning and showed Agent Helms where he had observed the Escort parked on the roadway the night before – approximately some 800 feet from where the car was ultimately found. {R. 3849-3853; 3909-11; 3936-38}. In that area, SLED agent Edward Porter collected in the street or on its shoulder one fired bullet and six .380 shell casings. The officers found in the middle of the road a pool of blood containing some hair and a earring back. As they scanned the area, they noticed blood on pine straw and branches 18 and 29 feet off the roadway down a path towards the wood line. There, they found a woman's shoe identified as Kandee's by her mother. {R. 3853-3860; 3867-71; 3910-12; 4164-66; 4272; 4286}. SLED DNA expert Matt Fitts later matched the blood samples to Kandee Martin. {R. 4366-67; 4377-79}.

D. Saturday morning, 2/17/01: Appellant's arrest, his pants, and Kandee's watch

After receiving information that Appellant had been with Kandee the night before, Branchville Chief Boom Walters, Dorchester County Lieutenant James Nettles, Dorchester

5498

detectives Terrence Van Doran and Alvin Coker, and other police arrived at Dorothy's trailer on the Saturday morning of February 17th, 2001. The officers asked Dorothy if they could enter to search for Appellant, and she voluntarily agreed – eventually signing a consent to search form. Officers found Appellant hiding alongside a bed in a child's room down the hall, and he was promptly arrested and Mirandized.¹ {R. 4125-29; 4139-42; 4144-45; 4191-95; 4208; State's Exhibit #27}.

Appellant was wearing nothing but his boxer shorts, and officers asked him if he wanted his pants. When Detective Van Doran retrieved the back jeans from the sofa in the living room, he found a brown lady's watch in the pocket. {R. 4129-32; 4142; 4150-52; 4195-98; 4207-08}. Kandee's mother identified at trial the watch as belonging to her daughter. {R. 4164-65}. Moreover, SLED chemist Layton also found the presence of a heavy petroleum accelerant, but not gasoline, on the black Levi's – and a number of Appellant's friends testified at trial he was wearing black jeans the day before. {R. 3763; 4058; 4093; 4193; 4297-98}.

E. Appellant's friends and relatives come clean about Kandee's murder

As the investigation progressed, it began to center around a number of people who had known each other for years and lived in or hung out at Branchville Villas Apartments, or "the projects". Of these people, Appellant's sisters Yolanda and Kendra, his first cousin (and codefendant) James Tywan Gadson, and his lifelong friend Travis Felder all testified

¹ During the Jackson v. Denno hearing (but not in the guilt phase), it was brought out that officers arrested Appellant at Dorothy's trailer that morning based on an outstanding Orangeburg County arrest warrant for receiving stolen goods. {R. 321-22; 331, 648, 665, 797, 935; 5420-22}.

for the State after securing plea agreements. {R. 3735-36; 3981; 4085-86; 4167-68}.

1. The argument over the gun

William Henry Koger lived across the street from the projects, and people tended to gather in his yard, drink beer, and stand around a fire in a 55-gallon barrel. On February 16th, a gathering was planned at Koger's for Joseph Fogle's birthday. {R. 3673-76; 3680; 3683; 3700; 3988; 4060}.

Koger stated people started to arrive about 11:00 a.m. or so. Appellant – also known as “JR” or “Black” – was apparently there periodically throughout that afternoon. At some point Appellant left – there was some disagreement in the testimony from various witnesses about whether this was a trip to the meat market for the party, or whether the meat market trip was earlier and this was a different trip. In any event, before he left, Appellant took out from his waistband a grey and black High Point .380 semiautomatic pistol – which he had bought a couple of weeks earlier – wrapped it in a paper bag, and put it into the barrel in Koger's yard. {R. 3675-77; 3683-84; 3700; 3750-51; 3983-89; 4031-32; 4057-59; 4077-78; 4101}.

When Appellant returned, a number of people, including trial witnesses Koger, Fogle, and Carolyn Brown – saw Appellant get upset at Tywan because someone had taken his gun. However, Hiram Johnson interceded, and told Appellant he had taken the gun back to Katrina West's apartment in the projects. Appellant went across the street and got the gun, and put it back in his pants. {R. 3677-79; 3684-85; 3690-91; 3701; 3985-90; 4058-60; 4077-78}.

5500

2. Unpaid debts and threats to kill

At another point later that afternoon, Appellant asked Fogle to take him to Frankie Martin's house. Kande's car was parked out front, and Appellant mentioned to Fogle that Kande owed him some money. {R. 3685-87}.

Appellant apparently also spent some time that afternoon with his sister Yolanda and Katrina West's apartment in the projects. The three of them left in Yolanda's little blue Volkswagen to go get medicine for Katrina's baby at the pharmacy, with Appellant riding in the back seat and the girls in front. On the way, they saw Kande's car parked out in front of Charlie Fralix's house, and Appellant told Yolanda to stop. {R. 3701; 3721-24; 3736-40; 3763-65}.

Charlie's nephew Eddie Waters was leaning in the car window and talking to Kande, who asked to borrow \$5 for gas. Appellant told Yolanda to pull up alongside Kande's car, and tried to get her attention through the open rear window of Yolanda's VW. However, Kande held up her finger at Appellant, saying "hold on a minute", and turned back to her conversation with Eddie. {R. 3724-35; 3740-42; 3764-66}.

There is some discrepancy as to the words Appellant actually used when Kande told him to wait, but it is clear that Kande's gesture angered Appellant. Eddie heard Appellant say "Fuck waiting a minute. I'm about to kill this bitch." {R. 3725-27}. According to Katrina, Appellant declared "fuck that ride, that bitch be dead by dark fall". Appellant's sister Yolanda described his comments as "Fuck that bitch, that bitch be dead by dark". {R. 3765-66}. Yolanda also told police Appellant said "that bitch owed me some money and I want my money today". In any event, Yolanda drove off. {R. 3742-45; 3749}.

3. Tywan Gadsden describes Kandee's murder

Appellant made true on his threat later that night. Appellant's first cousin and codefendant Tywan Gadsden described the murder at trial pursuant to a plea agreement. Tywan, who had spent the afternoon drinking with others under a tree in Koger's back yard, testified Appellant did not return to Koger's until around 7:00 or 7:30 that evening. Appellant was riding with Kandee in her green Ford Escort, and he called Tywan over and told him to get in. {R. 3990-93; 4033}.

The three drove to a nearby Horizon EZ shop, where they gassed up the car and drove off without paying. With Appellant directing the way, Kandee then drove out into the country, where they eventually ended up on Nursery Road. There, they stopped, turned the car off, and Appellant and Tywan got out. {R. 3994-96; 4033-35}.

Appellant and Tywan walked down the road a ways, as Appellant whispered he was going to kill Kandee because she was wearing a wire. Kandee followed behind, grabbed Appellant by the arm and said she was scared. A car came down the road, and the three jumped into the woods until it passed. {R. 3997-99; 4035-36}.

Kandee then started back down the roadway with Appellant following. As Tywan came out of the woods behind them, he saw Appellant fire three times at Kandee. Kandee ran towards Tywan, but stopped and turned to face Appellant. She begged, "Please Black, don't shoot me no more. I have a baby to take care of." Appellant responded to her pleas by firing twice more, and Kandee fell to the ground. {R. 3997-4003; 4011-12; 4036-37}.

Tywan, who said he "messed in his pants a little bit", jumped in the car while Appellant dragged Kandee into the woods by her feet. Appellant then climbed in the

5502

driver's seat of Kandee's car, remarking: "I shot that bitch in the head. Heard her head hit the ground." They then headed back to Branchville. {R. 4012-14}.

Eventually, they parked Kandee's car in a wooded area behind a coal plant. Before they got out, Appellant threatened to blow Tywan's brains out if he ever told anyone. Appellant then headed for the projects while Tywan walked back to Koger's house. Appellant eventually came back with Yolanda's car, and he and Tywan went to the EZ shop for some beer. They then went to another friend's house where they talked to Travis Felder, before returning to Koger's. {R. 4015-17; 4033-35}.

4. The trip to the club in Kandee's car: admissions of guilt

Appellant eventually went to Meeka and Katrina's apartments in the projects, where he ran into Hiram Johnson. Hiram testified he agreed to go with Appellant downtown, and they left in Yolanda's car to go to the EZ shop. There, they ran into Appellant's uncle (and Tywan's father) James J. Gadsden, who was walking home from a restaurant where James does odd jobs in return for burgers. Appellant gave James \$10 and told him to go inside and buy them four pairs of gloves. James did so, purchasing brown cotton gloves and a beer with the change. Appellant and Hiram then drove back to the projects. {R. 3957-60; 3962-63; 4017; 4061-63}.

Around midnight, everyone decided to go to the Allen Murray nightclub outside of Bowman. Appellant drove Kandee's car, with Hiram, Tywan, and Darrien Williams as passengers. Appellant told the men he had stolen the car, and made them put on the gloves James bought at the EZ store. {R. 4017-20; 4063-65; 4081}.

State's witnesses Yolanda, Carolyn Brown, Valorna Smith, Travis Felder, and Keith

Rivers were among those who also went to the Allen Murray Club around midnight. All of them testified Appellant never went inside the club, but instead hung around in the parking lot, often sitting in Yolanda's Volkswagen. {R. 3691-92; 3696-97; 3707-09; 3714; 4039-42; 4089-90; 4104; 4112-15}. Hiram stated Appellant walked around the lot some, trying to sell Kande's car. {R. 4067}.

After about an hour or so, Appellant, Hiram, Tywan and Darrien headed back to Branchville in Kande's car. As he drove the Escort with the pistol sitting in his lap, Appellant remarked, "I killed Kande, heh heh heh". Appellant dropped Hiram off at the projects. {R. 4021-22; 4067-69}.

5. Travis Felder describes the car fire

Travis, Carolyn, and Valorna also left the club and went back to Valorna's apartment in the projects. They were watching movies and hanging out when there was a knock at the door about 3:00 a.m. Appellant was alone, and said "Trav, come here, let me holler at you quick like". Appellant told Travis he needed help parking a car. {R. 4042-45; 4116-18; 4090-92; 4119-20}.

Travis testified that he got in his own car and followed Appellant in the Ford Escort back to Nursery Road. Appellant pulled over on the side of the road, cut his lights, and went into the woods for a minute. The next thing Travis saw was Appellant pulling a body by its feet face down. As Appellant opened the trunk and put the body inside, Travis could see by the trunk light it was Kande. {R. 4093-97}.

Appellant looked back at Travis, and said, "You didn't think I would do it, did you? I killed Kande Martin." Appellant told Travis to go down the road and turn around, while

5504

Appellant drove the Escort up into a field. Travis watched as Appellant threw a light into the car, which erupted in flames. Travis then took Appellant back and returned to Valorna's, where he went to sleep. {R. 4098-4101; 4106}.

F. May and June 2001: a pistol found in the Edisto river – and bullets found in the couch

Appellant's murder weapon was found after police managed to get information in May and June 2001 from Appellant's wife Dorothy and his sisters Yolanda and Kendra, all of whom, as mentioned before, testified at trial with plea agreements. {R. 3735-36; 4161; 4167-68}. Dorothy stated that a few days after the murder Hiram Johnson told her the gun was hidden in the sleeper sofa at her trailer on Lockett Street. She found the pistol hidden a "cuff" or "sleeve" of the couch, put it in her pocketbook, and went over to see Kendra at Appellant's grandmother's. {R. 4198-4202; 4210-12}.

While Dorothy claimed she talked with Kendra and then left the gun at Kendra's in the clothes hamper, Kendra testified that she and Dorothy went to meet Appellant's father Marion Bowman, Sr. at the EZ shop. Marion Sr. took the gun and put it in the middle console of his truck. {R. 4168-73; 4203-04; 4211-12; 4358}.

The next day, Kendra and Yolanda met with Marion Sr., and then followed him out to the graveyard at the Zion AME church. Appellant's father brought the pistol from out of the nearby woods, and they wrapped it in a towel and put it in Yolanda's trunk. Kendra and Yolanda drove out to the Old Cope Road bridge and threw the gun over the side into the Edisto River. {R. 4174-78; 4183-87}. On May 28th, 2001, diver Mark Sheetz recovered the black and grey High Point .380 semiautomatic in the river bottom about 25 to 30 feet from the bridge. {R. 4220-29}. The gun was conclusively matched by SLED firearms examiner

David Collins to five of the six Winchester .380 shell casings found at the Nursery Road scene. While the sixth casing and spent bullet could not be conclusively matched to Appellant's .380, they were of course consistent. {R. 4315-20}.

Following Dorothy's statement to police in June 2001, officers visited the residence of her sister Sally Bookhart, Dorothy had moved from her trailer on Lockett Street within a week or so after Appellant's arrest, and she gave the sofa back to Sally. When the officers arrived, Sally willingly agreed to their requests to search the sofa. In a little "pocket" of the sofa's fabric, SLED agent James Helms discovered a box of Winchester .380 ammunition, consistent with the shell casings found at the Nursery Road scene. {R. 4205; 4244-49; 4259-62}.

G. The DNA match

Finally, SLED DNA analyst Fitts found human blood and semen in the vaginal swabs taken from Kandee at autopsy. While the mixture of female and male secretions in the vaginal swabs complicated identification, Agent Fitts was able to match Appellant to a probability of 1 in 5300. {R. 4370-72; 4379-87}.

H. The State's sentencing phase case

Following the 24-hour "cool down" period, the State began its evidentiary presentation in the sentencing phase by reincorporating its evidence from the guilt phase. {R. 4650}. It then introduced certified copies of Appellant's March 1998 convictions from two incidents – with a third degree burglary charge and a petty larceny charge for each. {R. 4652}.

Next to testify were Joseph Wimberly and David Thompson – the two victims from

5506

the March 1998 convictions. Wimberly noted that his house was robbed of a shotgun, of which the barrel was later sawed off. Stolen from Thompson's residence was cash and a .357 pistol. Within 24 hours, Appellant's cousin used the pistol to kill himself. {R. 4653-59; 4801-02}.

Next was SLED arson agent James Helms, through which the State introduced photographs of Kandee as she was found severely burned in the back of her trunk. {R. 4660-68}.

The pathologist Dr. Janice Ross described autopsy photographs of the entrance and exit wounds to Kandee's back and behind her left ear. The trial court excluded the general autopsy photographs in view of the pictures introduced through Helms. {R. 4669-91}.

Finally, Kandee's mother Cordillia Martin and father Wayne Martin gave victim impact testimony about Kandee and the effect of her loss on them and Kandee's young son. {R. 4692-4708}.

I. The defense's sentencing case

The defense case in mitigation began with Appellant's older sister Kendra Bowman. She generally described good times growing up with Appellant, but noted her biological father was abusive until he left when the children were babies. {R. 4742-48}.

Next to testify was Appellant mother Dorothy Bowman (his wife, who testified during the guilt phase, is also named Dorothy). Dorothy related that Appellant's father was abusive, but he left when the kids were very small. She theorized that Appellant longed for fatherly involvement, and noted that her subsequent boyfriend Joseph Sims was a positive influence on the kids. Appellant had trouble in school and only finished the ninth

grade, but he would help his mother out after she became disabled. {R. 4750-59}.

Appellant called Margaret Baughman, an adult education teacher at the Dorchester County Detention Center. She testified that during he pre-trial incarceration Appellant took classes, and even became a reliable assistant to her teaching at the jail. {R. 4761-67}.

A forensic social worker named Jeffrey Youngman also testified in Appellant's mitigation presentation. Generally, Youngman theorized Appellant's functioning was negatively impacted by his upbringing. Appellant's biological father was abusive, and then generally absent after he left when the kids were very young. The mother was very strict, and would "box" or beat Appellant daily. The family was poor, and Appellant was supposedly deprived and dirty when young. While the social worker detailed some injuries Appellant suffered as a child, he noted that the doctor at the time did not suspect abuse. {R. 4791-94}.

Appellant started having difficulty in school after the third grade, and became both an academic and disciplinary problem. When his mother's health worsened, he had to assist with the household. {R. 4794-4800}.

The social worker noted a family history of alcohol abuse. Appellant started experimenting with alcohol in the 5th grade, and eventually started selling drugs. Appellant also supposedly faced repeated abandonment from male figures in his life, from his father, to his mother's paramour Joseph Sims, to the death of his grandfather. The deaths of two cousins – including one who killed himself with the gun Appellant stole – negatively affected Appellant. {R. 4797-4802; 4807}.

These factors led Youngman to theorize that Appellant would make impulsive

5508

decisions with poor judgment and a lack of consideration of the consequences. {R. 4805-09}.

Frankie Martin testified that Kandee came by on February 16th to borrow \$3. He stated Appellant came by with Joe Fogle to see Kandee, and that Appellant left with Kandee. {R. 4830-32}.

Corrections consultant and former South Carolina prisons official James Aiken was called to the stand next for the defense. He was qualified as an expert in future dangerousness and prison adaptability issues. Aiken noted that he had evaluated thousands of inmates for placement in prisons. According to Aiken, if Appellant was given life, he would never leave again from a South Carolina prison for any reason whatsoever. He noted the South Carolina Department of Corrections could easily manage and incapacitate Appellant for the rest of his life, with the prison's fences, gun towers, and trained guards. Aiken also opined that Appellant would adapt well to prison life, given that during his three previous incarcerations, Appellant had no significant incidents of violence to staff and inmates, and had assisted the adult education classes. {R. 4832-45}.

Interestingly, Appellant's next witness – who, unlike Aiken, had contact with Appellant in a jail setting – was not quite as kind about Appellant's behavior. Dorchester County Detention Center guard Sharon J. Branch testified that Appellant has "attitude", and would often speak out to guards. While Appellant never made her feel threatened or raised his hand, he would often refuse direct orders – depending on what kind of day he was having. For example, he would refuse to return to his cell when ordered, saying: "you want me to go in, put me in". As his death penalty trial approached, Appellant started

behaving “calmer” and “better”, but had on a Sunday during the trial caused a problem requiring the intervention of ministers and prison staff, because he was not allowed to go to church when he wanted. **{R. 4882-88}**.

On the other hand, another jail guard named Enrique Badillo testified that Appellant was very polite, and presented no difficulty or threats to safety. **{R. 4902-05}**.

Finally, guilt phase witness Travis Felder was shown a security videotape from the Horizon EZ store at approximately 3:00 a.m. on February 17th, 2001. He admitted the tape showed him at the store – without Appellant – buying gasoline in a small gas container. Felder admitted that after Appellant came and got him from the girls’ apartment in the Branchville Villas, Appellant gave him a gas jug and asked him to buy some fuel. Travis stated he thought Appellant was just filling up the can to move the car. **{R. 4911-28}**.

5510

ARGUMENT

I. THERE IS NO REVERSIBLE ERROR FROM THE TRIAL COURT'S FAILURE TO CHARGE THREE STATUTORY MITIGATORS BASED ON SUPPOSED EVIDENCE OF APPELLANT'S VOLUNTARY INTOXICATION, WHERE THE ISSUE WAS NOT EVEN MENTIONED TO THE TRIAL COURT, AND IN ANY EVENT THERE WAS ABSOLUTELY NO EVIDENCE APPELLANT WAS ACTUALLY INTOXICATED AT THE TIME OF THE CRIME OR ENGAGING IN HEAVY CONSUMPTION IMMEDIATELY PRIOR.

Appellant first contends the trial court erred by failing to instruct on three statutory mitigators despite the supposed existence of evidence Appellant was voluntarily intoxicated at the time he committed the crime. However, the issue is not preserved, as it was never as much as mentioned to the trial court at any point during the proceedings. In any event, there was no evidence Appellant was either actually intoxicated at the time of the crime or at least engaging in heavy consumption reasonably prior to the time of the crime. As such, there could be no error.

A. Events at trial

As noted before, William Koger testified that people liked to come to his house, hang out, and drink beer, and that a party for Joe Fogle was planned that night. While Appellant was at his house at times after 11:00 a.m., he left at three times that afternoon and evening. {R. 3673-79}.

Joe Fogle did not mention any drinking. He testified that Appellant left Koger's house to go to the meat market at one point, and that at another time Appellant and Fogle went to Frankie's house, where they saw Kandee. {R. 3682-87}.

Keith Rivers stated that on February 16th he was in Koger's yard. When asked what "you all" were doing, he stated "drinking beer, drinking liquor, and talking". Rivers stated he saw Appellant at Koger's, and when asked what they were doing, stated "we was just

all talking, having a good time, that's all". Finally, Rivers stated that he saw Appellant at about midnight or one a.m. outside of the Allen Murray club. Rivers asked Appellant if he wanted to go in and get Rivers a beer, but Appellant said he wasn't going in the club. {R. 3690-96}.

Carolyn Brown testified about cleaning chicken for the party and Appellant's argument with Tywan over the pistol. She did not mention any drinking, and noted that she saw Appellant later that day in a car with his sister and another woman. {R. 3699-3702; 3706-07}.

Eddie Waters described hanging around Charlie Fralix's house (NOT Koger's) and drinking beer. He related about seeing Appellant as a passenger in the rear of the car that pulled up next to Kandee's when Eddie was talking to her through the window. Appellant left without getting out. {R. 3721-28}.

Appellant's sister Yolanda and cousin Katrina West testified about spending part of the afternoon with Appellant, during which they went to the pharmacy in Yolanda's VW and stopped by Fralix's house on the way. Neither Yolanda nor Katrina described them doing any drinking; indeed Katrina testified she was not drinking and saw no one drinking at Fralix's house. {R. 3737-45; 3761-72}.

James J. Gadsden (Tywan's father) testified about seeing Appellant and Hiram that evening parked in the EZ shop parking lot. Appellant gave James \$10 to buy the four pairs of gloves. While James stated he bought a beer with the change, he did not mention buying any beer for Appellant or Appellant drinking any. {R. 3957-61}.

As noted in the Statement of Facts, James Tywan Gadsden testified about spending

5512

portions of the day with Appellant, including when he killed Kandee. Tywan first described riding in Yolanda's car with Appellant during the morning of February 16th. Back in Branchville, he noted that Appellant took a beer out of the paper bag before putting the gun in it. Tywan stated that Appellant put the gun in a trash barrel at Koger's house and left, while Tywan sat down drinking. Appellant returned at which point the previously-described argument over the gun happened. {R. 3984-90; 4031-32}.

Tywan testified that after the gun dispute was resolved, Appellant left and Tywan did not see him until 7:00 or 7:30 p.m. Tywan stated that *he* had been drinking since 1:00 p.m., that he was drinking beer and sharing a fifth of gin with "everybody", and that he was "feeling in good shape" when Appellant picked him up. However, again, Tywan testified Appellant was NOT at Koger's during the six and a half hours or so during which Tywan was drinking. {R. 3989-94; 4031-32}.

Tywan of course then described Appellant's murder of Kandee and their return to town in her car. He specifically noted he was not drinking while riding with Appellant and Kandee. {R. 4034}.

According to Tywan, after they returned Appellant stated he was going to get some beer in Yolanda's car, and that Tywan went in and bought the beer at the EZ shop. Tywan stated that they then went to Fred's house before returning to the projects. Tywan went back under the tree at Koger's – he stated Appellant left at some point with Hiram in Yolanda's car. {R. 4014-17}.

Tywan stated that later that night going to the Allen Murray Club with Appellant, Darrien, and Hiram in Kandee's car. According to Tywan, he went inside the club, but

Appellant stayed outside the entire time with Hiram. They left in Kandee's car about 2:00 a.m., and Tywan testified he laid down in the back seat because he had been drinking all day, and was "near about" drunk. {R. 4018-22}.

Hiram Johnson testified seeing Appellant at Koger's in the afternoon during the dispute over the gun, but stated he left and did not see Appellant again until that night when they went to buy gloves at the EZ store. Later, Hiram went with Appellant to the Allen Murray club, and noted they just hung around the parking lot. {R. 4058-67}. On cross, Hiram stated that some of the men were drinking when he was at Koger's house earlier that afternoon, but Hiram himself was not. {R. 4076-78}.

Travis Felder described drinking some beer at "Fred's" house after he got off work late Friday afternoon. He testified Appellant stopped by and asked him if he was going to the club before leaving. Felder went to the "Get it Get it" club, and described doing some beer drinking before going to the Allen Murray Club, where he saw Appellant in the parking lot. Felder then related how Appellant came and asked him for a ride, and how Appellant lit Kandee's car on fire. {R. 4087-92}.

Carolyn Brown also stated she saw Appellant standing outside of the Allen Murray club before she left at 2:30 to 3:00 a.m. She described Appellant sticking his head in the door and asking Travis Felder for a ride. {R. 4042-45}.

During the sentencing phase, the defense called forensic social worker Jeffrey Youngman. In describing Appellant's general social history, Youngman stated that Appellant's mother and father drank, and that Appellant started experimenting with alcohol and "stealing sips" in the 5th grade. {R. 4797}. Later, Youngman noted that Appellant's

5514

decisionmaking structure was weakened by Appellant's mother selling drugs, Appellant's "alcohol abuse", and the fact he was selling drugs. {R. 4807}. On cross, Youngman noted that Appellant's selling of drugs affected his decision making process with regard to Kandee's murder inasmuch as he had an image to protect. Youngman did say he found the existence of substance abuse in Appellant's life. {R. 4811; 4824}.

The issue of charging mitigators based on voluntary intoxication was never raised to or ruled upon by the trial court.

B. General Rules

When fashioning a capital sentencing charge, the trial court has a duty to review all statutory instructions and instruct the jury on any circumstances which may be supported by the evidence, and not merely on those requested by the defendant. State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000). In making this determination, the trial court is concerned with only the existence of evidence at not its weight. Id.

Evidence of voluntary intoxication is a proper matter for consideration by the jury in mitigation of punishment. State v. Pierce, 289 S.C. 430, 346 S.E.2d 707 (1986). When there is evidence that the defendant was intoxicated at the time of the crime, the trial court should instruct the jurors on three statutory mitigating factors: S.C. Code Ann. § 16-3-20(C)(b)(2), (6) & (7) (Supp. 2000). Pierce, 289 S.C. 430, 346 S.E.2d 707. These mitigators are:

(2) The murder was committed while the defendant was under the influence of mental or emotional disturbance;

(6) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law were substantially impaired;

(7) The age or mentality of the defendant at the time of the crime.

If the trial court gives a specific charge on a nonstatutory mitigator of voluntary intoxication, it is not reversible error to fail to charge the three statutory mitigators. State v. Plemmons, 296 S.C. 76, 370 S.E.2d 871 (1988).

C. The issue is not preserved.

As noted before, a trial court has an independent duty to review the evidence at trial and charge any and all mitigators warranted by that admitted before the jury. Hughey, *supra*. However, this general statement does not abdicate the requirement that the defense must contemporaneously raise the issue and give the trial court a fair chance to rule upon it in order to preserve the issue for appeal – as this Court abolished *in favorem vitae* review for capital cases in 1991. See State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). Indeed, Hughey cites two pre-Torrence death penalty cases in support for the proposition that a trial court has an independent duty to charge mitigators regardless of a request by the defendant – State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990) and State v. Bellamy, 392 S.C. 103, 359 S.E.2d 63 (1987). Caldwell specifically noted it was applying *in favorem vitae* review to the trial judge's failure to charge a mitigator, because no specific request was made at trial for the mitigator at issue on appeal in that case. 300 S.C. at 506, 388 S.E.2d at 823.

This case is of course post-Torrence, and there is no amorphous “statutory mitigator” exception to the contemporaneous objection rule that has somehow been the only thing to survive abolition of *in favorem vitae*. Thus, Appellant was required to raise the issue below in order to assert it on appeal. See State v. Humphries, 325 S.C. 28, 479

5516

S.E.2d (1997) (where judge gave defense opportunity to request mitigators, and it did not, issue was not preserved for appeal).

And it is clear the present issue is not preserved. In this case, the issue of charging mitigators based on voluntary intoxication was **never** raised whatsoever at any time or in any fashion by the defense. Voluntary intoxication during commission of the crime simply was never discussed at the sentencing phase, even tangentially. While the defense halfheartedly requested a charge on mitigator (2) – mental or emotional disturbance – it virtually conceded that the record was devoid of any evidence to support such a charge. Apparently, this was because the defense as a tactical matter did not want to raise mental health issues as they would “place [Appellant] in greater jeopardy” based on “certain issues that were part of the preliminary matters” – presumably referring to the fact that the State could point out Appellant’s statement to the Hall Institute during his evaluation that Kandee’s vagina was fondled after her death. {R. 350-51; 960-64; 1107; 1244}.² The judge then expressly found no evidence in the record of mental or emotional disturbance or impaired capacity, but asked the defense to point to any the court may have missed. The defense attorney responded by simply noting he wanted his client to personally hear the judge reject the mitigator. {R. 4937-40}. Moreover, the defense also did not object on this issue at the end of the judge’s sentencing phase charge. {R. 5046-49}.

Therefore, Appellant’s present issue was not raised below and is not preserved for

² Appellant made similar claims to Orangeburg County Sheriff in part of a particular statement that was ultimately excluded by the trial court. {R. 350-51; 374-77; 418-19; 1353-54}. Thus, having won that battle, the defense obviously did not want to lose its benefit by opening the door to the same information for use by the State. Indeed, the defense had a number of mental health experts on its witness list for the sentencing phase, but did not call any of them other than a social worker. {R. 4576-79}.

appeal. See State v. Johnson, 333 S.C. 62, 508 S.E.2d 29 (1998) (to preserve for appeal a request for a jury instruction, the party must object before the jury retires); Rule 20, SCRCrimP (requests for instructions must be submitted at the close of evidence, and parties must object to instruction issues before the jury retires; failure to do so constitutes a waiver).

D. Since there was absolutely no evidence that Appellant was actually intoxicated at the time of the crimes, there was no reversible error.

Even if a request was made, there was no evidence in the record of intoxication to justify charging the three mentality mitigators. In his brief, Appellant essentially tries to create sufficient evidence from two sources – testimony that some other folks were drinking the day Kandee was murdered, combined with general mitigation testimony that appellant and his family have a *history* of substance abuse or alcohol use.

However, such evidence of is patently insufficient to justify the charge under this Court's precedent. In State v. Drayton, 293 S.C. 417, 361 S.E.2d 329 (1987), the defendant pointed to evidence that his confession stated he drank alcohol on the night of the murder, as well as that he drank beer at the convenience store where the victim was abducted. The Court held that such evidence did not require charging of the three mitigators, as such evidence was NOT evidence that the defendant was *actually intoxicated* at the time the crime was committed. Similarly, in State v. Humphries, 325 S.C. 28, 479 S.E.2d 52 (1997), the Court found insufficient evidence to justify the diminished capacity mitigator where the only evidence was the defendant's statement that he and his accomplice were drinking beer the night before the early morning robbery.

In contrast, this Court has required the instructions where there was evidence either